

Domestic violence Criminal-legal aspects of this phenomenon over the period 2013-2020

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Abstract

The legal system in Albania relies on the application of procedures and articles stipulated in the Criminal Code, the Civil Code, the Criminal Procedure Code, and the Constitution. The same legal system underlies any efforts to combat domestic violence as manifested in all its forms - physical, psychological, or emotional. The services provided by public employees to domestic violence victims find broad support in the relevant legal framework, but are poorly enforced in practice. The phenomenon of domestic violence is difficult to eradicate from the Albanian society in all areas where it is extended. However, it is not considered as an impossible mission. Such a mission falls not only within the purview of the justice system, but also warrants the involvement of civil society.

The main findings of this paper confirm that the number of reported cases of domestic violence has increased. This form of violence, same as other gender-based violence against women such as trafficking in human beings, prostitution, exploitation of prostitution, gender discrimination persists. This paper also presents the trends in the various forms of gender-based violence.

This study seeks to present the applicable legal basis on the prevention and fight against this phenomenon. In drawing these conclusions that serve this legal framework and the institutions tasked with responsibilities to address this wound of modern Albanian society, the study first analyzes the notion of this criminal offense and various aspects that influence in its existence. The study keeps a constant focus on the criminological aspects of this crime.

Keywords: *criminal offense, domestic violence, criminal code, legal framework, victim, forms of violence.*

Methodology

This paper is elaborated using the contemporary scientific methods. As such, I have included analysis and synthesis, (*Greek analysis - breaking up; synthesis - union*), which are the two universal cognitive methods. In the paper, the analysis represents the breaking up of the object of study in constituent part. The synthesis represents a summative union of the elements of the object of study. The analysis and synthesis in the paper are in mutual unity. There can be no synthesis without analysis, and analysis would not make sense without the synthesis.

Similarly, the historical and logical methods followed in this paper are quite important. The historical method allows for criminal legal phenomena to be studied over their historical development (from past to present). Unlike the historical method, the logical method dictates that phenomena be explained by the development laws rather than by their history.

Finally, my paper is based on both the comparative method and normative method. The former is the heart of the scientific methodology. It means ascertaining the similarities and differences between the phenomena of social life and the respective institutions of criminal law.

The comparative method highlights the novelties and advantages of the object of study. Only a comparative method leads to accurate evidence-based conclusions and to pinpointing the problems related to the object of study.

1. Introduction

Domestic violence against women is a pervasive widespread global problem that transcends borders and occurs in all cultures and societies around the world. Domestic violence is a form of violence against women, which the United Nations Declaration on the Elimination of Violence against Women defines as *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 arbitrary deprivation of liberty, whether occurring in public or in private life*.¹

In 2002, a review of 50 population-based studies conducted in 35 countries before 1999 showed that 10% to 69% of women reported having been physically abused by an intimate partner at some point in their lives, and that 10% to 30% of women reported having experienced sexual violence from an intimate partner.²

In 2005, the World Health Organization (WHO) conducted a multi-country study on domestic violence against women in 10 selected countries. It showed that 13% to 61% of women who had a partner, have experienced physical violence from an intimate partner, while 6% to 59% of women have experienced sexual violence from an intimate partner.³

In 2013, the WHO conducted a meta-analysis of 185 studies from 86 countries and analyzed data from 155 studies in 81 countries. It found that 30% to 37% of women who were in a relationship have experienced physical violence and/or sexual by their intimate partners. Also, this study found that about 80% of this violence occurs in the family. In addition, the study found that 42% of women physically or sexually abused by their intimate partners had suffered injuries, and that 38% of the total number of murders of women were committed by intimate partners.⁴

Despite the similarities in women's experiences with domestic violence in various cultures and societies, understanding the specifics of domestic violence within a given society is key to developing legislative reforms and policies, preventive and response initiatives, and protection and support systems for victims and survivors of domestic violence.

¹ UN General Assembly (1993). Declaration on the Elimination of Violence Against Women (Resolution document A/REX/48/104). New York, NY: United Nations, p. 2.

² Krug E.G, L. Dahlberg, J.A. Mercy, A.B. Zwi & R. Lozano (2002). World Report on Violence and Health. Geneva, Switzerland: WHO.

