



**Qendra "Të Drejtat e
Njeriut në Demokraci"**

**Human Rights
in Democracy Center**

STUDY

ROLE OF TIRANA DISTRICT COURT IN PROTECTION FROM DOMESTIC VIOLENCE IN FAMILY RELATIONSHIP

Tirana 2015

With financial support and assistance of Open Society Foundations (OSI)

The author views expressed in this publication do not necessarily reflect the views of the Open Society Institute.

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ABBREVIATIONS

Law no 9669, dated on 18.12.2006 “On measures against violence in family relations”, DV Law

KPrP Code of Penal Procedure

KPrC Code of Civil Procedure

QDNJD Human Rights in Democracy Centre

DV Domestic Violence

PO Protection Order

IPO Immediate Protection Order



CHAPTER I.

Scope and Methodology

This report was prepared by the Human Rights in Democracy Centre (HRDC) in the framework of the project “*Social economic support and increasing access to justice system for vulnerable groups in Municipal Unit No. 6 in Tirana*”, with the financial support of Open Society Foundations (OSI).

The purpose of this study is assessment of access of victims of domestic violence in court and other institutions responsible under the law “*On measures against violence in family relations*”, as amended, through the monitoring of judicial decisions and practice of Tirana District Court.

The study was based on three main aspects:

- Decisions issued by the Tirana District Court, Family Section, regarding protection orders
- Decisions granted by the Tirana District Court, Penal Division, regarding penal acts set forth in article 130 / a of the Criminal Code “Domestic Violence” and article 321/2 “Actions contrary to the decision of court”;
- Practice followed by HRDC’s attorneys during the representation of cases of domestic violence in court.

HRDC monitored 635 civil judgments, published on the official website of Tirana District Court¹ (for monitored period this court did not publish 100% of decisions for technical reasons) and 338 criminal decisions on the basis of special questionnaires developed by HRDC. The questionnaires were based on socio-economic aspects of domestic violence victims / perpetrators as well as technical issues of implementation of the Law “*On measures against violence in family relations*”, as amended. It is also used comparative methods of data during the monitoring of the Centre for the same subject matter, for the period January - December 2014 and January - September 2012².

Human Rights in Democracy Centre for monitored period has represented in Court 77 legal cases with object “issuance of IPO / PO. Out of which 82% were accepted/partly accepted by Court. In 2012, HRDC represented to court 48 cases of domestic violence, with a successful percentage 71%.

Conducting of periodic monitoring on the implementation of the law “*On measures against violence in family relations*”, amended, has assisted HRDC to identify problems in the implementation of

¹ www.gjykatatirana.gov.al.

² Study “Role of Tropoja district court for protection against domestic violence”, Human Rights in Democracy Centre, 2012.



the existing legal framework against domestic violence, which needs improvement, as recent amendment was conducted in 2010.

The findings and recommendations of this study will be shared with other institutions, in order to improve their work in implementation of Law No. 9669, dated 18.12.2006 “*On measures against violence in family relations*” and criminal legislation.

A special thank goes to donors, Open Society Institute that assisted in support and successful implementation of this project.

I hope that the reader will find this study useful,

Aferdita Prroni

Executive Director of HRDC



CHAPTER II

Technical aspects of application of Law of Domestic Violence

II.1 Statistics regarding number of judged cases

For the monitored period, 646 lawsuits were deposited with the object issuing of protection orders / Orders Immediate Protection (out of them, 19 has as object change. interruption, or continuation of protection order³). 21 cases are carried on from the previous year. So, we have 667 cases deposited for review at the District Court of Tirana⁴. If we refer to study “*The Role of the District Court of Tropoje Protection from Domestic Violence*”⁵ and compare statistics, there is an increase in about 20% regarding number of judged cases.

