

## DOMESTIC VIOLENCE AND CRIMINAL RESPONSIBILITY

**Fatbardha ISMAILI**

<sup>1</sup>*Criminal Law/ Law Faculty, University of Tetova, North Macedonia*  
<sup>\*</sup>*Corresponding Author: email: fatbardha.ismaili@unite.edu.mk*

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### Abstract

This paper will address domestic violence and criminal responsibility, as it is a widespread and ongoing problem that affects millions of families worldwide. The consequences of this violence can be devastating, with far-reaching effects on physical and mental health, as well as social and economic consequences for women and their families. The purpose of this paper is to research domestic violence and criminal responsibility as one of the most negative phenomena of our society, presenting a broad overview of this social phenomenon and to sensitise public opinion and responsible institutions to the issue of violence against women and domestic violence and to improve their capacity to respond effectively to such violence by fostering a victim-centred approach while holding perpetrators accountable and stopping the cycle of impunity. This paper collects existing data on the dimension of domestic violence and criminal responsibility and reviews the available literature on the consequences of abuse. It also explores the relationship between violence and other pressing issues, such as patriarchal attitudes and gender inequality, the lack of legal protections and services for survivors, and a culture of impunity for perpetrators.

*Keywords: Domestic, violence, criminal, responsibility, patriarchal attitudes.*

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### 1. Introduction

Domestic violence and criminal responsibility in North Macedonia is highly prevalent and widespread reaching pandemic proportions. Domestic violence refers to all acts of physical, sexual, psychological and economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim. e. The Istanbul Convention recognises that domestic violence affects women disproportionately. While domestic violence is a broad term involving different social and psychological dynamics and power differentials and covers various forms, such as child abuse, elderly abuse and interpersonal or partner abuse, research has found that that domestic violence against adults is distinctly gendered. 1 It disproportionately victimizes women more than men, whilst men are over-represented as perpetrators. It is strongly related to socially determined power differentials between men and women. It is the gendered nature of partner-related violence that distinguishes intimate partner violence from violent crime in general as well as from other types of violence in the home such as child or elder abuse.

Particular attention to be paid to women victims of domestic violence. The Istanbul Convention recognises that domestic violence affects women disproportionately. While domestic violence is a broad term involving different social and psychological dynamics and power differentials and covers various forms, such as child abuse, elderly abuse and interpersonal or partner abuse, research has found that that domestic violence against adults is distinctly gendered. It disproportionately victimises women more than men, whilst men are over-represented as

perpetrators. It is strongly related to socially determined power differentials between men and women. It is the gendered nature of partner-related violence that distinguishes intimate partner violence from violent crime in general as well as from other types of violence in the home such as child or elder abuse.

## **2. Forms of domestic violence and criminal responsibility**

Domestic violence is manifested in a continuum of multiple, inter-related and sometimes recurring forms –

physical, sexual, psychological and economic harm and suffering. Such violence can be experienced in a range of settings, from private to public, and transcending national borders. All forms of violence against women and domestic violence are human rights violations; however, the Istanbul Convention calls for the specific criminalisation of certain forms (Articles 33 to 39).

- Physical violence refers to bodily harm suffered as a result of the application of immediate and unlawful physical force. It also includes violence resulting in the death of the victim.

-Psychological violence refers to any intentional conduct that seriously impairs another person's psycho-logical integrity through coercion or threats.

-Stalking is any form of direct and indirect control and surveillance of the victim, with or without physical contact. It usually takes place after the end of the relationship, but it can occur while the relationship is still on-going. It can, amongst others, include threats and harassment, online or offline, following the person, spying causing the victim to fear for her or his safety.

-Sexual violence, including rape covers all forms of sexual acts performed on another person without her freely given consent and which are carried out intentionally. It includes non-consensual vaginal, anal or oral penetration of a sexual nature with any bodily part or object; other non-consensual acts of sexual nature; causing another person to engage in non-consensual acts of sexual nature with a third person. Unwanted acts of sexual nature between spouses are also covered.

-Forced marriage refers to physical and psychological force exerted on a victim to involuntarily enter into marriage. Luring a person to go abroad with the purpose of forcing this person to enter into marriage is also covered under the Istanbul Convention.

-Female genital mutilation consists of performing, assisting to perform or inciting, coercing or procuring the cutting, stitching or removal of part or all of the female external genital organs for non-therapeutic reasons.

-Forced abortion and forced sterilisation refer to the termination of a pregnancy or terminating a woman or girl's capacity to naturally reproduce without her prior and informed consent.