³ Garcia-Moreno, C., H. Jensen, M. Ellsberg, L. Heise & C. Watts (2005). WHO Multi-Country Study on Women's Health and Domestic Violence. Geneva, Switzerland: WHO.

⁴ WHO (2013). Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence. Geneva, Switzerland: WHO.

2. Historical global developments against domestic violence

The views of Western society on domestic violence and particularly the treatment of women in the primary social unit (family) have been influenced by three major schools of thought: customary law, Judeo-Christian religious ideas, and Greek philosophy. All three of these schools have considered the patriarchal system as natural - acknowledging the domination of society by males due to the male-superiority view. Exceptions to this approach are rare, among the most important being Plato's "Republic".⁵ As part of the culture perpetuated by these ideologies, violence against women has been a natural expression of male dominance. In this context, several thoughts or ideologies emerged over the years which improved the concept of family relationship, seeking to protect its members regardless of gender and focusing primarily on minors, as an essential and most vulnerable part of the institution. of the family.

3. Domestic violence in Albania

In Albania, domestic violence is a problem that affects women and children, as well as families and communities.⁶ However, Albanians tend to consider domestic violence as a private or family matter, and as a normal part of marital and family life. Given that domestic violence often occurs indoors and is not openly discussed, accepted, or addressed in the Albanian society, victims generally suffer in silence.⁷ Domestic violence emerged as a concern in Albania after the 1990s, when the country was going through major political and social changes. This major political change opened Albania to foreign aid, expertise, and investments, as the country embarked on the process of transforming and reforming its economic, legal and political structures.⁸ The transition also brought an incursion of international organizations to support the country's reforms and reconstruction, and the creation of NGOs. Some of these organizations devoted their efforts to women's issues, including violence against women and their human rights. Even though domestic violence existed long before this transition period, cases of domestic violence surged significantly in the '90s as families experienced a lot of stress and pressure due to the transition.⁹

⁵ In his utopia, *The Republic*, the rulers (guardians) may be of any gender. "Men and women alike possess the qualities which make a guardian; they differ only in their comparative strength or weakness". See *The Republic*, in *The Dialogues of Plato*, transl. Benjamin Jowett, Third Edition.

⁶ Minnesota Advocates for Human Rights (1996). *Domestic Violence in Albania*, Minneapolis, Minnesota: Minnesota Advocates for Human Rights. Haarr, R.N. & M. Dharmo (2009). *Domestic violence in Albania: National population-based Survey*. Tirana, Shqipëri: UNDP. For further information, see link: <https://www.undp.org/content/dam/albania/docs/Domestic%20Violence%20Survey%202013.pdf>

⁷ Haarr, R.N. (2013). *Domestic Violence in Albania National population-based Survey*, November 2013. Tirana, Albania: UNDP, p. 9. Last accessed on 23 March 2020, <https://www.undp.org/content/dam/albania/docs/Domestic%20Violence%20Survey%202013.pdf>

⁸ Minnesota Advocates for Human Rights, 1996.

⁹ Unemployment rate hiked up due to closure of factories and plants, and disorder and violent &

Domestic violence against women in Albania is not a new phenomenon; it has deep roots in patriarchal traditions and customs that have long shaped Albanian society. The 45 years of communist regime in Albania (1945–1990) did not entirely eradicate these deeply rooted patriarchal attitudes, including those related to the *Kanun* that was used in some areas of Albania. In some areas of Albania, men and women still refer to the *Kanun* to explain attitudes and views on gender roles and patriarchal authority, including the husband's right to "punish" his wife who is considered his property.¹⁰

After 1991, the new Government of the Republic of Albania ratified a big number of important conventions, such as:

- UN International Covenant on Civil and Political Rights (ratified on 4 October 1991).
- Un Convention on the Rights of the Child (ratified on 27 February 1992).
- UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (ratified on 11 May 1994).
- Un Convention on Elimination of All Forms of Discrimination against Women (ratified on 11 May 1994).
- European Convention for the Protection of Human Rights and Fundamental Freedoms, and its Protocol (ratified on 10 February 1996).
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ratified on 10 February 1996).
- CoE Convention on Preventing and Combating Violence against Women and Domestic Violence (ratified on 4 February 2013).

In 1998, the government of Albania adopted the new Constitution. It promotes the principles of equality and non-discrimination, and the protection and respect of human dignity and human rights and freedoms.