635 judicial cases are judged and 32 are still in judging process

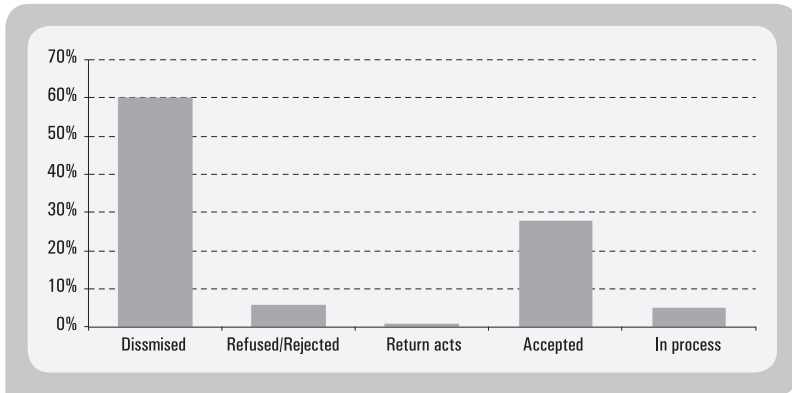
Court has ordered:

- Termination of judgment for 401 lawsuits;
- Reject for 42 lawsuits;
- Return of acts for 8 lawsuits
- Acceptance of lawsuit/request for 176 cases ;
- Partly admission of lawsuit for 8 cases
- 32 cases are still in process

³ Article 22 of Law “For measures against violence in family relationship”, changed.

⁴ According to Monitoring Report January – December 2014, 873 cases are deposited to Tirana court.

⁵ Study of Human Rights in Democracy Centre.



Graph no. 1 All Decisions

In total we have 451 decisions in which the Court has ruled termination/ refusal / return of acts, in relation to 184 which were accepted/partly accepted. About 71% of cases were terminated/ refused/returned acts and only 29% were accepted / partly accepted. According to the monitoring report of the Tirana District Court for the period January - November 2014, about 70% of cases tried were terminated / refused/ returned acts and 30% were accepted / partly accepted. In this way we see almost the same tendency as a year ago.

If we refer to statistics of 2012 about 74% of terminated/refused/ returned acts and only 26% were accepted/partly accepted. It is positive the fact that there is an increase of 3% of cases accepted/ or partly accepted from period 2012 to 2015.

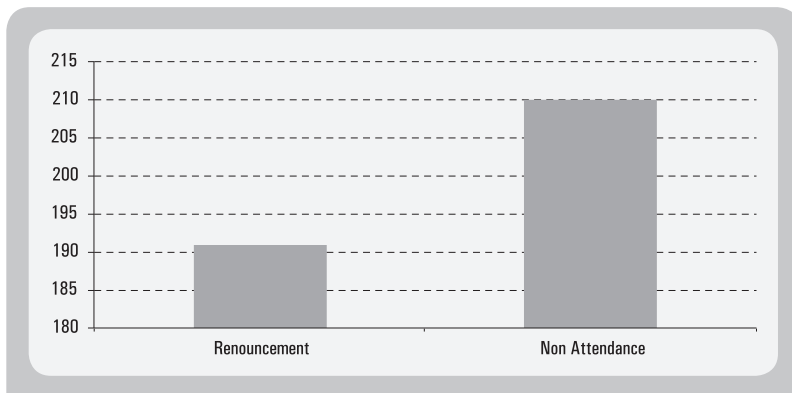
Regarding the protection measures imposed by the court in cases of acceptance of lawsuits, in accordance with Article 10 of the Law “*On Measures against Domestic Violence*”, amended, there is a tendency of the court to award all protective measures required by plaintiff.



In this context, for 176 cases, court has provisioned all protection order required by the plaintiff, but also has enlisted other protection measures, which were not required by plaintiff. In 8 cases, the court has partly admitted the lawsuit, and granted its measures. So in about 96% of cases the court has granted the protection orders required by the parties.

II.2 Non final decisions (ceased cases)

For 401 cases, the Tirana district court has ruled termination of judgment. Out of 401 decisions, for 191, it is the plaintiff (victim) who decided on her to withdraw the case, and in 210 other cases, the case is ceased because parties did not show up at the court. Therefore, in 47 % of cases, the reason of dropping of case is withdraw of plaintiff by the judgment of case.



