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**The Impact of COVID-19 on Domestic Violence and
Criminal Justice System:
Perspectives from the EU Member States**

Introduction

It was in March 2020 that the World Health Organization (WHO) pronounced that the coronavirus disease (COVID-19) outbreak was a health emergency of global concern. This announcement led to many governments taking drastic measures to contain the spread of the outbreak. Consequently, the European Union (EU) Member States enforced containment measures that included lockdowns, curfews, social distancing, wearing of masks, and working from home. These measures brought a combination of economic and social stress. In other words, normal life was disrupted and the socio-economic impact of the COVID-19 pandemic began to be felt. Family members had to be confined to their homes for longer period than would be the case in normal days. Under these circumstances, social problems compounded, including family problems such as extreme cases of intensified domestic violence. Researchers are now curious to understand whether or not the COVID-19-related confinement measures potentially precipitated situations of gender-based violence (GBV).¹ The present paper explores the impact of the coronavirus crises on family welfare across some selected EU Member States (Hungary, Poland, Germany, France, Italy and Spain).

In contemporary families, apart from their importance as the foundation of society, conflicts abound due to struggles of interests and material resources. In other words, families have also become an arena for conflicting interests due to cultural and socio-economic inequalities. In Europe, for example, the European Pillar of Social Rights, a social right advocacy about better delivery on rights for the European citizens, has been fashioned to express principles and rights that are essential for fair and well-functioning of EU Member States. It espouses equality of treatment and opportunities between women and men, which are necessary to be ensured and fostered in all areas. Such policy actions are important in bridging gender-based inequalities.

¹ Roberto RODRIGUEZ-JIMENEZ – Natalia E. FARESOTERO – Lorena GARCÍA-FERNÁNDEZ: Gender-based violence during COVID-19 outbreak in Spain. *Psychological Medicine* (2021) 1–2. <https://doi.org/10.1017/S0033291720005024>. (22. 06. 2021)

It is very likely that reducing the gender inequality gap is one way of also mitigating gender-based domestic violence, which has taken a worrying trend across the EU Member States. According to the previous Eurostat data on the number of reported incidents of intentional homicide, rape and sexual assault, over half of all female murder victims are killed by an intimate partner, former intimate partner, relative or family member.² According to the previous scientific study, there are approximately 3, 500 domestic violence-related deaths in the EU every year. This translates into more than nine homicide victims every day, seven of which are women.³

About a decade ago (2010), domestic violence against women was already reported as very high and worrying in the EU Member States. The Eurobarometer survey on domestic violence against women showed that one European in four knows a woman among friends and family who is a victim of domestic violence. By comparison, almost three quarters of respondents think domestic violence against women is common in their country (74 percent) while almost three in ten say domestic violence against men is common in their country (29 percent). Moreover, one in five of the EU citizens surveyed said they know someone who commits domestic violence in their circle of friends and family. At the same time, 87 percent of the respondents believed that the EU should be involved in the fight against domestic violence.⁴ Furthermore, the European Values Study (EVS), which is a large-scale, cross-national, and longitudinal survey research program on basic human values provides insights into the ideas, beliefs, preferences, attitudes, values, and opinions of citizens all over Europe. It is a research project that conducts surveys on how Europeans think about life, family, work, religion, politics, and society. According to the EVS data, few households in Europe consist of the traditional male breadwinner, and female housekeeper. At the same time, Europeans surprisingly come out as conservative when it comes to other aspects of family values.⁵ This implies that despite women being equally breadwinners in today's households, the European culture has not fully emancipated them from the patriarchal bondage. But there is some emerging good news, however, with regard to gender perception in Europe.

According to the recently launched EVS 2017-5th wave dataset (i.e. 2017–2021) survey, gender perception seems to be changing across Europe. For instance, on the battery of whether or not men make better political leaders than women do, 15,008 of respondents agreed strongly, 28,960 agreed, 49,533 disagreed and 29,683 strongly disagreed. See table 1 in Appendix A for details. The opinion survey reveals that women are perceived to be better leaders than men. By implication, women are more likely to be better household “managers” than men. The important role that women play in families and in society as a whole cannot be underestimated. But how women are treated in the households affect the quality of roles they play in society. If women are disrespected, battered, abused and discriminated upon at home by the male gender, then that translates into less value of their full potential to make the family and society better. The foregoing propositions clearly show the difficulties that women face in every days life mainly because of their being female in gender. Despite the

² For this category, though, the data are not available for all Member States. See: Towards a Uniform Approach to Data Collection: EIGE's Femicide Definition. *Femicide* Vol. XI., ACUNS (2018) 78-82. The European Observatory on Femicide, published findings on femicide in Europe in 2018.

³ Figures for 2006. See: Estimated mortality related to domestic violence in Europe, summary of scientific report. *Psytel* June (2010) 5. <http://www.psytel.eu/en/>. (08. 05. 2021)

⁴ <https://europa.eu/eurobarometer/surveys/browse/all/series/20806>. (09. 05. 2021)

⁵ <https://europeanvaluesstudy.eu/about-evs/research-topics/family/>. (04. 05. 2021)

fact that women are proving to be good leaders and managers, they still face many challenges at home. It cannot be gainsaid that women are still more vulnerable to domestic abuses and the COVID-19 pandemic containment measures considerably subjected them to a lot of risk of being abused by their male partners, especially at a time when even the justice system became less accessible due to the crises caused by the pandemic. The present paper looks into this potential risk with a view to deepening the understanding of this topic in relation to the COVID-19 pandemic.

