

## Protective Measures Against Domestic Violence and their Implementation

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**Abstract:** Law on measures against violence in family relations is already about 4-years, which came into force in Albania. As a civil society initiative this law had the support of many social groups. The law came as a need of time in which domestic violence is a widespread phenomenon. Those who are most affected by this phenomenon are women and girls of all ages, regardless of socio-economic status or position in society. This is not just a phenomenon of the Albanian society, but is present in all societies, whether emancipated or not. Changing from one place to another has to do with the state's efforts to eliminate it. Violence against women constitutes a violation of the rights and freedoms of women and hinders basic or deny the enjoyment of those rights. (Preamble to the Declaration on the Elimination of Violence against Women, adopted by the General Assembly of the United Nations.) Despite the entry into force of the law on protection measures in family relations, became a step forward to prevent violence in family relationships, not lacking in daily news media with painful consequences for victims of domestic violence. This paper will address the safeguards provided for in national law, their enforcement by state authorities, as well as cases of jurisprudence of the European Court of Human Rights and the Albanian courts, highlighting the applicability and efficacy of this law.

**Key Words:** Violence in family relationships, protective measures.

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### Introduction

Albanian society changes are reflected in family relations, and consequently in recent years have noticed an increase of reported cases in terms of crime and violence in the family.

Statistical data from various organizations and state structures has resulted in years: 90% of women who serve their sentence in prison 313 in Tirana, because they killed their husbands, because for years have been cut physical and sexual violence.<sup>1</sup> From the study data show that many of these women and girls have not been convicted of crimes committed and that, in most cases, have come from violence. 70 percent of them have experienced violence and 30 percent sexual abuse.

In a study conducted by the Independent Forum of Albanian Women in 2004, in 9 districts of Albania 1895 questionnaires were completed and 85.17 per cent of respondents confirmed the existence of domestic violence. Thus, it is estimated that one third of Albanian women experience some form of domestic violence.<sup>2</sup> Statistical data of the State Police over the years show a growing and wide geographical spread of offenses relating to domestic violence. The figures show clearly the extent of domestic violence in Albania. Since the year 1996 in their report "Domestic Violence in Albania" Lawyers for Human Rights recommends that the Albanian State should care for victims of domestic violence by offering them legal and social services.<sup>3</sup>

Growing phenomenon of domestic violence require specific legislative measures for its prevention. In this context the initiative of civil society in Law No. 2006 was passed. 9669, dated 18.12.2006 "On measures against domestic violence". This law was intended precisely to prevent and reduce domestic violence in all its forms by appropriate legal measures, and ensuring the protection of family members who are victims of domestic violence. The law pays special attention to children, the elderly and persons with disabilities. This end he realizes through two pathways:

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<sup>1</sup> Information taken from publication "Monitoring the press on domestic violence, 2001-2002"

<sup>2</sup> Observations of the last ten years show that over one quarter of women report being made victims of emotional and sexual, and that rural women are more affected by physical violence (see Reflections, 1995, 1996, Bregu & Gjermeni, 2003, Gender Alliance for Development, 2006). In 2004 the Counseling Center for Women and Girls report that there were about 6670 phone calls from women and girls. According to Interior Ministry figures for domestic violence cases in 2005, according to evidence of criminal incidents resulting 102 such cases, of which 21 were homicide cases, while 25 others are threatened with murder. The 2006 study supported by UNICEF shows that 1 in 5 children have experienced dizziness, 1 in 14 children has experienced fainting and 1 in 4 has experienced bruising and bleeding due to shocks

<sup>3</sup> Amnesty International 2006: Albania: Violence domain Against the family is not her shame.

First sanctioning authorities, who have the duty and power to respond to domestic violence.  
Secondly enables courts to issue protective orders against abusers.

### 1- But What we Mean about Violence?

Its definition is given by one of the most important documents for the rights of women is DVAW "On the elimination of violence against women." "Violence against women is gender based violence that brings or could bring harm or suffering due to physical, sexual or psychological nature of women, including threats of committing such acts, coercion or arbitrary deprivation of freedom, which occur both in both public and private life".