Graph no. 2

Statistics from the decisions demonstrates that in 131 cases, court issued emergency protection order, but in the session of confirmation of this Order, the victim is withdrawn or did not show up, and cases

were dismissed. The fact that 33% of the dismissed decisions are equipped with emergency protection order (out of 401 dismissed decisions, 131 have been provided the emergency protection order) shows that there has been their willingness to pursue legally the case, but various factors have influenced the decision to withdraw from judicial process.

Another indicators show that, in 27 % of cases, there was at least one postponement of legal session (maximum 6 postponement⁶). Postponement had various reasoning; we may mention lack of presence of parties in process, lack of ID, request of parties, lack of formation of judicial body, official holidays, etc.

HRDC notes that these delays adversely affect the performance of the judicial process, because they reduce the confidence of victims in the justice system, and at the same time they contradict with the purpose of the Law, which aims protection of victims of domestic violence through quick and costless procedures. In these conditions the successive postponements of court hearings may face the victim with an increased risk of recurrence of violence and aggravation of conflicts in the family.

Another reason leading to the dismissal of cases is court efforts for reconciliation. Often, the hearing for the issuance of PO/ IPO is addressed as other civil processes where court put efforts to reconcile among parties. Due to the fact that reconciliation in judicial process for issuing the PO / IPO is inappropriate⁷. Actions of reconciliation as foreseen in (articles 158 / b and 240 of Civil

⁶ Decision no. 2956 dated 10.04.2015, legal session were postponed for six times upon request of defendant party (one of requests was to expel the judge). Plaintiff did not show up after this, and legal case was terminated.

⁷ Decision no. 1960 dated 13.03.2015.



Procedure Code) are inappropriate in matters of domestic violence. Violence must be regarded as a vicious circle in which reconciliation cannot function due to the cycles of violence. HRDC's lawyers/advocate through representation of victims of domestic violence in court have found that in many cases victims of domestic violence who withdraw from the trial as result of reconciliation with the perpetrator find themselves as in previous situation, involving violence; for example, the HRDC advocates have supported, and legally represented to court one case for several times (she withdraw the legal case twice). Two decisions were granted by Tirana District Court for the legal case involving V.D and E.D with object issuance of Protection Order, respectively on 14.08.2015 and 10.07.2015. Such reconciliation situations of parties in most of the cases have temporary result, because the cycles of violence tend to recur.

In court practice, in cases with object protection order, the judge makes every effort to settle the dispute amicably during the preparatory stage.

In some cases where HRDC attended and represented the interests of victim/survivor of DV, we noticed the persistence of the court to reconcile. Such practice is not appropriate for domestic violence, where the victim/survivor request protection from previous episodes of violence and such protection extend the effects on the future. Moreover, the effects of protection orders are temporarily and do not bring permanent consequences for the perpetrator, but simply restriction or preventing violence.

Also, it is noted a direct intervention of court by suggesting perpetrator to issue a statement where he agrees not to exercise violence in the future and at the same time asking the victim to withdraw from the case by a subsequent declaration.

This action is in defiance of the law „*On measures against violence in family relationship*“, as amended, which intends to protect and assist victims/survivors of domestic violence and not to resolve the issue amicably.

Another reason that obliges parties to give up is the fear from the abuser or from his/her threats. In this context, the physical separation of the parties to prevent threats is not respected, moreover, in most of cases, judicial sessions are conducted in the offices of judges, so practically it is impossible, physical separation of parties. *Only 9% of the dismissed cases are represented by the lawyer.* 5% of them are represented by private lawyer, and 4% are represented by the NGO lawyer.

Lack of free legal aid affects the effective progress of judicial process for victims of domestic violence. In 91% of cases, victims/survivors of DV are not supported with legal protection. In the absence of a legal representative, the victim of domestic violence withdraws from judicial process, because he/she does not have proper information on the importance of legal consequences of protection order. In other cases without the presence of a legal representative, victims of domestic violence accept the proposal of the Court to reconcile. Even in cases where victims of domestic violence is confident and wants to pursue trial, the lack of a legal representative makes it quite difficult to collect documentary evidence or witnesses. As a result of these difficulties, we face a very high percentage of dismissed cases. For the reasons mentioned above, we think that the defense through free legal representation will have a considerable impact in reducing cases of termination of the trial.