The rest of this paper is organized as follows. Part 2 explores coronavirus crises and domestic violence, part 3 discusses theories of domestic violence, part 4 provides discussions on COVID-19-related domestic violence in the EU Member States, part 5 explores COVID-19-related Domestic Violence and the Criminal Justice System, part 5.1 looks into jurisprudence on the European domestic violence, part 6 provides insights on the European Union's response to domestic violence, and part 7 provides a conclusion.

Coronavirus Crises and Domestic Violence

The coronavirus crisis in Europe and all over the world has been devastating and considerably overwhelming. From normal life disruptions, job losses and reduced working hours, the COVID-19 pandemic has had its dark side of home isolation during quarantine. It has likely contributed to spikes in domestic violence across the EU Member States and women are more likely to have been hit the hardest. For instance, according to recent statistics released by the Institute for Gender Equality (EIGE), during the first wave of the pandemic in Europe, employment for women reduced by 2.2 million across the EU. Furthermore, women working in retail, accommodation, residential care, domestic work and clothing manufacturing suffered heavy job losses as these sectors make up the bulk of women's workforce, hence about 40 percent of all jobs lost by women during the crisis were in these professions.⁶ The primary function of EIGE is to collect, analyze and spread data on the equality between women and men to the EU Member States. This ensures that gender equality is promoted and realized in order to combat gender-based discrimination as sexism. According to the ABC NEWS of 31 May 2021, the coronavirus crisis led to an increase in reports of domestic violence in Europe, according to a preliminary overview published by the European Institute for Gender Equality (EIGE) during the three national lockdowns.⁷

When women lose their source of economic power, especially their jobs, they become more vulnerable in abusive homes. Quarantine measures during the COVID-19 pandemic bear associated risks for the unemployed women. According to a study conducted on February 25, 2014 at the Royal Holloway, University of London, women with a higher risk of job loss are more likely to become victims of domestic abuse. The study, however, found significant gender differences, with a higher number of men out of work correlating with a decrease in abuse cases.⁸ This study suggests that when a husband loses his job (i.e. source of economic power) to depend on his wife for support, he is more likely to humble himself at home and avoid domestic abuse. This is probably because he would feel economically

⁶ <https://eige.europa.eu/news/covid-19-derails-gender-equality-gains>. (07. 06. 2021)

⁷ <https://abcnews.go.com/International/french-feminists-baguettes-raise-awareness-domestic-violence/story?id=77964934>. (01. 06. 2021)

⁸ University of Royal Holloway London. Unemployed women face greater risk of domestic violence. *ScienceDaily* February 25 (2014) www.sciencedaily.com/releases/2014/02/140225101147.htm (15. 06. 2021)

reduced. However, when the husband is employed and the wife is unemployed, it is likely the case that the wife will suffer domestic abuse at home. When a husband is economically empowered over his wife, he can be arrogant and cruel to her. However, when the wife is economically powerful over the husband, it is more likely that domestic violence at home will be reduced because the husband's contribution to partnership would be reduced and, hence the wisdom to remain humble to the wife. This shows how economic disparity between genders disproportionately affect women more than men. However, it should be noted that women are more likely to remain in an abusive relationship if they think the costs of enduring it are less than the costs incurred in ending the relationship.⁹

Domestic violence may be understood as assaultive behavior involving adults who are married, cohabitating, or who have an ongoing or prior intimate relationship.¹⁰ It is captured as an incident whereby one member of the family subjects another member to physical abuse, sexual abuse, emotional and psychological abuse. It also includes forcibly confining a person or restricting the person's freedom, or withholding the necessities of life from them. The common denominator about domestic violence is that it entails a pattern of assaultive and coercive behaviors such as physical, sexual, and psychological attacks, along with economic coercion that adults use against their intimate partners.¹¹ It mainly manifests as a constellation of spousal or intimate partner abusive and controlling behavior. It thus creates a climate of fear and intimidation that keeps one partner, especially the male gender in a position of domination and control, and the other partner (female gender) in a position of subordination and compliance. In June 2020, the United Nations (UN) also added its voice to the side effects of COVID-19-related side effects. The UN warned of a "shadow pandemic" alongside COVID-19: a global rise in domestic violence. The UN voiced its concern that around the world, there had been a spike in reports of domestic violence against women during lockdowns and other restrictions. This left many women trapped at home with their abusers and the containment measures made it difficult for them to access safety and support services.

Domestic violence also includes gender-based violence against women, which is mainly a form of violence that is directed against a woman because she is a woman. However, violence against women should be perceived as a global phenomenon that is deeply rooted in gender inequalities, discrimination and stereotypes. The phenomenon of intimate partner violence has always put women at risk more than men. Violence against women by men not only amounts to abuse of the male gender masculinity (power), but also to assault on the dignity of women. But it is also important to note that there have been incidents of female-on-male domestic violence and homicide. Domestic violence may affect male partners in the same way it is perceived to affect female partners, hence it is a social problem that should deeply concern us. It not only entails the violation of human welfare and rights, but also a potential cause of trauma. The World Health Organization (WHO) has conceptualized violence as, the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high

⁹ Ibid.

¹⁰ Gail GOOLKASIAN: Confronting domestic violence: The role of criminal court judges. *National Institute of Justice* November (1986) 1-8.

