



**PILLAR III
HUMAN RIGHTS**

Domestic Violence: International and Albanian Approaches
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Abstract

Domestic violence is still one of the state's biggest challenges. During the new Millennium several legal changes have been made. In 2011, for the first time, European states took International responsibility under the standard of 'due negligence.' This criteria was inflicted by the "Council of Europe Convention on preventing and combating violence against women and domestic violence" (Istanbul Convention). From then on, states could be directly considered as responsible for not being able to perform all the necessary acts and legal implementations in accordance with international obligations. In addition, this Convention is also important because is the first legally-binding document that focusses on gender-based violence. Albania, as part of the Council of Europe, has ratified this Convention in 2013. As a result, the Parliament has passed several bills. In specific, in 2018, the law introduced several new legal instruments to provide women a better protection against domestic violence. In the conclusions, the paper treats the recognition by the Albanian state of its international legal liabilities by adopting in its domestic law the provisions of the 'Istanbul Convention.'

Key words: CEDAW, domestic violence, due diligence, immediate protection order, Istanbul Convention, protection order.

1. Introduction

International Community acknowledges its duty on protecting human rights by establishing legally-binding instruments. In the light of these mechanisms, the domestic laws of respective signatory states have been changed due to the impact of all embracing standards. With reference to that, this Paper is concerned with state's undertaking its International accountabilities in the area of women rights. Such responsibilities are reflected in the implementation of the proper policies and the adoption of several laws within national level. Domestic violence is no bounded with a specific culture or region.¹ **Article 3/b of the "Council of Europe Convention on preventing and combating violence against women and domestic violence" (Istanbul Convention) states that 'domestic violence' shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether**

¹ U.N. Children's Fund, Domestic Violence Against Women and Girls, 6 INNOCENTI DIGEST 1, 3-5 (2000), <www.unicef-irc.org/publications/pdf/digest6e.pdf>



or not the perpetrator shares or has shared the same residence with the victim. Such violence is in correlation with the gender based fact that it occurs just because the victim is a woman (Istanbul Preamble).

This paper examines the importance of the “Istanbul Convention” by considering its implementation in the domestic law of the signatory states. It considers the legal doctrine as well as the case *Bevacqua v Bulgaria* since that is the first case that the –“European Court of Human Rights (ECtHR)”- has applied the concept of –‘due diligence’-. The structure of this paper is as the following: Section II focuses on the states’ attempt to become internationally aware for combating domestic violence. Furthermore is treated the ‘due diligence’ standard and the role of GRIEVO, as the monitoring mechanism of the “Istanbul Convention.” Whereas, Section III is concerned with the Albanian law of domestic violence. In addition, this section shows different data regarding the domestic violence in Albania. In the conclusion, the paper underlines the impact that International law has in the amendment of the Albanian legal system.

2. International obligations of states towards Domestic Violence

This section examines the implementation of the -‘due diligence’- standard in the international law. In particular, it studies the “Istanbul Convention” since this is the first multilateral international legally-binding treaty on gender violence.

States, when they show little to no effort on taking measures against domestic violence,² might be responsible for condoning any such acts exercised by non- state actors.³ This is a ‘new’ concept of state’s liability,⁴ first established by the United Nations Organization (UN) in 1979. It was the UN General Assembly which approved the first international instrument for women- the “Convention on the Elimination of Discrimination against Women” (CEDAW). Even though CEDAW’s provisions aimed to protect women from discrimination,⁵ they were insufficient to focus on violence practiced towards women.⁶ Thereupon, in 1992, the CEDAW’s Committee established the ‘General Recommendation 19,’ which provided the definition for violence against women. Its novelty was seen in the implementation of the ‘due diligence’ standard.⁷ This standard obliged for the first time

² Roth, Kenneth. “Domestic Violence as an International Human Right Issue,” in *Human rights of women: national and international perspectives.*” 326, 330 (Rebecca J. Cook ed., 1994)

³ Rudolf, Beate and Eriksson, Andrea. “Women’s Rights under International Human Rights Treaties: Issues of Rape, Domestic Slavery, Abortion, and Domestic Violence,” 5 INT’L J. CONST. L. 507, 522-523 (2007)

⁴ Hasselbacher, Lee. “State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, And International Legal Minimums of Protection,” 8 Nw. J. Int’l Hum. Rts. 190 (2010)

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*



the signatory states to take concrete measures on eliminating any act of violence against women.⁸ Under such norm, states would be assessed whether they had accomplished their duty or not.⁹