Albanian law makes a distinction between the general definition of violence and violence in family relationships. Violence defines it: "any act or omission of a person against another person that causes the violation of physical, moral, psychological, sexual, social and economic development."<sup>4</sup>

While "Domestic violence" means any act of violence, any act or omission of a person against another person that causes harm to the physical, moral, psychological, sexual, social, economic, committed between persons who are or have been in the family relationship. Obviously this is an inclusive definition of acts of violence in all its forms, leaving open the possibility of expanding interpretation of acts of violence than those explicitly mentioned.

### 2. Which Are The Forms of Violence

a) Physical violence; b) sexual violence ; c) Violence psychological (or emotional) ; d) Economic Violence.

2-a. Physical violence includes pushing, hitting, pinching, biting, jumping, close to home, hitting various objects, threatening with a knife or other weapon, refusing to help the woman when she is pregnant or sick, to form serious - murder, attempted murder, wounding, etc.<sup>5</sup>

2-b. Sexual violence includes: treatment of partner (partner) as a sexual object, to make strip obligation, the obligation to have sex, to touch the persistence to do whatever it wants, the obligation to have sex with someone else, committing acts sadistic sexual, compelling partner to have sex after physical abuse or as a condition to maintain their relationship, conducting extramarital sexual relations, etc.. It was observed that spouses or partners who practice this form of violence, want to demonstrate their strength and ability to dominate and to humiliate the victim.

2-c. Psychological violence includes ignoring the feelings of the wife, constant criticism, constant contradiction of views, public or private humiliation, trying to convince partner violence deserves that his actions, partner threat of adultery, jealousy signs of constant threat of getting children, keeping hidden the money, keeping at home without work, abuse of children, called derogatory names, etc.. Most of psychological abuse occurring in the context of other forms of abuse such as verbal, economic and social isolation. Psychological violence, for its nature, is very difficult to identify because no visible traces, as physical violence, but verbal attacks, humiliation, intimidation, restraint can be even more harmful than physical assault.

2-d. Economic violence has to do with the partner's control over family financial income or even ban the participation of women in decisions about spending money, even refusal of money to cover basic family needs, denial of property ownership joint, damage or destruction of property, theft of property, etc.

### 3. Subjects Protected By Law

Are clearly all persons recognized as members of the family "who are":<sup>6</sup>

- a) the husband / wife or cohabitant / wife or ex-spouse/ex-wife or former partner / wife cohabiting;
- b) brothers, sisters, relatives in direct line including adoptive parents and adopted children,
- c) the husband / wife or co / lo of persons indicated in the letter "b",
- d) straight sex, including parents, and adoptive children of the spouse/i or cohabiting /i
- e) brothers and sisters of the spouse /i if living together during the last 3 months;
- f) Children of spouses or cohabiting partners.

<sup>4</sup> Article 3 of Law no. 9669, dated 18.12.2006 "On measures against violence in family relations

<sup>5</sup> Physical violence is a form of violence that victims are easier to perceive and accept the nature of its performance and visible traces it leaves on the victim

<sup>6</sup> Article 3/3 of Law no. 9669, dated 18.12.2006 "On measures against violence in family relations

As seen from a wider circle of entities law protects not only existing family but under the influence of the Family Code recognizes and protects cohabiting partners and former partners and former husband or wife. This is because the violence is shown to these categories. The respondent is the person sued for domestic violence before the competent bodies.

#### 4. Protective Measures Against Violence in Family Relations<sup>7</sup>

##### 4.1 Protective Measures

Law has provided a very clear safeguards against domestic violence depending on the situation that is the victim of violence. The law provides protection to victims of domestic violence, can team up:

*A-Protection of physical integrity*, which is made in this way;

- a) immediately ordered the defendant / (perpetrator / en) to refrain from committing or threatening to commit domestic violence against plaintiff (victim) or other family members of victims.
- b) ordering the defendant immediately / (perpetrator / en) to refrain from harming, harassing, contacting or communicating directly or indirectly with the victim or the victim's family.
- c) Immediately removing the defendant / (perpetrator / en) from the residence for a period specified by court order and not allow to enter the flat new court authorization;
- d) to immediately stop the defendant / en (perpetrator / en) to approach a certain distance beyond the victim or the victim's family members.
- e) prohibiting the defendant immediately / (perpetrator / en) to close the home, workplace, the original family house or apartment or the next couple of other people and more children's school or places frequented by the victim, unless attendance is for work purposes;
- f) immediately placing the victim / s and a minor in temporary shelters, keeping in mind the best interests, that of minor.
- g) limiting or prohibiting the defendant / (perpetrator / en) to meet the victim's child, under conditions that may be suitable
- h) prohibiting the respondent / (perpetrator / en) entry or stay in the temporary or permanent victim, or any part thereof, regardless of the rights of ownership or possession of the perpetrator;
- i) ordering the law enforcement officers to seize any weapons that the perpetrator during the inspection perform or order the perpetrator to surrender any weapons belonging to him;

