

Domestic violence, a widespread phenomenon in Albania - Strengthening measures and severity of impunity for this criminal offense

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Abstract

The focus of this paper is oriented to the amendments concerning punishment, stricter measures, facilitation of procedures, the possibility that the law gives victims of domestic violence to be protected immediately by the abuser, and how legal changes have influenced the reduction of this widespread phenomenon in Albania. The continuous increase of domestic violence victims led to the necessity of legal changes. In the amendments of law no. 9669, dated 18.2006 is provided the increase of punishments, strengthening of measures and facilitation of the procedures in order to provide the victims greater opportunities to be protected against the domestic violence. This is the legal system that operates to eliminate domestic violence that occurs in all its forms, as physical and psychological violence. The legal framework that supports victims of domestic violence is wide and complete, but the implementation process is very slow and difficult to apply. This deficiency on the implementation of laws for domestic violence is similar to the lack of a legal framework, thus there are little opportunities provided for the rehabilitation or treatment of victims and punishment of abusers. The phenomenon of domestic violence is difficult to eradicate from the Albanian society in, but is not considered as an impossible mission. This mission must not be seen as a duty of the Justice system only, but in order to be completed, it must necessarily involve the civil society.

This study's aim is to offer feasible and realistic solutions that can significantly minimize the number of domestic violence cases. A detailed analysis is made on causes and different aspects that impact this phenomenon, in order to conclude a general opinion that serves to the legal framework and institutions responsible for domestic violence.

Keywords: protection order, immediate protection order, measures, violence, victims of violence, court, law, family, the Constitution, the Criminal Code.

Introduction

Domestic violence is a wound on human society, and Albania is not an exception. The justice system is facing more and more cases of domestic violence of various forms. Domestic violence is globally widespread. Its consequences on women are considerable, because it threatens their lives, wellbeing, psychological integrity and freedom. Physical signs are easy to identify, but domestic violence comes in more other forms that are difficult to be detected. Often the abuser prohibits the victim to address the case to the competent institutions, especially in cases when violence marks are evident, in order to be difficult to prove the violence. Justice professionals must be very attentive to the psychological consequences of domestic violence. Often the woman has signs of post-traumatic stress and a good professional of justice may require the help of a colleague in the field of psychology or social work, to make an assessment and a professional report to demonstrate those consequences, not so

obvious at first glance. Violence against women is considered as the most frequent violation of human rights, but at the same time the less addressed. Violence against women is a form of gender-based violence derived from a lower position of women in society. Although women are often victims of domestic violence, they are not the only victims of it. Other categories such as the elderly, disabled or children are affected. It is the duty of justice workers to assess very carefully these cases. Statistics indicate a higher level of violence in children compared to violence against women. Legal changes and increasing of the penalties for the offense of domestic violence are needed not only to protect women but also the children and elderly. Unfortunately these cases have become more frequent in our country. Some of the characteristics of children with abusive parents are: aggressive or violent behavior against their siblings, friends, and parents; this is more evident in boys. While girls tend to be more mature, more passive and closed. They might keep the victim position. Some kind of struggle creates between children and parents for family dominance. Especially in little children is observed immature behavior and little strategies to deal with problems in society, frequent contradictions with siblings and friends. It exists the possibility that these children are not in touch with their emotions. They probably don't have many friends and also indicate inappropriate and uncontrolled behavior due to misconception of acceptable behavior in society. Physical disorders consists of anxiety and fear during the night, abdominal pain, headache etc. Generally they have a lower level of impulse control. Teachers can note serious problems with behavior and under average level of studying. These children may have problems with nutrition. They are prone to drug and alcohol abuse. Abused children sometimes tend to exchange roles in family by becoming protector of their mothers. Domestic violence is defined as a series of abusive or threatening behavior including physical, psychological, economic and sexual violence and other forms of intimidation, isolation and coercion.

Treatment of domestic violence by the criminal legislation

Albanian legislation provides protection for individual who may be prone to domestic violence. Article 15 of the Constitution of the Republic of Albania charges public bodies to actively contribute to the protection of human rights. Constitution as the fundamental law of the country guarantees the protection of life, freedom, integrity, dignity, personality, economic, social and cultural rights. The Criminal Code of the Republic of Albania is used to offer protection to victims of domestic violence, to restrain the phenomenon and penalize the abusers.