In the same line, in 2002 the Committee of Ministers of the Council of Europe (CoE) adopted the 'due diligence' standard with the '2002 Recommendation.'¹⁰ This legal instrument sums up elements from the nature of the 'CEDAW' and the 'General Recommendation 19.' Further, it introduced the role of state on preventing, prosecuting and penalizing acts of violence committed by state actors or private persons.¹¹ Whilst state actors are all the officials, the agents, the Institutions and other troupers which act on behalf of the state,¹² non-state actors are the private persons.¹³ All together must refrain from performing acts of violence. Regardless of the existence of a well-implemented legal system,¹⁴ still it is not enough. Therefore, the government shall intervene in order to guarantee the application of the 'due diligence' standard.¹⁵ Thereupon, the state's representative organs play a major role given that they take concrete measures on protecting persons by the acts of non- state actors. A failure to do so might bring state's responsibility.¹⁶

The '2002 Recommendation' ministered as a solid ground for the ECtHR¹⁷ interpretation of the 'due diligence' standard. Consequently, the Court reaffirmed the role of International instruments on binding States to take legal measures on prohibiting and penalize acts of violence against women.¹⁸ In the *Bevacqua v Bulgaria* case, the ECtHR judged as the following:

“Member states should ensure that all victims of violence are able to institute proceedings, make provisions to ensure that criminal proceedings can be initiated by the public prosecutors, encourage prosecutors to regard violence against women as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest, ensure where necessary that measures are taken to protect victims effectively against threats and possible acts of revenge and take specific measures to ensure that children's rights are protected during proceedings.”¹⁹

⁸ Commission on the Elimination of Discrimination against Women, General Recommendation No. 19: *Violence against Women*, 11th Sess., 4, U.N. Doc. A/47/38 (1993), available at <www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

⁹ Meyersfeld, Bonita. “*Domestic Violence, Health, and International Law*,” 22 EMORY INT'L L. REV. 61, 66 (2008).

¹⁰ Eur. Consult. Ass., Recommendation Rec (2002)5 of the Committee of Ministers to member states on the protection of women against violence, 794th Sess. (April 30, 2002), available at <[www.coe.int/T/E/Human_Rights/Equality/PDF_Rec\(2002\)5_E.pdf](http://www.coe.int/T/E/Human_Rights/Equality/PDF_Rec(2002)5_E.pdf)>

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Velasquez Rodriguez V Honduras*, Inter- Am. Ct. H. R (ser. C) No. 4, Para 172 (1988)

¹⁵ See *supra* note 10.

¹⁶ See *supra* note 4.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Bevacqua v. Bulgaria*, App. No. 71127/01, Eur. Ct. H.R. (2008), par 50.

Later, this European community²⁰ constituted the first legal binding instrument towards violence against women. The “Istanbul Convention” defines domestic violence as a form of violence against woman. Furthermore, it states that such acts are a direct discrimination and violation of human rights. Under the integration of *due negligence* standard in national laws is possible to prevent and punish any acts of violence, and provide protection for the victim. Hence, the signatory States are responsible for acting in accordance with its provisions. Furthermore, the Convention creates GRIEVO- a monitoring mechanism,²¹ which supervises the implementation of the Convention by the Parties - Article 66(1)²². GRIEVO shall prepare draft reports for such process - Article 68(10).²³ On the other hand, Parties shall submit the GRIEVO’s reports to their Parliaments - Article (70/2)²⁴ in order to take the proper legal changes in their domestic law.

Ratifying Countries of the Convention should provide procedural warranties in the ongoing of investigation and judicial process,²⁵ by being aware of women as the most afflicted subject.²⁶ Additionally, these measures should be reflected in dedicated hotlines, shelters, medical services, and rapidly intervention when acts of violence occur.²⁷ Immediate entrance in the place where victim is being attacked, followed by treatment and advices by competent trained staff are the predicted actions under the Article 50 of the Istanbul Convention. At the same time, states shall establish ‘Protection Orders’ in their national laws. These legal remedies are a promptest intervention when acts of domestic violence have already occurred and is needed to protect the victim from another threatening conducts.²⁸ Among other things, national authorities must ensure the

²⁰ The term ‘European community’ refers to the signatory states of the “Istanbul Convention,” located in the continent of Europe. These are members of the CoE as well.

²¹ Gasmi, Gordana. New CoE “Convention on Preventing and Combating Violence against Women and Domestic Violence: Istanbul Convention” – Importance of setting European Legal Standards. Foreign Legal Life (Stranipravniživot), UDK 34. Belgrade. Issue 2, pp. 37 – 57 (2014)

²² Istanbul Convention, 2011, Article 66(1). The Group of experts on action against violence against women and domestic violence (hereinafter referred to as “GREVIO”) shall monitor the implementation of this Convention by the Parties.

