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DOMESTIC VIOLENCE AGAINST CHILDREN – NEGATION OF FUNDAMENTAL RIGHTS

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ABSTRACT

Children are the most sensitive part of a society, therefore the violence against them is considered a serious violation of their personal rights and their higher interests.

In most of cases, children in Republic of Macedonia are very little or not at all informed concerning the possibilities of reporting the cases of violence against them by their parents or relatives (sisters, brothers, grandparents). The issue of domestic violence is still considered a private problem which occurs within the home. Thus, in most of cases, this problem remains unsolved in silence, without any alert for the state institutions or SOS phone lines for reporting domestic violence. Some children who are more aware for being subjected to violation of their rights are afraid to report the case because of further consequences.

In this article some facts will be given about observing the symptoms and signs of violence against children, forms and types of violence against children, determination factors of the violence as well as the consequences and the impact of the domestic violence on the physical and psychological development of children.

Based on the legal provisions and international conventions, parents, responsible institutions and the society in general are morally and legally obliged to respect and preserve the interest of the child. This article will show that in practice, these legal obligations are violated by parents and in specific cases also by the competent institutions because the lack of intervention.

INTRODUCTION

Domestic violence is not a new phenomenon; it has existed for ages and remains an unsolved problem for many families in which educational forms that cause harmful socio-psychological consequences prevail. Violence against children in general and domestic violence in particular, is a multidimensional problem, which requires a more serious approach by the state, NGOs, citizens and domestic members themselves, who subdue directly or indirectly to the violent actions.

At the beginning of this paper, the notion of domestic violence is explained, followed later by the explanation of domestic violence against children. The study contains data related to the national and international legal framework for the protection of children as victims of domestic violence, for the

assistance and juridical measures for the protection of children as well as the role of schools in the prevention of this phenomenon.

In our country, there have been a very few studies related to domestic violence against children; a greater empirical approach has been devoted to violence against women and their protection, including children as indirect victims to this kind of violence, which is not to be neglected; however, we should not ignore the fact that violence is exercised against children as direct victims. The violence against children could be physical, psychological and sexual, manifested in different forms. Noticing and recognizing the signs of violence exercised against children, is often difficult, especially when it comes to psychological violence. It should be pointed out that the number of cases of violence against children is much bigger than the data being revealed.

The notion “domestic violence” itself in our society began to be recognized by the end of the 20th century. The “promotion” of the phenomenon dealing with domestic violence began in 1994, whereas the first activities undertaken by the non-governmental sector in relation to it were oriented towards the recognition of this phenomenon in the society and the assurance of help and support for women and children in the position of victims (National Strategy for prevention and protection from domestic violence 2012-2015, 2012).

‘We are aware that in order to enable a harmonic development of the individuality of each and every child, we have to create appropriate conditions for them to grow in a healthy domestic environment filled with love, affection and understanding. This is exactly what makes us treat children as equal to adults, as active subjects and holders of rights and obligations. We should be respectful and devoted to them in order to provide them with good education for the sake of further prosperity of mankind’. This is what is stated in the communique of the ombudsperson in the Republic of Macedonia (Ombudsman Republic of Macedonia, 2014).

1. DIRECT AND INDIRECT DOMESTIC VIOLENCE AGAINST CHILDREN

What do children need? We know the answer from our own childhoods. First and foremost, children need a safe and secure home, free of violence, and parents that love and protect them. They need to have a sense of routine and stability, so that when things go wrong in the outside world, home is a place of comfort, help and support (UNICEF, 2014, p.3). However, there are situations in life that disequilibrate family security.

Every kind of child maltreatment by their parents represents a sort of damage to them (or the threat for damage). Domestic violence against children also refers to the violence exercised over them by “external persons”, such as educators, babysitters as well as people from other institutions where children are taken care of during the day (Filippini & Hoogerwerf, Lucio & Rodrigues, Diaz & Royo Salas, Gorgia Fyca, 2004 p.7)

Children can be victimized directly or indirectly. The following are considered as forms of domestic violence: physical and sexual violence, psychological abuse and pressure, negligence in caretaking, exploitation, forcing children to beg, insults, underestimation, threats, cause of the feeling of fear, limitation of the freedom of movement, as well as other actions that impinge the child’s dignity and personality.