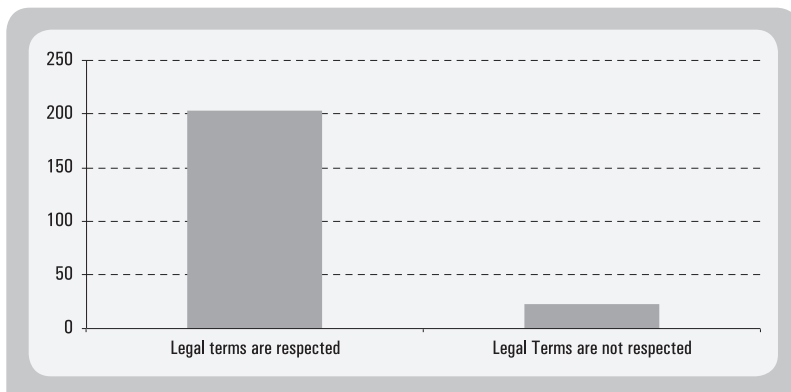


II. 3 Respect of Procedural terms

Article 16 of Law no. 9669 of 18.12.2006 *“On measures against violence in family relations”* as amended states *“the court establishes a hearing with regard to a protection order within 15 days from the filing of the petition”*.

According to this disposition, the term for examination of protection orders is respected in 90% of cases, averagely the judicial starts 15 days after the filing of petition. However, we have noted repeated cases of violation of procedural deadlines, which may be considered flagrant⁸.

It is also noticed a positive practice regarding review of lawsuits to issue immediate protection orders. Judges in each case begin judicial review within 48 hours of the filing of the petition for the issuance of the Immediate Protection Order, in accordance with Article 18 of the Law *“On Measures against Domestic Violence”*, which states that:



Graph no. 3

⁸ Decision no.5436, dated 30.06.2015, legal process lasted for 6 months, and 13 postponement sessions occurred, out of this 8 upon the request of defendant.

The court reaches a decision with regard to emergency protection orders within 48 hours from the presentation of petition.

Whilst in cases involving minors, the court decides within 24 hours from receipt of the petition. This legal obligation is fulfilled by the court, almost in every case.

II.4 Postponement of judicial sessions

Postponements of court hearings for the issuance of protection orders are noticed in 10% of monitored cases. Grounds for postponement of these sessions are different; and include lack of announcement of the parties, the demands of lawyers, but in many cases, reasons of delays is the lack of presence of judges (in some cases for long periods of time), and official holidays. Consequently, the final decision is taken in an unjustified period of time. Such period cannot be considered “*within a reasonable time*” because of specifics of such cases. As a result, it is violated constitutional right to a fair hearing, where the main component of this right is judgment within a reasonable time⁹.

If we refer to examination of lawsuits requesting immediate protection orders, judges should start judicial examination within 48 hours as foreseen in article 18 of the Law “*On Measures against Domestic Violence*”, changed, which states that “*the court reaches a decision with regard to emergency protection orders within 48 hours from the presentation of petition*”.

In this context we have noted postponement of judicial sessions because of lack of announcement of plaintiff, and lack of

⁹ Decision no.5875 dated on 13.07.2015. court postponed 12times the legal case and finally gave a decision after 7 months.



identification cards. Such reasons hinder the examination of cases within foreseen legal terms and put the victim in a potential risk of life.

Often, postponement relates to withdraw of victims from lawsuit pertaining immediate protection order and lack of presence in successive judicial session. Reasons are linked with fear of victim from perpetrators, menace, doubts to forgive the perpetrator, uncertainty or doubt in the justice system, etc.. Postponement of hearings for the issuance of immediate protection order cannot be justified by the malfunction of the postal system; notification procedures can be performed and not necessarily the defendant to be present.

