

Violence Against Women and Ratification of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence by the Republic of Albania			Law
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Keywords: convention, prevention, violence, woman, child, measures against violence, Criminal Law/Code, criminal sentences (convictions), ratification, etc.

Abstract

Nowadays, violence against women knows no boundaries. Every day, around the world, one out of three women, according to the statistics, is violated. Violence against women (and girls) is a human rights violation occurring globally. It includes rape, domestic violence, women being beaten and killed by their husband, women victims of human trafficking and more.

The United Nations defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.” Violence against women has several forms of manifestation, out of which the ones that are mostly encountered by are violence exerted by the partner/husband/spouse and sexual violence.

Historically, violence against women is a manifestation of unequal relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women.

Women and girls are often exposed to serious forms of violence such as domestic violence, sexual harassment, rape, forced marriage, crimes committed in the name of so-called “Honour” and genital mutilation, which constitute a serious violation of the human rights, especially of women and girls. This is an obstacle to the achievement of equality between women and men.

Introduction

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1. Council of Europe Convention on preventing and combating violence against women and domestic violence

Council of Europe Convention on preventing and combating violence against women and domestic violence is adopted in principle⁷⁸ by the Albanian Government and is therefore signed in Strasburg⁷⁹. It is also ratified by the Assembly of the Republic of Albania by Law No. 104/2012⁸⁰.

Violence against women, including domestic violence, is one of the most serious forms of gender-based violation of human rights. Despite positive achievements in policy-making and current practice, violence, in its various forms of expression, remains spread in all levels of the society across all European Council Member States.

The drafting of a special Convention on violence against women and domestic violence is considered by the Council of Europe a legal instrument in preventing and combating domestic violence and other types of violence against women, protection and support of victims of such violence as well as for the punishment of perpetrators, as a step forward to demonstrating a greater respect for fundamental rights of women.

The Convention, in its preamble reaffirms all the principles and freedoms provided for in the key international acts on human rights, such as in the ones of the Council of Europe and the United Nations Organization. In this context, it is quite understandable that the existence of this Convention reconfirms the fact that the creation of a Europe without violence against women and without domestic violence, is one of the priorities in the policies pursued by the EU, focusing in

⁷⁷ Violence exerted by the partner/husband/spouse, shall be referred to the behaviour of a partner or ex-partner/husband/spouse, causing physical injuries, sexual, psychological, including physical aggression, sexual coercion, psychological abuse and possessive behaviour.

Sexual violence shall mean any sexual act, in the attempt to conduct sexual intercourse against will, or any other sexual act against an individual, by use of coercion, violence, force or power on the part of any person, regardless of the relation with the victim, at any environment.

⁷⁸ Adopted by Decision No.723, date 20.10.2011, of the Council of Ministers “On the adoption in principal of Convention “On preventing and combating violence against women and domestic violence.”

⁷⁹ Signed on 18 December 2011, by the Minister of Labour, Social Affairs and Equal Opportunities.

⁸⁰ Official Gazette No.151, date of adoption 8.11.2012, pg.8246.

particular on the women and girls with special needs, whom often are the most vulnerable category threatened by violence and all its forms, either in or outside the family.

1.1. Purpose, objective and general obligations

The main purpose of the Convention shall be to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence. Whereas the objective of the Convention is to apply to all victims of domestic violence, in particular to the category of women which suffer the most from all forms of violence.

The provisions of the Convention shall be applied without any type of prejudice/discrimination, while all the Parties shall be required to take all the necessary legislative measures to promote and protect the right of anyone, in particular women, so that they can live without violence, physical and psychological, both in public and private life. Also, taking special measures on the part of the state to protect women from violence shall not be considered a form of discrimination, thus complying with the conditions of the Convention.

1.2. Integrated policies and collection of data

The structure of this convention is similar to almost all other Conventions:

- Prevention;
- Protection;
- Punishment/conviction.

The new thing about this Convention is the great importance it gives to policies of gender equity/equality⁸¹.

The Parties shall also be required to implement effective policies, by means of an inter-institutional and all-inclusive cooperation among all the actors and factors, in particular the legislative, executive, non-profit organization (OJF), etc.⁸².

