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DOMESTIC VIOLENCE AND MARITAL CRIMES

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INTRODUCTION

Domestic violence is an act that violates human rights. All the people are free and born with equal right and dignity, so these rights belong to everyone and are inalienable. Human rights are basic rights which each human being must have.

Awareness of dignity of equal and inalienable rights of all human beings is a foundation of freedom, justice and peace in the world.

Not respecting and avoiding human rights, insults the human consciousness, therefore a higher aspiration of each individual is the creation of a world in which people enjoy the word freedom, trust, freedom from fear and poverty – UNIVERSAL DECLARATION FOR HUMAN RIGHTS OF 1948, OF GENERAL ASSEMBLY OF UN (UNITED NATIONS).

Domestic violence was something kept within house walls and consisted of a private issue, but with the development of society, this issue took a series of different dimensions, by creating a legal environment and mechanisms that will guarantee the protection of domestic violence's victims.

Domestic violence and martial crimes, wherever they happen, it is a violence of human rights, which touches women and girls, by not excluding all the society layers, with no difference.

By family, in the meaning of criminal – law protection, we understand the domestic community of husband and wife with their descendants, or: domestic community of parents with their children, who are obliged to keep them. This is the so-called contemporary monogamy family, respectively close family.

But, we are also aware of the so-called big family, which except parents and their children, includes the families of some spouses with their descendants.

Criminal offences against marriage and family are such disallowed behavior, against marriage and family, respectively against good relations between spouses and family members.

Marriage and family, first of all, are institutions that consist of the family right. There are many laws which regulate social and law relations in marriage and family (LAW ON MARRIAGE, LAW ON RELATIONS BETWEEN PARENTS AND CHILDREN, LAW ON CUSTODY, LAW ON ADOPTING, ETC) despite this, these laws cannot regulate all the relations that are created in marriage and family, but only those that are special and which cause consequences of social and law nature. Social institutions are obliged towards citizens to create an environment in which they live without violence.

For the reason that many relations in marriage and family are personal, they belong to the intimate sphere of the human life and it is not necessary to be regulated. Because otherwise it

would cause the risk of people's freedom, would mix in personal and internal issues, in people's feelings and persuasions, who very often cannot be subjected only to law norms.

From the aspect of criminal right, the circle of marital and family relations, is closer, who should be subject of criminal law protection, meanwhile those issues and cases from marriage and family are less, and they're a review subject of Criminal Courts.

Criminal right, in the case of protecting marital and family relations, must intermediate only with extreme cases, when we have to deal with attacks especially risky against such relations and when those attacks cannot be avoided with moral, social, cultural and other similar social measures. In this form, the criminal sanction is taken as the latest tool implemented by society with the purpose of preserving and protecting marital and family relations.

The reduction of the domestic violence phenomena and respect of human rights, domination of law must be a basic priority of the function of a democratic society that mainly focuses in the respect of human rights.

Domestic violence and marital crimes are sanctioned with civil law norms, even with criminal law norms by being considered as a possible object of criminal offences.

The concretizing of such legal obligation is the legal regulation of family rights' protection and creation of an adequate legal base with relevant protective measures, if such rights are violated from people in family relations.

Domestic violence/ violence in gender bases, is a complex and dynamic phenomena which doesn't recognize limitations within gender, ethnicity, race, age or socio-economical status.

Gender inequality is often in the core of domestic violence, that results in more women and children whose rights were violated compared to men.

In the context of the Republic of Kosovo / violence in gender bases was ignored for long during and after the conflict years, but also because of the powerful cultural tradition in order to hide domestic violence. Only in the last years, it has begun to take the attention it deserves.

Especially, the Republic of Kosovo has approved laws and national policies for addressing gender inequalities. In 2010, the Law for the Protection against Domestic Violence approved by the Assembly of the Republic of Kosovo and was enriched with the formulation and approval of the National Strategy and act plan against domestic violence 2010-2014.

Agencies of United Nations, UNICEF, UNFPA, UN WOMEN, OHCHR, joined the program for Violence in gender mutual bases of OUN to support the Government in the implementation of SKPVDHF 2010-2014 linked to LMDHF.

In the Republic of Kosovo, domestic violence is defined as each act or non-act on purpose that results in mistreatment, which is executed from an individual who is or was related to the victim,

including here the physical mistreatment (physical violation, physical pain, fear), psychic mistreatment, psychic suffering, fear feeling, invasion of dignity, insult, humility), sexual abuse (sexual relation and abuse), economical mistreatment (damage, invasion of property, fear for the economical position of the victim).