Physical violence is more emphasized; even though the intensity of the actions can be low, it can cause long-life consequences in children. Psychological violence is less visible, but can cause incurable consequences in the child’s psychosocial development. Emotional violence can also be indirect when the victim is present during the physical or psychological maltreatment of another family member. In these cases, the child is considered a secondary victim. Children that are raised in families where

violence prevails are victims, regardless whether they have directly been affected or have witnessed violence exercised against any other member of their family. It is more than evident that violent behavior between parents affects their children's development and reflects negative consequences in their lives, such as anxiety, depression, difficulties at school, aggressiveness, theft, drug abuse, lack of self-confidence, etc (Savovska, Galevska & Velkovska, p.32).

In reports produced by NGOs dealing with the protection of women's rights, it can clearly be seen that violence has simultaneously been exercised against both women and children, especially in cases when they (children) have attempted to protect their mothers. In addition, children that are raised in a tense family environment are prone to repeating that violence either as its authors or victims. It is considered that these children are not sensible towards domestic violence (Overlien, 2010, p.84).

In our country, only cases of sexual violence in the Roma community have been alarmed and made public and only when the situation really escalated, which does not exclude the possibility of sexual abuses in other communities as well. Domestic violence against children cannot be attributed only to a specific ethnic group or social stratum; it exists in every family, regardless of their materialistic, educational, religious or ethnic background.

2. NATIONAL AND INTERNATIONAL PROTECTION OF CHILDREN – VICTIMS OF DOMESTIC VIOLENCE

'Violence against children is violation of their rights' (Wang & Zhang, 2011, p.6). The family is the natural nucleus of the society and as such has the right to protection by the society and the state (Article 16 of the Universal Declaration of Human Rights). The parents' duty to look after their children is also provisioned within the Constitution of the Republic of Macedonia (Article 40). Within the framework of the legislative package related to parent's duties and responsibilities towards their children, the Law on Family (*'The parental right shall consist of the rights and duties of the parents to take care of the personality, the rights and interests of their minor children, and their children to whom their parental right has been extended'* - Article 44 of the Law on Family of the Republic of Macedonia) and the Law on Child Protection are also included. Therefore, every action that would contradict the child's dignity and their physical and psychological development is considered a violation of their fundamental rights, even in cases when these actions are exercised by the child's family member.

Even though there has always been a necessity to raise the awareness that domestic violence is a prohibited phenomenon, the normative regulation in our country related to this issue is quite new. The Law on Family from 1992 did not include any special provisions in relation to domestic violence and legal protection of victims. However, the judicial incorporation of the domestic violence within the positive legislation of the Republic of Macedonia, the problem of domestic violence has been included within the judicial normative under the family and Criminal legislation since 2004, whereupon victims of domestic violence are provided legal protection and assistance. This has been regulated with the complements and amendments of the Law on Family from 2004, 2006, 2007, and 2008. Domestic violence has also been included in the Criminal Code from 2004. In addition, in 2007 there was a procedure initiated for the complementation and amendment of the Law on Family in terms of the harmonization of the definition of domestic violence with that given in the Criminal code.

After a series of requests by social workers, specialists in Family Law and NGOs for a special law regarding protective measures for victims of domestic violence, in September 2014 the Law on prevention, prohibition and protection from domestic violence was brought. This law completes the framework for legal protection of victims of domestic violence.

In terms of the definition, the Law on Family of the Republic of Macedonia defines as domestic violence every kind of maltreatment, offence, security violation, body injuries, sexual, psychological or physical

violation, through which a feeling of insecurity, danger and fear in a family member is caused (Article 94-b). Actions of this kind are considered domestic violence even if they are exercised on children.

The Criminal Code of the Republic of Macedonia considers domestic violence every kind of maltreatment, fierce offence, security threat, body injury, gender violence or any other kind of violence such as physical or psychological violence, which may cause a feeling of insecurity, danger and fear from the spouse, parents, children or other people that cohabitate in marital or extra-marital relations or in a common household, as well as from the former spouse or other persons who they have children with or are in close personal relations (Article 122, Paragraph 19 of the Criminal Code).

