

## CRIMINAL LAW MEASURES OF PROTECTION IN CASES OF DOMESTIC VIOLENCE AND LEGAL REGULATIONS IN THE REPUBLIC OF NORTH MACEDONIA

Muhammed Izeti

Internacionalni Univerzitet u Novom Pazaru  
muhammedizeti1727@gmail.com

### ABSTRACT

Domestic violence is a serious legal, sociological and psychological problem of modern societies. It is defined as a pattern of abusive and coercive behaviour that may include physical harm, psychological and sexual abuse, social, physical, financial isolation, extreme jealousy and possessiveness, intimidation and threats committed by someone who has been, is or wants to be in an intimate relationship or a relationship with an adult or adolescent and is aimed at establishing control of one partner over another. Threats can be directed at a partner, his or her family, pets, property, etc. This term also includes children who are used by bullies to intimidate and abuse an adult victim, as well as those who are forced by the abuser to participate in the abuse of an adult victim. The aim of this paper is to present an elementary legal framework for domestic violence in terms of measures of protection and criminal liability in the case of legislation in the Republic of North Macedonia, with the aim of presenting deficiencies in the harmonization of laws with international instruments and making recommendations on the premise of improving it.

**Keywords:** Domestic violence, Protection measures, Criminal justice framework, Republic of North Macedonia.

### I. INTRODUCTORY REMARKS

Domestic violence and violence against women represents a social problem all countries are facing, and it is defined as a way of behaviour or relation in which force, intimidation, control (in the meaning of limitation of freedom) are used directly or as a threat to hurt and oppress other persons psychologically, physically, economically or socially. Gender oriented violence arises from expectancies related to gender roles and unequal balance of power in society and it is rooted in an unequal position of women and men in the private and public sphere. The term "domestic violence" is used to describe acts of violence between family member, including adult partners, parents and children (including adult children), guardians or partners of elderly persons, brothers and sisters etc. In relation to other forms of violence, domestic violence is a specific type of violence. The specificity of this type of violence emerges from the lack of logic of its existence. Namely, there is no understandable excuse for this type of violence, because it is very difficult to provide an answer: why does someone abuses, harasses, mistreats, or in one word physically and psychologically hurts a member of their family, someone who they should love and respect.<sup>1</sup>

Domestic violence is a social phenomenon that is related not only to the life of the individual, but also the whole society. Domestic violence is a part of the "last longing phenomenon" and

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<sup>1</sup> Jović, Miodrag, Krivično Pravo- posebni deo, skripta I, Pravni fakultet Internacionalni Univezitet u novom Pazaru, 2011 p. 129.

it almost became a part of our everyday life as a social-pathological phenomenon. Models and patterns of its existence are part of patriarchal or traditional understanding of gender relations, gender patterns and family relations.<sup>2</sup>

Domestic violence isn't only a widespread social problem that is damaging individuals, families and society in general, however it is also a criminal offence. As such, it requires not only a strong society condemnation and activities in the terms of prevention, but also a steadfast social disapproval and equally strong reply of the judiciary system. In accordance with the Convention on prevention and fight against violence on women and domestic violence adopted by the European Council, domestic violence is regarding "any act of physical, sexual, psychological or economical violence, that occurs in a family or a family union, or between former or actual spouses or partners, with no regards whether the doer shares or doesn't share the same residence with the victim"<sup>3</sup>.

Domestic violence is one of the most serious forms of violence, because it breaches basic human rights and freedoms of family members, like the right to life, right to freedom and security, right to physical, psychological and sexual integrity. Domestic violence is a complex criminological, sociological, victual and above all, criminal challenge of modern society. High frequency, serious consequences, towards direct or indirect victims, difficulties in the process of identifying and processing doers, make this phenomenon require a very quick social reaction. Domestic violence has been considered as an allowed way of behaviour and private matter of individuals for many years. Due to more frequent actualization of this problem and international conventions, foundations for fighting domestic violence have been established, on the international and the local level. Domestic violence is considered as a social problem, and not a private problem. Many conventions and recommendations are adopted for protection from domestic violence, the violence is highlighted as a criminal offence and conditions and frames are established according to which one should act in cases of domestic violence<sup>4</sup>.

## II. CONCEPTUAL FRAME OF DOMESTIC VIOLENCE

Considering that domestic violence is a part of those social phenomena that have to be reviewed from many aspects, like the psychological, sociological and legal aspect. Also, in recent years, the feminist access for explanation of this phenomenon has been mentioned frequently.<sup>5</sup>

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<sup>2</sup> For more, see: Petrušić, N., Žunić, N. i Vilić V., *Krivično delo nasilja u porodici u sudskoj praksi – nove tendencije i izazovi*, OEBS Srbija, Beograd 2018, p.7; Jovič, Miodrag i Kešetović Želimir, *Nasilje u porodici u svetlu novih inkriminacija*, Bezbednost, vol. 6/2002, p.866.

