

LEGISLATION ON VIOLENCE AGAINST WOMEN - INTERNATIONAL LEGAL AND POLICY INSTRUMENTS



Legal Studies

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Abstract

Until recently, human rights were treated as a field - a matter of internal competence of states, therefore neither a state nor the international community had the right to raise the issue of human rights violations in a state without the risk that this should be interpreted as interference in internal affairs on that country. However, the international community, especially after the creation of international organizations - the League of Nations and the United Nations, pays more and more attention to the well-being of the individual - Man, as one of the most important conditions for maintaining peace, security, stability and democracy. Even today, in many countries of the world, human rights and basic freedoms are violated in a brutal way: ethnic, racial or religious minorities are oppressed, discrimination, genocide is practiced, and most importantly, VIOLENCE is practiced, which proves that the struggle for the full integration of this field of rights has not yet been obtained everywhere. Violence against women as a phenomenon appears everywhere. Each country with its national laws combats acts of violence in a way that ensures criminal prosecution, where they provide support to the victim and strengthen the prevention of acts of violence against women. At the core of violent behavior in the family are historically unequal relationships as a result of the views about the power of men and women - power is a function of achieving control in the family and over its members by creating violent relationships where these victims of relationships are women, children and elderly persons. States have an obligation to create various laws and policies that protect violence against women at national and international levels, but in many countries the legislation is limited and not enforced.

Introduction

Human rights according to international law represent a set of norms contained in modern international conventions and agreements, in which states undertake obligations to recognize, respect, protect and guarantee the specific rights of their citizens within their territory². Human rights and fundamental freedom were traditionally treated as matters of internal competence (national competence), therefore their regulation was carried out by laws, declarations and constitutions. They would be transferred to the international field after the Second World War, influenced by the new understanding that only the international recognition and protection of human rights could be an obstacle not to repeat the crimes and violence practiced in many countries.³

The man possesses certain rights, by the very fact of being human. Starting from the fact that women are human beings indicates that they too enjoy rights. Violence against women is also known as gender-based violence. Over the past two decades, violence against women has become understood as a violation of women's human rights, such as: the right to life, safety, dignity, physical and moral integrity, as well as a form of gender discrimination.⁴ Gender-based violence is a brutal form of discrimination and violation of the basic rights of the victims. It is both the cause

¹ This paper was presented on the 5th International Multidisciplinary Scientific Conference (IMSC-2022) held by The Association-Institute for English Language and American Studies, Tetovo, North Macedonia.

² Prof. Dr. Ljubomir Danailov Frchkovski, International Law on Human Rights, Skopje 2012, p.11

³ Prof. Dr. Zeynulah Gruda, International Law on Human Rights, Pristina, 2001, p.13

⁴ See more at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

and effect of inequality between women and men. It happens all the time, and today, in every society and in every country, regardless of social background, whether at home, at work, at school, on the street or on the Internet. It not only affects women's health and well-being, but also hinders access to employment, thereby negatively affecting their financial independence and the economy. Gender-based violence refers to violence against a person because of his or her gender and expectations about his or her role in society or culture.⁵

Violence against women is one of the most widespread violations of human rights. It can include physical, sexual, psychological and economic abuse, and it occurs regardless of age, race, culture, class or place of residence. It takes place in the home, on the streets, in schools and in the workplace. It has many expressions—from the most widespread forms of domestic and sexual violence, sexual harassment and stalking, to harmful customs, so-called honor killings, and other types of femicide. Women's and girls' access to public space is usually hampered by fear of crime and victimization. Street harassment and various forms of violence, as well as threats from them, are universal problems that negatively affect woman's right to use public space. Sexual harassment and violence against women occur in public spaces in a variety of settings. This limits their access to basic services, cultural and recreational opportunities, and negatively affects their health and well-being. In addition to the low level of recognition of violence against women in public places, an additional problem is the lack of specific, comparable and systematically collected data, as well as the limited capacity of local governments, civil society organizations and other stakeholders to collect this data. Also, where public space is inadequate, poorly designed or privatized, the city becomes increasingly divided on the basis of religion, ethnicity, gender and economic status.

On the other hand, public space can serve to bring about equality. Well-designed and maintained public spaces help reduce rates of crime and violence and create space for formal and informal social, cultural and economic activities, which contribute to improved trust and safety. The protection of the physical and psychological integrity of women is provided for at the international level, including the protection from any violence and harassment that constitute a significant violation of basic human rights and dignity. For this purpose, the international community, through legal mechanisms, adopted many agreements that propose specific answers, solutions and recommendations.