In cases of postponement, victims of violence are placed at unquestionable potential risk. In any case, if the defendant does not agree with the protection order, he/she has the opportunity to appeal within five (5) days.

II.5 Confirmation of Immediate protection order

Issuance of immediate protection order is done immediately, i.e., within 48 hours from the submission of lawsuit. This order is issued if the court finds that the threat from perpetrator is direct and endangers the health, safety or well-being of victim. Judgment at this stage does not involve reviewing all documentary evidence or witnesses, which cannot be displaced in such shortage of time. For this reason, court collects the evidence from both parties in the confirmation of protection order.

We have identified that court (judge) often ask the victim *“did the perpetrator exercised violence for duration of protection order (20 days)”* and if his/her answer is no, then automatically court

overturns the case¹⁰. Interpretation of the law in this manner is not in accordance with “spirit” of legislation against domestic violence, because aim of this stage of trial is exactly the reviewing of evidence which could not be administered in the process of examination of emergency protection order.

II. 6 Court reasoning

If we refer to the reasoning of decisions, court has used as legal basis the Istanbul Convention, ratified by Law no. 104/2012 dated 08.11.2012 “*The Council of Europe Convention on the Prevention and Combating Violence against Women and Domestic Violence*” in only 13 decisions. From monitoring of decisions of court, is concluded that we have well-argued in 75% of the cases, whereas other remaining we have noticed various problems, such as lack of data of parties¹¹, material mistakes¹², confusion¹³, unsuitable protection measures¹⁴, mistakes in legitimating of parties¹⁵, non-effective decisions¹⁶, attempts of court to re-conciliate¹⁷. An issue to mention is that court in two cases has provisioned inclusion of perpetrators in rehabilitation

¹⁰ Decision no. 9 dated on 07.01.2015. Court reasoning is not correct; because the fact that perpetrator did not exercise violence is not a condition to overturn the lawsuit. Contrary, this fact demonstrated the affectivity of immediate protection order, and the victim needs its confirmation to prevent future potential violence.

¹¹ Decision no 5125 dated on 19.06.2015. Data are missing in this decision, data about family relations are mission, causes of violence, etc.

¹² Decision no. 3405 dated on 24.04.2015.

¹³ Decision no. 1092 dated on 17.02.2015.

¹⁴ Decision no. 2297 dated on 23.03.2015, protection measures are not suitable. At the time, three children are equipped with protection order; also meetings with overnight stays to violent parent are provisioned. Father had a long history of abuse toward children , and was sentenced for penal acts toward minors.

¹⁵ Decision no. 2736 dated on 03.04.2015, legitimating of parties is contrary to DV Law, because in laws that do not live together for three months are not subject of DV Law.

¹⁶ Decision no. 3096 dated on 16.04.2015. it is issued a protection order against a mentally disabled person.

¹⁷ Decision no. 9680 dated on 09.12.2015.



programs against alcohol. But, monitoring of decisions reveal that 18% of the perpetrators are regular drug/alcohol users.¹⁸ Fact that a minimal number of decisions of the Court containing the rehabilitation measure against alcohol, contradicts the spirit of the legislation and policies against domestic violence, which pay attention not only to the rehabilitation of the victim but also the perpetrator.

Another measure that can be applied for abuser's rehabilitation is counseling measures carried out individually / in group. In any case, the Court did not provisioned this measure (providing of individual counseling/or group one). Such treatment of perpetrators is necessary and should be applied by the Court, since violence is seen from the perspective of the victim and not the perpetrator, who is basically the genesis of the phenomenon and needs specialized treatment. Currently this service is not offered by any public institution, but only by a nonprofit organization. Monitored decisions do not reflect granting of such measure against the abuser/perpetrator.

Another issue to pay attention is request of court for administration of common ownership¹⁹ documentation (residence) when such protection measured is requested:

c) Removing immediately the defendant (perpetrator) from the residence for a Certain period of time, determined in the court order and restricting their reentrance

Without court authorization;

g) ordering the defendant (perpetrator) to allow the victim to possess the commonly used residence or part thereof;

¹⁸ Decision no 797 dated on 09.02.2015; Decision no 7529 dated on 08.10.2015.