The Criminal Code determines types of domestic violence, acts of commitment, consequences, qualities of the doer and the object of protection. However, there is no provision that protects children in particular when they are put in the position of a witness or when they face consequences from domestic violence. The aim of the legislation to incriminate domestic violence as a qualified criminal act is undoubtedly based on the need for efficient criminal-legal protection of victims of domestic violence. Legal resolutions contain a clear message about the determination of the state to undertake fierce measures in preventing domestic violence and ensuring protection of victims. The qualification implies two aspects: assignation of tougher punishments and official prosecution against all criminal acts – domestic violence. Only in cases of criminal acts – body injury, the prosecution depends on the victim's will, which is expressed through a submitted proposal (In cases when the victim is a child, the proposal is submitted by the other parent or the center for labor and social policy). For criminal acts in the context of domestic violence, imprisonment from three months to ten years, or even life-long imprisonment is stipulated by law (National Strategy for prevention and protection from domestic violence 2012-2015, 2012, p.14).

In 2008, the first *National Strategy for Protection from Domestic Violence* was adopted and it was implemented in the period between 2008 and 2011. The *National Strategy for the Prevention of Domestic Violence 2012-2015* was a continuation of the first program and its aim was further development of a comprehensive and effective system for the prevention of domestic violence in the Republic of Macedonia. The national strategy is also in compliance with the commitments and duties that the government has undertaken in order to eliminate domestic violence. The main aim of the Strategy for prevention of domestic violence is the prevention of all forms of domestic violence against any of the potential victims; however, the measures stipulated by this document provide a specific approach that deals with victims' individual needs (National Strategy for prevention and protection from domestic violence 2012-2015, 2012, p.2).

Seen from the perspective of legal framework and sublegal acts, we should make mention of the compilation of the *Rules on the modality of the implementation and monitoring of enunciated measures for the protection of families and persons – victims of domestic violence undertaken by the Center for social affairs and the modality of monitoring of temporary measures enunciated by the Court of Law* (2007).

At an international level, all documents proclaim protection and observance of the greatest children's interests, among which we would distinguish the *Convention on the Rights of the Child* (20th November 1989), which decrees signatory states of the convention to undertake all legal, administrative, social, and educational measures to protect children from any form of physical and psychological violence, as well as insults, maltreatments, abandonment, disregard, underestimation or exploitation, including sexual abuse, for as long as they are under their parents custody (or either of them), their legal representatives or any other person to whom they have been entrusted (Article 19).

Our country has been constantly gaining negative remarks in terms of the implementation of the KDF by the courts and public prosecution. Therefore, in order for the Convention not to remain just a piece of written paper, the Republic of Macedonia has compiled *The National Children's Action Plan (2006-2015)* which gives priority to children's rights and interests, including all relevant factors and resources

from both the governmental and non-governmental sector in the country. (The Ministry of Labor and Social Policy, the Ministry of Education and Science, the Ministry of Health, the Ministry of Justice, the Ministry of the Interior, the Agency for Youth and Sports, the Agency for Information, the Ministry of Foreign Affairs, the Ombudsman). In order to make children an active part of this national strategy, the Government of the Republic of Macedonia in 2007 established the National Commission for Children's Rights in the Republic of Macedonia.

3. LEGAL PROTECTION AND ASSISTANCE FOR CHILDREN – VICTIMS OF DOMESTIC VIOLENCE

This part of the paper presents the formal legal measures stipulated by the Law on Family, which are undertaken in order to prevent domestic violence; the role of centers for labor and social policy, which are obliged to undertake action and intervening measures in all cases when there are indications that domestic violence is taking place somewhere; temporary legal measures that the court undertakes in order to protect the victim – the child, as well as other services such as the SOS line, teller centers and shelters.

The work of state bodies and NGOs is very important in providing legal assistance and consultation to children – victims of domestic violence. The prevention of domestic violence would be very efficient if these bodies undertake all legal measures (family and criminal) provided by the national and international law.

