

GENDER BASED VIOLENCE AND OTHER SOCIAL PROBLEMS IN FAMILY RELATIONS. EFFECTS ON THE DISSOLUTION OF MARRIAGES AND REGULATION OF IT'S CONSEQUENCES.

Aurela Bozo, Ma, Ph.D. Candidate

Center for Legal Civic Initiatives, Rr."Vaso Pasha", P.12, Shk.1, Ap.1, Tirana, Albania,
email address: aurboz@yahoo.com

Abstract

The paper aims to refer to the social context and contribute in analyzing the gender based violence in family relations, combined with other social problems and their effects on dissolution of marriages. The paper raises the research question "Is domestic violence a pure cause for dissolution of marriage or is it combined with other social/family problems? If yes how do they interact with each other and affect the marriage?" The method which will be used in this paper is interviewing of women in the process of dissolution of marriage and an analyze of the court decisions of Tirana Judicial District Court issued during 2012 year, with object dissolution of marriages and regulation of it's consequences. The methodology will combine quantitative and qualitative analyses.

The article will reflect aspects of the sociology of violence, family violence, family and sociology of law. At the end of the paper, it has been found that domestic violence effects the family relations and findings will be resulted related to novelties in the forms of gender based violence present in family relations, members of the family faced with violence, other social problems which accompany the family today and their combinations with domestic violence. Since, this paper comes in continuation of other analyses of the author on this issue during recent years; it will be focused more on the combined causes of dissolution of marriage, identified novelties and tendencies on family violence as one of the causes of dissolution of marriage. Violence in family relations will be analyzed as a cause and consequence of dissolution of marriage. It has been found that the court consider violence in family relations as a factor, reflected in the regulation of dissolution of marriage' consequences.

The findings of the paper and the analyze will generate some conclusions and important suggestions.

Keywords: *gender based violence, dissolution, marriage, consequences, family.*

The methods

To write this article, the experience of the author¹ and the every day work in supporting the victims of gender based violence with free legal aid and assistance, since 2004 year is used. 400 court decisions (downloaded from <http://www.gjykatatirana.gov.al>) with the object dissolution of the marriage issued from Tirana Judicial District court during the first six months of 2012, are studied and analyzed.

The interviews with the marginalized women, coming to CLCI during 2011-2012 years, to benefit from free legal aid in their process of dissolution of the marriage, has made the article more consolidated in it's findings and recommendations.

The aspects of the sociology of law, sociology of family and violence are incorporated in this article. The changes and transformation of the law in the frame and it's implementation are the results of the impact of the way of living and organization of the society and it's units, one of which is family.

The number of marriages in the prefectures of Tirana has indicated an increase in the end of 2012 and the first quarter months of 2013 compared to the first quarter months of 2012.

(http://www.instat.gov.al/media/203251/statistika_1_2013_.pdf)

The table below shows this increase tendency.

Marriages

Tirana	I-12	II-12	III-12	IV-12	I-13
	1115	1166	1498	1321	1419

Table no.1

What happens with marriages, which are some of the causes of dissolution of the marriages in Tirana prefecture, which are some new tendencies are some of the points, this article is raising.

One of the first findings of this article is that there are women, who continues to be in a higher percentage of cases, initiator of the judicial process of dissolution of the marriage. So, from the monitoring it has resulted that in 46.5% of the cases there are women who have submitted a lawsuit with object dissolution of the marriage, in Tirana Judicial District Court. In 41.5 % of the cases, there are men who have initiated the procedures of the dissolution of the marriage. In 12 % of cases, the parties have submitted together a request for dissolution of the marriage with the consent of both parties. According to the Albanian legislation one of the cases of dissolution of the marriage is the case of dissolution of the marriage with the consent of both parties. (Family Code, 2003)

The table below shows data on the gender of the initiator of the dissolution of the marriage.

The gender of suitor

Women as suitor	Men as suitor	Dissolution of marriage with the consent of both spouses	Total in percentage

46.5%	41.5%	12%	100
-------	-------	-----	-----

Table no.2

It is indicated in a clear way from this monitoring an increased number of the cases of the dissolution of the marriage with the consent of both spouses, who submit to the court together with the request for dissolution of the marriage an agreement, which regulates the consequences of the dissolution of the marriage. This is an indicator of the emancipation of the society, and in a specific way an emancipation of the relations in the family.

“On the other side it is one of the ways of dissolution of the marriage with a low cost for both parties. Unlike other legal cases of dissolution of the marriage, the agreement of spouses regarding dissolution of the marriage, which make the premise for initiating of this procedure and in a same way one of the main conditions of dissolution of marriage entail a less active commitment of the court and consequently a restricted possibility regarding refusal of the request on dissolution of the marriage”.(Omari, 2007, p.228)

One of the reasons in increasing cases of dissolution of the marriage with consent of both spouses is the fact that in this case, judicial parties do not define the causes of dissolution of the marriage, and especially which of the spouses are responsible regarding making the marriage to go to end.