-Sexual harassment refers to verbal, non-verbal or physical conduct with a sexual nature and unwanted by the victim. Article 40 of the Istanbul Convention gives states parties the option to apply either criminal law or other sanctions (for instance, penalties under labour law)

## **3. Common myths and stereotypes about domestic violence**

There are many myths and gender stereotypes about violence against women and domestic violence which can have serious negative impact on the protection and justice provided to victims. These myths are incorrect beliefs that are not based on evidence but on preconceived ideas and stereotypes. They develop in part because it can be difficult to understand why one person would hurt another, particularly in the context of an intimate relationship. If these myths

are formally or informally embraced by the criminal justice institutions, this can lead to: secondary victimisation; the justification of unique case treatment such as corroboration requirements and the admissibility of victim character evidence; the downplaying of the perpetrator's responsibility and criminality; the denial or trivialisation of violence perpetrated by men against women; and victim blaming.

Myths and gender stereotypes disable the safeguards in the criminal justice system, influence the discriminatory application of criminal procedures and evidentiary rules that have developed traditionally out of beliefs about women and girls, and distort the conduct of judges, prosecutors and defence counsel.

- Distort their perceptions of what occurred in a particular situation of violence or the issues to be determined at trial.
- Focuses their attention on the victim's behaviour and personal characteristics rather than the perpetrator's actions which generally results in suspicion of the victim's claim of gender-based violence against women.
- Affect their vision of who is a "real" victim of gender-based violence against women.
- Influence their perceptions of the culpability of persons accused of gender-based violence against women.
- Influence their views about the credibility of witnesses.
- Lead prosecutors to submit / not object to, and judges to permit the admission of irrelevant or highly prejudicial evidence to court and/or affect the weight judges attach to certain evidence.
- Influence the assessment of evidence.
- Cause them to misinterpret or misapply laws.
- Shape the ultimate legal result (Manual, Violence against Women and Domestic Violence in Kosovo, 2020)

It is therefore important for prosecutors and judges to be aware of these myths and gender stereotypes; constantly ask themselves whether their conduct and decision-making in cases involving violence against women and domestic violence is grounded in gender stereotypes; and actively play a role in dispelling these myths and counteracting the ways in which myths promote victim blaming in their day to day tasks. It is essential that prosecutors and judges focus on assessing the credibility of the incident and the perpetrator's actions and not solely on the credibility of the victim.

#### **4. International and national legal frameworks for responding to Violence against Women and Domestic Violence**

In recent decades, developments in international law to promote a comprehensive and multi-sectoral response to violence against women, including a gender-responsive criminal justice system, have had an increasing influence on national legal systems in Europe. For many years, violence against women, and more specifically domestic violence, was considered outside the realm of state responsibility because perpetrators were usually private persons, in many cases husband, rather than actors working on behalf of the state. Since the 1990s; however, violence against women, including domestic violence, has received international attention by the international community and, subsequently international law.

A number of key international instruments have been adopted obliging states to respect, protect and fulfil women's right to a life free of violence. The main international instruments for dealing

with violence against women are set out below. Convention on the Elimination of All Forms of Discrimination against Women (1979) Sets out discrimination against women as a violation of their human rights. Includes CEDAW General Recommendation No. 35 on gender-based violence against women (2017) updating General Recommendation No. 19 on violence against women (1992), and frames “gender-based violence against women” within the overall context of discrimination; expands the definition to include specific acts of gender-based violence against women that can amount to torture or cruel, inhuman or degrading treatment.

Includes CEDAW General Recommendation No 33 on women’s access to justice. Articulates the following individual rights: the right to life and personal integrity; the right not to be tortured or to cruel, inhuman or degrading treatment or punishment; the right to equal protection under the law/due process; the right to equality in the family; the right to the highest standard of attainable physical and mental health.

UN Declaration on the Elimination of Violence against Women (1993) Defines “violence against women” and sets out range and manifestations of VAW. Reiterates that women are entitled to the following rights: right to life; right to equality; right to liberty and security of the person; right to equal protection under the law; right to be free from all forms of discrimination; right to the highest standard attainable of physical and mental health; right to just and favourable conditions of work; right not to be subjected to torture.

UN Updated Model Strategy and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (2010) Sets out guiding principles for all criminal justice responses (including victim-centred; perpetrator accountability) and calls on states to criminalise and prohibit all forms of violence against women. Also includes strategies to improve investigations, evidentiary rules, court room procedures, and victim’s rights.

## **5. Conclusions**

Domestic violence is a pervasive issue that affects millions of people around the world, regardless of gender, age, race, or socioeconomic status. It can have devastating consequences, both physical and psychological, for the victims and their families. However, it is a problem that can be addressed through a combination of legal, social, and educational measures.

It is crucial that we break the cycle of violence and create a safe and supportive environment for victims. This can be achieved by providing resources and support for victims of domestic violence, such as hotlines, shelters, and counseling services. It is also essential to raise awareness about the issue and educate people on healthy relationships and respectful behavior.

In addition, we need to hold perpetrators of domestic violence accountable for their actions through the legal system. This includes enforcing restraining orders and providing counseling and rehabilitation programs to help them address their abusive behavior.

Ultimately, ending domestic violence requires a collective effort from individuals, communities, and governments. By working together, we can create a world where everyone is free from the fear of violence and can live a life free from abuse.

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