*B-Defense for economic security*

- a) ordering a person authorized by the courts (officer or bailiff) to accompany the victim or the defendant / (perpetrator / en) to the victim's residence and supervise the removal of personal property,
- b) ordering the defendant / (perpetrator / en) to allow the victim to own home which they use together victim and offender / wife or any part thereof,
- c) ordering the defendant / (perpetrator / en) to pay rent permanent residence or temporary residence of the victim, as well as obligations to the victim, children or other family members who have dependents;
- d) ordering the defendant / (perpetrator / en) to make a payment in favor of cohabittees, who, to effect the above measure, remain deprived of their livelihoods.

*C-Defense with a social character*

- a) Transferring the victim temporary custody of children and temporarily removing parental responsibility of the respondent / (perpetrator / en),
- b) establishing and ordering the case (under the jurisdiction of the court) the intervention of social services public or private place of residence or the organizations which aim to support and shelter of persons subjected to domestic violence;
- c) victim of domestic violence in rehabilitation programs;
- d) ordering the defendant / (perpetrator / en) to participate in rehabilitation programs;

##### 4.2 But How Would Be Possible for the Effective Realization of All These Protective Measures Provided for by Law?

The law provides two ways to implement them:

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<sup>7</sup> Article 10 of Law no. 9669, dated 18.12.2006 "On measures against violence in family relations

A- "Emergency Protection Order".<sup>8</sup>

B- "Protection order".<sup>9</sup>

A-"Emergency Protection Order" means an order issued temporary court, valid until the issuance of a protection order.

B-"Protection order is an order issued by the court, providing protection measures for victims.

In an emergency protection issued by the court within a short time frame due to the emergency situation. In the emergency protection order may contain some safeguards to protect the physical integrity.

Protection order issued by the court after assessing the situation of domestic violence with a duration determined by anticipating some of the safeguards provided above.

In both cases it is the court that decides on the appointment of an immediate protection order or an order of protection, depending on the situation. Such a decision constitutes an executive title which means that it is bound to be implemented by the respondent. An order of protection issued by a court, shall be notified immediately, who was not present at the hearing and victims provided with two copies of the original, so that one of them to keep for himself and the other to make available to the police at the moment needed. Court, within 24 hours after issuing the protection order by the court sends a copy of his victim and other persons mentioned in the prosecutor has filed the petition of the social services of local units, which are permanent resident or the victim and other persons mentioned in the police department of the location where the permanent resident or the victim and other persons mentioned in the decision. In cases where there are grounds for believing that he / the accused / (perpetrator /) has committed or threatened to commit an act of domestic violence or / the accused / (perpetrator /) presents a threat direct and immediate threat to safety, health or welfare of the victim and other family members of victims, or the issuance of the emergency protection order is necessary to protect safety, health and welfare of the victim or the members other families who are protected by the protection order. court decides on the request for immediate protection within 48 hours after submitting the application by issuing an emergency protection. If the / the defendant / a (respondent / wife) is not, then, the court summon and implement the relevant provisions of the Criminal Code, in case of obstruction of execution.

## 5. Responsible

The law defines the main target for achieving the goal of creating a coordinated network of responsible. The tasks of these institutions is not only protection, support and rehabilitation of victims, but also ease the effects. A special attention is paid to prevention of domestic violence as an effective protection, as a first step in order to curb this phenomenon preventing the causes that bring it. Law "On domestic violence defines two types of authorities responsible for: administrative and judicial.