Simultaneously, the collection of separate data and the establishment of a “*data base*”, as per gender and the research conducted in the area of violence against women, shall be considered a key element for the policy-makers. The process for the implementation of integrated policies and collection of data, also involves the importance to address the importance of the collection of such data, in an orderly and comparative manner, on all types of violence against women, as mentioned by this Convention.

⁸¹ The Parties, by means of this Convention, should encourage and effectively implement policies of equality among men and women, with the purpose of empowering the latter.

⁸² This means that the Parties must acquire sufficient funds and financial resources, necessary to realize policies and programmes that in return shall be of assistance to women.

Prevention

Prevention of violence against women and domestic violence is one of the key measures that the Parties must take under this Convention, with the purpose of making the public aware, in overcoming gender stereotypes and raising such awareness as a result.

By means of the provisions of the Convention, the Parties shall be called upon to take all the necessary legislative measures in preventing violence, to take measures in encouraging and promoting changes to the social and cultural models in the behaviour/conduct of both women and men, to conduct campaigns or awareness raising programmes in an orderly fashion and at all levels, in particular in cooperation with the civil society and international organizations.

As a matter of fact, among the most important actors in implementing these measures stands the central and local governance that must prioritize the rights of all victims of violence, but in particular, as per their specifics and needs, the individuals without protection, due to their peculiar circumstances⁸³.

In this regard, the Convention gives a crucial importance to the promotion of gender equity, mutual respect in inter-personal relations and against violence, by paying great importance to the role of the system of education and education. On the other hand, in order to obtain the proper impact in implementing the measure of prevention of violence against women, the preparation of appropriate training programs for professionals is also important, as one of the key elements in implementing such measure. Also the preparation of training programmes and their monitoring in an orderly fashion is important in achieving fruitful results in promoting prevention of violence, under this Convention⁸⁴.

Protection and support

Another measure of importance, which receives specific attention under the Convention, is protection and support. The Convention contains a range of obligations to establish more general and specialized services, in order to fulfil the needs of the individuals exposed to violence. Under the Convention, these services, in compliance with international principles, must ensure a better inter-institutional cooperation and coordination, among many state institutions, at central and local governance level as well as the bodies of the judiciary such as: the prosecutor's office, the courts and the fruitful cooperation of such institutions with the non-profit organizations (NPO's) that

⁸³ Women, children, individuals with special needs and individuals under legal custody/guardian form part of the category of individuals without protection, due to the peculiar circumstances.

⁸⁴ In training programs, the Parties shall focus on preparing these programs to also suit individuals that have exerted violence, in particular those who have committed sexual crimes, and therefore involve them in rehabilitation programs.

operate in the area of protection of women victims of violence, etc. the parties must provide service to all women/girls victims of violence, and their children, also victims of violence⁸⁵.

Rights and obligations

Along measures suggested under the Convention, the Parties under this Convention have the obligation to take the necessary legislative steps, in order to ensure protection of victims, either in civil or criminal proceeding⁸⁶, compensations for the harm inflicted onto the victim, etc. Of special importance under this Convention are the measures that the Parties must take in relation to the crimes committed under the so-called “Honour”.

Investigation, prosecution, procedural law and protective measures

One of the obligations of the state Parties, as set forth under this Convention, is the necessity to take the necessary legislative or other measures with the scope that the investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention, shall take into consideration the rights of the victim at all stages of criminal proceedings.⁸⁷

In these cases, the trial is conducted behind closed doors, with the scope to ensure the privacy of the victim, in order to avoid any type of moral or psychological harm that may be inflicted.

In one of the chapters of the Convention⁸⁸, a special attention is paid to regulating the particular relations of the victims of violence and the identification of the person that inflicted violence, his/her status, place of residence, etc.⁸⁹.

2. International cooperation

One of the general principles set forth under the Convention⁹⁰ is the necessity for regional and international cooperation, at addressing the matters in question, either in the field of civil or criminal law. Such cooperation shall be intended at:

⁸⁵ Among the specialized services the following can be mentioned: help/assistance phone lines, shelters, specialized services providing medical and psychological assistance, in particular to those that have suffered from sexual violence, etc.