<sup>3</sup> Article 3, point b of the European Council Convention on fighting against violence towards women and domestic violence, adopted on the 7th of April 2011, which is literally as follows: "*Domestic violence*" marks all acts of physical, sexual, psychological or economical violence carried out in a family or a household, or between former or actual spouses or partners, with no regards whether the violator shares the same household with the victim; See:

Konvencija Vijeća Evrope o sprečavanju i borbi protiv nasilja nad ženama i nasilja u obitelji, Biblioteka Ona, Zagreb 2014, p.7

<sup>4</sup> For more, see: Jovič, Miodrag i Kešetović Želimir, *Nasilje u porodici u svetlu novih inkriminacija*, Bezbednost, vol 2/2002, p.882,

<sup>5</sup> Joviš, Miodrag, *Krivično Pravo- posebni deo, skripta I*, Pravni fakultet Internacionalni Univezitet u novom Pazaru, 2011, p. 130.

*Psychological theories*, observe violence as an individual phenomenon, by highlighting personality characteristics or pathology as key reasons for domestic violence. Older psychological concepts (theory of masochism or theory of a violent pathology), like the new ones (theory of social learning, theory of learned helplessness and theory of survival), are neglecting social factors and moving the responsibility from the violator to the victim, reducing responsibility of the violator about his personal behaviour, aren't discussing and aren't questioning the responsibility of social institutions which should offer their help and support to the victims, and can't explain the key characteristics of the phenomena: a) why women, children and powerless family members are the most common victims; b) how to explain 90% of domestic violence cases where there is no psychological disorder of the violator (theory of violator pathology); c) how to explain the fact that more than 50% of violators and/or victims didn't have the experience of "frustrating addiction" or the experience of abuse in their childhood, as the cause of violent behaviour/suffering in their older age (theory of social learning); d) how to explain the fact that the victim actively and continuously responds to violence, giving efforts to find help and a way out, although they can live in violence for many years (theory of learned helplessness).<sup>6</sup>

*Sociological theories* are putting an accent on social constructions of key concepts (gender, family, social status etc.), that have a determining and directional influence on the phenomenon. They confirm that there is a higher number of reasons for domestic violence, here is some of them: domestic violence is a result of a general social system where violence is tolerable, stereotypes of domestic violence are learned and they are reaffirmed through usual social interaction, and aggressive behaviour can produce desired effects (general systematic theory); the family rests on violence or a violence threat, and the person who owns more resources is able to control and issues orders (theory of resources); domestic violence occurs when the benefit is higher than possible losses (theory of exchange and social control); social values provide a meaning and direction to violence, respectively the violence is approved, and in certain aspects it is a preferred behaviour (theory of violence). However, the multifactorial sociological approach can't explain: a) why is the largely the highest percentage of domestic violence directed against women, b) why is the violence occurring only in certain families.<sup>7</sup>

*Feminist theories* imply that domestic violence is the most general social phenomenon that is present in all times and all cultures (spatial and time universality). Explanations are located in key terms: gender, power, influence, control and patriarchy. Although the concepts according to which the immanent clash for the family are acceptable, as well as the concept that violence is the last resource for providing subordination of other members, feminist theories imply that it's not about a clash of interest between equals, but a fight for power between unequal in advance. Social construction plays of the gender plays the key role, and patriarchy is the widest context of abuse and discrimination within the family, that produces and maintains

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<sup>6</sup> Ignjatović, T., *Nasilje u porodici i institucionalna zaštita - Priručnik*, Beograd 2010, str. 3; As opposed to new ones, older psychological understandings were explaining domestic violence through the existence of certain psychopathological characteristics of a violator and a victim (i.e. Sadism, masochism, spiritual backwardness etc.). Modern psychological understandings of domestic violence are based on the ideas of social learning, respectively that domestic violence (like some other forms of behaviour) is initially learned in the family – by identification, but in other formal and informal groups where the individual is growing and developing. Yet today, ruling theories in this area are the theory of learned helplessness and theory of survival. For more, see: Krivično Pravo- posebni deo, skripta I, Pravni fakultet Internacionalni Univerzitet u novom Pazaru, 2011, p. 130.

<sup>7</sup> Ignjatović, T., *op.cit.*, p. 3

violence in the family through structural and ideological influence. Hence, power and control represent the essence of the domestic violence (control through compulsion).<sup>8</sup>

Domestic violence, in the legal sense<sup>9</sup>, means abuse, harm, breach of security, inflicting physical pain, sexual or psychological violence, physical or economical violence that causes a feel of insecurity, danger or fear, including threatening through those acts towards the spouse, parents, children or other persons who live in a marital or extramarital union or a mutual house, or against an actual or a former spouse, extramarital partner or a person with whom they share children or have personal relations, with no regards whether the violator shares the same residence with the victim.<sup>10</sup>

Domestic violence can be divided according to various forms of manifestation, as follows:

- Physical violence that implies using body parts or weapons for a threat, punishment, domination, control or hurting another person. It can be carried out in various manners and means, and its consequences are light physical injury or heavy physical injury.
- Psychological violence is related to a serious threat that the life or the body of a family member will be attacked. Psychological violence is also referring to intimidation, constant criticizing, underestimation, various accusations, emotional blackmail, creating insecurity to the victim, verbal abuse, harassment, mistreatment etc.
- Sexual violence is related to any form of abuse of sexual freedom and moral, any form of degrading and humiliation on sexual basis, any type of forcing into sexual intercourse and rape. This type of violence is usually followed by physical and psychological violence, and these types of violence are done simultaneously and they are especially humiliating.
- Economical violence generally implies seizure of money and valuable objects, controlling of earnings and incomes, banning a family member to dispose their own and mutual income, banning a family member to get employed and make their own incomes, seizure of working equipment, imposition of an obligation for constant detailed reporting about money spending etc.