International Legal Instruments for the Protection of Women From Violence

Countries have obligations under international law to enact, implement and monitor legislation that addresses all forms of violence against women. Many countries have adopted or revised legislation on violence against women⁶. However, significant gaps remain. Many countries still do not have legal provisions specifically addressing violence against women and, even where legislation exists, it is often limited in scope and coverage, or not enforced at all. The adoption and implementation of national laws to address and punish all forms of violence against women, in

⁵ <https://www.unwomen.org/en>

⁶ <https://evaw-global-database.unwomen.org/en>

accordance with international human rights standards, is one of the five key outcomes of the Secretary-General's campaign "UNITE to end violence against women" to be achieved in all countries by 2015.⁷

The international community, through legal mechanisms, adopted agreements that provide solutions, recommendations and answers for the protection of women from rape, where the most important are:

- Convention of the Council of Europe on preventing and fight violence against women and domestic violence
- Convention on the elimination of all forms of discrimination against women of the United Nations⁸
 - Optional Protocol to the UN Convention⁹
 - General Recommendation No. 19 violence against women¹⁰
 - General Recommendation No. 33 on access to justice for women.

The Committee on the Elimination of Discrimination in its general recommendation No. 19 (1992) on violence against women confirmed that states can be held responsible for private actions if they act with due diligence to prevent violations of women's rights and recommended that state parties provide adequate protection of women, respect their integrity and dignity and of course ensure that laws against any form of violence against women will provide adequate protection.¹¹

Effective protection, effective legal measures-sanctions, civil remedies for the protection of women from violence are some of the measures taken by the states for the effective protection of women from any type of violence, starting from:

Physical violence (manifested by the use of physical force or threat). Physical violence is also expressed through very severe forms of kicking, biting, burning¹², pushing, hitting, pulling hair, assault by throwing objects at the victim, inflicting injuries with weapons, burns and similar acts that may result in minor or serious needs. According to research in the Republic of Macedonia at the level of the entire territory of the country, every 4th woman was a victim of domestic violence of this kind at least once in her life.¹³ Physical violence can go as far as attempted murder or murder.¹⁴);

⁷ <http://endviolence.un.org/>

⁸ [Convention on the Elimination of All Forms of Discrimination against Women \(un.org\)](#)

⁹ [Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women \(un.org\)](#)

¹⁰ <https://www.refworld.org/docid/52d920c54.html>

¹¹ Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992) on violence against women

¹² Chacheva, V., Friščić, J., Mishev, S., "Life in the shadows", Domestic violence against women, research results, Association for Emancipation, Solidarity and Equality of Women of RM-ESE, Skopje, 2006, p.6

¹³ Report from field research, "Domestic violence", Association for Emancipation, Solidarity and Equality of Women in the Republic of Macedonia ESE, Skopje, 2010, p. 24.

¹⁴ Mihov, S., Friščić, J., "Guide for the conduct of professional structures in protection against domestic violence in the criminal justice system", Association for Emancipation, Solidarity and Equality of Women of RM-ESE and Citizens' Association Akcija Zdruzenska Skopje, Skopje, 2008, p.13.

Psychological violence (manifested through control, isolation, jealousy threats, preventing her from working outside the home, belittling or humiliating others, seeking permission for health care and other behaviors by the perpetrator of this violence. Psychological violence can be defined as behavior aimed at intimidation and persecution, and takes the form of threats, wiretapping, destruction of property, isolation, aggression, verbal abuse and repeated humiliation.¹⁵);

Economic violence (disposal of personal financial assets is limited and prevented, for whatever purpose, where partial or complete economic dependence of the victim is created from this type of violence.);

Sexual violence (understood as vaginal, anal or oral penetration of a sexual nature, with any body part or object in the body of another person without his consent. It also includes other acts of a sexual nature with a person, without consent, as well as stating another person to engage in acts of a sexual nature with a third person without his/ her consent. Sexual violence and sexual abuse include any sexual contact with the victim (touching, caressing in inappropriate places), soliciting prostitution, unwanted sex, sex in front of a child and showing the intimate parts of the act in front of a child.¹⁶);

Sexual assault (is a type of violence where the violence against the victim is manifested through the use of physical force or threats, it is always with a goal.);

Rape (rape is that type of violence that occurs by a known or unknown person, gang rape, marital rape, etc.);

Sexual harassment in public spaces (it is a type of violence that includes sexual behavior where the victim is humiliated and a feeling of fear is created.¹⁷);

Stalking (it is a form of intimidation through multiple forms – phone calls, messages, social networks where the emphasis is on instilling fear into the victim.¹⁸);

Sexual harassment at the workplace (it is a type of violence that includes verbal - physical behavior that violates the dignity of the victim (the victim feels degraded and humiliated at the workplace.¹⁹ Sterilizations Sterilization refers to racial-ethnic minorities and the poor.²⁰);

Forced and arranged marriages (is a way of choosing an intimate or marriage partner and in doing so creates emotional stress, pressure, and often suffers mental and physical violence either from members of their own family or from the family where she should be given. Many researches

¹⁵ UN Women. "Glossary of Terms from Programming Essentials and Monitoring and Evaluation Sections

¹⁶ Dukas, D., Kotseva, A., Kachanska, B., "Domestic violence-Brochure", Women's Organization of the Municipality of Sveti Nikole, Sveti Nikole, 2010, p. 6.