²³ *Ibid.* Article 68(10). GREVIO shall prepare a draft report containing its analysis concerning the implementation of the provisions on which the evaluation is based, as well as its suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified. The draft report shall be transmitted for comments to the Party which undergoes the evaluation. Its comments shall be taken into account by GREVIO when adopting its report.

²⁴ *Ibid.* Article 70(2). Parties shall submit the reports of GREVIO to their national parliaments.

²⁵ *Ibid.* Article 49. General obligations 1. Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings. 2. Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention.

²⁶ See *supra* note 21.

²⁷ Avdeyeva, Olga. “When Do States Comply with International Treaties? Policies on Violence against Women in Post-Communist Countries” (2007)

²⁸ See *supra* note 22. Article 53. Restraining or protection orders 1 Parties shall take the necessary legislative or other measures to ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered by the scope of this Convention. 2 Parties shall take the necessary legislative or other measures to ensure that the restraining or protection orders referred to in paragraph 1 are: - available for immediate protection and without undue financial or administrative burdens placed on the victim; – issued for a specified period or until modified or discharged; – where necessary, issued on an ex parte basis which has



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effectiveness of law over perpetrators, by intervening in those situations where the victim withdraws from initial accusation.²⁹

To recap, concrete measures can be taken by changing, expanding or creating new legal norms in penal, civil, administrative and labor laws. Since the primary liability is assumed for the national Governments, they shall establish training programs for the judges, the police officers, along with the medical and immigration service personnel. Measures should include as well: rehabilitation or advocating services for the victim and training programs for the potential victim.³⁰

3. Albanian legal changes on Domestic Violence

This section focuses on the Albanian legal regulation towards domestic violence. It gives a general overview of how such violence was considered from the Albanian customary law the “Kanun of Lek Dukagjini,” to the current days. Such historical overcoming aims to make a broad legal comparison between what was foreseen under the custom and how is regulated up to the current legislation. Under the custom, domestic violence was legitimated. Only in 2012, the Albanian State criminalized for the first time domestic violence with the amendment of the “Penal Code of the Republic of Albania. The law “On measures against domestic violence” of 2006 paved the road for the protection of the victim by several state actors. However, it is only with the impact of the “Istanbul Convention” that was implemented in 2013 that the Albanian legal system also included the ‘For the preliminary measures of the immediate protection’ order.

In patriarchal countries, it is difficult to study domestic violence.³¹ Given that people are strongly attached to their tradition, they use it as a justification towards acts of violence.³² The Albanian customary law - for example, the “Kanun of Lek Dukagjini” (Kanun) - emphasized the subordination of women as a cultural element.³³ As such, in cases of disobedience, the husband had the right to humiliate in public or even to beaten up his wife. Moreover, an appropriate behavior of the wife could raise to her husband the right to do one of the following sanctions: cut her hair, strip

immediate effect; – available irrespective of, or in addition to, other legal proceedings; – allowed to be introduced in subsequent legal proceedings. 3 Parties shall take the necessary legislative or other measures to ensure that breaches of restraining or protection orders issued pursuant to paragraph 1 shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions.

²⁹ *Ibid.* Article 55. Ex parte and ex officio proceedings 1 Parties shall ensure that investigations into or prosecution of offences established in accordance with Articles 35, 36, 37, 38 and 39 of this Convention shall not be wholly dependant upon a report or complaint filed by a victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint. 2 Parties shall take the necessary legislative or other measures to ensure, in accordance with the conditions provided for by their internal law, the possibility for governmental and nongovernmental organizations and domestic violence counsellors to assist and/or support victims, at their request, during investigations and judicial proceedings concerning the offences established in accordance with this Convention.

³⁰ See *Supra* note 27.