With no regards of the form of its occurrence, the violator and the victim have to be in family relationship, whether it is a blood, civil or marital relation, or any other personal relation before or during the occurrence of the violence. All forms of domestic violence are targeting to put the victim under full control. The violator wants to achieve all of that through domination, humiliation, isolation, threat, intimidation, negation and blaming of the victim.<sup>11</sup>

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<sup>8</sup> Ignjatović, T., *op.cit.*, p. 4;

<sup>9</sup> Domestic violence represents a serious problem in modern societies, therefore the number of legislatures that are foreseeing this deed as a criminal offense is increasing, although incriminated behaviour can generally be included with existent incriminations (i.e. through breach of security, constraint, abuse of a minor, and in some cases of bigger consequences like heavy physical damage, negligent deprivation of life etc.). However, for the sake of provision of a complex criminal legal protection, as well as the significance of this phenomenon, it is justified to judge domestic violence as a special criminal offence. See: Stojanović Zoran, Komentar Krivičnog zakonika: prema stanju krivičnog zakonika od 1. juna 2017. godine i prema stanju zakonodavstva od 13. decembra 2016 godine, 6. izmenjeno i dopunjeno izdanje, Beograd, Službeni glasnik, Beograd 2017, p. 618.

<sup>10</sup> Balili, M. Arta, *E drejta familjare*, Tirana 2006, str. 257; Konstantinović-Vilić, S, Nikolić-Ristanović V., *Kriminologija*, SKC 1998, p.122.

<sup>11</sup> Pallavi Mahajan, *Critical Eye Analysis Of Dometic Violence Act, 2005* (Protection Of Women Against Domestic Violence Act), SSRN, May 13, 2011, p.2.; Mušić, S., *Nasilje u porodici kroz pravni okvir u Bosni i Hercegovini*

The phenomenon of domestic violence is absent in every society and has negative consequences on the health of the victim in the meaning of psychological, physical and social condition. Victims are usually not able to bring independent decisions, raise their voice about the oppression against them and they are not able to defend themselves and their children, fearing from the consequences. Even in case of reactions and measures that official institutions must undertake, there are no unique practices in all societies. The phenomenon of violence doesn't always depend on legal regulations and conditions that institutions have for their fight, but also the application of usual, moral and religious norms in that society and the personal character of the party in that relation have their own influence. It is like that because usually denial of violence becomes a reason for deterioration of relations and occurrence of new, more intensified violence. That causes the domestic violence never to get fully clarified or to cover only a small part of cases, especially when the victims are women and children. Hence, even with reporting domestic violence cases, there is a difference between official data that appears and the real number in practice.<sup>12</sup>

Domestic violence is a universal phenomenon, present in all societies, cultures and regions in the world. It is one of hardest forms of violence because through its manifestation, basic human rights and freedoms of the family are breached, like the right of life, right of freedom and security, right to physical, psychological and sexual integrity. This global pathological phenomenon causes inestimable consequences on individual and social plan. Increase of criminal in society, juvenile delinquency, violent behaviour of people in everyday life relations, high economical expenses which the society pays for restoration of consequences caused by domestic violence are only a part of negative consequences that this phenomenon is causing.<sup>13</sup> Domestic violence isn't an isolated incident, but a model of behaviour<sup>14</sup> and the increase of violence in society are in a direct relation with the increase of domestic violence. Unlike other forms of violence where the society is more active and more responsible, domestic violence has more likely been neglected for a long time, because of the existent worldview. Although we are talking about domestic violence where the violator and the victim can be any of the family members, nevertheless the most common cases of practical data confirms that they are in a family relation. According to statistical data, 93% of reported and sentenced violators of domestic violence during the investigation period are men, and 825 of the victims are women or children.<sup>15</sup>

Domestic violence is occurring in many forms: marital violence, partner violence, violence towards members of a mutual household, violence against children. Violence is practiced

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Zbornik radova Pravnog fakulteta Sveučilišta u Mostaru br. XXVI., Mostar 2018., p. 170; Šemović, Almedina, *Pravna zaštita žrtava nasilja u porodici* (Master rad), Univerzitet u Novom Pazaru, Departman za pravne nauke, Novi Pazar 2014.

<sup>12</sup> Jovič, Miodrag i Kešetović Želimir, *Nasilje u porodici u svetlu novih inkriminacija*, *Bezbednost*, vol. 6/2002, p. 884.

<sup>13</sup> Petrušić Nevena i Konstantinović-Vilić Slobodanka, *Porodičnopravna zaštita od nasilja u porodici u pravosudnoj praksi Srbije*, Beograd 2010, p. 8.

<sup>14</sup> Markus, I., Tamne brojke: Istraživanje o kućnom nasilju u centralnoj I Istočnoj Evropi, u: „Ženska prava I društvena tranzicija“, Centar za ženske studije, istraživanja I komunikaciju, Beograd, 1997, p. 101.