¹¹ Anne L. GANLEY: *Understanding Domestic Violence*. In: Carole Warshaw (ed.): Improving the health care response to domestic violence: A resource manual for health care providers. Family Violence Prevention Fund and Pennsylvania Coalition Against Domestic Violence, San Francisco, 1995. 16.

likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation.¹² The definition of domestic violence is clearly well subsumed in the broader definition by the WHO. The part of the broader definition that perceives domestic violence as involving the use of “physical force or power, threatened or actual, against oneself” is important in the sense that the injury or harm suffered by the victim could be self-inflicted. Indeed, there are instances whereby victims of domestic violence decide to inflict injuries upon themselves or even commit suicide if they cannot simply handle the cruelty and other forms of abuses by their spousal partners. This, however, applies to both genders (i.e. husband and wife), whereby one spousal partner may decide to commit suicide because of horrific abuses by the other partner.

The coronavirus epidemic resulted in lockdowns that caused considerable frustrations to many families across the EU Member States. It is very likely that such frustrations had some bad side effects that triggered tensions and abuses in many European households. Indeed, a section of research indicates that among the many side effects of the COVID-19 pandemic, it has become clear that the current health crisis provided a breeding ground for an increase in domestic and intra-family violence.¹³ It cannot be emphasized enough that COVID-19 lockdowns provided fertile ground for partners to vent out strong feelings about issues as well as against their partners. Such venting out only gives rise to dreadful and inescapable confrontations between partners at home. The incident of COVID-19 pandemic has not only disrupted normal life for many people, but has also enormously contributed to violence against partners, particularly the female gender partners. It is very likely that conditions that confine partners at home without the freedom of interacting with the outside environment do contribute to contempt. This is likely to see domestic abuses soar across Europe during the COVID-19 pandemic. Victims of COVID-19-related domestic violence would only seek support and medical attention from a hotline due to restrictions on movement and great pressure on healthcare systems.

Theories of Domestic Violence

Domestic violence can be mitigated as long as there is good communication between family members. Even during periods of home confinements due to COVID-19 pandemic, family partners that engage in good communication are more likely to coexist peacefully. In other words, good communication in a family setting is essential. Indeed, the social process of people interacting at home is not only good for the purpose of bonding with each other, but also for the purpose of helping each other by closely working together to arrive at best solution to common problems. However, lack of good communication at home may breed contempt. In families where both spouses are employed and report to work regularly, their daily interaction is reduced, hence they spend little time together because they are at work for the better part of the day. However, when they are confined within a certain physical space in their homes, it is only through good communication that they are both able to coexist with little stress, pressure and violence.

¹² WHO: *World Report on Violence and Health*. Genève, 2002.

¹³ Andrew M CAMPBELL: An increasing risk of family violence during the COVID-19 pandemic: Strengthening community collaborations to save lives. *Forensic Science International Report* (2020) 2. 100089. See also: Megan L. EVANS et al.: A Pandemic within a Pandemic – Intimate Partner Violence during Covid19. *New England Journal of Medicine* 383 (2020) 2302-4.

It is more likely the case that lack of good communication between family members when compounded by the COVID-19 containment measures would potentially present a recipe for chaos, contempt, and domestic abuse. The more they (family members) get confined in one physical space with less mobility outside their home, the more they are likely to become more familiar with each other's faults and weaknesses, hence the old adage that goes "familiarity breeds contempt." This expression is all too familiar and it injects sense in the analysis of the impact COVID-19 containment measures on family welfare. It reflects what often happens in long-standing relationships and marriages. Regrettably, over time when two people get confined in a physical location for too long, their relationship or happiness may begin to fade. Yet, the question that presents is this: Is it familiarity that actually breeds contempt? A section of research shows that although people believe that learning more about others leads to greater liking, more information about others actually leads to less liking. The ambiguity here is that not staying around someone for too long leads to liking, whereas staying around someone for too long may breed contempt. When spouses stay away from each other during the day because they have to report to work, when they get back home they feel they had missed each other. However, when they stay home for long without reporting to work, they get to experience more faults and weaknesses in each other, hence the dislike.

The discipline of sociology provides several theories with varying explanatory power on domestic violence. For instance, Albert Bandura in his social learning theory postulated that people learn to be violent through reinforcement from others, and also by watching the behavior of others and then modeling that behavior.¹⁴ This theory implies that individuals who witness domestic violence within their families are also more likely to behave violently later on in life. This theory relates to the treatment of women in patriarchal societies. Women have been traditionally denied the full potential in decision-making, leadership roles, and economic engagement. These shortcomings have played out for several a hundred years. Societies have therefore been socialized to have women play second fiddle to men. In many contemporary societies, women still play second fiddle to men and this is transposed in their homes. During the COVID-19 crisis, many women are likely to experience bad treatment, especially because they are out of employment due to shut downs of places of work and that means their economic power at home is also reduced. In such situations, male spouses socialized in patriarchal societies are likely to perpetrate domestic abuses against women. It can be observed that women who live in patriarchal societies are more likely to take the brunt of the COVID-19 pandemic relative to their counterparts in liberal societies.

The patriarchy theory is believed to provide explanatory power for domestic violence because it fosters the systematic oppression of women and abuse of wives.¹⁵ The underpinning of this theory is that the economic and social system operates both deliberately and unconsciously in order to support a patriarchal society and family structure. This makes the man (husband) in the family feel more superior to the woman (wife) and in turn foster the oppression of women. A section of the literature on domestic violence reveal, however, that despite this patriarchy theory, marriage provides insurance against employment risk through the pooling of resources. When the male partner (husband) faces a high risk of unemployment, a potentially abusive husband strategically conceals his bad type as he has an

¹⁴ Albert BANDURA: *Aggression: A social learning analysis*. Englewood Cliffs, NJ, Prentice-Hall, 1973.