In Article 130 of the Criminal Code, as amended, domestic violence is provided as a criminal offense in three paragraphs: Assault, like any other act of violence against the person who is the spouse, former spouse, cohabitant or former cohabitant, close to the offender, with the violation of the physical, psychological and economic and social integrity, shall be punished with imprisonment up to two years.

Serious threat to cause death or serious injury to the person who is the spouse, former spouse, cohabitant or former cohabitant, close or close affinity with the author of the offense, with the violation of psychological integrity of them, shall be punished with imprisonment up to three years.

Injury committed intentionally, against the person who is the spouse, former spouse, cohabitant or former cohabitant, close or close affinity with the author of the offense, which caused temporary incapacity to work more than nine days, is punishable with imprisonment up to five years.

If these acts are committed repeatedly, or in the presence of children, they are punished by one to five years.

Who is protected by law?

Law protects victims of violence from members of family or relatives. According to the law, family members are considered:

- spouses or former spouses, cohabitating partners or former cohabitating partners;
- brothers, sisters, relatives in direct line, including adoptive parents and adopted children, children and spouses of these persons;
- parents and adopted children of spouses or cohabiting partners;
- brothers and sisters of spouses if they have lived together during the last 3 months;
- Children of spouses or cohabiting partners.

How can the law protect against domestic violence?

According the new law against domestic violence, civil courts may impose protective measures for victims through a quick, affordable and simple procedure. Protection orders provide the opportunity to take action and to be protected from violence. They can assist victims by drawing orders against the abuser.

There are two types of defense orders:

A defense order is a court decision that defines a series of protecting measures for the victim/victims of domestic violence. The court issues a protection order if finds sufficient evidence to believe that the abuser may commit an act of domestic violence or where the issue of the protection order is necessary to protect the security, health and wellbeing of the victims of family members. An immediate protection order is a temporary court order valid until the issuance of a protection order. It may be issued if the abuser presents an "immediate risk for the safety, health or welfare of the victim or of his / her family members ". In case of minor victims the court must made a decision within 24 hours from the request. For non minor individuals the court must decide within 48 hours. The court will also appoint a date for the continuation or termination of the order within 20 days of its issuance. Both orders enter into the force immediately after their issuance and are valid despite the abuser is informed or not. There are several forms of a protection order. An immediate protection order includes measures as: orders the abuser to commit or threat to commit acts of violence against the victim or other members of the family; obliges violator to not harass, contact or communicate directly or indirectly with the victim or the victim's family member; removes the perpetrator from dwellings for a certain period of time with a court order and prevents from re-enter the house without court authorization; It prevents violator to get closer than a certain distance of the victim or the victim's family members; Prohibits violator to approach the home, workplace, house of the family or the next couple house or others apartments, and moreover the children's school or any other place frequented often by the victim, except cases when

this happens for work purposes; Puts victims and the minors in temporary shelters; restricts or prohibits violator to meet the child victim; Prohibits violator to enter or stay in the temporary or permanent residence of the victim, or in any part of dwelling, regardless of ownership or property rights that the abuser may have on these objects; Orders a court authorized person (policeman or bailiff) to accompany the victim or abuser to the victim's residence and supervise the obtaining of personal belongings; Orders police to seize any weapons in the possession of the abuser found during police searches, or ordering the abuser to hand over any weapons in his/her possession.

How can you get a protective order?

If you have been abused by a family member or someone with whom you are in an intimate relationship, you can seek a protection order at any time in any Civil Court (Family Section). You can go to the district court where you live (place of habitual residence), even if you live there temporarily (place of temporary accommodation), or at the place of habitual or temporary residence of the abuser. District courts are open from Monday to Friday, 08:00-16:00. The law allows the violated person to go in the nearest police station; in the prosecution (prosecutor) and they can address the case to the court for a protection order. Victims of violence can go and in the healthcare center or hospital, as they have an obligation to notify the police.

Law No. 9669, dated 18.12.2006, "On measures against domestic violence"

This law aims to: prevent and reduce domestic violence in all its forms, through appropriate legal measures; guarantee protection with legal measures for family members who are victims of domestic violence, paying special attention to children, the elderly and persons with disabilities.

The object of this law is: The establishment of a coordinated network of institutions responsible for the protection, support and rehabilitation of victims, mitigation of consequences and prevention of domestic violence; direct efforts for creating the structures and bodies responsible at national and local level to support victims and prevent domestic violence; strengthening the judiciary in taking protection measures against domestic violence; providing / guarantee a rapid and inexpensive service for victims of domestic violence fast, in court or other competent authorities to implement the law, in accordance with the law.

