

“Breaking the silence – united against domestic violence”

29th Council of Europe Conference of Ministers of Justice

Report from Portugal

Domestic violence is neither a recent phenomenon nor a problem pertaining exclusively to certain societies or social settings. It is a serious problem that statistically affects more women than men and that, in essence, means a serious and repeated violation of the most fundamental human rights, through the exercise of the arbitrary power of the stronger upon the weakest.

Most times, it is a silent problem, withdrawn from the public domain. It does not distinguish itself solely by the physical violence involved, although in most cases such is the main element, but also includes psychological violence, so serious and so difficultly visible.

Irrespective of the form it may assume, violence in the domestic context seldom polarizes itself in a situation or incident. It comprises a set of behaviours that corresponds to a behavioural pattern of abuse and control in which the perpetrator of the crime has, as ultimate goal, the exercise of power over the victim.

In addition, the scene of domestic violence is likely to reproduce itself in the future generations, perpetuating behavioural patterns not compatible with the aim of establishing a fairer society, based on the respect of human dignity.

In Portugal, the average age of the victims of domestic violence is deemed to be between 26 and 45 years old, 90, 6% women and 9% men. The perpetrator, mostly male, is in average between 36 and 45 years old and is, usually, the spouse/partner of the victim. In about 64% of the cases, the

violence occurs in a continuous manner and indoors¹. However, it is noted that domestic violence also seriously affects the children, the elderly, those that are dependent and the disabled.

In the last years, following the campaigns and initiatives carried out by several international organisations, such as those of the United Nations, of the Council of Europe and of the European Union, Portugal has adopted a strategy to prevent and combat this phenomenon that entails (1) on one hand, concrete legislative options and, on the other hand (2) awareness raising campaigns, (3) public debates, (4) a closer collaboration with non-governmental organisations that operate in this area and (5) seriously assuming the protection and recuperation of the victim of domestic violence.

In this context, it is particularly relevant the criminal reform recently carried out in 2007² that has introduced the crime of domestic violence in the Criminal Code and has set it up as an autonomous crime, detached of physical abuse.

With the inclusion of the new article 152, whoever, in a repetitive manner or not, imposes physical or mental abuses, including bodily punishments, deprivations of liberty and sexual offences to the spouse or ex-spouse; to a person of another or of the same sex with whom the agent maintains or has maintained a relationship equal to a relationship of spouses, even if without cohabitation; to progenitor of common descendant in first degree; or to a person particularly undefended, due to age, deficiency, disease, pregnancy or economic dependency, who cohabitates with him, is punished with sentence of imprisonment from one to five years. If the agent commits the act against a minor, in the presence of a minor, in the common domicile or in the victim's domicile is punished with sentence of imprisonment from two to five years. If, from the acts referred to above, results death, the agent is punished with sentence of imprisonment from three to ten years and in the cases where it results grievous bodily injury, the agent is punished with sentence of imprisonment from two to eight years.

Bearing in mind the need to prevent recidivism and re-victimization, the Criminal Code foresees now as accessory sentences the prohibition to contact the victim and the prohibition to use and carry weapons, for a period from six months to five years, it also foresees obligation to attend specific programs for the prevention of domestic violence. The accessory sentence of prohibition

¹ Source – Assembly of the Republic (Parliament) – End domestic violence - <http://app.parlamento.pt/violenciadomestica/conteudo/seccao-dadosestatisticos.html>

² Introduced by the Law No. 48/2007, of 29 August, that has amended the Criminal Procedure Code and by the Law No. 59/2007, of 4 September, that has amended the Criminal Code.

to contact the victim may include distance from the victim's residence or place of work and its compliance may be supervised by remote technical means. The agent convicted by a crime of domestic violence may also, considering the concrete seriousness of the act and its connection with the function performed by the agent, be hindered from parental powery, tutorship or curatorship for a period from one to ten years.