¹⁹ Decision no 1929 dated on 12.03 2015. Court, after administration of written evidence, had overturned petition of victim to return to residence, arguing that it is owned by her.

Such requests not only procrastinate legal process, but also are contrary to DV Law, because the law does not unintentionally use the term „owned“ but uses the term „commonly used“.

These restrictions over the right to property under the law will be carried out “*regardless of the rights of ownership or possession of the offender*”, which means that if we put in the balance ownership of the offender with the victim’s health or life safety, balance lean to victim protection regardless there is a common household owned or not.

Moreover, if we consider the fact that the effects of protection orders do not violate permanently the rights of ownership (or guardianship), but are temporarily.

In this context, the special relationships that regulates Law No. 9669, dated 18.12.2006 “*On measures against violence in family relations*”, in specific cases and situations stipulated by this law, based on Constitution and international agreements will prevail in relation to other relationships protected and guaranteed by the legislation of the Republic of Albania, according to the principle “*lex specialis derogat lex generalis*”, including joint ownership relationship recognized by the Civil Code and the Constitution.

According to the law in question, the limitations of these rights in relation to the rights guaranteed by this law are temporarily in terms of time, quality and / or quantity and serve to guarantee the avoidance of serious consequences against life, health, dignity and personality of victims of domestic violence. Consequently, this kind of discrimination is a “*positive discrimination*” recognized and guaranteed by Article 17 of Albanian Constitution.

Another problem is related to the need for joining of lawsuits according to article 55 of Civil Procedure Code (the court which judges



the main lawsuit has the authority to consider also the secondary requests, the counter-lawsuit or the main intervention). In this case, the court decides to join them in a single case.

One judge of Court of Tirana has issued two different protection orders for the same case, at the same date, where parties are at the same time victims and perpetrators. In such cases are needed to join them in a single case, aiming at avoiding absurd²⁰ decisions.

Problematic are found below:

Table no. 1

Court reasoning	Number	In %
Incomplete decision /well reasoned	171	75 %
Missing data /confuse	30	13%
Material mistakes	4	2%
Inappropriate protection measures	4	2%
Issues are not linked	4	2%
Administration of property docs	3	1.5%
Party legitimacy (not legal)	5	2 %
Procedural Violation	2	1%
Non –effective decision	3	1.5%
Total	226	100%
(184 accepted + 42 dismissed)		

²⁰ Decision no 3900 dated on 12.05.2015 v.s decision no. 3901 dated on 12.05.2015.

II.7 Lack of evidence

In legal cases involving protection orders, the court has the discretion to decide for the issuance of protection order based on its conviction, established by description of circumstances and facts. The aim in this case is related with the fact that domestic violence in most of the cases happens without presence of other persons, behind walls of the house, and existence of written evidence or witnesses is almost impossible especially when it comes to psychological violence. The court, recognizing on the one hand the difficulties that bears proof of the claims of such nature, as conflicts that happen in family, in most of cases without the presence of third persons, and the possibility of abuse with legal instrument of the protection order on the other hand, in cases where there is a lack of evidence, should support its decision on the application of the principle of proportionality, and more specifically the relationship between what is required by the plaintiff, with the rights that are deprived from defendant in the case of acceptance of research. But practice of Tirana districts court, for issuance of protection orders, requests written evidence, witnesses, and their absence lead to the dismissal of the case.

If we refer to Article 15 of the Law *“Evidence during the hearing”*, court may issue protection order based on description of circumstances and facts regarding occurrence of domestic violence and takes a decision regarding the petition presented by the party (article 15.3 of the DV Law).

Monitoring reveals that Tirana district court has consolidated the practice based on written evidence/witnesses in 71% of cases, and only in 29% of cases, court has reasoned based on the judge’s cogency.