¹⁵ R.Emerson DOBASH– Russell DOBASH: *Violence against wives: A case against the patriarchy*. Free Press, New York, 1979.

economic incentive to avoid divorce followed by the associated loss of spousal insurance. However, when the female spouse (wife) faces a high risk of unemployment, her expected financial dependency on her partner prompts the husband with violent predisposition to display his abusive nature.¹⁶ It can be argued that during the COVID-19 pandemic lockdowns, households with male partners who have lost their jobs with only female partners as the sole breadwinner are more likely to experience reduced domestic abuse, while households with female partners who have lost their jobs with only male partners as the sole breadwinner are more likely to experience increased domestic abuse.

COVID-19-related Domestic Violence in the EU Member States

The COVID-19 pandemic has revealed that there is still some disconnect between culture and the law for the protection of women. While legal norms are also known to derive from culture and traditions, some aspects of cultural barriers have remained an impediment to the progression of laws. This seems to be the case in Hungary and Poland. For instance, on May 5, 2020, the Hungarian Parliament blocked ratification of a regional treaty on violence against women. The treaty was by the Council of Europe Convention on Combating Violence against Women and Domestic Violence (Istanbul Convention). The Istanbul Convention establishes a gold standard of inclusion, recognizing everyone's right to live free from violence, regardless of sexual orientation, gender identity, immigration status, or other characteristics. It also obliges state parties to uphold minimum standards for protection from and prevention and prosecution of violence against women. However, while voting against this treaty, politicians in Hungary claimed that the convention would promote "gender ideology" - gender equality with a view to undermining traditional family values.¹⁷

The Hungarian government has, however, come to its defense arguing that it had made domestic violence a criminal offense a year before the Istanbul Convention, and all required legislation was already transposed into the Hungarian legal system. The Hungarian authority has maintained that the Hungarian law provides women with stricter and more prominent protection than EU practices in general. The government believes that it is doing all it could to contain domestic violence and the COVID-19 pandemic has bolstered its effort to institutionalize a system effective enough to take strong action against domestic and intimate partner violence and to effectively protect victims. The government is quick to add that although helplines have been set out to obtain the help of women's right groups, activists, support centers, and awareness-raising campaigns, the coronavirus epidemic has unfortunately halted these steps.¹⁸ This implies that victims of domestic violence are more likely to be at risk during this period of the coronavirus epidemic. It should be noted, however, that while resources for victims seem to exist in Hungary, they are likely to be inadequate to meet the needs of victims.

It is important to mention, however, that even though the European Victim Protection Directive has been transposed into Hungarian law, these rights should not just exist on black letter law, but should get alive by way of operationalization of the law. More important,

¹⁶ Helmut RAINER – Dan ANDERBERG – Jonathan WADSWORTH – Tanya WILSON: *Unemployment and Domestic Violence: Theory and Evidence*. Bonn, 2013.

¹⁷ <https://hungarytoday.hu/violence-against-women-domestic-abuse-istanbul-convention-cases-rise-police-campaign/>. (07. 05. 2021)

¹⁸ Ibid.

criminal legislation on domestic violence in Hungary should be adequate and effective in terms of its language and operationalization. Investigations on domestic violence should be purely a matter of an incident as opposed to incidences (frequency) within the household. This means that it does not require at least two separate instances of domestic violence to occur within a short succession of time in order to commence criminal liability for the specific offense. At the same time, the judiciary should play an enhanced role in curbing domestic violence by refraining from simply making temporary restraining orders since such orders may be insufficient to provide adequate protection to victims. Although the data on domestic violence in Hungary during the COVID-19 restrictions is still very scanty, a preliminary report showed that in line with global trends, reported cases of domestic violence have increased during the corona lockdown in Hungary.¹⁹ For instance, in March, 2020 after the first lockdown in Hungary, one-third increase in cases of domestic violence was reported, according to official sources of women's organizations' helplines.²⁰

In Poland, the Amnesty International expressed fears of increased gender-based violence during the COVID-19-related containment measures. The Amnesty International criticized the Polish government over policy decisions taken by the government that fail to protect women from gender-based violence. It particularly criticized the Polish authority for withdrawing from the Istanbul Convention, which it claimed is a landmark European treaty to prevent violence against women, including domestic violence. The Polish authority termed the treaty as "harmful" since it "contains elements of an ideological nature" requiring schools to teach children about gender. However, critics argued that such language was meant to mask the government's wider desire to reinforce the patriarchy while demonizing women's rights and gender equality.²¹ Poland and Hungary seem to be united in rejecting the treaty and this may be interpreted to mean that both countries are not only conservative, but also more uncomfortable with certain protection laws that favor women. In March, 2020, following the first containment measures of the first wave in Poland, the Polish Women's Rights Center (CPK), which is a Non-Governmental Organization that supports victims of domestic violence, reported that the number of phone calls on its helpline for victims of domestic violence went up by 50 percent.²²

Domestic violence incidents during the coronavirus epidemic have equally not spared the French territory. According to the ABC NEWS of 31 May 2021, the coronavirus crisis led to an increase in reports of domestic violence in Europe, according to a preliminary overview published by the European Institute for Gender Equality during the three national lockdowns. During its first COVID-19 confinement measures in the spring of 2020, France witnessed a spike in domestic violence cases. France with its 67 million population is one of the European Union partner states that have taken the brunt of coronavirus. Fears abound that unless the COVID-19 epidemic is completely contained, lockdown measures and regulations imposed by government are likely to trigger more domestic violence. Reports my local media houses in France indicate that women protection groups have expressed fear that the continued lockdown measures are likely to see women come out very damaged. The

¹⁹ <https://eu.boell.org/en/2020/06/05/pandemic-management-backs-women-hungary>. (24. 05. 2021)

²⁰ Ibid.