³¹ Haarr, R. N., Dhamo M. (2009). Violence in the Family in Albanian -National Survey on the Population. (2009)

³² Minnesota Advocates for Human Rights. “Domestic Violence in Albania.”(1996)

³³ Arsovska, Jana and Verduyn, Philippe. “Globalization, Conduct Norms and Culture Conflict. Perceptions of Violence and Crime in an Ethnic Albanian Context.” BRIT. J. CRIMINOL. 48, (226 – 246) (2007)

her nude and whip her through the village. If the woman complained to her parents, the only liability of the husband was to explain why he did so.³⁴ The murder of the wife was allowed. But only in the cases of infidelity, betrayal of hospitality or adultery.³⁵ It should be executed during the act, only with one bullet from behind. Anyhow, after the regime changed into Communism, the usage of the “Kanun” was prohibited.³⁶ Defending family’s honor under the custom was punished up to death. Family members of the persons acting contrary to the law would be sent into isolation.³⁷ The Albanian legislator set up laws for substantial equality between man and woman. Although domestic violence was part of the family relationships, yet nobody made them public.³⁸

Only in the recent years, Albania paved the road to the treatment of domestic violence by taking legal to institutional reforms. It shown a western approach to its legislation, by adopting different laws in order to protect the victim, to prevent the repetition in cycle of such violence, and to bring its legal system closer to the standards of the European Union.³⁹ For instance, the Legislator criminalized domestic violence only in 2012.⁴⁰ The article 130(a) of the ‘Penal Code of the Republic of Albania’ gives the definition of domestic violence and the years of imprisonment for the perpetrator.⁴¹ Other laws which deal with domestic violence are: the ‘Civil Code of the Republic of Albania’ and the ‘Family Code of the Republic of Albania’, as well as *ad hoc* laws such as ‘On measures Against Violence in Family Relations;’ ‘On the Ratification of the Council of Europe Convention;’ ‘On Prevention and Fight of Violence Against Women and Domestic Violence;’ ‘On the Protection of Children’s Right;’ ‘On Gender Equality in the Society.’⁴²

Nevertheless, one of the laws with the most impact in the Albanian legal reformation is the law ‘On Measures against Violence in Family Relations’ of 2006.⁴³ Firstly, because it was an initiative of 20 000 Albanian citizens, who exercised their constitutional rights of referendum.

³⁴ UNICEF Report “Mapping of Existing Information on Domestic Violence in Albania, Tirana. National Committee of Women and Family of Albania and UNICEF. (2000)

³⁵ Baban, A, Domestic Violence against Women in Albania. Tirana: UNICEF Report. (2004)

³⁶ See *supra* note 33.

³⁷ Jolis, B., “Honour Killing makes a Comeback,” Albanian Life, 57:25-35. (1997)

³⁸ See *supra* note 34.

³⁹ See *supra* note 33.

⁴⁰ The law nr.23/2012, dt.1.3.2012, “For some additions and some changes on the law nr.7895, dt.27.1.1995 “Penal Code of the Republic of Albania”, changed.”

⁴¹ Ibid. Article 130(a). Domestic Violence- Battering and any other act of violence against a person who is a spouse, former spouse, cohabitant or former cohabitant, close relative or close relative in-law to the perpetrator of the criminal offence, resulting in violation of his or her physical, psycho-social and economic integrity, shall be punished by imprisonment of up to two years. A serious death threat or serious injury, against a person who is a spouse, former spouse, cohabitant or former cohabitant, close relative or close relative in-law to the perpetrator of the criminal offence, resulting in violation of his or her physical, psycho-social and economic integrity, shall be punished by imprisonment of up to three years. Intentional injury committed against a person who is a spouse, former spouse, cohabitant or former cohabitant, close relative or close relative in-law to the perpetrator of the criminal offence, resulting in a temporary disability for work for more than nine days, shall be punished by imprisonment of up to five years. The same offences which are committed repeatedly or in the presence of minors, shall be punishable by one to five years of imprisonment.

⁴² Vokshi, Asim and Rystemaj, Jonida. “Domestic Violence against women in Albania: a legal and socioeconomic perspective.” (2013)

⁴³ *Ibid.*



Secondly, it represented the endeavor of Albanian Parliament towards such problem.⁴⁴ In particular, it is the first law which introduced the ‘protection order.’⁴⁵ In 2018 the law was amended in order to provide an effective protection for the victims of domestic violence.⁴⁶ The changes in the law shall have been due to the ratification of the Istanbul Convention, which Albania signed in 2011. The Article 116 of the Albanian Constitution acknowledges the ratified international acts as a source of law.⁴⁷ Furthermore, the Article 3(1)⁴⁸ of the amended law affirms that the principles of the Istanbul Convention are implemented in the new law. For instance, Article 3 of the amended Albanian Law⁴⁹ is similar to Article 3 of the Istanbul Convention.⁵⁰

The acknowledged competent organs on preventing and combating domestic violence are: the State’s Policy, the Prosecution Office and the Court. These actors shall use all the legal remedies authorized by the law. Thus, in the function of their competences the Police Officers and the Persecutor shall request the ‘Protection order’ and the ‘Immediate protection order,’ likewise the victim. The order ‘For the preliminary measures of the immediate protection,’ is a novelty which gives the Police the right to intervene immediately,⁵¹ without waiting for the Judge to establish for a ‘protection order’ or an ‘immediate protection order.’ The act is on behalf of the law when the case is of such danger that it might risk the life, the health and the freedom of the victim. Anyhow, the Court shall establish on this remedy within 48 hours. Additionally, as under the Article 18(2) (1), the Court shall continue with the adjudication of one of the protection orders, despite the fact that the victim may withdraw from the process or not. The intention of the legislator under this legal

⁴⁴ See *Supra* note 37.