Responsible authorities: the main authority responsible for the implementation of this law is the Ministry of Social Welfare and Youth. Other authorities responsible line are: a) local government units; b) The Ministry of Interior Affairs; c) Ministry of Health; d) The Ministry of Justice.

Women more vulnerable to violence

Not all categories of women experience violence in a relationship or family. Unequal position of women in society is what affects mostly in their victimization. Education is the main element of women's position in society. Women with secondary

education or less are more likely to experience domestic violence than those with higher education. Also, women who do not work outside the home are more likely to experience violence than those who work outside the home. Referring statistic on violence on women, 19% of violated women in Albania suffer from domestic violence injuries, such as: cracks/bruises, deep wounds, broken bones/teeth, unconsciousness, head and abdominal injuries. 14% of them were impossible to do housework or caring for children because of injuries from domestic violence, and 44% of raped women suffer from sexually transmitted disease. But what differs most notably in the use of violence, is the period when women in our country begin to experience violence. One in four women begin to experience violence in the first year of marriage, while one in two women, according to research done in our country, claim that violence against them started in the second or third year of marriage.

In a study conducted by the commission for the protection of discrimination in 2015 is indicated that 59% of women have suffered domestic violence. Only in 2015 were 53% violated women, also in this study is indicated that 59.4% of women, more than one in two women are said to have suffered domestic violence during marriage, intimate relations, or lifelong. During 2015 are reported to the police 3094 cases, 1292 of these are considered offenses. High Council of Justice published a summary for the reviewing of domestic violence cases in 38 courts and recommended changes to the law and judicial practices as it turned out that are violated deadlines for the issuance of protection orders. 1882 violated women have asked for protection by the end of September, while 2/3 of the requests for protection orders are withdrawn, but is also found that even in cases where a protection order has been issued, it has not been implemented.

Another study conducted in 2014 by the EU publications office in Luxembourg on domestic violence, and according to an information bulletin published on the official website of the Ministry of Social Welfare, prepared by Dr. Robin Haar to prevent violence against women, following the observation made by the EU Publications Office results that 59.4% of women aged 18-55 years experience domestic violence. Compared with year 2007, after amendments in the law, violence has increased by 3%, while compared with 2015 is the same level, 59.4%

Violence in children

Domestic violence not only affects one of the partners, but in most cases are children also its victim. In the study conducted in our country for the last year results that 58% of children are violated by a family member, also of 86% of children are witnesses of domestic violence. This "double violence" in children leads to negative consequences in their social life or even their integration in society. Besides the psychological trauma that remain in their minds, this violence reflects negatively on their education, making that 43% of children have difficulty in school, 31% of children live in fear because of domestic violence, 6% children leave home to live with relatives. Referring to this study, one in two children in 86% of cases requires more assistance for the violence exercised against one of his parents. In none of cases, by abused children is not required assistance from doctors or police.

Reasons for violence

In various reports of organizations that protect the rights of violated women and other family members, is pointed out that the abusers seek for power and control over partners, or dependant on women, so they feel threatened of any attempt by them for independence. Referring to the study conducted in our country, is indicated that "some men use violence, as this is the only way they know to get in touch with the partner." Meanwhile, the main reason for the use of violence by men, is the domestic violence they have witnessed in their families, and also the difficult economic conditions.

Conclusions and Recommendations

By the end of the paper we can conclude that: Even legal amendments of 2006 have strengthen measures and facilitate procedures by giving victims greater opportunities to be protected, there are almost the same number of domestic violence cases. Although is increased the number of denouncements, it slightly affected in the reduction of violence. Victims are drawn from the requirements for the order of protection, or in some cases the orders have not been implemented. Some processes have been delayed, thus deadlines for consideration of the issuance of protection orders have not been respected. The public has not been informed continuously for legal changes and opportunities to be protected by domestic violence. Lack of education, the difficult economic situation, tradition, culture, inability, failure to implement laws and delay of judicial processes are some of the reasons that we have almost the same level of violence in the family.

Establishment f sustainable sections with specialized police officers, attached to every police station in order to deal only with cases of domestic violence. is needed cooperation with non-governmental organizations dealing with the rights of women and children and with the media, with the aim to inform the public and subjects of this law about the legal amendments. Legal changes should be considered, by making the necessary improvements given the gaps that are identified during the implementation of the law and unification of jurisprudence.

References

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