¹⁷ UN Women. „What is sexual harassment“

¹⁸ „Stalking information“. *Victimsofcrime.org. Stalking Resource Center.*

¹⁹ EIGE (24 August 2015). „What is gender-based violence?“. *Eige.europa.eu. European Institute for Gender Equality.*

²⁰ Volscho, Thomas W. (Spring 2010). „Sterilization racism and pan-ethnic disparities of the past decade: the continued encroachment on reproductive rights... Wicazo Sa Review. Johns Hopkins University Pres.25

have shown that forced/arranged marriages often continue with psychological and physical violence by the partner or his family.);

Femicide (the term femicide refers to the intentional killing of a woman because she is a woman. One of the first people to use the term femicide²¹ is the feminist author Diana E. H. Russell who defines femicide as "the killing of a woman by a male person because she is a woman."²² Other terms used are feminicide, honor killing, and crimes of passion. Gendercide is also indicated as an alternative term, which is actually a much more inclusive term. Some feminists believe that the motives that lead to femicide are very different from the motives for murder. In fact, the focus is not on violence that occurs on the street, but on violence that occurs in the home or by those closest to the victim).

The UN Convention on the Elimination of All Forms of Discrimination against Women²³ although there is no specific article on the elimination of violence against women, in general recommendations 19 and 35 the focus is precisely on this problem (on the elimination of all types of violence against women). They reflect the Committee's view that violence against women is a form of gender-based discrimination and as such it is necessary to address it. This Convention is an impetus for further regulation of violence against women in other international documents.

Article 35 of the Convention provides recommendations on physical violence and obliges "Parties to take the necessary legislative or other measures to ensure that the intentional commission of acts of physical violence against another person is criminalized." In the explanation Report²⁴ it is clarified that any intentional act of physical violence against another person is criminalized regardless of the context in which it occurs; and that the term "physical violence" refers to injury to the body as a result of direct and unlawful force, while also including violence that results in the death of the victim.

According to the **United Nations Convention on the Elimination of All Forms of Discrimination against Women**²⁵ states have an obligation to eliminate discrimination against women through legal, political and programmatic measures. The obligation applies to all spheres of life, as well as to matters related to marital and family relations, and includes obligations to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.

²¹ <https://en.wikipedia.org/wiki/Femicide>

²² http://www.dianarussell.com/origin_of_femicide.html

²³ <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>

²⁴ <https://rm.coe.int/16800d383a>

²⁵ <https://www.mtsp.gov.mk/WBStorage/Files/priracnik.pdf>

The Palermo Protocol

The Palermo Protocol is a reaffirmation of "the determination of (states) to ensure the full and equal enjoyment of all human rights and fundamental freedoms by women and to take effective actions to prevent the violation of these rights and freedoms"²⁶.

The Optional Protocol is a tool for states to improve and supplement existing mechanisms for the implementation of women's rights, to encourage states to take additional steps to implement the Convention; to initiate changes in discriminatory laws and practices; advance existing mechanisms for the application of human rights within the United Nations system; and create greater public awareness of human rights standards in relation to discrimination against women.

Council of Europe Convention on Preventing and Fighting Violence Against Women and Domestic Violence

According to the Council of Europe Convention on preventing and fighting violence against women, including domestic violence (Istanbul Convention), violence against women is understood as a violation of human rights and a form of discrimination against women and refers to all acts of gender-based violence that lead or are likely to lead to physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, extortion or arbitrary deprivation of liberty, whether occurring in public or private life. The Convention on Preventing and Combating Violence against Women and Domestic Violence of the Council of Europe - Istanbul Convention²⁷ is a key regional document for the protection of women from violence. By ratifying the Istanbul Convention, the countries of the Western Balkans and Turkey undertook to adopt legislative and other measures to prevent violence against women and that with full commitment they will prevent, investigate, punish and provide compensation for the violence covered by the Convention. The Istanbul Convention clearly indicates that member states are obliged to ensure the implementation of regulatory obligations - the domain of legislative regulation of issues and operational obligations - the domain of ensuring implementation. The adoption of appropriate legislation, as a regulatory obligation, includes criminal legislation that should ensure the investigation, prosecution and punishment of perpetrators in a manner proportionate to the gravity of the offenses committed. In the area of operational obligations, states have a duty to prevent violence, as well as to promptly and effectively investigate allegations of domestic violence. Domestic violence also raises the issue of violation of the European Convention on Human Rights and Fundamental Freedoms, i.e. Articles 2 (right to life), 3 (prohibition of inhuman and degrading treatment), 8 (right to respect for private and family life) and 14 (prohibition of discrimination).