²¹ <https://www.amnesty.org/en/latest/news/2020/07/while-tackling-covid-19-europe-is-being-stalked-by-a-shadow-pandemic-domestic-violence/>. (09. 05. 2021)

²² <https://notesfrompoland.com/2020/04/13/locked-down-with-a-violent-partner-domestic-violence-soars-in-poland-during-coronavirus-pandemic/>. (19. 05. 2021)

lockdown is said to increase tensions at home and hence lead to serious commissions of domestic violence. The head of France's National Federation of Solidarity for Women (FNSF) that runs the country's 3919 domestic violence hotlines intimated its fear that domestic violence is likely to increase during subsequent waves of coronavirus and extended lockdowns.²³

In Germany, the Deutsche Welle (DW) News reported that the spread of the coronavirus that brought lockdowns and home isolations made some people to be locked away with an abusive partner or family member and that might have led to the danger of domestic violence, which skyrocketed during the first lockdown in Germany. In a study conducted by Prof. Janina Steinert - a Professor of Global Health at the Technical University of Munich (TUM) and Dr. Cara Ebert of the RWI – Leibniz Institute for Economic Research, the results of an online survey indicated that there was a significant increase in the number of reported cases involving gender-based domestic violence in the period of the first strict lockdown in Germany between March and May, 2020. The survey involved 3,800 women between the ages of 18 and 65.²⁴ The study was representative for Germany in terms of age, education, income, household size and place of residence. The study further revealed that about 3 percent of women in Germany were subject to physical violence at home during the strict lockdown period and 3.6 percent were raped by their partners. Moreover, 3.8 percent of the women felt threatened by their partners while 2.2 percent were not permitted to leave their home without permission. Yet, in 4.6 percent of all cases, the partners controlled the women's contacts with others, including digital channels such as messenger services.²⁵ These are some of the results of the first major representative survey on domestic violence during the coronavirus pandemic. In cases where women were in quarantine or families suffered from financial insecurity, the figures were significantly higher. Only a very small percentage of the women concerned made use of support services.

Emerging data shows an increase in the number of calls to domestic violence helplines in many countries across the EU member states since the outbreak of COVID-19. Recent literature indicates that the share of spousal and intra-family violence increased on the whole in 2020 during the lockdown and curfew as compared to 2019 when there was no such containment measures.²⁶ In Italy, for example, the case was not different. Italy is one of the EU Member States that was hardest hit by the coronavirus epidemic. According to the Italy's national statistics agency (ISTAT), the number of calls placed to Italy's national domestic violence hotline increased nearly 80 per cent last year (2020). This was a sign that coronavirus-induced lockdowns created a "detonator" effect in already violent homes. The report said the number of calls to the toll-free 1522 number and related texting option hit a peak in April and May, 2020, during the first wave of COVID-19, which hit Italy first in Europe. Yet, another peak of domestic violence cases came around November 25, 2020, which led ISTAT to the observation that the coronavirus was actually a "double pandemic" – one that was epidemiological and one fueled by domestic violence.²⁷

²³ Reported by France's 24 News Channel. 02. 11. 2020. <https://www.france24.com/en/france/20201102-france-fears-fresh-wave-of-domestic-violence-amid-second-covid-19-lockdown> (22. 06. 2021)

²⁴ <https://www.tum.de/nc/en/about-tum/news/press-releases/details/36053/> (12. 05. 2021)

²⁵ Ibid.

²⁶ French Interministerial Mission for the Protection of Women against Violence and the Fight against Trafficking in Human Beings (MIPROF). Domestic violence during confinement: evaluation, follow-up and proposals.

²⁷ <https://barbados.loopnews.com/content/italy-statistics-confirm-increase-domestic-violence-covid>. (27. 05. 2021)

In Spain, the specific helpline for requesting help during domestic distress is 016. By dialing 016, women who are victims of gender-based domestic violence are able to obtain specialized care by the care personnel. During the first containment period (March-May, 2020) in Spain the recorded volume of calls to 016 that occurred went up compared to the calls received during the same period of the previous 2 years. The data obtained from the website of the Ministry of Equality of Spain (Ministerio de igualdad, 2020) provided that evidence.²⁸ The cross-sectional analysis of the data indicates that there was a positive correlation between home confinement and the higher number of calls requesting help due to GBV, but the relationship between the beginning of the home confinement in Spain and the increase in helpline calls. This is a good pointer that the COVID-19-related home confinement may have greatly contributed to the gender-based domestic violence in Spain.

COVID-19-related Domestic Violence and Criminal Justice System

Domestic violence involving assault that causes trauma or bodily harm should be treated as a criminal offenses. This requires the involvement of the entire justice system process and procedure. Police must be informed of such cases of violence for investigations and arrests should be made if culpability can be proved. Police-recorded offences of that type of crime should be handed to the prosecution authority for appropriate criminal proceedings. Then an impartial court of justice must accord both parties procedural rights by conduct the criminal proceedings with utmost fairness and making its decision in accordance with the law. The criminal justice system of the EU Member States must not only be proactive, but also responsive in handling crimes involving domestic violence.