Since the Albanian governments ratified these various international conventions and adopted the new Constitution, international organizations and NGOs have worked in cooperation with the government to address issues of violence against women, including domestic violence against them.¹¹

4. Criminal legislation on domestic violence and its evolution

The Constitution of the Republic of Albania sanctions the principle of equality and non-discrimination as one of the basic principles that permeates all the legislation. The phenomenon of domestic violence is one of the most important matters in the Albanian legislation. International norms have a very important impact on our legal

petty crimes increased. The housing need came out as a social problem, Albanian families traditionally consisted of a big number of members.

¹⁰ UNICEF, 2000, Paulo Sergio Pinheiro (2006). World Report on Violence against Children. Geneva, Switzerland: UNICEF.

¹¹ Haarr, R.N. (2013). Domestic Violence in Albania National population-based Survey. Tirana, Albania: UNDP, p.10. Last accessed on 23 March 2020, <https://www.undp.org/content/dam/albania/docs/Domestic%20Violence%20Survey%202013.pdf>

system and national policies. Adherence to international norms by transposition to the national legislation paves the way for the development of domestic law.

International treaties become legally binding upon ratification by the Albanian government. The Constitution stipulates that "*the Republic of Albania shall apply the international law binding on it*". Upon publication of international treaties in the Official Gazette, they become part of the country's legal system and are directly applicable.¹² In cases when the implementation of these new treaties requires the adoption of a law, then the standard procedures for the issuance of a new law are followed in compliance with the treaty.

The Constitution of the Republic of Albania prohibits discrimination on grounds of gender.¹³

Other constitutional obligations are the protection and respect of dignity, human rights and freedoms, marriage, life, and family, without ranking how these relations are created. Both the family and marriage enjoy special protection by the State; similarly, children, young people, pregnant women, and young mothers have the same right to seek support and assistance from their State.

The State and international treaties have expanded the concept of torture and indecent, inhuman, or degrading treatment to include not only such treatment by individuals who held official functions in the past, but by any individual. This obliges the State to protect citizens from such treatment. The Constitution states that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."¹⁴

In this view, mechanisms have been established specially to guarantee the full fulfillment of constitutional rights and to check the functioning and implementation of constitutional laws by institutions. The mechanisms put in place to guarantee protection from violence are the Judiciary, the People's Advocate, and the Constitutional Court. Should these mechanisms fail to guarantee the fulfillment of constitutional rights, the Constitution of the Republic of Albania allows international jurisdictional alternatives to make another interpretation of the Constitution itself and the decisions of the mechanisms established by the Constitution. Any person, group of individuals or non-governmental organization may file a complaint with the European Court of Human Rights if they claim that their rights recognized by the Convention or its Protocols have been infringed upon by the Albanian State.

The Albanian legislation on domestic violence consists of procedural and material provisions provided in the Criminal Code, the Criminal Procedure Code, the Family

¹² This agreement between two or more States provides for rights and obligations applicable in international law. States are bound by it. By becoming party to a treaty, States take on obligations applicable under international law.

¹³ Article 18/2.

1. All are equal before the law.
2. No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry.
3. No one may be discriminated against for reasons mentioned in paragraph 2 whether reasonable and objective legal grounds do not exist.

¹⁴ For further information, see Article 25.

Code, and the Law on Measures against Violence in Family Relations.¹⁵

Until 2001, the Criminal Code did not consider domestic violence as a separate criminal offense, but it provides for any criminal offense committed against children, pregnant women, persons with disabilities, systematic repetition of domestic violence, or the offense committed by taking advantage of family relationships.

The difficulties of proving psychological violence, the social mentality, the insufficient level of knowledge of legal rights by citizens, the lack of confidence in effective punishment of this crime, and fear that public disclosure could bring problems in the well-being of the family relationships holds back victims from reporting domestic violence.

The Criminal Code introduced a new gender dimension.¹⁶ For the first time, the amendments and additions adopted successively in 2012 and 2013, provide for and punish domestic violence as a separate criminal offense and qualify other criminal offenses where there is a family relationship between the perpetrator and the victim. The 2012 amendments introduced Article 130/a¹⁷ in the Criminal Code entitled "Domestic violence". This article provides for three paragraphs of domestic violence: First, beating and any other form of violence against persons in family relations. Being that physical violence takes various forms and there can be no exhaustive list thereof, the legislator decided to include in this article the wording "*any other form*". This wording was already known in the Criminal Code, specifically in Article 90. Given the types of domestic violence, it implies any action or omission that infringes upon the physical, psycho-social and economic integrity.