It has resulted from the monitoring that emigration of one or both spouses has sharpened the problems in family relations. It has affected the relations of the spouses in the family, causing the lack of affection among the spouses, the lack of communication among them, establishing new affective relations out of the marriage, interventions of the parents of the spouses in the spouses' and family relations, using the alcohol (5%) and spending money in gambling (1.75%), etc. In some of the analyzed cases, asking to come back from emigration or non concluding successfully the family reunification has been the source of disagreements between spouses. Thus, it has resulted from the monitoring that in 22 % of the cases one or both spouses are in emigration and in 0.5 % one of the spouses is abroad for reasons of working or study. The increased possibilities for studying abroad for the Albanian citizens during last years is reflected in the marriage relations too.

It has resulted from the monitoring that in 7 % of the cases, the marriage is done between an Albanian citizen and a foreign citizen. In most of these cases, spouses do not have children. This fact has been associated with the problems of the different understanding of the life, different conceptualizing and ways of the spousal life, family relations and because of that conflicts and disagreements has been present, being accompanied with other causes and factors they have brought the dissolution of the marriage.

From the monitoring in the first place there are ranked parties, who have been emigrant in Greece, in the second place there are party, who have been emigrant in Italy, in the third place there are parties emigrant in UK, in the fourth place there are persons emigrant in Germany, in the fifth place there are persons emigrant in USA and in the last place there are persons who have emigrated in Belgium. This conclusion reflects which are the main countries in which the Albanian citizens emigrates.

From the monitoring of the court decisions, there are stemming data regarding the number of the children of the spouses in the process of dissolution of marriage.

It has resulted that in 36 % of cases, the spouses do not have children; in 28.4 % of cases the spouses have one child, in 26 % of cases the children have two children, in 7.2 % of cases the spouses have 3 children, in 0.9 % of cases the spouses have four children, in 0.6 % of cases

the spouses have five children, in 0.6 % of cases the spouses have six children and in 0.2 % of cases the spouses have 7 children.

The table below shows data on the number of children of the spouses in the process of dissolution of the marriage.

The number of children of spouses in divorce process

Spouses without children	Spouses with one child	Spouses with two children	Spouses with three children	Spouses with four children	Spouses with five children	Spouses with six children	Spouses with seven children
36%	28.4%	26%	7.2%	0.9%	0.6%	0.6%	0.2%

Table no.3

Analyzing the causes of dissolution of the marriage, it is noted that the lack of ability of spouses to give birth to child has brought conflicts and disagreements in the marriage and family relations. It is reflected in the relations of the couple with other members of the family too. If we analyze the cases of spouses without children, in correlation with the years of the marriage, the result is:

In 9 % of cases of the spouses without children, they have 0-1 years being married; in 37.8 % of cases of the spouses without children, they have 2-3 years being married; in 30.6 % of cases of the spouses without children, they have 4-6 years being married; in 17.1 of cases of the spouses without children, they have 7-10 years being married; in 3.6 % of cases of the spouses without children, they have 11-14 years being married and only in 1.8 % of cases of the spouses without children, they have 15-20 years being married.

The table below shows the data on this correlation.

Years of marriage for couples without children

0-1 years being married	2-3 years being married	4-6 years being married	7-10 years being married	11-14 years being married	15-20 years being married	Total in percentage
9%	37.8%	30.6%	17.1%	3.6%	1.8%	100

Table no.4

Having a child in the marriage continues to be very important for the Albanian spouses and society and family in Albania, the lack of this ability of giving birth a baby after some years of spouses being together, push them towards the dissolution of the marriage.

The highest percentage of cases are cases of spouses with one child and two children which reflects the fact that the first years of the marriage are the years of proves for the marriage life.

Based in the monitoring we have findings regarding how is the marriage tied? Are the parties tied knowing and being in love with each other or they are tied with the mediation of third persons. It has resulted that in 35% of cases, the spouses are tied with each other in marriage with the mediation of the third persons.

In 65% of cases, they are tied with each other based in love and knowing each other. It is very positive finding to have 65 % of the cases, in which the marriage is tied after the love of future spouses and knowing each other. It shows in a clear way that this is the main way of a marriage in Albania. The percentage of the parties tied with the mediation of the third persons although is ranked in the second place is considerable. It has resulted that in 1.2 % of cases, in which the future spouses are tied based in love and knowing each other, parties have known with each other through internet. Although, it indicates a tendency, it continues to be low, regarding the cases in which the relation is finalized with marriage.

The table below shows data on that point.

The way marriage is established

The marriage is based in love	The marriage is tied with the mediation of third persons	total
65%	35 %	100

Table no.5

Domestic violence is one of the causes of dissolution of marriage, based in the studied court cases. It consists in violation of physical, psychological, moral, economic, sexual of integrity.

Regarding the form of physical violence, in 11.5 % of cases, the court decision shows that parties are faced with physical violence. One of the women in the process of dissolution of marriage, A.V, mother of three children explained that she was seriously injured as a consequence of the violence exercised by her spouse.