It cannot be emphasized enough that domestic violence is no longer a private family matter as has been the conception for many years. It is important for the relevant protection authorities to act swiftly to contain the proliferation of such cases. The authorities should not wait until the “blood is flowing” before they can take legal action against the perpetrators. It is important to mention that domestic violence against women and intimate partner violence are proscribed in both domestic and international law. For instance, the International Covenant on Civil and Political Rights (ICCPR) provides that such violence and discrimination violates a woman’s rights to life and security of person (Article 6), freedom from torture and ill-treatment (Article 7), equality before the courts (Article 14), equal protection before the law (Article 26), and protection of the family (Article 23).²⁹

Despite the need for the rule of law and the equality of justice, Amnesty International has expressed its reservations on the handling of domestic gender-based violence against women by some European governments. For instance, a recent Europe wide survey found that Polish women tend to report fewer cases of domestic violence than other women across the EU countries. This low level of reporting to the police is mainly associated with a lack of faith in the criminal justice system and a fear of victims not being believed.³⁰ At the same time, some concerns were raised that law enforcement agency was not effective in responding to domestic distress calls. In Poland, for example, there were reports from

²⁸ Ministerio de Igualdad, Spain. 25. 11. 2020. <https://violenciagenero.igualdad.gob.es/violenciaEnCifras/home.htm>. (07. 05. 2021)

²⁹ <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. (17. 05. 2021)

³⁰ <https://www.amnesty.org/en/latest/news/2020/07/while-tackling-covid-19-europe-is-being-stalked-by-a-shadow-pandemic-domestic-violence/>. (26. 05. 2021)

women who had called the police for help, only to be told that the authorities refused to intervene. In some instances, the authorities responded with “We need to understand that the services are overburdened with new duties, understaffed and lacking preventive measures like masks and gloves.” This, however, left many women in a very difficult situation.³¹

In many jurisdictions, the justice system for domestic violence is twofold. Firstly, there is usually the family law protection order, which is a civil order made in a family court. In the second part, the breach of the protection order may become a criminal offense for the person named in the order if that order is disobeyed. The police then may enforce the order under the Criminal Code and the individual may face significant legal consequences through criminal proceedings. The court would normally issue a family law protection order to protect one member of the family from being abused by another family member, especially if there is a risk of violence. A protection order normally lists conditions the person named in it must follow, for instance, it may require a family member to stay away from direct contact with the victim. In many jurisdictions, such orders are granted under the Family Law Act. The coronavirus epidemic presents a challenge not only for the courts to grant such orders, but also for the victims and perpetrators of domestic violence. This is because lockdowns and other COVID-19 restrictions saw courthouses shut down and that would make it difficult for victims to access justice. Moreover, even if a protection order was granted, then the implementation of it would still be a challenge due to COVID-19 restrictions, which forestalled movements. This means the perpetrator would not move away from the troubled home and find an alternative accommodation elsewhere.

It is important to add that specialized family courts instead of general courts are required not only for the issuance of protection orders in domestic violence cases, but also for the full criminal trial of domestic violence offenders. Moreover, domestic courts in the EU Member States should increasingly pay attention to foreign case law on domestic violence so that they can apply best practices and international principles in dealing with domestic violence instead of national instruments, some of which are not yet fully developed to provide an effective intervention on violence against women. Since violence against women is considered a violation of human rights, international conventions and principles should be applied by domestic courts. Within the EU jurisdiction, jurisprudence on domestic violence has been developing, but mainly through the European Court of Human Rights (ECtHR). There are some instances whereby High Contracting Parties are unable to effectively and satisfactorily resolve domestic violence incidents by the operationalization of domestic laws. When an aggrieved party feels that he or she has sought legal redress and has fully exhausted the available domestic legal options, but he or she still feel dissatisfied with the decision of domestic courts, then the next step is to launch an appeal to the ECtHR for legal redress.

In the Hungarian law, Act no. XIX of 1998 on the Code of Criminal Procedure provides for ways of instituting criminal cause of action, including those involving domestic offenses. For instance, Section 138/A, makes provisions on Restraining Order. It states that a restraining order restricts the right of the accused to free movement and the free choice of residence. The accused under the effect of a restraining order shall, in line with the rules established by the court decision, a) leave the dwelling specified by the court and keep away from such dwelling for a period prescribed by the court, b) keep away from the person

³¹ <https://notesfrompoland.com/2020/04/13/locked-down-with-a-violent-partner-domestic-violence-soars-in-poland-during-coronavirus-pandemic/>. (19. 05. 2021)

specified by the court, and from this person's home, workplace, [...] for a period specified by the court, c) refrain from directly or indirectly contacting the person specified by the court. It also states that a restraining order may be issued in case of a well-founded suspicion of a criminal act punishable by imprisonment having been committed – provided that the purpose of the restraining order may be fulfilled and if pre-trial detention of the accused is not necessary – and if, particularly in view of the nature of the criminal act the behavior of the accused prior to and during the procedure and the relationship between the accused and the aggrieved party, there is well-founded reason to assume that if left in the residential environment, the accused would.

Jurisprudence on the European Domestic Violence

Jurisprudence on domestic violence in Europe is promising and that means that the courts are beginning to pay considerable attention to abuses against women at home. For instance, the European Court of Human Rights (ECtHR) is already doing a remarkable job with regard to resolving domestic violence disputes. However, it was not until 2007 that the ECtHR substantively addressed a domestic violence before it. In addressing cases involving domestic violence, the court usually pays attention to violations of Articles 2, 3, 8 and 14. These Articles have been found in various cases involving violence against women taking place in the home.