<sup>15</sup> Мисоски Бобан и Аврамовски Дарко, *Анализа на податоците од набљудуваните судски постапки во предмети од семејно и родово базирано насилство во 2019 година*, ОБСЕ, Скопје 2019.



through continuous use of physical and psychological force. Marital violence implies physical, sexual, psychological and economical abuse which the husband applies against the wife, with no regards whether it was reported or if it was the subject of a criminal or offensive prosecution or judgement.<sup>16</sup> The legal aspect of marital violence is very stratified, because violence is the cause for numerous procedures in civil and criminal legal fields. Also, violence against children is present, somewhere less and somewhere more, in societies around the world. Children are victims of domestic violence and because of their historical role in which they have always been under the supervision of the father or any other family member. The fact that they are children and the lack of physical power or inability to take care of themselves makes them victims. Children's rights are most usually breached during the divorce procedure, domestic violence and forcing them to beggary, respectively abuse of children labour, as well as in cases of sexual abuse by relatives or friends of the child.

### III. INTERNATIONAL FRAME OF DOMESTIC VIOLENCE

International standards<sup>17</sup> for protection of human rights clearly instruct that the state is responsible for prevention, enforcement of investigation and juridical sanctioning of all breeches of human rights. Also, according to the principles of international law, there is a responsibility of the state for deeds done by a violator, if the signatory country doesn't prevent breach of the rights, doesn't enforce an investigation and doesn't punish the deed of violence, and doesn't provide access to justice, including compensation of damage to the victims. Here, in short terms, we will present some international documents related to domestic violence.

#### III.1 United Nations Documents

United Nations Documents are of key significance for recognition of domestic violence as breach of human rights according to international law and as a type of discrimination against women; also, for recognition of responsibility of the state for private acts of violence against women. These documents have various forms and their power moves from obligatory to formal non-obligatory. The Preamble of the Charter of United Nations is setting as one of the main objectives, the reaffirmation of "belief in basic human rights, dignity and value of every human being, into equal rights between men and women". Article 1 proclaims that one of the objectives of the United Nations is acquirement of international cooperation for advancement and encouragement of respect of human rights and fundamental freedoms for all, with no regards of their gender. According to the Charter, the first international instrument which is specifically related to human rights and equal rights between men and women, all members of the United Nations are legally obliged to aspire towards full realization of all human rights and fundamental freedoms.

The Convention on the elimination of all forms of discrimination against women<sup>18</sup> is considered as the "international charter for women's rights". The Convention requires that all

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<sup>16</sup> Konstantinović-Vilić, S, Nikolić'Ristanović V., *Kriminologija, SKC 1998*, str.122; Petrušić Nevena i Konstantinović-Vilić Slobodanka, *Porodičnopravna zaštita od nasilja u porodici u pravosudnoj praksi Srbije*, Beograd 2010, p. 9.

<sup>17</sup>Jovič, Miodrag, *Krivično Pravo- posebni deo, skripta I*, Pravni fakultet Internacionalni Univezitet u novom Pazaru, 2011, p. 131.

<sup>18</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, it came to power on the 3rd of September 1981;

signatory countries should adopt a set of measures to end discrimination against women in all forms, including:

- Incorporation of the principle of equality between men and women in their legal systems, removal of all discriminatory laws and adoption of adequate laws that forbid discrimination against women;
- Establishment of courts and other legal institutions for provision of efficient protection of women from discrimination; and
- Providing elimination of all deeds of discrimination against women by individuals, organizations and companies.<sup>19</sup>

One of the most important international documents is the Declaration on the elimination of violence against women<sup>20</sup>. Although it doesn't have a legal obligatory power, its' provisions are of great importance for the establishment of direct obligations of the member countries of the United Nations in the field of fighting against domestic violence. It is universal in the aspect of its scope and it is accepted as a source of international law. The Declaration concretizes actions that countries have to take for elimination of violence that occurs in the private sphere: they have to develop adequate criminal legislature; they have to review the development of national action plans on eliminating violence against women; in the scope of available resources, they have to provide social services for women who are victims of domestic violence; they have to take measures to provide that public officers who should apply the laws to have the appropriate training for sensitisation towards the needs of women; and they have to provide appropriate resources from the government budget for fight against domestic violence.<sup>21</sup>

The Beijing platform for action also provides a review of various specific activities for governments, non-governmental organizations, private sector, educational institutions and other subjects which they have to undertake for confrontation and fighting violence against women. These activities also include response strengthening of the legal system towards domestic violence.

### III.2 European Council and European Union Documents

The European Council system of human rights is based on international agreements that define the obligation of member countries through non-obligatory documents, like guidelines, recommendations and resolutions. The European Council agreements on human rights is the Convention on protection of basic human rights and freedoms (so-called European convention), adopted in 1950 and came to force in 1953, followed by the European social charter from 1965 and the European convention on prevention of torture and inhumane or humiliating treatment from 1989. The European convention consists of relatively strong mechanisms for implementation with a special court (European court for human rights with

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Šemović, Almedina, *Pravna zaštita žrtava nasilja u porodici* (Master rad), Univerzitet u Novom Pazaru, Departman za pravne nauke, Novi Pazar 2014.

<sup>19</sup> Nikolić-Ristanović Vesna I Dokmanović Mirjana, *Međunarodni standardi o nasilju u porodici i njihova primena na Zapadnom Balkanu*, Beograd 2006, p. 55.

<sup>20</sup> Declaration on the Elimination of Violence Against Women/DEVAW), adopted in 1993.