Domestic violence is a criminal offense, and the legislation seeks to protect family relationships and in particular the integrity of persons within a family from any act of violence, which does not necessarily have to cause incapacity for work, or be classified as light or severe injury - as provided in other paragraphs of Article 130/a of the Criminal Code. In the logical, grammatical, and literal interpretation of Article 130/a, first paragraph of the Criminal Code, the legislator has provided "beating" as an element of the objective side of this criminal offense, but also any other act of violence which is not classified as beating (which causes incapacity for work).

Second, the serious threat to murder or cause severe injury in family relationships. Initially, the Criminal Code considered threatening and severe injury as criminal contraventions, regardless of the motives of threat.¹⁸ Four times was the Criminal Code amended during 2001-2012 to criminalize serious threats for revenge or blood feud,¹⁹

¹⁵ Law no. 9669 dated 18.12.2006 regulates the protection from violence in family relations. Its aim is to prevent and reduce domestic violence in all its forms through appropriate legal measures, and to ensure protection of family members – who are victims of domestic violence - through legal safeguards by placing special importance on children, the elderly and people with disabilities.

¹⁶ Article 130/a of the Criminal Code; Law no. 23/2012 and Law no. 144/2013 "On some additions and amendments to Law no. 7895 dated 27.1.1995 'Criminal Code of the Republic of Albania', as amended.

¹⁷ Article 17 of the Law no. 23 dated 1.3.2012.

¹⁸ Article 84 of the Criminal Code.

¹⁹ Article 83/a; amended by Law no. 9686 dated 26.2.2007, Article 8.

and the threats due to racism or xenophobia motives through the computer system.²⁰ By the amendments of 2012, the legislator provided as a separate criminal offense the serious threat of murder or severe body injury to the person who is a spouse, ex-spouse/cohabitant or ex-cohabitant, close kin or close in-law to the perpetrator. This amendment was accompanied by a tougher punishment, by removing the fine as an alternative to imprisonment and providing now for three years in prison rather than one.

“Threatening” on the objective side is committed through direct actions by the perpetrator. For these actions to constitute a criminal offense by the law, the objective side must meet some conditions: (a) threats must be serious, i.e. their form and content must discard any doubt from the injured person that the perpetrator firmly intends to commit the action(s).²¹ Assessment whether the threatening is serious is made on a case-by-case basis, considering the concrete circumstances in which the occurrence rolls out, the nature and intensity of the threatening actions, the means and way by which the threats are made, etc....’ (b) threats must be for murder and severe injury and not for any other criminal offense.

Third, light intentional injury, i.e., one that causes temporary incapacity for work more than 9 days, was stipulated as a separate paragraph in Article 130/a (paragraph 3).

The recidivism element of the above criminal offenses is provided in a separate paragraph of the same article.

Despite the novelties brought by this legal regulation, the provision did not provide for the punishment of witnessed violence, i.e., cases when the criminal offense is committed in the presence of the child. Drawing from practice and cases of domestic violence committed in the presence of children and taking stock of the consequences of such criminal offenses on children, the last paragraph of Article 130/a was supplemented in 2013 by adding the phrase “or in the presence of children”. Victims of domestic violence may be not only spouses, therefore, the Law on measures to prevent violence in family relations²² defines the circle of persons protected against domestic violence, specifically: spouse, ex-spouse, close kin, or close in-law to the perpetrator.²³

This paragraph of Article 130/a includes the aggravating circumstance of “repetition” and the commission of the criminal offense in the presence of “children”. Here, we must clarify the legal term “repetition” according to the meaning given to it by the Criminal Code. So, referring to Article 50, “repetition” means the commission of a crime after a sentence is delivered for a previously committed crime. In the case at hand, for the “repetition” to be triggered as per the fourth paragraph, the offender must have been convicted earlier for the criminal offense of “domestic violence” set out in Article

²⁰ Article 84/a; introduced by Law no.10 023, dated 27.11.2008, Article 12.

²¹ Elezi I. E Drejta Penale e R. Sh, Pjesa e Posaçme, Botimet Erik, Viti 2009, Tirana, fq.76 (Elezi I. “Criminal Law of the RoA, Special Part”, Erik Publications, 2009, Tirana, p. 76).