### 5.1 Administrative Authority

Chief Administrative Authority responsible for the implementation of this law is the Ministry of Labour, Social Affairs and Equal Opportunities.<sup>10</sup> It has a coordinating role, supporting and supervising. In the framework of this law by the Ministry are designed strategies and action plans for prevention of domestic violence.<sup>11</sup>

Other relevant authorities of the line are:

a. local government;<sup>12</sup> b) Ministry of Interior; <sup>13</sup> c) Ministry of Health; d) Ministry of Justice.<sup>14</sup>

<sup>8</sup> Article 3/7 of Law no. 9669, dated 18.12.2006 "On measures against violence in family relations

<sup>9</sup> Article 3/6 of Law no. 9669, dated 18.12.2006 "On measures against violence in family relations

<sup>10</sup> Article 5 of Law no. 9669, dated 18.12.2006 "On measures against violence in family relations

<sup>11</sup> Its duties are: a) design and implementation of national strategies and programs in the field of protection and care to victims of domestic violence, b) or co-financing of projects, which aimed at protecting and strengthening the family, and care of victims of domestic violence; c) support the establishment of support structures and all necessary infrastructure, which serves to support and fulfill all the needs of persons subject to domestic violence, including assistance financial, and medical and social services, under legislation in force; d) organizing training sessions on domestic violence social service employees, who are attached to each local unit, the structures of the Order Police and the NGO workers States licensed to provide social services, d) maintaining statistical data on the level of domestic violence; f) support and supervise the creation of rehabilitation centers for victims of domestic violence; e) support and supervise the creation of rehabilitation centers for perpetrators of domestic violence; h) the licensing of various NGOs that provide social services for victims and perpetrators.

<sup>12</sup> a) commitment to the creation of social service structures in cases of domestic violence, b) installing a telephone line regional 24-hour, which then creates a link with local units, police, medical emergencies and NGOs, by Located in this way the coordination between

All the above mentioned bodies have a legal obligation to respond to each case, and to treat according to the specifications of each organ. Also, they have a duty to enforce judicial decisions, to record and reflect everything in the documentation and to cooperate with other structures. They have administrative and criminal liability for failure to meet these obligations.

#### *Local government units (L G).*

Although (LG) has sectors of education and social services, which have a duty to deal with domestic violence, the process of decentralization of power has led many to overlook problems. Social services offered by the reduced only financial assistance, or addressing the violence to police, an NGO, or hospital. According to annex the Department of the Ministry of Education curriculum for "school psychologists" recommended that this task to perform and people close to the psychologist's office, which has brought about reduced quality of work and the effect on children. Although kindergartens and schools in most of them are restructured, they have not provided recreational facilities for abused children from domestic violence as quiet rooms, a dining annex, art rooms, information and communication environments. Existing facilities including the library, activity rooms, gyms, made little of computers in service. The large number of students per class in some areas for concern for these children.

#### *Ministry of Interior*

The Ministry of Interior at the central one of the structures more closely related to issues of domestic violence is "Department of Juvenile Protection and Family Violence" in the General Police Directorate at the Ministry of Interior. In Police Departments in counties near the Sector Combating Serious Crimes has a specialist who follows the dynamics of criminal offenses related to domestic violence at the station level police department. But police still did not play in a professional role in preventing the phenomenon of domestic violence. There are still no satisfactory standard of police service delivery by the relevant structures. Overall, police officers are not trained specifically to treat serious and professional manner in domestic violence cases. Disciplinary measures should include negligence cases related to domestic violence. New victimization by the police is an irreparable damage.

#### *Ministry of Health*

Ministry of Health shall establish the necessary capacity to provide medical help for domestic violence in the emergency services in health centers and communes. But the traditional model of Albanian health care, doctors have no legal obligation to ask patients and patients' records indicate the cause of injuries, wounds, fractures, that he / they represent. As a result, doctors treat the "physical symptom", while the violence behind the symptoms always remain "untreated" and as a result of unaddressed. Only 13% of health providers that they record cases of violence, of which only 4% say that not only document the case and the cause of violence. So be patient registrations that relate only to the filing of the diagnosis and personal data. Due to this, but the lack of legal obligation to document cases of violence, is the lack of clear and professional skills to handle this delicate matter with the patient without endangering it (SHKPS, 2006).<sup>15</sup>

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them, c) establishment of social and rehabilitation centers for victims and perpetrators, as well as coordination with existing ones, giving priority to specialized centers in the respective areas.

<sup>13</sup>Ministry of Interior has the following duties: a) creation of specific sectors to prevent and fight against domestic violence at police departments, b) training of the police to handle domestic violence cases.