<sup>21</sup> Nikolić-Ristanović Vesna I Dokmanović Mirjana, *Međunarodni standardi o nasilju u porodici i njihova primena na Zapadnom Balkanu*, Beograd 2006, str. 61; Jovič, Miodrag i Kešetović Želimir, *Nasilje u porodici u svetlu novih inkriminacija*, Bezbednost, vol. 6/2002, str. 885.

headquarters in Strasbourg), individual appellate procedure and Council of ministers which monitors whether the country really abides by the juridical decisions of the Court.

Documents on human rights of the European Council are calling upon principles of the agreement of the United Nations and other documents according to which violence against women is a breach of basic human rights. Article 14 of the European Convention states that "enjoying the rights and freedoms set by this Convention will be provided without discrimination based on any background like gender...". The Convention guarantees the right to life (article 2), the right to freedom and security of the individual (article 5) and the right to freedom from torture, inhumane or humiliation treatment (article 3). Also, it highlights the right of women to efficient legal means in front of national authorities in case their rights have been breached (article 13).<sup>22</sup>

In 2000, the Parliamentary assembly of the European council has adopted the Recommendation 1450 through which it recommended a creation of a European programme for fighting against domestic violence. This programme would include, among other things, harmonization of national legislatures with the right of the European Union and providing protection for victims through the legal system. The Recommendation highlights that domestic violence is a criminal law breach and therefore the Parliamentary assembly is encouraging the country members to "recognize that they are obliged to prevent, research and punish acts of domestic violence and to provide protection to the victims"<sup>23</sup>.

The European Union guides towards gender equality through numerous guidelines, resolutions, recommendations and acts, published by the European Union Council, the European Commission and the European Parliament. In 1986, the European Parliament adopted a Resolution on violence against women. In the beginning of 2006, the European Parliament adopted a policy of zero tolerance against all forms of violence against women in its' Resolution on fight against men's violence against women, adopted on the 2<sup>nd</sup> of February 2006.

The European Council Convention on prevention and fighting domestic violence and violence against women (Istanbul 2011) established international mechanisms for monitoring of its' implementation on national levels. In article three of this Convention, the definition of violence against women and domestic violence that includes partner relations, previous and current, is provided. This Convention defines violence against women as "breach of human rights and a form of discrimination against women and implies deeds of gender conditioned violence that result or it will result with physical, sexual, psychological or economic damage or suffering of women, including a threat by those deeds, compulsion or arbitrary deprivation of freedom in public or private life".

Domestic violence includes all deeds of physical, sexual, psychological or economic violence that occur in the family, family union or between former or actual spouses/partners, with no regards whether the violator shares or doesn't share residence with the victim. "Gender" marks socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for men and women. "Gender oriented violence against women" represents violence directed against women and affects women disproportionately.

This convention provides comprehensive and detailed guidelines for creation of politics against domestic violence and violence against women and integrates numerous relevant conventions,

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<sup>22</sup> Nikolić-Ristanović Vesna I Dokmanović Mirjana, *Međunarodni standardi o nasilju u porodici i njihova primena na Zapadnom Balkanu*, Beograd 2006, p. 63-64.

<sup>23</sup> Ibid. p.64-65.



declarations and resolutions of the UN and European Council, including CEDAW and Recommendations of the European Council Ministers Committee.<sup>24</sup>

#### IV. LEGAL REGULATIONS IN THE REPUBLIC OF NORTH MACEDONIA ON DOMESTIC VIOLENCE

In the internal plan, protection from domestic violence is applied through norms of constitutional, civil and criminal law<sup>25</sup>. Constitutional legal protection is directly realized through certain regulations of the constitution of the Republic of North Macedonia. The formal frame for protection of families from violence in the RNM constitution is relatively rounded and adjusted with international UN and EU documents. Article 8 of the RNM constitution, related to legal order, enacts that "confirmed and published international agreements and generally accepted regulations of international law are a part of our legal order. Article 8 is literally stating:

Basic values of the legal order of the Republic of Macedonia are:

- Basic human and civil rights and freedoms adopted by international law

The ones determined by the Constitution are:

- Free expression of nationality;

- Rule of law;

- Division of state authorities into legislative, executive and juridical;

- Political pluralism and free direct and democratic elections;

- Legal protection of property;

- Market freedom and entrepreneurship;

- Humanism, social justice and solidarity;

- Local self-government;

- Order and humanisation of space, and protection and promotion of surrounding space and nature, and

- Adherence to generally accepted norms of international law.<sup>26</sup>

The legal system of the Republic of North Macedonia<sup>27</sup> regulates domestic violence from two sides, from the first side according to civil legislation as a civil legal protection, and from the second side, through the Penal code, as a criminal legal protection. The characteristic of existing solutions, in civil and penal legislation is their compliance with international standards

<sup>24</sup> [http://www.coe.int/t/dghl/standardsetting/convention-violence/convention\\_en.asp](http://www.coe.int/t/dghl/standardsetting/convention-violence/convention_en.asp); Грозданова Едена, *Анализа на усогласеноста на одредбите од Законот за превенција, спречување и заштита од семејно насилство со стандардите содржани во Конвенцијата на Совет на Европа за спречување и борба против насилство врз жените и домашно насилство*, [https://civicamobilitas.mk/wp-content/uploads/2018/03/cela\\_brosura.pdf](https://civicamobilitas.mk/wp-content/uploads/2018/03/cela_brosura.pdf)

<sup>25</sup> Jovič, Miodrag, *Krivično Pravo- posebni deo-*, skripta I, Pravni fakultet Internacionalni Univezitet u novom Pazaru, p. 132.