²² Article 3, para. 3 of the Law.

²³ Article 16 of the Criminal Procedure Code stipulates that: “Incompatibility on grounds of family, blood or in-law relations”. Close blood includes newborns, descendants, brothers, sisters, uncles, aunts, nephews, nieces, sibling’s children, whereas close in-law include father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather and stepmother.

130/a of the Criminal Code and not for any other criminal offense; otherwise, only the aggravating circumstance set out in Article 50, letter 'ç' of the Criminal Code applies.²⁴ So, the circumstance of "*repetition*" does not imply the commission of the criminal offense "*more than once*" which is an aggravating circumstance under Article 50, letter 'h' of the Criminal Code, as well as a qualifying circumstance in many provisions in the special section of the Criminal Code. So, a criminal offense is committed more than once when it is already committed before and it violates the same legal relation the following times. Also, an indispensable prerequisite is for the offender to have been convicted for the same criminal offense concerning any episode he is tried for; otherwise, he is considered a recidivist within the meaning of Article 50, letter 'ç' of the Criminal Code.

Also, this paper must interpret the phrase "*in the presence of children*" as a qualifying element provided by the fourth paragraph of Article 130/a of the Criminal Code. In order to clarify the legal term "*child*", we refer to the Convention on the Rights of the Child ratified by the Republic of Albania with Law no. 7531, dated 11.12.1991. Article 1 of this Convention explicitly states that: "*For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*" In this view, the qualifying circumstance "*in the presence of children*" applies only in those cases when the parents inflict physical, psychological violence, threats or minor injuries to the spouse, ex-spouse, cohabitant or ex-cohabitant, close kin or close in-laws, in the presence of his/her minor child/children. By this provision, the legislator intended to guarantee the rights sanctioned in the Convention on the Rights of the Child and in the Family Code. So, the preamble explicitly states that: "*Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance; Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community; Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding; Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity...*". On the other hand, the Article 2 of the Labor Code stipulates that: "*Parents, competent bodies and courts shall primarily, in their decisions and activity, take into consideration the best interest of the child*", whereas Article 5 of the same Code explicitly states that: "*Every child has the right, for the full and harmonious development of their personality, to be brought up in a family environment, in an atmosphere of joy, love and understanding*". So, from the logical and systematic interpretation of Article 130/a, fourth paragraph of the Criminal Code against the applicable legal framework that guarantees the rights of children, we conclude that the purpose of the qualifying circumstance "*in the presence of children*" is to prevent and punish parent's acts of

²⁴ Instruction no. 1, dated 23.06.1980 of the High Court's Plenum states that: "*Aggravating circumstances, provided that they are part of the criminal offense and serve for its legal qualification, shall not be mentioned in the court's decision as such because they have been taken into account in the shaping the criminal offense*".

domestic violence in the presence of minor children, as a child has the right to grow up in a family environment, in an atmosphere of joy, love and understanding, for a full and harmonious development of personality; and domestic violence infringes upon these rights. Parents must consider the best interests of the child in any case, and non-compliance with this principle triggers consequences, including criminal liability in cases provided by the Criminal Code.

Some forms of domestic violence introduced with the amendments of 2012 did not touch upon the provisions of the Criminal Code related to murder and severe injury within the family.

In 2013²⁵ two separate criminal offenses were included in the Criminal Code: intentional murder due to family relations introduced in a separate Article (79/c) which provides for a sentence of not less than 20 years in prison up to life imprisonment²⁶ and severe injury inflicted on a person who is the spouse, ex-spouse, cohabitant or co-habitant, close blood/kin or close in-law to the perpetrator, or when it resulted in death.²⁷ In the context of revising the criminal policy, the criminal offense of murdering a newborn²⁸ is punishable only by imprisonment up to 5 years, while before it was considered a criminal contravention.

5. Types of domestic violence

There is already ample evidence in the literature regarding the physical and psychological consequences of domestic violence, which can be short-term, medium-term, or long-term.²⁹ The development of criminal legislation should be treated in close connection with case law.³⁰ Analysis of the types of domestic violence intends to assist in the presentation and recognition of its forms by illustrating them with extracts of final decisions delivered by all the three levels of courts. Below, we present the types of violence:

a) Physical violence – means the use of force against someone in a way that harms, injures or endangers that person. Physical violence includes an extensive range of behaviors such as scratching, pushing, shoving, grabbing, biting, choking, pinching, poking, hair-pulling, arm twisting, slapping, grabbing, hitting, beating, kicking,

²⁵ Law no. 144, dated 2.5.2013.