According to law, state institutions aim and are obliged to prevent domestic violence, to secure and protect victims, to prosecute perpetrators and offer support, treatment and reintegration for domestic violence victims.

In the Republic of Kosovo, there isn't any system of unified periodic statistical data yet on domestic violence, therefore in their absence, we used results from surveys, studies and researches, which served as a base for the formulation of policies and programs against domestic violence, from central and local institutions.

However these studies and researches are conform to the real situation of domestic violence in Kosovo, despite different perceptions for this phenomenon in our society.

From presented data, we understand that domestic violence in Kosovo is a phenomenon with relatively high measures, but reports show that domestic violence is being treated from the institutions of the Republic of Kosovo.

OBJECTIVES

The identification of the expansion of different forms of violence towards women, children and youth that appear or appeared in the Republic of Kosovo. The identification and collection of information for the family values regards to domestic violence. The identification of risky factors of domestic violence. The documentation of the consequences of violence towards women and children. The identification of types and expansion of the access in services and referential mechanisms for the victims. The identification of advantages and individual resources and communities for the prevention and answer towards violence. Objectives that are expected to be executed:

To create efficient and general mechanisms for the prevention of violence in family: To compile policies in central and local level for the prevention, protection, offering services for victims and violators; The society to be aware on domestic violence; To create mechanism for education and awareness of youth on domestic violence; To increase measures of reporting domestic violence.

To have efficient mechanism of the protection for domestic violence victims; To provide efficient services for the physical protection of domestic violence victims in family in all the territory of Kosovo; to increase capacities of actors (Policy, Prosecution, Courts and Social Work Centers) for the domestic violence treatment in family to provide free law help for the victims.

To provide efficient services for the rehabilitation and integration of domestic violence victims: to establish and power capacities of medicine employers, social services and education for offering services to domestic violence victims, to increase policies of economical support of victims and violators; to establish and power social services (Medicine, Education, Social, Economical, Law) for victims and perpetrators of domestic violence)

METHODOLOGY

The presence of criminal offences towards domestic violence and marital crimes, increases the necessity for finding and defining measures for the prevention and fight of it.

Methodology is a process of using ways, tools and forms to achieve the defined goals. By achieving the goals from the theoretical aspect, we will use methods of knowledge and the dogmatic one, through which we achieve understanding as a definition and scientific – law concept, without excluding other contemporary methods and methods of observing and describing, to give a full view through analysis and cases.

The methodology of discovery, research and explaining criminal offences in the field of domestic violence and marital crimes in the Republic of Kosovo, it has been worked on, but in this direction, the possibilities of expansion are necessary and challenging in this aspect. In this direction, we analyze acts and defined proofs that deal with the discovery and explanation of these offences.

During the study and research of criminal offences of domestic violence and marital crimes, we will use defined research, historical, law, comparison, individual cases, observing, absorbing, complaint, interview, statistical, evidence methods and other notes. Just as it is seen, violence in gender bases and women violence have often been used in exchange forms since when in general men caused violation towards women. Also, types of violence aren't reciprocally exclusive, violence in gender bases includes family violence, trafficking, violence in meetings, houses, schools or communities reflects and powers gender inequalities.

Methodology includes the quantity and quality method of collecting information from the total of surveyed individuals. The quantity part of research consists in equal polls based in family members and schools, by using surveys. The quality part of research consists in discussions with emphasis in groups of women, men and children, with interviews with actors. Regards to attitudes towards violence, men generally show a higher scale of tolerance and the same thing happens at teenage boys towards teenage girls. Domestic violence, in its many forms, is a dynamic and complex phenomenon that happens in every country of the world. It doesn't recognize limitations in the aspect of gender, ethnicity, race, age, education, cultural identity, socio-economical status, religion, sexual orientation, physical and mental skills or personality. Gender inequality is often in the core of domestic violence, by usually resulting more in women and children whose rights have been violated more compared to men. This is because women and children are generally in less influencing and less powerful positions within social structures and processes. These inequalities, are delicate and obvious, manifested in patriarchal relations, social norms and organizational cultures where we find the domination of men, gender division, animosity towards women and acceptance of violence from men and women. Even though many families/violence in gender bases is spread against women, it doesn't exclude children and men violence. Generally, this is a problem that requires attention with high priority from all the

society members; women and men. In the context of Kosovan society, domestic violence is a new occurrence. Because of the more visible ethnical violence lately, and the cultural tradition to keep violence in secret as a private family issue, it has been massively ignored up until the last years.

