

LAW REGULATION OF DOMESTIC VIOLENCE IN REPUBLIC OF MACEDONIA FROM INDEPENDENCE UNTIL TODAY

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Domestic violence represents one of the most flagrant violations of fundamental human rights as it is manifested within the family institute, among people who have an emotional connection between them. Domestic violence in the past has not been addressed by state institutions precisely because it took place within the home, within the family and was considered a private matter. Recently this concept has started to change, even though not to the necessary level but, since this form of violence affects entire society, not only the family, but also the state and state institutions. This change came mainly after the rise of awareness of society to protect human rights and fundamental freedoms, to treat equally all people regardless of gender, age, race, religion, etc., considering these actions as criminal offenses etc. When these rights were proclaimed and when all the forms of domestic violence were banned, domestic violence began to be treated as a general matter and the state began to take measures to prevent and combat it, including its legal framework.

And yet, what really is domestic violence? There are many definitions for domestic violence, both in the international terms and national level. All these definitions are very similar to each other, including all the forms of manifestation of domestic violence as well as persons who are perpetrators, respectively victims of this violence. Criminal Code¹ of the Republic of Macedonia defines domestic violence as: “Family violence means harassment, rude offense, threatening security, bodily

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¹ **Criminal Code of the Republic of Macedonia**, Official Gazette nr.7/08.

injury, gender violence or other psychological or physical violence which causes feeling of insecurity, threat or fear, to the husband / wife, parents or children or other persons living in marital or extramarital or in common household and to the ex-husband / wife or other persons who have common children or are in close personal relationship”² Meanwhile, the Law on Prevention and Protection from Domestic Violence gives this definition: “The term domestic violence implies abuse, insult, endangering security, bodily injury, gender violence or other psychological, physical or economic violence which causes feeling of insecurity, danger or fear, including threats of such a acts, to the spouse, parents or children or other persons living in marital or extra-marital or in common household, and to ex-husband/wife, and to current or former partner or those who have children together or are in a close personal relationship, regardless of whether the perpetrator shares or has shared the same residence with the victim or not”³

The issue of domestic violence and against women is treated in various International legal conventions and resolutions but it has never been treated explicitly and thoroughly. There, domestic violence is defined as violence against women, given the fact that the majority of victims are women. Although we have some changes in the international documents which are adopted in the recent years, which explicitly define and mention the notion of domestic violence.

The first important international document who treats specifically violence against women as a violation of fundamental human rights and which defines this issue is the UN Declaration on the Elimination of Violence against Women. Article 1 of this Declaration gives this definition: “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or

² **Law on Prevention and Protection from Domestic Violence in the Republic of Macedonia**, Official Gazette nr.138, 17.09.2014

³ 48/104 **Declaration on the Elimination of Violence against Women**, <http://www.un.org/documents/ga/res/48/a48r104.htm>

arbitrary deprivation of liberty, whether occurring in public or in private life”.⁴

Very similar definition to this has the Council of Europe Convention on preventing and combating violence against women and domestic violence adopted in 2011, where the term domestic violence is defined as: “domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”.⁵

As it can be seen by these definitions, a subject of domestic violence or a victim of domestic violence can be any member of the family, regardless of gender and age. Consequently, the victim of domestic violence can be: women, children, elderly and disabled parents and men. Also, the definitions outlined above imply that domestic violence is manifested in various forms. The victim may be subject to one or more forms of manifestation of domestic violence.

According to statistics in the Republic of Macedonia, most prevalent forms of domestic violence are:

- Physical abuse or violence;
- Psychological abuse;
- Sexual abuse.

In the literature we also can find some other forms such as economic (financial) abuse, spiritual abuse etc.

The Republic of Macedonia declared its independence from Yugoslavia in 1991. As with the other countries of Central and Eastern Europe, Macedonia is an emerging democracy in the process of developing a free

⁴ **Council of Europe Convention on preventing and combating violence against women and domestic violence**, 12 April, 2011, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c>