⁴⁵ See *Supra* note 42.

⁴⁶ The law nr.9669, date 18.12.2006, “On measures against violence in family relations” was changed by the law nr.47/2018, “On some amendments and some additions on the law nr.9669, date 18.12.2006, “On measures against violence in family relations,”

⁴⁷ Constitution of the Republic of Albania. Article 116 1. Normative acts that are effective in the entire territory of the Republic of Albania are: a. the Constitution; b. ratified international agreements; c. the laws; ç. normative acts of the Council of Ministers. 2. Acts that are issued by the organs of local government are effective only within the territorial jurisdiction of these organs. 3. Normative acts of ministers and directors of other central institutions are effective within the sphere of their jurisdiction in the entire territory of the Republic of Albania.

⁴⁸ Law no. 47/2018 “For some additions and some changes in the law no.9669, date 18.12.2006, ‘On measures against domestic violence in family relations, ‘changed.’” Article 3 (1). Applicable Legislation. 1. This law is based on the principles sanctioned in the Constitution of the Republic of Albania, at the United Nations Convention on the “Elimination of All Forms of Discrimination against Women discrimination against women,” Council of Europe Convention “On Preventing and Combating violence against women and domestic violence,” and other international acts ratified by the Republic of Albania.

⁴⁹ *Ibid.* Article 3(2) “Domestic violence” is any act of violence, defined according to point 1 of this article, that occurs within the family or household unit, exercised between family members, as defined in point 7 of this article, who are or have been in a family relationship, regardless of whether the abuser shares or has shared the same apartment with the victim.

⁵⁰ See *supra* note 22. Article 3(b) “domestic violence” shall mean all acts of physical, sexual, psychological or 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;

⁵¹ *Ibid.* Article 13(1). Order for “For the preliminary measures of the immediate protection “1. When, from the performance of the risk assessment, results that the exercised violence poses a risk to the life, health and liberty of family members, the responsible structures for the treatment of cases of domestic violence, at the State Police, take immediately preliminary measures to stop the acts violence and protect the victim.



provision⁵² was to strengthen the role of the Court and improve the State actors' cooperation. Just as the "Istanbul Convention" requires.⁵³

However, regardless of an existing legal framework in conformity with the international standards, with the proper additions or amendments, the situation of domestic violence in Albania is displayed in increased numbers. According to the latest survey of the Organization for Security and Cooperation in Europe (OSCE) on violence against women, "Well-being and safety of women,"

Conclusion

International Law helps States to improve the quality of life of their citizens. By making or implementing the necessary legal changes, States show their real commitment towards the most problematic issues of the society. In particular, domestic violence as treated in this paper.

The spirit of the "Istanbul Convention" is reflected in the legislative changes that the Albanian State did in 2018. Under such, the Legislator showed a genuine commitment towards the 'due diligence' standard by implementing it into an *ad hoc* law. All State actors are obliged under the new improved law to prevent and punish any act that consists in domestic violence. Furthermore, as the ECtHR judged, a well- functional system is reflected in the opportunities it provides to the victim. Starting from the facilities to start the proceeding, to the shelter support. Additionally, non-state actors are tied as well. Only that their duty consists in the non-performance of any violently act and the moral responsibility of denouncing any occurrence of such circumstances.

Notwithstanding, the latest report on violence against woman published by one of the World's influential organization- OSCE- stated that Albania results to be the first country of the Balkan Region with the highest percentage of women victims of domestic violence. This indicator might be interpreted in the light of other factors such as social-economic situation, citizens awareness towards domestic violence and Officers action without prejudice on the following acts. Only an accordance between the aforementioned factors ad actors might be reflected in the reduction of domestic violence cases in the near future.

⁵² Given that this standard is a new legal implementation, there is still no case- law concerning it.

⁵³ Council of Ministers, *Relation for the draft law "Law no. 47/2018 "For some additions and some changes in the law no.9669, date 18.12.2006, 'On measures against domestic violence in family relations, 'changed.'*" (2018)