Centers for labor and social policy play a crucial role in providing legal assistance and social support for children. The Law on Family obliges every such center to implement all legal measures every time they are informed (The Center for Labor and Social Affairs retrieves information related to domestic violence from the citizens, family members, victims themselves, official and legal persons, who are obliged to submit these pieces of information to the above-mentioned center), that children have been victims of domestic violence. These measures include imperatival sheltering for the child-victim for up to six (6) months with the possibility of extension for another six (6) months, healthcare, psycho-social treatment, continuation of education, counseling, notification of prosecution bodies, legal assistance and representation, initiation of legal procedures, request for enunciation of temporary protective measures, as well as other measures they consider helpful in resolving the domestic violence problem (Article 94-g of the Law on Family).

From the legal-procedural perspective, courts play a very important role, since they enunciate temporary protective measures such as they forbid violators to threat with committing domestic violence; they forbid violators to maltreat, upset, or contact the family member by any means (in this case the child); they forbid the violator to get near the child's place of residence, school or other places the child usually visits; they decide on moving the victim from the household, regardless of the ownership, until the final decision is brought by the competent court; they prohibit them from owning weapons or if they do – it is confiscated; they force them to return everyday life items that are necessary for the fulfillment of family's daily needs; they enunciate to the violator the measure of mandatory family care; they make the defendant visit adequate counseling offices; they force him/her to mandatory curing if they are suffering from addictive or other illnesses; they oblige them to compensate medical and other expenses caused by the practice of domestic violence as well as any other measure that the court would consider to be necessary for the security and well-being of other family members.

The termination of parental right is one of the least favorable legal-family measures, which the court enunciates in cases when *the parent exercises physical or psychological violence against his/her child, sexually abuses him/her or violates his/her rights in any other way* (Article 90 of the Law on Family)- *'A serious abuse or derogation of parental obligations includes the following actions by the parent(s): physical or psychological violence against the child; sexual exploitation of the child; child's labor*

imposition not compliant with his/her age; permission to consume alcohol, drugs and/or other psychotropic substances; motivates the child to express unacceptable social behavior; abandons his/her child for more than three months and does not take care about him/her; violates his/her child's rights in any other form that is not acceptable, etc'. With the latest complementation and amendment of the Law on Family (Official Gazette, No.38/2014), the following are also considered as abuse of parental right: forcing children to beg and exploiting them.

The procedure for the termination of parental right is a non-contentious procedure and is regulated with the Law on Non-contentious Proceedings (Articles 106-111) – *'The parent who abuses his/her parental right or severely derogates the execution of his/her parental duties, after the admission of the opinion by the social affairs center, is denied the right to exercise his/her parental right by a decision from the court through an extraordinary procedure'.* The separation of the child from the parent is a measure which is more unaffordable to the child rather than the parent when this process is undertaken under normal circumstances (e.g. when the child is separated from one of the parents due to a divorce); however, the same procedure is carried out in cases of violent actions, i.e. when the violent act is life-threatening and when the court decides that it is intolerable for them to continue living in such a vicious circle. In these cases, the centers for labor and social policies have to get engaged in the improvement of the child-parent relationship, since the possibility of restitution of parental right does exist once the legal conditions for such an action have been fulfilled.

As regards the protective measure – child sheltering, we have to point out that this category of children can be temporarily placed in the *SOS children's village*, which is situated in Skopje. NGOs have special importance, though children themselves are rarely informed about their role in this matter and the help they can get from them.

SOS phone lines – children can use these lines to report on the violation of their rights, including violent actions undertaken by their own parents, relatives or other people. The usage of these lines creates possibilities for initiating procedures for intervention in those dysfunctional households where it is suspected that children are abused and maltreated.

SOS phone lines help children get more easily to the necessary information about the type of assistance they can get, obtain professional advice, psycho-social support or simply talk about problems they have. A special professional team is engaged in these telephone conversations with children and they usually consist of pedagogues, social workers, psychotherapists, and volunteers who can offer alternatives for solving the children's problems. Depending on the violation of rights, the free legal assistance service functions within the Children's Embassy 'Megjashi'. This type of legal service follows procedures undertaken by institutions and reacts in cases when it has not been acted to the child's best interest ('Megjashi', 2013)

Based on the last report from the First Children's Embassy in the World 'Megjash' in the Republic of Macedonia, from 104 cases reported through SOS phone lines, 32 children have reported domestic violence exercised directly on them, of which nine cases of physical violence, ten cases of psychological violence and thirteen cases of lack of caretaking ('Megjashi', 2013).