²⁶ Regarding this criminal offense, the High Court's Criminal Chamber in its Decision no. 00-2017-281, dated 5.4.2017, upheld the Decision no. 119, dated 26.11.2014 of the Tirana Serious Crimes Court of Appeal which found the defendant A.R. guilty of the criminal offense of attempted murder due to family relations, provided for in Articles 79/c and 22 of the Criminal Code and convict him to 20 (twenty) years in prison."

²⁷ Law no. 144, dated 2.5.2013, Article 18.

²⁸ Law no.144, dated 2.5.2013, Article 17. Before, the Criminal Code provided for a fine or imprisonment up to two years. Amendments made it punishable only by 1-5 years of imprisonment.

²⁹ Tamo, A. dhe Karaj, Th. Korrik 2005 "Dhuna kundër Fëmijëve në Shqipëri" Qendra e Zhvillimeve Humane, Tirana, fq 16 (Tamo, A. & Karaj, Th., July 2005 "Violence against Children in Albania", Human Development Promotion Centre, Tirana, p. 16).

³⁰ Ismet Elezi, "Zhvillimi i legjislacionit penal në Shqipëri, viti 1999, Botimet Albin, Tirana, fq.270 (Ismet Elezi, "Development of criminal legislation in Albania", 1999, Albin Publications, Tirana, p. 270).

choking, hair-pulling, burning, stabbing, and strangling. Physical violence may also include the use of restraints or one's body size and strength, means to restrict freedom and/or weapons by a person (gun, knife or other object) in order to gain and maintain control over a person. From the above, there are four different types of physical violence based on the severity and the likelihood of causing physical injuries.

- Moderate physical violence – includes one or more of the following physical acts: kicking, throwing, pushing, dragging, slapping and/or hair-pulling.
- Severe physical violence – includes one or more of the following physical acts: hitting, beating, intentional burning, choking or suffocation, and/or threat to use a weapon or using a weapon against a person. The third paragraph of Article 130/a of the Criminal Code provides for the qualifying circumstance “*light injury*” which results in temporary incapacity for work over nine days. There are many such cases tried by courts. So, Kavaja District Court ruled on a case of severe physical violence reasoning *inter alia* as follows:

.... The day of the occurrence, on 19.07.2015 around 16.00, the injured person F.H. and her son A.K. came out of the room she had rented on the Golem beach to go to the sunbeds by the sea, when she saw her ex-husband, defendant F.K. approaching them. When the defendant was certain that the injured party F. saw him, ran towards her leaving no chance to F. to go away or hide. Once he reached them both, defendant F.K. attempted to open a bag and pull something out of it. The injured person, suspecting that he wanted to draw a weapon, begged him not to leave the children orphan and tried to snatch the bag from him. Meanwhile, the defendant reacted by punching her in the face and knocking her to the sand. They engaged in a physical fight and it was their son A.K. initially who intervened and saw his father open the bag trying to pull out an item that looked like a handgun, but he could not pull it out. In those moments, other people intervened, vacationers, who were there. The injured party, taking advantage of their intervention managed to grab the (defendant's) bag that had fallen to the ground and ran to the “*Horizont*” hotel where she contacted the owner, citizen S. Gj. who noted that the lady had signs of violence on her face and was shouting: “*He wants to kill me, he wants to kill me!*” She asked for help and wanted to call the police...

... Defendant F. K., in the commission of the criminal offenses for which he was tried, acted with direct intent and guilt. There is an evident causal link between the actions and omissions of the defendant F. K., the use of fists against F.H. and the consequent bodily injuries of the citizen F. H. caused in the presence of their child.³¹

- Physical violence with a weapon – includes threatening and/or hitting with a weapon or other object that can cause physical injuries.
- Physical violence with aggravated injuries – includes physical violence that causes bodily injury to another person.

b) Psychological violence includes a range of behaviors that aim to criticize and humiliate, control, isolate, intimidate, cause fear, and attack a woman's character and undermine her sense of self-worth, self-esteem and safety. The types of psychological violence include:

- Verbal abuse – when the woman is criticized, insulted, humiliated and/or talked

³¹ Decision no. 12-2016-664 (76), dated 28/04/2016 of Kavaja District Court.

to in a manner that attacks her character and undermines her sense of self-worth and self-esteem.