²⁶ <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>

²⁷ Convention to prevent and combat violence against women and domestic violence - Istanbul Convention: <http://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168008482e>

The Istanbul Convention is the most comprehensive document in the field of violence against women, which provides a broad framework of action for prevention, protection and support of victims and punishment of perpetrators. This convention also defines "gender-based violence against women": violence directed against a woman because she is a woman or which disproportionately affects her (Article 3 paragraph 1-d); Also according to article 4 paragraph 3 of the Convention, the parties ensure the implementation of the provisions of this Convention, especially the measures to protect the rights of victims, without discrimination on any basis such as sex and gender and 18 other grounds of non-discrimination. This Convention obliges States to ensure that victims of violence receive adequate and timely information about available support services and legal measures in a language they understand, legal and psychosocial counseling, financial assistance, housing, education, training and employment assistance. Victims are guaranteed the right to appropriate civil remedies against state authorities that have failed to fulfill their duty to take necessary preventive or protective measures within their powers and the right to seek compensation from perpetrators for acts established in accordance with this Convention. Victims also have the right to legal advice and free legal aid, under the conditions established by domestic law.

In the Republic of Macedonia, the legal framework regulating gender equality and women's access to justice consists of: the Constitution, laws and ratified international conventions. In this sense, it should be pointed out that only the Constitution of the Republic of Macedonia guarantees protection against discrimination based on sex (but not gender), while other laws that contain provisions on gender equality regulate protection by gender and sex or separately. Thus, in Article 9 of the Constitution of the Republic of Macedonia, it is determined that the citizens of the Republic of Macedonia are equal in freedoms and rights regardless of gender, race, skin color, national and social origin, political and religious belief, property and social status. At the same time, paragraph 2 of this article guarantees the equality of citizens before the Constitution and the laws. Gender equality is also guaranteed by the constitutional provisions regulating the competence of the Ombudsman: Namely, according to Amendment XI of the Constitution: "The Ombudsman pays particular attention to the protection of the principles of non-discrimination and adequate and fair representation of the members of the communities in the bodies of state authority, the bodies of local self-government units and in public services".

The Committee for Human Rights, the Committee against Torture and the Committee for the Elimination of Racial Discrimination have adopted and issued Concluding Observations for the Republic of Macedonia, which also contain recommendations related to measures against violence against women. They refer subliminally and request the Republic of Macedonia: To increase efforts aimed at preventing, opposing and punishing violence against women and girls, including domestic violence; Eliminate violence against women and children and consider recognition of violence against women and children as a separate crime in the Criminal Code; To ensure effective implementation of the existing legal framework through timely, expedient and impartial investigation of cases of domestic violence and punishment of the perpetrators in accordance with the gravity of the committed acts; To take measures to ensure that victims have access to effective

legal remedies and protection measures, including: legal compensation for all women and girls who have been victims of violence and an adequate number of shelters available in all parts of the country, especially for unwed mothers aged sixteen to eighteen, including Roma women and women belonging to other communities; Raise the awareness of the population, especially persons belonging to minority groups, about the prohibition and negative consequences of family and gender-based violence and inform potential victims about available legal remedies. Encouraging women to report cases of family and gender-based violence by raising awareness of the criminal nature of such acts and providing adequate assistance and protection to women victims, and To organize trainings for local authorities and law enforcement agencies, as well as for social workers and medical staff on how to identify and appropriately counsel victims of domestic violence.

Conclusion

The phenomenon of domestic violence follows man, or rather humanity, throughout its centuries-old existence. It cannot be associated only with a nation, culture, race, religion or other social characteristic. Violence against women and girls is one of the most widespread, persistent and devastating human rights violations in our world today, which goes largely unreported due to the impunity, silence, stigma and shame that surrounds it. Data obtained from various studies conducted around the world show that in all countries, whether developed or underdeveloped, women are more or less exposed to some type of violence, whether it is physical, sexual or psychological violence. Violence against women continues to be an obstacle to achieving equality, development, peace as well as fulfilling the human rights of women and girls. In all cases of violence, commitment is required from institutions for the protection of victims of violence (female perpetrators). Wrong prosecution, soft punishment policy - low punishments for the perpetrators of crimes are one of the main reasons for the loss of trust in the institutions where in most cases the victims do not want to present cases of violence and end up killing the victim. Violence against women is inexcusable - it is actually a crime that must be punished.

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