In 8.7 % of these cases in which domestic violence is present, Tirana Judicial District court has issued protection order/urgent protection order. We founded data in the court decisions and interviews with women in the process of dissolution of the marriage that the parties are or have completed in the same time the process of issuing urgent protection order or protection order from Tirana District Judicial Court. This fact is used by one of the parties, mainly women to pursue the judge in the cases with object dissolution of marriage that the violator is not responsible and not able to care for the children as far as the violator (father) has exercised violence upon the mother or directly or indirectly upon children. It is a very important factor for the court to decide which of the parents will exercise the parental responsibility for the children, how often the next parent will meet children etc.

The violence exercised by the perpetrator upon children directly is present in 0.75 % of the studied cases and it is exercised power in family relations in the presence of the children in 2.25 % of cases.

Regarding the form of psychological violence, it has resulted that:

In 45.5 % of cases of dissolution of the marriage, the psychological violence is present. In the forms of psychological domestic violence, it is included the form of disagreement and disputes.

In the studied cases, there are reflected stereotypes on the role of women in the family relations. The judge of the family section, in Tirana Judicial District Court reflects the gender stereotypes in the Albanian families when he/she argues the court decision.

“Thus in the court decision no.16, dated 13.01.2011 it is written that, “Because of the fact that judicial parties lived together with the parents of the defendant, the suitor (woman) was considered as a woman to work and to prepare the food and not in an equal way with her spouse.” (<http://www.gjykatatirana.gov.al>)

In 4.25 % of the studied family cases the jealousy between spouses has been present.

Unemployment of the spouses and poverty in family are presented as other causes of dissolution of the marriage, in 4.5% of the studied cases.

Increasing of level of poverty in the Albanian society it is reflected in the micro level, in family units, too. Referring to the data of INSTAT, “The population extremely poor, defined as persons who face difficulties in fulfilling their basic food needs, is increased from 1.2% in the year 2008 in 2.2 % in the year 2012. (http://www.instat.gov.al/media/206688/shqipëri-trendi_i_varferise_2012)

The affective relations with persons out of the marriage are another cause of dissolution of the marriage. It has resulted present in 6.75 % of the studied cases.

Regarding the representation of the cases in the court by lawyers it has resulted that in 54.25 % parties are represented and legally supported by lawyers with payment or have benefited free legal assistance by lawyers working for nongovernmental organizations. This is very important and closely connected with access of the marginalized women in the justice system.

It is approved the law no.10039, dated 22.12.2008, ‘On juridical Aid’ and is established and functioned the State Commission for Juridical Aid. The implementation of this law is closely linked with the access in justice of the vulnerable groups. If we analyze a single case, the expenses in the judicial process includes the judicial tax of 9000 AL, the average payment of 40.000 AL for the lawyer, the payment up to 25.000 AL for the psychologist, the expenses for drafting the lawsuit, photocopying etc. It is a burden for parties and especially for the vulnerable women in the judicial process.

Regardless the undertaken steps, the number of citizens that have been able to benefit from the Law on Legal Aid has remained in the range of single digits thus imposing the need to make the system more effective.

Conclusions and recommendations:

It has resulted an increased awareness of the society to make the dissolution of the marriage with the consent of both spouses.

It is recommended to continue the work on increasing the level of awareness of the community to know the legal rights stemming from the family legislation and to use their rights effectively.

It has resulted that causes of dissolution of marriage are conflicts and disagreements, lack of affection and communication between parties, poverty and unemployment, different characters, different understanding of marital life, non fulfilling of parental and family responsibilities, affective relations out of the marriage, lack of birth of children, interference of other family members especially the parents of one of the spouses, the violence exercised in all it’s forms, gender stereotypes accompanied with the consuming of alcohol, gambling, etc.

It is recommended a more effective way of working on prevention of using alcohol, rehabilitation of persons, establishing the center for rehabilitation of the victims of violence in family relations, more attention and more possibilities and effective policies regarding employment, undertaking of steps in increasing the level of knowledge on the marriage, rights and responsibilities, etc.

It has resulted that parties are represented by lawyers in the judicial processes in the court.

It is recommended that “the State Commission for Juridical Aid to expand the number of lawyers, contracted non governmental organizations which provide free legal aid and expanding of geographical areas of the contracted lawyers to offer free legal aid.” (Tirana Legal Aid Society {TLAS}, 2012)

References:

- Law no.9062, dated 8.5.2003, Family Code, article 125
- Omari, S. (2007). THE FAMILY Right. Tirane.
- TLAS, Report on Juridical Aid in Albania, Tirana, 2012, p.49.
- The court decision no.16, dated 13.01.2011 of Tirana Judicial District Court;
- <http://www.gjykatatirana.gov.al>
- http://www.instat.gov.al/media/206688/shqiperi-trendi_i_varferise_2012
- Note: The author of this article is working for Center for Legal Civic Initiatives since 2004. Center for Legal Civic Initiatives is a non profitable organization in Tirana working to increase the access of the violated women and girls in the justice system.