⁵ Minnesota Advocates for Human Rights, **Domestic Violence in Macedonia**, 1998, pg.10

market economy. Macedonia must overcome a long history marked by the absence of a democratic tradition, economic hardship and tensions among its ethnic groups to achieve prosperity and to better protect the human rights of its citizens.⁶ Republic of Macedonia had no legal provision that explicitly regulated domestic violence until the changes were made in the Family Law in 2004. Until then, perpetrators of domestic violence were prosecuted according to the general criminal provisions against violence. According to a report made by Minnesota Advocates for Human Rights on September 1998 about Domestic violence in the Republic of Macedonia, criminal assaults were divided into two broad categories: those assaults causing “body injuries” and those causing “serious body injuries.” According to the law, for bodily injuries, a private lawsuits would be initiated by victims, and for serious bodily injuries, prosecution would be initiated ex officio by the Public Prosecutor.⁷ Taking into consideration this legal situation in the Republic of Macedonia, we can understand the difficulty or even the inability of the victims to seek help and legal protection against domestic violence (in all its forms), except the cases with “serious body injuries”. Moreover, it can be concluded at that time, there were statements such as that domestic violence does not exist at all in the country. Such a statement were made back in 1998 by deputy Prime minister of Interior and chief of Skopje Police in an interview to Minnesota Advocates for Human Rights where they point out that domestic violence in the Republic of Macedonia doesn’t exist, or the statement of chief public prosecutor of the Republic of Macedonia where he outlines that his office between years 1980 and 1995 hasn’t replied with a lawsuit (criminal charge) to any of the requests for an assault or when he adds that some cases of assault to women by their husbands were mostly dealt with mediation, through (civil) divorce proceedings rather than through prosecution (criminal proceedings).⁸

⁶ Minnesota Advocates for Human Rights, **Domestic Violence in Macedonia**, 1998, pg.21

⁷ Minnesota Advocates for Human Rights, **Domestic Violence in Macedonia**, 1998, pg.17

⁸ Minnesota Advocates for Human Rights, **Domestic Violence in Macedonia**, 1998, pg.22

After the year 2000 a new approach appeared towards treatment of domestic violence. This was initially done by non-governmental organizations who undertook concrete steps and activities for informing the public about domestic violence and by conducting different researches and analysis regarding the issue, organizing campaigns, roundtables and other activities for helping our society to identify domestic violence primarily, condemn (denounce) or even to prevent the same. Hence, concrete steps were made as a contribution to regulate the issue legally. Substantial changes into legislation for protecting the victims of domestic violence began in 2004 with amending of the Criminal Code and Family Law with adaptation of appropriate articles that explicitly have to do with domestic violence. Furthermore, the state and social policies underwent profound changes regarding recognition of domestic violence primarily, condemning and punishing the perpetrators, raising the awareness of victims to denounce the domestic violence etc. Even more important changes into legislation were made in 2006 and 2008 and especially in 2014 where a special Law to regulate the domestic violence was adapted, "Law on prevention and protection from Domestic Violence" effective since 1st of July 2015. It should be noted that by adaptation of this special Law, relevant articles of the Family law were repealed (abrogated).

The fact that domestic violence occurs in private homes doesn't relieve the state from its responsibility to fight it. The state has legal responsibility to ensure that existing laws regulating marital relations are non-discriminatory and to incriminate the physical integrity injuries, regardless the perpetrator is an intimate partner or other person. States have legal obligation to ensure that victims of domestic violence have adequate legal remedies in their disposal to protect them from domestic violence and that perpetrators are punished appropriately. For these reasons, state has an obligation to repeal (abolish) discriminatory laws, submit adequate laws and ensures efficient actions of state officials in the fight against domestic violence.⁹

⁹ Bistra Netkova, **Human rights and domestic violence, case of the Republic of Macedonia**, South East european University, 2007, pg.83

In the spirit of harmonization of positive legislation of the Republic of Macedonia with the one of European Union (an important benchmark for the integration in EU) and based on international declarations and conventions ratified by Republic of Macedonia dealing with domestic violence and protection of its victims, Criminal Code of the Republic of Macedonia has made an important step in the year 2004.

Domestic violence is not incriminated as a special criminal act but is incriminated under existing criminal acts in criminal legislation, with the definition of harsher sentences and *ex officio* prosecution when the offense is committed in the context of domestic violence, so domestic violence stands out as a particular type of crime. This change was necessary both in terms of preventive as well as repressive aspect, meaning it was therefore necessary and crucial tightening of criminal justice repression in order to combat more successfully domestic violence in the country. Before these changes were made, the issue of domestic violence was treated within other general criminal acts in the Criminal Code of Republic of Macedonia.