In the Hungarian law, Act no. LXXII of 2009 on Restraining Order due to Violence among Relatives is an important legal provision on how to respond to cases of domestic violence. This law enables the police to place a temporary restraining order on the perpetrator for seventy-two hours, inter alia, if it finds evidence of domestic violence upon home visit, or upon the report of the aggrieved party. However, the courts may issue a restraining order for up to thirty days. This Act is only, however, applicable to the relationships listed in it (section 1 subsection 5), and that means that former common-law spouses do not fall within its scope if the relationship has not been previously registered.³²

In *Kaluza v. Hungary* (2012), the European Court of Human Rights (ECtHR), held unanimously that there had been a violation of Article 8 of the Convention; and that the respondent State (Hungary) was to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,150 (five thousand one hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Hungarian forints at the rate applicable at the date of settlement. On the merits, the applicant pointed out that while the Government had emphasized the difficulties in reconstructing the facts of an act which had happened behind closed doors, they had not taken into real consideration the positive obligation of the State to protect her private and family life. Her right to physical integrity had required the domestic authorities to decide on her civil disputes with Gy, B., within a reasonable time. The applicant further argued that a remedy which was slow could not be regarded effective. In her opinion, Article 8 of the Convention included her right to use her home being secure in her person and without disturbance. The applicant complained that the Hungarian authorities failed to take positive measures to protect her from her violent

³² <https://eucpn.org/document/hungarian-policy-on-sexual-crime>. (17. 05. 2021)

former common-law husband.³³ She relied on Articles 2, 3 and 8 of the Convention. The Court found that this complaint should be analyzed under Article 8, which reads as follows:

“Everyone has the right to respect for his private and family life, his home and his correspondence.”³⁴

In *Rumor v. Italy* [2014] ECHR 557, the case originated in an application (no. 72964/10) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Ms Giulia Rumor (“the applicant”), on 8 November 2010. The applicant alleged, in particular, that the authorities had failed to protect and support her after the violence she had endured at the hands of her former partner, Mr. J.C.N. (“former partner” or “J.C.N.”), causing her anguish and fear in violation of Article 3 of the Convention. Furthermore, citing Article 14 in conjunction with Article 3 of the Convention, the applicant alleged that she had been discriminated against on the basis of her gender. However, despite the applicant’s concern, the ECtHR not only declared the application admissible, but also held on the merits that there had been no violation of Article 3 of the Convention alone and in conjunction with Article 14 of the Convention.³⁵ The Court reached that decision simply because Italy had not yet ratified the Council of Europe’s Convention on Preventing and Combating Violence against Women and Domestic Violence. Just like Hungary and Poland, the refusal to ratify the Convention meant that women would continue suffering domestic abuses without tougher protection by domestic laws. Had this Convention been in force in Italy at the time of the relevant events, then the Court would have likely found Italy culpable and the applicant would have gotten sufficient relief.

The European Union’s Response to Domestic Violence

The EU’s response to domestic violence has been mainly shaped by the feminist movement interest groups. These movements have been challenging the legality and the fairness of men’s abuses against women. Gender-based violence has been contested and discredited as a cultural framing that portrays women to be inferior to men. Although some EU Member States have incorporated specific laws that refer to “family violence” in their penal codes, there are still some others, for example, Germany, that have gender-neutral legal framework. This means that some EU Member States still do not consider gender-based domestic violence as a serious criminal offence. To the extent that gender-based domestic violence is not coded as a crime in some jurisdictions, it makes it difficult for the law enforcement agencies and prosecutors to frame gender-based violence as a criminal offense. This has led to different options and approaches being taken as actions against the offenders other than the required legal action. For instance, there have been efforts by some women’s advocacy groups to pursue and incorporate different approaches culminating in multiagency responses. These responses include the “emergency barring order” by which police orders the offender to leave home and look for an alternative accommodation elsewhere and not to be in close contact with the victim for a period of about 2 weeks. During this two-week period, the victim is provided proactive support and can be assisted to apply for and obtain a civil protection order in a civil court. Although it can be said that the Police response to

³³ See Case of Kalucza v. Hungary. European Court of Human Rights. 2012. Application no. 57693/10.

³⁴ Ibid.

³⁵ See *Rumor v. Italy*, [2014] ECHR 557.

domestic violence across the EU Member States is fairly good, the prosecution of such cases has, however, remained generally difficult. In some cases, evidence to prove domestic violence becomes very difficult to procure and, hence such cases are dropped from criminal prosecutions for lack of evidence. This has led to the perception that prosecution may not be the best alternative to the provision of protection or safety for women at home. Instead, recent reforms aim at strengthening support services, provide special protection for victims, and develop community-based approaches.³⁶

The problem that is slowing down policy actions (i.e. speedy response) against domestic violence in some of the EU Member States is their strong attachment to patriarchy. Domestic violence in Italy has, for example, been described as is “a structural phenomenon” which shows no sign of diminishing, because it has its roots in a deep and persistent disparity of power between men and women and in the patriarchal organization of society.³⁷ According to a report released in 2019 by the Italy’s Giambrone Law Firm, women in Italy are tolerating an unacceptable level of domestic violence which can often lead to the tragedy of femicide as women are nearly always murdered by their partners or former partners.³⁸ But it must be noted that even before the COVID-19 pandemic in Italy, the Italian Parliament had already legislated a law that imposes stiffer penalties on domestic violence perpetrator. For instance, in an attempt to curtail the rising incidents of assaults against women by their partners the ruling party (government) responded by drafting what it referred to as “Codice Rosso” (code red) law in the hope of mitigating the tide of domestic violence. Thus, the Senate overwhelmingly voted for the bill to be passed into law. The new law enshrines tougher penalties and provides for longer prison sentences.