On the other hand, as a result of this reform, article 200 of the Criminal Procedure Code on the prohibition and imposition of conducts, in the pre-sentence phase, enhances the prohibition of the defendant to contact the victim, by any means, and adopts preventive measures regarding the non-acquisition or use or even the delivery, within the established period, of weapons or other objects that he holds, capable to facilitate the commission of another crime. This article also foresees that the defendant, on prior consent, may be submitted to treatment of the dependence he suffers and that has favoured the commission of the crime, in an adequate institution. This last question is especially relevant, considering that in most cases, domestic violence appears connected to pathologic dependences.

Hence, in 2007, the Law No. 51/2007, of 31 August, defining the aims, priorities and the criminal policy orientations for the biennium 2007-2009 was approved. This Law includes domestic violence in the crimes to which high priority prevention is given and in the crimes to which high priority is assigned in the investigation, taking into account that violent crimes against the persons deserve a priority treatment.

It must be referred that Portugal adopted the Resolution of the Council of Ministers No. 83/2007, of 22 June, approving the III National Plan against Domestic Violence that clearly points towards a consolidation of a policy of prevention and fight against domestic violence. Such implies a transversal approach in relation to the answers to be provided to this problem, by promoting a culture for citizenship and equality, strengthening information and training campaigns and supporting and sheltering victims in a logic of reintegration and autonomy.

It should also be mentioned that the Mission against Domestic Violence and its attributions is now part of the Commission for Citizenship and Gender Equality, where it is established, for the first time, a specialised central service under the direct administration of the State, with specific attributions in this field, that directly articulates itself mainly with non-governmental organisations relevant in the fight against domestic violence.

It should also be referred the very simple and relevant practical measures, such as:

- Exemption from payment in the access to the health care services for victims of domestic violence³ or
- In the scope of foreigners' rights, Law No. 23/2007, of 4 July (Immigration Law), provides the issuance of an autonomous residence title for the family of the person holding the residence permit, whenever he/she has been sentenced by the crime of domestic violence.⁴

It must be highlighted that, at this moment, it is under discussion at the Parliament the a Law Proposal on the legal regime applicable to the prevention of domestic violence and to the protection and assistance to its victims⁵; such is an initiative developed in order to, on the one hand, prevent and repress the phenomenon of domestic violence and, on the other, support and promote the autonomy and dignifying living conditions of the victims. This Bill is based on the principles comprised in the Council Framework-Decision No. 2001/220/JHA, of 15 March 2001, on the standing of victims in criminal proceedings and on the Council of Europe Recommendation Rec. (2006) of 14 June 2006, on assistance to crime victims.

Despite all that has been done in Portugal and in so many other places, the elimination of domestic violence, while a manifestation contrary to human rights, is a battle that is far from being won.

Nonetheless, it is possible to conclude that, given the context of familiar intimacy in which it usually occurs and develops, the fight against this phenomenon demands special measures and an alliance of efforts both at national and international level. Dialogue is a prime element in this process, as well as the cooperation and the coalition of efforts, either at State level or at the level of the civil society and the non-governmental organisations.

We emphasize, at this point, the importance of the roadmap for Equality between Women and Men 2006-2010, at the European Union level, as well as the role of the European Parliament Resolution, of 2 February 2006, on the current situation in combating violence against women

³ It was brought into effect by the amendment made to the Decree-Law No. 201/2007, of May 24, and to Decree-Law No. 173/2003, of August 1, amended and republished by the Decree-Law No. 79/2008, of May 8.

⁴ Article 107 of Law No. 23/2007, of July 4.

⁵ Law Proposal No. 248/X.

and any future action, the role of the community programmes on the measures to be taken regarding the prevention of domestic violence and also the recent European Parliament Declaration on the “Say no to violence against women” campaign, of 22 April 2009, urging the European Commission to declare, within the next five years, a “European Year on Zero Tolerance of Violence against Women”.

In the European Council context, as we know, besides all the different campaigns developed over the years, it should be noted and encouraged the works being currently carried out at the Ad Hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO); its aim is to create an international legally binding instrument on this matter, a task in which we are fully engaged and involved through our experts. This constitutes, no doubt, an important milestone in the fight against these forms of violence. We expect assertive results and, above all, we hope to build up an instrument capable of promoting efforts both at the international community and at the Member States level, in order to start paving the way to eliminate this crime. That is the answer that the citizens demand from us.