4. THE EDUCATIONAL ROLE OF SCHOOLS

Children in our country are very little informed about their rights and how much they are respected. They are not aware which actions are considered as violation of their rights and they do not also know where to address to seek protection. This lack of information also causes lack of data referring to the degree of violation of children's rights by their family members, which makes timely intervention for their protection almost impossible.

The role of schools is very important in the education and teaching of children about the recognition of this phenomenon and the undertaking of concrete steps for the protection of children from potential violence by their family members. Included people in this process are the pedagogues, psychologist, teachers and social workers.

We would emphasize in this case the role of the school psychologist and pedagogue. The psychologist should be the closest to children – pupils and they have to be trained to be able to detect children with family problems. The psychologist has to master the practice of consultations and be knowledgeable about the collaboration with other institutions, which s/he would inform, if necessary. Children have to fully trust their school psychologist but in order to achieve this, the psychologist has to have the necessary communication skills, ability to build and develop relationships with kids, gain their empathy so that they can feel more secure to reveal their family problems without being afraid of anyone. The psychologist has to talk to parents as well in relation to their mutual disequibrated relations.

Social workers have to get engaged in the supervision of dysfunctional families focusing more on the collaboration and coordination with other relevant institutions that can provide help and prevent domestic violence at an early stage of children's development.

We consider that it is very important that school curricula include a special subject related to legal and institutional protection of victims of domestic violence. Schools should promote the national and international legal frameworks, which force the country and parents to protect the children's interests; in this respect, we would recommend the distribution of the *Convention on the Rights of the Child* in schools.

Children should know that fierce patriarchal education belongs to old times and that norms based on traditional values with violent behavior are prohibited by law. Children need to trust social bodies regarding the period after the announcement of the case and the need to know how to protect themselves and where to address if they are victimized.

On the other hand, schools should regularly communicate with parents, making sure they are correctly exercising their parental rights. At the same time, schools have to pay special attention to abused children and be timely informed about their possible violation (Wang & Zhang, 2011 p.11).

CONCLUSION

Domestic violence in the Republic of Macedonia continues to be considered a serious social problem. In order to prevent this negative phenomenon, various different campaigns have been organized by governmental and non-governmental organizations, which have also been supported by the media in order to raise the awareness among people; however, the success of the campaign "behind closed doors" is way far from expected results. The conclusion drawn by certain NGOs in the country, after a series of research activities undertaken in this respect, is that domestic violence against children has evident negative consequences in their psychological-social development; what is worse is that those children may probably continue the violence cycle once they establish their own families later in life.

According to the last report by the state ombudsman on this matter, we can clearly see that cases of violence against children have been minimally reported at the Center for Labor and Social Policy; these centers do not keep separate evidence on cases of domestic violence against children and therefore there are no concrete empirical data (Special report by the Ombudsman of RM on the situation with domestic violence against children (2006), p.4). This situation is expected to improve because respective Centers are obliged to take evidence of children who address them for help and consultations and report the number of children who have received the required service.

Despite many initiatives to prevent domestic violence, children keep being considered as the most unprotected and marginalized part of our society. Seen from the practical aspect of the case, very few children report their maltreatment by other persons; what is more, cases when the other parent or another family member reports the violence against the child/ren are also very rare. We consider that the level of all services offered to children – victims of domestic violence - has to be improved and reformed. The aim of legal measures has to encompass direct protection of victimized children by making sure that violators receive deserved punishments for their mean actions.

Laws have to contain special legal provisions relating to domestic violence against children whereupon children will be regarded as victims; there should also be specific legal measures that will exclusively be undertaken during domestic violence against children; a special legal procedure also has to take place in such cases. The law has to defend the child after the pronouncement of the case. On the other hand, children have to know which actions are considered as violent against them, be encouraged to report maltreatment regardless who it is caused by.

Most of the parents are led by the sense that punishing their children is one of educational measures inherited from one generation to another. In these cases, irresponsible parents have to be informed about the types of actions that are considered to be violent as well as those that are known to be educational. Counseling offices are more than necessary for parents, especially for those that are thought to have been rehabilitated from legal measures undertaken against them.

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