<sup>26</sup> Article 8 of the RNM Constitution; Constitution of the Republic of Macedonia, Official Newspaper of RM, nr 52, on the 22.11.1991, extended through the constitutional ammendments I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX И XXX <http://makemigration.readyhosting.com/upload/Ustav.pdf> <https://www.sobranie.mk/content/Odluki%20USTAV/UstavSRSM.pdf>

<sup>27</sup> About similarities and differences in legal systems in former yugoslavia, see: Šemović, Almedina, *Pravna zaštita žrtava nasilja u porodici* (Master rad), Univerzitet u Novom Pazaru, Departman za pravne nauke, Novi Pazar 2014.

and recommendations in this field, which are imposing comprehensive legal solutions, i.e. incrimination of domestic violence and introduction of protection measures.<sup>28</sup>

#### IV.1 Protection measures against domestic violence according to civil legal regulations in RNM

The legal frame for protection of domestic violence victims has been introduced for the first time in 2004 through amendments and addendums of Family law of the Republic of North Macedonia<sup>29</sup>, as well as later amendments and addendums of the law, adopted in 2006 and 2008, in which the accent is set on the measures taken by institutions for protection of domestic violence victims, especially the Centre for social issues and courts in the Republic of North Macedonia.

Especially important laws that are also related to the system of protection of domestic violence victims is the Law on social protection<sup>30</sup> and the Law on free legal assistance<sup>31</sup>. So, the Law on social protection regulates the rights to financial support of domestic violence victims and their care in the shelters, whereas the Law on free legal assistance regulates the right of domestic violence victims to register and acquire free legal support in all judiciary and administrative procedures, in matters of interest for the victim, as well as in the aspect of rights of social, health, pension and disability insurance, child protection, employment, domestic violence victims, criminal offence protection and victims, human trafficking, right to an asylum and property rights. In order to provide comprehensive legal frame for protection of domestic violence victims, in 2014, in a civil procedure, *lex specialis* was adopted, a Law on prevention and protection from domestic violence<sup>32</sup>, with a postponed application from 01.01.2015. This law regulates the procedures of authorised institutions and associations of citizens, as well as their mutual coordination and cooperation, for prevention of domestic violence and providing protection for the victims.<sup>33</sup>

The law on prevention and protection from domestic violence, under domestic violence defines physical violence, psychological violence, perseverance in violence, sexual violence, economic violence and gender based violence. In the case of these types of violence, the responsible institutions in RNM are: Ministry of Labour and Social Politics, Ministry of Internal Affairs,

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<sup>28</sup> *Водич за психолошка помош и поддршка на жртвите на семејно насилство*, прирачник, Здружение за еманципација, солидарност, и еднаквост на жените на Р.М. – ЕСЕ, Скопје, 2010, p. 8.

<sup>29</sup> Family law, cleared text, Official Newspaper of RM, nr. 153/2014

<sup>30</sup> The Law on social protection, consolidated text, year 2015, <http://www.mtsp.gov.mk/content/pdf/zakoni/ZSZ%20konsolidiran%20%20IX-2015.pdf>

<sup>31</sup> Law on free legal support, cleared text, official Newspaper of the RM 161/09 and 185/11, <http://www.pravda.gov.mk/Upload/Documents/Zakon%20za%20BPP%20precisten%20tekst.pdf>

<sup>32</sup> Law on prevention and protection from domestic violence, Official Newspaper of the RM nr. 138 on the 17.09.2014 г., ID Official Newspaper nr. 33/15, ID Official Newspaper nr. 150/15.

<sup>33</sup> See: Калајчиевски Котеска, Катерина, *Постапување и мерки на заштита во случаи на семејно насилство и насоката на нивно унапредување преку обврските од истанбулската конвенција*, (magistarski rad), Универзитет „Св. Климент Охридски“ - Битола правен факултет – Кичево дисперзирани студии: Битола, Bitola 2018. p.51.

Ministry of Health, Justice, Science and Education, as well as the Units of local self-government.<sup>34</sup>

As a part of the law, it is foreseen that the concerned state institutions take preventives and protection measures against domestic violence. According to the law, the key role is played by the Centre for social issues, the Ministry of Internal Affairs, health institutions, Local self-government units and Citizens Associations.<sup>35</sup>

#### **IV.2. Domestic violence in the penal code of RNM**

Domestic violence, according to the Penal code of RNM, means harassment, rough violation, breach of security, physical injuries, sexual or other psychological or physical violence that causes feeling of insecurity, vulnerability or fear from the spouse, parents or children, or other persons who live in marital or extramarital union or a mutual household, or a former spouse or persons with a mutual child or have close personal relations.<sup>36</sup> The Penal code regulates all three types of domestic violence, physical, psychological and sexual.<sup>37</sup> Violators and victims of domestic violence, according to the Penal code can be the following persons: spouse, parents or children from another person who live in a marital or extramarital union or a mutual household, former spouse, persons who weren't in marriage or didn't live in an extramarital union, but have a mutual child, and persons with very close personal relationship (boyfriend and girlfriend etc.).

a) Psychological violence against women includes the following structural elements: control on a woman – control of her movement; control on her personal contacts and a total control of the family budget; isolation – prohibition of contact with family – prohibition of working outside the house; jealousy or possessiveness; behaviours that are causing emotional or psychological distress and suffering of the woman, verbally aggressive behaviour, name-calling with humiliating terms, behaviour that humiliate women, total obedience of the woman – the man's word should always be the last, etc.