LEGAL AND INSTITUTIONAL FRAME-WORK ABOUT WV/VGB

Kosovo's institutions have worked a lot to develop and release national laws and policies, by relying on international instruments to treat gender inequalities and conditions that discriminate women and humiliate them in public and private spheres.

Laws that deal with domestic violence and gender bases include: THE PENAL CODE OF KOSOVO Nr. 04/L-123 (KPPK), LAWI Nr. 2004/2 For Gender Equality; Law Nr. 2004/3 Against Discrimination; Law Nr. 02/L-17 Law for Social and Family services; Law Nr. 2004/32 for Family in Kosovo; Law Nr. 04/L-218 for the Prevention and Fight of Human Trafficking; Law for the Protection of Trafficking Victims; Law Nr. 03/L-154 For Ownership and other property rights.

These laws aim to be in accordance with international and European standards, like the Convention for the Elimination of All Forms of the Discrimination towards Women. Not respecting and the derision of human rights insults the human consciousness, therefore a higher aspiration of each human is the creation of a world in which humans enjoy the freedom of word, trust, freedom from fear and poverty – UNIVERSAL DECLARATION FOR HUMAN RIGHTS OF 1948, OF GENERAL ASSEMBLY OF UN (UNITED NATIONS) .

CONCLUSION

Crimes that deal with the criminality of violence, are spread in some chapter of penal codes. Meanwhile, criminal behavior of domestic violence are usually some forms of violence manifested by violence in marriage, therefore violence among spouses, husband and wife, children violence and parents' violence. This violence can be manifested as a physical, psychic and sexual violence. The prevention of domestic violence can be achieved through measures with a social character and repressive measures when there are criminal offences in the field of domestic violence and marital crimes.

Basic characteristics of the contemporary policies of research, judgment and prevention of criminal offences towards domestic violence and marital crimes, can be summarized in some whole features such as: General definition of paper – study and research from the aspect of social interest, from the other side knowledge and treatment of illegal acts towards family and marriage.

Consequences that deal with the cause of victims in people, physical injuries and material harms. In this paper work, there's a special emphasis on the necessity of study and research in the field of preventive measures of illegal offences towards family and marriage in the Republic of Kosovo and the punitive policies foreseen with the Penal Codes and Code of Penal Procedure. Within this, we deal with preventive measures and their carriers: Legislation in the Republic of Kosovo, social measures, tools of public informing, family, schools, police bodies, prosecutions, courtsetc.

As far as foreign legislations, especially those of EU, have scored visible results regards to the field of punitive policies in the criminal offences of domestic violence and marital crimes, from the other side our legislation made the first steps in this direction. Therefore, these data are important to study this problem deeper.

The methodology of the discovery and explanation of domestic violence and marital crimes in the Republic of Kosovo in the after-war period has progressed, but there is still space for improvement and fulfillment, which means ability of using tools and advanced methods, has a special emphasis.

The study and research of researching methods and techniques in the direction of new knowledge that deal with many aspects of such offences of this field, of domestic violence and marital crimes, has an inevitable importance in the efficient fight and successful prevention of these offences. In contemporary conditions, it is being insisted on the social prevention of criminality, which is developed as a special field of criminal policy. A characteristic of contemporary fight of criminality is that among many mutual features, there are manifested some specifics that are linked to the type of defined society, with the character and scale of economical and social development. In this paper work, it is talked about the state and problems which family faces

with in actual conditions and circumstances in our country in general. A special attention was drawn to the function and importance of family, role, position and its members in society.

In the first chapter – Domestic violence and marital crimes, meaning, history, purpose, objectives, definitions and methodology of paper work and research of domestic violence and marital crimes. Explanation and analysis of the types of domestic violence and marital crimes according to theories and practices in our country.

In the second chapter, we deal with the results of the evaluation of forms of domestic violence and marital crimes, expansion of domestic violence in gender bases: children, women, men, attitudes towards domestic violence and marital crimes, risk factors that interconnect with this occurrence and consequences of domestic violence.

In the third chapter – Services that address domestic violence: social, judicial, medical services and factors that interconnect with the treatment and prevention of domestic violence.

In the fourth chapter – Criminal offences against marriage and family where there are some criminal offences against marriage and family, phases of standard procedure of act during the reaction towards domestic violence and marital crimes cases. Protective and preventive measures are compiled and recommended towards domestic violence and marital crimes, in gender bases.