⁸⁶ For example, in cases when the Court issues a protection order for a violated woman, the specialized state bodies, such as the bailiff office is mandated to monitor the implementation of such an order.

⁸⁷ For example, a child who is a victim and a witness of violence against women and domestic violence shall be provided, when appropriate, special protection measures, looking after the best interest of the child, by ensuring both necessary legal and psychological assistance free of charge, in compliance with the national legislation in force/in place.

⁸⁸ For more information, see chapter VII on “Migration and asylum”.

⁸⁹ Here the resolution of the case and support provided to the victim has to do with the residence and status of the spouse or the partner in cases the marriage or the relationship is therefore dissolved. It also provides for a solution and addressing of demands for gender based asylum, for protection of refugees, etc.

⁹⁰ Chapter VIII of the Convention mentioned a great deal of international cooperation.

- a) preventing, combating and prosecuting all forms of violence covered by the scope of this Convention;
- b) protecting and providing assistance to victims;
- c) investigations or proceedings concerning the offences established in accordance with this Convention;
- d) enforcing relevant civil and criminal judgments issued by the judicial authorities of Parties, including protection orders.

2.1. Monitoring mechanisms

For the monitoring of this Convention, a group of experts referred to as “*Group of Experts*” shall be established on actions/measures against violence against women and domestic violence – hereinafter referred to as GREVIO.

GREVIO shall be composed of a minimum of 10 members and a maximum of 15 members, taking into account a gender and geographical balance, as well as multidisciplinary expertise.

Alongside such organization, it is also foreseen that for the implementation of Article 30 of the Convention, it is necessary to adopt respective legal acts and by-laws, under which “Adequate State compensation” should be established, in urgent cases as well as in cases when the perpetrator is reluctant to or is not able to respond. Therefore, it requires the provision of compensation orders to victims of violence, in accordance with Article 44 of the Constitution of the Republic of Albania, as well as the legislation in force⁹¹.

Conclusions

The establishment/drafting of a modern and contemporary legislation that responds to the current needs and developments is an initiative that deserves to be acknowledged by. As a matter of fact, with reference to the domestic law in our country, we can say that the current legislation is adequate, drafted in accordance with all the obligations and commitments to our international partners, in the framework of the major processes we as a country are part of, such as the EU integration process. But, the lack of implementation in practice of these laws deserved to be noted. Therefore, in relation to improving/amending the legislation in accordance with the requirements of the Convention, it is worth mentioning the initiative taken by the institutions applying the Convention, in order to include & classify domestic violence in the Criminal Code of the Republic of Albania, as a criminal offence as well as increase criminal convictions for offences related to domestic violence⁹².

⁹¹ Law No.9669, date 18.12.2006 “On measures against domestic violence”. By-laws may be adopted by the Council of Ministers up to 6 months following the ratification of the Convention.

⁹² These amendments were adopted by the Assembly of the Republic of Albania in February 2012, namely Law No. 23/2012 “On several additions and amendments to Law No.7895, date 27.1.1995 “Criminal Code/Law of the Republic of Albania”, as amended”, whereby domestic violence is sanctioned as a criminal offence (Article 130/a). Actions such as beating, serious murder threat or serious injury, intentional injury against family related individuals, closed

Following the amendments to the Criminal Code, there have also been additions, which mostly relate to domestic violence, including violence against children, deprivation of parental custody/responsibility⁹³, safety period/term⁹⁴, persecution⁹⁵, as well as the sentence against physical or psychological abuse against minors on the part of parents, siblings, grandparents, legal custodian or any other person that is obliged to be in custody of children⁹⁶.

The impact following the entry into force of these legal amendments to the law were immediate in prosecuting the perpetrators of such criminal offences. Despite the short period of time, there have been several prosecutions of this type, which have been prioritized due to the sanctions set forth under the provisions. It cannot be said that it has had a direct impact in the overall prevention of such criminal offence, but it can be clearly noticed that there is a change in the way this criminal offence is being handled. This can also be noticed in the security measures imposed against the perpetrators of such criminal offence, generally imposing the extreme measure of – “Detention”⁹⁷.