Psychological violence is sanctioned with the following criminal deeds:

a1) Coercion, according to article 139, paragraph 2 of the Penal Code: for which the lawmaker is foreseeing a prison sentence of 6 months up to 3 years. The deed is done by anyone who will use force or serious threat to force another person to do, not to do or suffer something. In this case, the violator through use of serious threat influences on shaping the will of the domestic violence victim or its realization, so the victim of domestic violence, as a consequence of the serious threat decides to do something that is not their will.

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<sup>34</sup> Article 3,4, 5 Law on prevention and protection from domestic violence, Official newspaper of the RM nr. 138 on the 17.09.2014 г., ID Official Newspaper nr. 33/15, ID Official Newspaper nr.. 150/15.

<sup>35</sup> Manual for court procedures in the procedures for domestic violence protection. Association for emancipation, solidarity and equality of women – ESE, Supported by USAID, 2015, 24, available on <http://esem.org.mk/en/pdf/Publikacii/2015/Priracnik%20zastita%20od%20semejno%20nasilstvo.pdf>.

<sup>36</sup> Compare: , Krivično Pravo- posebni deo-, skripta I, Pravni fakultet Internacionalni Univezitet u novom Pazaru, p. 133.

<sup>37</sup> Article 122, paragraph 21; Penal Code „Official Newspaper of the Republic of Macedonia " number 80/99, number 4/2002 year, number 43/2003, number 19/2004, number 81/2005, number 60/06, number 73/06, number 7/08, number 139/08, number 114/09, number 51/11, number 135/11 , 185/11, number 142/12, number 166/12, number 55/13, number 82/13, number 14/14, number 27/14, number 28/14, number 115/14 and number 132/14 ; Ammendment and addendum nr.160/2014; nr.199/ 2014; nr.196/ 2015; nr.226/ 2015; nr. 97/ 2017 year , article 122 paragraph 21.

a2) Illegal deprivation of freedom, according to article 140, paragraph 2 of the Penal Code: for which the lawmaker is foreseeing a prison sentence of 6 months up to 3 years. This criminal offense is done by someone who is illegally locked, closed or in any other form deprived from freedom or his freedom of movement is limited. The violator does this offense against the victim of domestic violence by closing them against their will or holding the domestic violence victim locked, deprives or limits their freedom of movement.

a3) Breach of security, according to article 144, paragraph 2 of the Penal Code: for which the lawmaker is foreseeing a prison sentence from 3 months up to 3 years. This offense is done by anyone who is breaching the security of domestic violence victims through a serious threat that they will attack the life and the body of the domestic violence victim or the life or the body of the beloved person.

b) Physical violence, according to the PC includes: beating, hair pulling, slapping, boxing, smacking, drowning, hitting an object, burning, pairing, i.e. every direct physical contact between the violator and the victim, which breaches the women's physical integrity; throwing objects at the women and directing serious threats with physical injuries. Physical violence is sanctioned with the criminal deeds of:

b1) Murder, according to article 123, paragraph 2 of the PC: for which the lawmaker is foreseeing a prison sentence of minimum 10 years or a life sentence. This deed is done: "by anyone who takes some other person's life, while committing domestic violence". This criminal offense is defined by the lawmaker by using general formulations, like taking other person's life, while he was committing domestic violence. It is a qualified form of murder.

b2) Momentum murder, according to article 125 of the PC: for which the legislation authority is foreseeing a prison sentence from one to five years. The definition of this deed is as follows: "The one who takes other person's life, who without any guilt is brought to a state of a strong exasperation, through an attack or a heavy assault or as a consequence of a domestic violence by the victim". This deed is a part of the group of privileged murders.

b3) Physical injury, according to article 130, paragraph 2 of the PC: for which the lawmaker is foreseeing a prison sentence of 6 months to 3 years. This deed is done by anyone who will physically attack the victim and apply physical injury or damage someone else's health. In most cases, the violator physically attacks the victim and applies physical injuries to them, humiliates them, hurts, ignores etc., so the victim falls into a special psychological condition, i.e. their health is affected.

b4) Heavy physical injury, according to article 131 paragraph 2 of the PC: for which the lawmaker has foreseen a prison sentence from 1 to 5 years. This deed is done by anyone who will heavily hurt someone else or they will heavily violate their health – the doer of the domestic violence, and apply heavy bodily injury or heavily violate the health of the domestic violence victim.

b5) Heavy bodily injury, according to article 131 paragraph 6 of the PC: for which the lawmaker is foreseeing a financial fine or a prison sentence up to three years. In the penal part from article 131, page 6 of the Penal Code, the lawmaker awards the victim with this, if it comes to it that in the state of strong irritation caused in a certain moment, without any quilt of the domestic violence victim and if the victim applied heavy injury to the violator.

c) Sexual violence in the PC is defined as coercion of sexual intercourse, a subject of coercion or other forms of sexual activities. Sexual violence is sanctioned with the criminal deeds:

c1) Rape, according to article 186 of the PC: The essence of this criminal offence is that the victim of domestic violence is free in their decision for a sexual intercourse or other sexual actions, and if the victim doesn't want to have a sexual intercourse with the husband or extramarital partner, that decision should be respected by the spouse or the extramarital partner.