- Psychological threats – to intimidate and cause fear in a woman by threatening to physically harm her and/or to hurt others that are close to her, and/or to destroy something important to her by undermining her sense of safety.
- The Tirana Court of Appeal ruled on a case of psychological violence, reasoning in a criminal decision *inter alia* that:
- “...On the objective side, the defendant acted by guilt in the form of direct intent with the specific intention to intimidate citizen Q.F. These actions have a direct causal link with the inflicted consequence which is undermining the victim’s psychological integrity as sought by the defendant”.³²
- Controlling behaviors – to ignore, to control and isolate, and to be jealous and accusatory of a woman for being unfaithful, in order to undermine a woman’s sense of self-worth and self-esteem. Jealousy is among the psycho-social factors that produce domestic violence. Jealousy is a reaction fueled by the perception that a relationship is threatened, which is not always real. Usually, jealousy is caused by the perception that the partner is attracted to someone else.³³
- Economic abuse – to control the household money, or prohibiting the partner or family member(s) from participating in decisions how to spend household money, even refusal to give money to cover basic family needs; denial of ownership over joint property; damage or destruction of property; refusal to allow the use of own income and manage own properties, etc.
- Sexual violence – to force, coerce or attempt to coerce a person to sexual contact or behavior without consent. Sexual violence includes, but is not limited to marital rape, attacks on sexual parts of the body, forcing sex after physical violence has occurred, or treating one in a sexually demeaning manner. Sexual violence can be committed by intimate partners and family members within the context of marriage, dating relationships and family.
- Witnessed violence refers to a violence episode that a person is forced to assist, although he/she is not the direct intended target of the perpetrator.³⁴

So, the Tirana District Court reasoned in a criminal decision as follows:

...The victim A.M. explained that her husband, the defendant E.M., used physical violence by hitting her with a belt on the buttocks and lower limbs. The physical examination of the victim and the relevant photographs and the examination revealed a skin bruising on the buttocks and lower limbs, which clearly shows that it is an injury caused by physical violence. The victim explained that her little boy, about 3 years old, woke up crying while she was out in the yard; and her husband used violence as above because she did not go near the boy quickly enough. The husband proceeded with physical violence by slapping her in the face for petty motives. Also, after the victim’s parents left, the husband again exercised physical violence pushing her and

³² For further information, see Decision no. 1021 dated 20.07.2016 of the Tirana Court of Appeal.

³³ Bringle R.G, Buunk B.P, Jealousy and social behavior. A review of personal, relationship and situational determinants. In Shaver P., (Ed.), Review of personality and social psychology, Vol 2, 1985 p. 241.

³⁴ Arta Mandro, “E Drejta Familjare”, Viti 2009, Tirana, fq. 341 (Arta Mandro, “Family Law”, 2009, Tirana, p.341).

knocking her to the ground. Referring to this physical violence by the husband in successive episodes for 3-4 days, she presented himself at the Police Station and filed a criminal report...³⁵

6. Conclusions

The notion of the criminal offense of domestic violence is new to the Criminal Code. It has undergone dynamic developments reflecting the changes in the domestic criminal legislation over the years. In a nutshell, domestic violence means any action or omission that undermines the physical, psycho-social, and economic integrity.

Domestic violence against women in Albania is not a new phenomenon; it has deep roots in the patriarchal traditions and customs that have long shaped Albanian society.

The paper focuses on domestic violence, as the most widespread form of violence in our time. As the Albanian criminal legislation introduced a new gender dimension, this paper addressed all types of violence such as physical, psychological, sexual, and witnessed violence and illustrated them with decisions delivered by courts of all levels.

Domestic violence is a criminal offense. The criminal legislation aims to protect family relations and in particular the integrity of persons within a family context from any acts of violence.

The purpose of providing in law the qualifying circumstance "*in the presence of children*" is to prevent and punish acts of domestic violence by parents in the presence of minor children.

The paper admits that legislative developments seek to keep up with social development and often precede them. But it happens that this goal takes a heavy social toll on victims of various forms of gender-based violence.

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