<sup>14</sup> Ministry of Justice has the following duties: a) to train forensic experts in the recognition, diagnosis, evaluation and reporting of domestic violence and acts of violence against children, b) to train bailiffs in their duty to enforce protection orders immediately, to ensure their implementation. and to take all appropriate actions, c) to fund free legal assistance under this act and provide a certain number of trained lawyers who can provide such assistance.

<sup>15</sup>The Code of Medical Deontology among General Duties of Physicians, in Article 8 stated "... if the doctor determines that the person (prison) has been ill, after the adoption of this fact by the person, the physician should inform the legal authorities." While among the duties to the sick, the same Code, Article 43 stated "When the visit determines that a child is abused, he should take necessary measures to protect the child. This he should do with caution and prudence, but if it deems fit, especially for children under 15 years old, he shall notify the competent authorities. " The Code does not provide special treatment of the doctor's patients / victims of domestic violence. Even in the case of the aforementioned child abuse is not specified mistreatment by family members and moreover, remains



Ministry of Justice.<sup>16</sup>

Ministry of Justice is responsible for harmonization of our legislation to fight and prevent domestic violence. However Department of Legislation and Legal Aid there is still no study on the justice and law in cases of domestic *violence*. The Department of Juvenile Justice, which coordinates activities for the care and protection of rights and legitimate interests of minors in the field of justice, legal education and prevention of offenses by juveniles, no statistics clear, divided into age groups. This makes it difficult to develop policies for the prevention of crime in these age groups, protecting the rights of minors, etc..

## 5.2 Judges

Albanian judges have authority to review all criminal, civil, administrative, commercial, family and any other matters specified by law. However, although there are constitutional opportunities in Albania is not yet established a specialized court for minors. There is a limited public confidence in the activity and authority of the judiciary. There have been charges of corruption, delays in trials, non-transparency, lack of professionalism among judges. Judicial administration employees were not received special training for the reception, orientation and treatment of victims of domestic violence. There is a lack of clear, detailed or reliable from the judiciary on cases of domestic violence in general and that practice to / from children to / from the elderly and women. Also lacks a unified system of statistical reporting.

The prosecutor's office did not pay proper attention to criminal offenses such as assault or wounding, and this is due to the harsh violence as criminal offenses followed by serious until death. Proposed sentence for an offender generally turns out to be low and kind of punishment not fitting. *Reporting with limited real situation, which reflects the distrust to the body.*<sup>17</sup>

The police has a complex organization and there are clear links with the judicial police and other police structures. Approval by the prosecutor for the investigative activities related to domestic violence situations to be more explicit in order to be more efficient.

Office of the execution is a more subtle level as regards implementing measures timely execution of orders, so that in case of domestic violence may have consequences for delays in the life of the victim. Associated with *physical abuse of minors* conclude that the CP figures are lacking specific offenses such as abuse by means of correction and discipline, abuse of children.<sup>18</sup>

## 6. Conclusions

In our legislation there is no special measures which are available for the purpose of protecting children against any violence in the conflict which exposes and can seriously damage the development of their personality. Child victims should have access to specialized, such as rehabilitation, assistance in their care and support.

Are to be commended recent legal changes, which provide for the establishment of a national center for social care service for victims of domestic violence. Obtaining a protection order within 24 hours by the court at the request of police and prosecution would provide immediate protection to children who are raped. Free legal service provided by lawyers has increased the efficiency of law, was added to denounce cases of violence and firing on all tax obligations and court fees. What is most important are recent changes in the penal code adopted by parliament on domestic violence. They treat this phenomenon not as a private matter, but as an offense. Criminalisation of this phenomenon will affect the reduction of prevalence rate. Implementation of the judiciary penalizing measures remains a challenge for the future.

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"up / judgment of the doctor" not seen as victims reporting obligation on the competent authorities. Still more, not clearly defined "competent authorities".

<sup>16</sup> Ministry of Justice has the following duties: a) to train forensic experts in the recognition, diagnosis, evaluation and reporting of domestic violence and acts of violence against children, b) to train bailiffs in their duty to enforce protection orders immediately, to ensure their implementation. and to take all appropriate actions, c) to fund free legal assistance under this act and provide a certain number of trained lawyers who can provide such assistance.

<sup>17</sup> The majority of offenses related to domestic violence fall into the category of those who followed the complaint by the injured accuser. For this reason, their reporting is **not recorded in the prosecution** and the court sent to the authority directly.

<sup>18</sup> these are part of some legislations of other countries, article 571-572 KP Italian

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