Moreover, the new law also categorizes acid attacks as a specifically designated crime with sentencing guidelines related to it, rather than being grouped together with the general term of grievous bodily harm. Reporting on behalf of the Giambrone Law Firm, Federica Brondoni (a Giambrone partner), observed that since the bill was passed, prosecutors across Italy are reporting a sharp rise in victims reporting attacks with Milan recording the highest of 30–40 reports per day, and in Naples, there are approximately 30 per day with Rome receiving 25 per day.³⁹ It was noted that this was not a spike in attacks but a spike in reporting attacks. This huge uplift in domestic violence reports is feared would swamp the Italian legal system. It can be deduced that before the law was made stronger to protect women against domestic violence in Italy, fewer cases of domestic violence were reported by women. However, when the law was made stronger to protect women against domestic violence, women started reporting abuses against them in large numbers. This implies that in countries where law on domestic violence against women is weak, women are likely to suffer in silence at their homes without reporting to the authorities.

Furthermore, the European Parliament is on record for championing proactive responses to gender-based violence across the EU Member States. The EU Parliament has strongly reiterated that violence against women is a violation of human rights and a form of gender-

³⁶ Carol HAGEMANN-WHITE: *Responses to Domestic Violence in Germany in a European Context*. In: Eve Buzawa, – Carl BUZAWA (eds.): *Global Responses to Domestic Violence*. Springer, Cham. 2017. https://doi.org/10.1007/978-3-319-56721-1_5

³⁷ https://www.giambronelaw.com/site/news-articles-press/library/articles/italy-strengthens-the-law-support-victims-of-domestic-violence?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration. (11. 05. 2021)

³⁸ Ibid.

³⁹ Ibid.

based discrimination. It also noted that domestic violence is often rooted in gender-based inequalities between men and women and it takes many forms that require urgent intervention measures. Indeed, the concern raised by the EU Parliament is genuine since such violence have had a major impact on women who in many cases tend to be the victims. It cannot be emphasized enough that the commissioning of such violence also imposes a significant cost burden on society. When women stay safe, society remains healthy and wealthy because of the socio-economic roles played by women in society. Although there is still lack of a unified legal approach to curbing domestic violence under the EU law, it is important that the EU should have a unified legal response to cases of gender-based domestic violence. As it is now, each Member State is allowed to take its own approach in handling domestic violence cases. It is important to mention, however, that there are already some instruments put in place by the United Nations and the Council of Europe in an effort to mitigate the incidences (escalation) of domestic violence. For instance, the Council of Europe's 'Istanbul Convention', to which the EU plans to accede, provides great hope as a yardstick in efforts to combat violence against women. At the moment, the EU is tackling the problem in various ways that are non-binding. However, due to the gravity of domestic violence against women across the EU Member States, there should be optimism that an EU legally binding instrument designed specifically to protect women from violence would be created and ratified in not the too distant future.

Ideally, protection against domestic violence should be under the ambit of the police, criminal law, and civil law of the Member State. In Germany, for example, police department has well trained officers (male and female) to deal with cases of domestic violence. Usually the German police can be contacted free of charge around the clock by simply dialing 110. Whenever a victim of domestic violence calls the police, she is required to tell the police whether or not she is in acute danger, and if so by whom and through what. Moreover, the victim is required to report whether or not she has been injured and, if so, by whom and with what. Suppose the offender is no longer present at home, the victim is required to tell the police if she is at imminent risk of further violence and whether the offender is armed. Once the police receive all these information, they can then decide whether or not they need to get to the victim as a matter of extreme urgency.

Conclusion

The COVID-19 pandemic led to containment measures that required people to stay home and be safe from the infection. Other than the safety that a home provides, the abode should also be a place of peaceful dwelling and for deriving familial togetherness, love, freedom and privacy. However, the impact of COVID-19 containment measures on domestic violence paints a worrying picture of the safety of women at home. When women get trapped at home with their abusers, their safety should be of great public concern and that means the national policy on gender should never get blind during crisis situations that put women at greater risk. Although there are a number of measures taken by the EU Member States when it comes to addressing the problem of domestic violence, such measures are still not effective in societies that are resistance to the transplant of Conventions and principles of international law. The COVID-19 crisis has shown that there are still some impediments caused by national policies to combat violence against women. For this reason, the Member States should be able to adopt different approaches to the problem with the help of advocacy

women groups. Moreover, the EU Parliament's efforts should continue focusing on strengthening the EU policy in the area of domestic violence. It should be viewed as a positive step, the call by the EU Parliament for a European Union strategy to counter violence against women, including a legally binding instrument.

Although no good data exists yet on the exact number of domestic violence cases across the EU Member States during the COVID-19 crisis, it should interest researchers more to have that data collected and subjected to the rigor of empirical analysis so as to speak more authoritatively on the impact of the COVID-19 crisis on domestic violence against the vulnerable members of the family. As it is now, the data available is wanting in completeness and may not be subjected to the rigor of empirical analysis. At the same time, a more fundamental theory with greater explanatory power that would significantly explicate the domestic violence phenomenon would be of great success. Since the preliminary analysis suggests real threats of domestic violence during the COVID-19 crisis, it should drive our curiosity and prediction that if actual data including the number of unreported cases of domestic violence is brought to bear, then the real consequence of domestic violence could be of greater magnitude than is currently known.

Appendix A

Table 1.: European opinion on better political leadership between men and women

Men make better political leaders than women do	Agree strongly	Agree	Disagree	Strongly disagree	Missing: Other	No answer	Don't know	Total
Code	1	2	3	4	-5	-2	-1	
Frequency	15,008	28,96	49,533	29,683	103	545	3,526	127,358
% of all	11.8	22.7	38.9	23.3	0.1	0.4	2.8	100.0
% of valid	12.2	23.5	40.2	24.1	-	-	-	100.0

Source: author from the data provided by EIGE