All forms of manifestation of domestic violence are incriminated into Criminal Code: physical violence, psychological violence and sexual violence. Physical violence is incriminated in criminal acts such as murder, injury or violation of bodily integrity, bodily harm (body injuries), serious body injuries, etc. Forms of psychological violence are incriminated in criminal acts such as coercion (forcing), illegal deprivation of liberty, endangering of safety while forms of sexual violence are sanctioned by acts like rape, sexual intercourse with a person with special needs, sexual assault against a child and mediation in prostitution.

Criminal offenses stipulated in the Criminal Code sanctioned especially when committed as a result of domestic violence are: murder (Article 123), instant murder (Article 125), body injuries (Article 130), serious body injuries (Article 131), forcing (Article 139), illegal deprivation of freedom (Article 140), endangering the safety (Article 144), intermediation in conducting prostitution (Article 191) and sexual assault against a minor who has not reached 14 years (Article 188). With these

changes, the Criminal Code stipulates that whenever any of the aforementioned offenses will be committed during domestic violence, will be considered as the most serious form of the offense, and the sanction will be greater than in the case of the basic forms of the same criminal offense. Along with the changes to the Criminal Code, in the same year the Law on Family¹⁰ of the Republic of Macedonia underwent changes, as well as the amendments on the years to follow in 2006 and 2008, which undoubtedly were more advanced steps towards more efficiently legal protection of the victims of domestic violence and legal progress in tackling this problem. In this line, a new added chapter (part) into the law titled Domestic Violence (VI-a) which dealt exclusively with the definition, treatment of domestic violence and protection of victims of this form of violence. However, despite this, the need for approval and addressing this problem with a special law on domestic violence was more than evident. Therefore, in order to ensure more efficient protection of the victims of domestic violence, ensuring responsible and necessary action of institutions and associations, as well as mutual coordination and cooperation, the Assembly of the Republic of Macedonia in September 2014 adopted the Law on prevention and protection from domestic violence which entered into force on 1 January 2015.

With the entry into force of this Law, the articles of Chapter “VI-a Domestic Violence” and the relevant sections dealing with domestic violence in the Family Law of the Republic of Macedonia were abrogated.

Law on prevention and protection from domestic violence has 9 parts and 67 articles:

General provisions

1. Prevention
2. Measures for protection
3. Temporary measures of protection
4. Imposing temporary measures of protection

¹⁰ **Family Law of the Republic of Macedonia**, Official Gazette nr. 38/04, 33/06, 84/08

5. Implementation of temporary protection measures
6. Multisectoral cooperation
7. Supervision over implementation of this law
8. Provisions for misdemeanor
9. Transitional and final provisions.

The purpose of this law is to take measures oriented towards prevention and protection of victims of domestic violence, respect for the freedoms and fundamental human rights, life, personal integrity, non-discrimination and gender equality, with full care about the interests and the needs of the victim (Article 2). Further, the law in the Article 4 deals with the definition of several terms as a perpetrator of domestic violence, victim of domestic violence, close personal relations, notion of children, violence, bodily / physical, psychological violence, surveillance, economic violence and gender based violence on women.

Article 5 authorizes and requires various state institutions to cooperate, coordinate and act to protect victims and prevent violence in the family. This law also envisages the establishment of a National Coordination Body, which approves state National Strategy for combating domestic violence in the country for a period of five years. It determines the composition of this body, their mandate and the tasks they must perform. It is worth mentioning that so far Macedonia has approved two strategies, the National Strategy for protection against domestic violence for the period 2008-2011 and the other for the period 2012-2015.

In the part *Prevention*, the Law foresees all the measures that should be taken by the state and the educational institutions of the Republic of Macedonia to prevent domestic violence and promote gender equality. Furthermore, this Law regulates the work of Centers for Social Care, their obligations, the activities they should take for the protection of the victims, the measures of protection and so on. Here we can say that the role of social centers according to the Law is essential in dealing with comprehensive domestic violence. Also, this Law gives a special im-

portance to the Temporary protection measures, their imposition and implementation.

Domestic violence, as a dangerous social phenomenon, that harms the physical, psychological and sexual human integrity and as a phenomenon that destroys the family and its well-being, undoubtedly requires a comprehensive and serious treatment by the state that claims a genuine democracy and prosperity. Republic of Macedonia, legally managed to adjust to the appropriate level the issue of domestic violence but a particular challenge for our country remains the implementation of this law by the relevant institutions. Also, as a challenge remains the preventive and repressive struggle by law enforcement bodies and courts to impose appropriate measures of protection and appropriate sanctions when a domestic crime is committed, in order to be as effective as it can as a country, in combating this phenomenon.