Whereas in the absence of this provision (Article 130/a), domestic violence was handled as per Articles 84, 89 and 90⁹⁸, of the Criminal Code. Under these provisions, considering the sanctions were reduced ones, the measure of “detention” could therefore not have been imposed, and the

family relations or in-law relations, etc., shall be sentenced to an imprisonment term of 2-5 years. In cases of repetition of such offences, they shall be sentenced from 1 up to 5 years of imprisonment.

⁹³ Article 43/a, which sets forth that the measure of deprivation from parental custody/responsibility shall be issued by the Court against the persons exercising parental custody/responsibility, in cases he/she is sentenced as a perpetrator or accomplice in a criminal offence against the child or as accomplice with the child in committing a criminal offence.

⁹⁴ Article 65/a, the Court, in issuing an order, may decide on setting a safety period...in cases of one of these circumstances: “...when the offence is committed against children, pregnant women or individuals that, due to various reasons, cannot be protected...”

⁹⁵ Article 121/a, which sets forth that Persecution, threat or harassment of an individual by means of repetitive/repeated actions, with the scope of inflicting a constant and severe state of anxietyin cases this offence is committed by the former spouse, former partner or the person that was spiritually related to the injured, the sentence shall be enhanced by 1/3 of the sentence imposed... In cases when this offence is committed against the minor, pregnant woman or an individual that is unable to be protected against, as well as in cases when the offence is committed by a masked person or in either in the possession or use of weapons, the sentence shall be increased up to ½ of the sentence already imposed.”

⁹⁶ The amendment of paragraph one of Article 124/b, of the Criminal Code, provides for an imprisonment sentence from three months up to two years, against any person that inflicts physical or psychological abuse to minors.

⁹⁷ Decision No. 82, date 1.02.2013, by act No. 471, case “B.B”, by the charge of “Domestic violence”, on the legal grounds of Article 130/a/1, in which case the Tirana District Court, by decision No.1068, act of date 23.09.2012, assessed as legal the detention and as a result imposed against the suspected B.B, the measure of “Detention”, as set forth under Articles 238 of the Criminal Procedure Code, the Court, under Articles 190, 379, 384, 390, 406, 485 of the Criminal Procedure Code, decided to find defendant B.B, guilty of having committed the criminal offence of “Domestic violence”, as provided for under Article 130/a/3 of the Criminal Code and therefore imposed the imprisonment sentence of 1 (one) year.

⁹⁸ Decision No.213, date 18.02.2010, by act No. 534, in which case the Tirana District Court, as per Article 379 and 390 of the Criminal Procedure Code, decided to find defendant Z. S, guilty of having committed the criminal offence as set forth under Articles 84, 90 and 320, of the Criminal Code, and therefore impose the measure of fine. The defendant, despite being under a restraining order issued by the Court, he has breached it not only by contacting the injured party, but also by inflicting physical and psychological violence against. Under these circumstances, the defendant has therefore committed the criminal offence of obstructing the execution of the decision of the Court, as set forth under Article 320, of the Criminal Code. Although in this case, in the absence of the provision (Article 130/a), the defendant was sanctioned by a fine.

perpetrators, under no circumstances would suffer detention as a result of having committed domestic violence.

Therefore, ratification of this Convention on the part of the Republic of Albania is an important step toward the protection and respect of human rights, in particular toward the protection of women victims of violence, and therefore prevention of this phenomenon as well as toward combating domestic violence.

References

1. Council of Europe Convention on preventing and combating violence against women and domestic violence;
2. Law No. 104/2012, on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence;
3. Criminal Code of the Republic of Albania;
4. Criminal Procedure Code of the Republic of Albania;
5. Law No. 23/2012 on some amendments to Law No. 7895, date 27.1.1995 Criminal Code of the Republic of Albania;
6. United Nations Declaration (UNO), No. 48/108, of 20 December 1993, On the elimination of violence against women;
7. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

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