On the contrary, if they force the victim to an intercourse, the will be held criminally responsible.

c2) Adultery with abuse of position, according to article 189 paragraph 2 of the PC: the lawmaker is foreseeing a sentence of minimum 10 years of prison. This criminal deed is done by a person who, during the time of domestic violence had a sexual intercourse or any other sexual activity with a child older than 14 years of age, which is entrusted to them with the aim of learning, education, guardianship or care.

c3) Mediation in prostitution, according to article 191 paragraph 4 of the PC: for which the lawmaker is foreseeing a minimum of 10 years prison sentence. This criminal deed is done by: "Any person who recruits, seduces, encourage or lures another person into prostitution or participates in any manner in connecting one person to another because of prostitution, with the aim of making profit provide a third person to use sexual services. "With the aim of earning money or a serious threat of use of force, they will force or lure another person to offer sexual services in the case of domestic violence"<sup>38</sup>.

Also, court procedures for criminal offences related to domestic violence and gender orientated violence are focused on the structures aspect of the entire effort to prevent this form of criminal in the Macedonian society. Namely, the court procedure, as a formal part of the legal penal system, which is lead against the violator of this form of a criminal offence, represents only one, not a less important, connection in the sense of fight against and prevention of the crime of violence. It means that repression of domestic violence and gender orientated violence can't be observed only through an analysis of the legislation efficiency, with neglecting other social and economic circumstances that cause or lead towards this form of crime.

From conducted analysis of court subjects related to criminal offenses of domestic violence, we can come to a conclusion which largely supports former discoveries about the dynamics and techniques of procedure with this type of a crime. Generally, the analysis makes it clear that this type of a crime is generally not reported and not revealed and that there is a huge number of dark cases, which results with the conclusion that only a small number of criminal procedures is undertaken in relation to these crimes. Considering the profile of the defendant and the victim, we can generally conclude that violators in most cases are the men who are in a current marital or extramarital relation with the victim, or they are former partners, whereas cases of domestic violence done by close family members are rare. During the criminal procedure, a very small quantity of data is collected about the economic specifications of the defendants, as well as the victims of this specific type of a deed, and there is no adequate information on the social environment of the defendants, which would provide in a great extent a more appropriate criminal-legal treatment for defendants and also victims.<sup>39</sup>

## V. CONCLUSION

Domestic violence is a complex phenomenon and can't be explained only through one factor. The risk factors or the protection factors can't explain domestic violence. Domestic violence

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<sup>38</sup> Also see: Михов Стојан, *Кривичноправна заштита на кривичноправна заштита на жените жртви на семејно насилство*, ЕСЕ, Скопје 2016, стр. 5-10; Калајчиевски Котеска, Катерина, *Постапување и мерки на заштита во случаи на семејно насилство и насоката на нивно унапредување преку обврските од истанбулската конвенција*, (magistarski rad), Универзитет „Св. Климент Охридски“ - Битола правен факултет – Кичево дисперзирани студии: Битола, Bitola 2018.

<sup>39</sup> Мисоски Бобан и Аврамовски Дарко, *Анализа на податоците од набљудуваните судски постапки во предмети од семејно и родово базирано насилство во 2019 година*, ОБСЕ, Скопје 2019.



occurs as a result of series of factors that must be considered in the interaction. However, knowing the aetiology of domestic violence can be of great importance for establishment of the program of prevention and repression. Individual and emotional characteristics, psychological characteristics and social factors, such as the cultural attitude towards violence, are affecting the family structure and situation. Also, power and control are characteristic for almost all forms of domestic violence. Therefore, prevention measures should be taken for promotion of changes in social and cultural patterns of men and women behaviour, in order to eradicate prejudices, customs, traditions, and all other practices that are based on the idea of women inferiority or stereotype roles for men and women. Sanctions foreseen for deeds of domestic violence should be proportional with the deed that is done, and they should prevent commitment of criminal offenses, i.e. reaching special and general preventions. Furthermore, measures for tracking or monitoring of convicts should be undertaken; denial of parenthood rights, if that is in the best interest for the child.

Regarding that, we consider that the Penal Code needs a primarily legal intervention, in a way to fully apply the regulations of the Istanbul convention, which would provide an opportunity for improvement of penal procedures against the doers of these crimes, as well as promotion of the Law on Penal Procedure, in the direction of improving solutions, initially because of protection of domestic violence victims in the family. Through these changes and increase of trust by victims in the criminal legal system, an increase of the threshold for reporting of these crimes could be expected. Besides that, efficiency improvement of the criminal legal system would encourage victims to report the violence, with the objective of its' efficient procedure and repression.

Also, programmes for violators should be seriously considered, which represent an obligatory aspect of the international strategy in the fight against domestic violence. They should be adopted, applied and periodically reviewed, as well as analysing the legislature in order to provide its efficiency in elimination of violence against women, with an accent on prevention of violence through prosecution of violators, undertaking measures for providing protection of women exposed to violence, access to efficient medicine, including a compensation fee for rehabilitation of victims, as well as rehabilitation of violators.

Also, additional sensitisation and training is needed for all subjects in criminal procedures and members of the Ministry of Internal Affairs, as well as the wider public about types of domestic violence, its' procedures, which could be a good foundation for the increase of trust of victims of this form of violence in order to increase the percentage of reported criminal offenses.

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