If we refer to written evidence, we may mention special medical report issued by health centers, according to article 7 of the



Law. Special medical report issued by Health Centers is a written evidence bearing unquestionable value in the process of proving to the court and failure of health institutions to equip victims of DV with such report brings not only a violation of the rights of the victim's to the family violence for health care but also a violation of the right to a fair hearing, as this lack in many cases resulting in postponement of hearings, delays of up to termination / dismissal of the case for lack of evidence.

Monitoring of Tirana district court for issuance of protection orders in 2014²¹, reveals that “*medical report*” is not presented as written evidence in any single case; whereas in 2015 there is one report²² issued by Kombinat Health Centre thanks to functioning of Referral Mechanism reactivated by HRDC in Kombinati area.

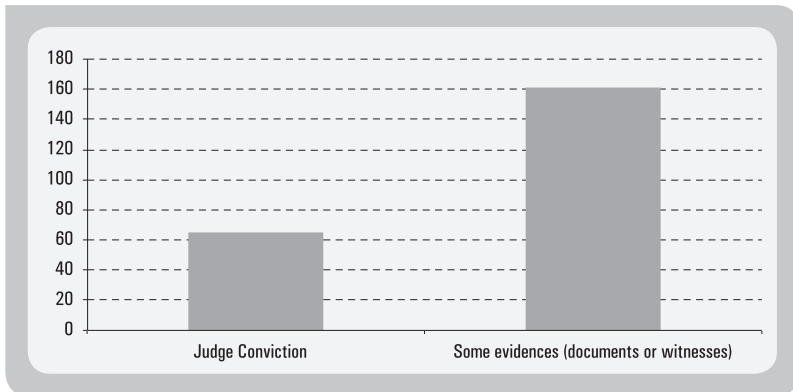
DV Law entered into force since eight years, and still health institutions did not undertake concrete steps to implement it, as such there is an urgent need by Ministry of Health to take necessary measures and take upon themselves legal responsibilities that victims of DV can access support services by health institutions as provided in the Law. Court has supported its decision on these types of written documents:

- Police Reports
- Process –verbal of incident issued by Police;
- Statements of parties;
- Family certificates;
- Previous court decisions (with object issuance of Po/IPO);
- Penal decisions;
- Attestations issued by court in cases parties are in divorce process;

²¹ Monitoring Report January – December 2014, Human Rights in Democracy Centre.

²² Decision no 7297 dated on 01.10.2015.

- Attestations issued by NGOs, Public Social Institutions (from which victims benefited services)
- Psychological evaluation report, mainly when minors are involved;
- Forensic Evidence Act, issued by the Institute of Forensic Medicine
- *Photographic, video, and other recordings, based on article 278 of Civil Procedure Code*
- *Direct examination of messages by court in presence of parties according to article 286 of Civil Procedure Code (When it is estimated necessary by the court for a person or a thing to be examined directly by it, on its own or on the request of the parties, it decides for their examination to be made in the place with or without experts)*



Graph no. 4

II. 8 Duration of PO

The Court has evaluated with seriousness the dangerousness that victim face, and has anticipated reasonable duration of protection order based on specifics of each case. The following table provides information on the duration of protection orders during the monitored



period for 184 legal cases (for which Tirana Judicial District Court has decided to accept the request or partially accept it). It is observed that in 59% of cases, the court has issued a protection order with a maximum term (1 year) and only in 1.5% of cases, court has decided minimum 1 month term.

Table no. 2

Duration of PO	Number	In %
1 month	3	1.5%
2 months	2	1%
3 months	14	7.5%
4 months	11	6%
5 months	5	3%
6 months	32	17.5%
7 months	1	0.5%
8 months	1	0.5%
9 months	3	1.5%
10 months	4	2%
12 months	108	59%
Total	184	100%

II. 9 Court decisions according to Police Stations

In about 98% of cases of domestic violence victims show up at the Police Stations to denounce/report the violence. Police Stations begin the procedure by filling out the petition for issuance of a PO / IPO. Police belongs to the category of entities entitled

to seek the Immediate Protection Order / Protection Order on its own initiative²³, when it concludes that family members are affected by violence. So when the police officer becomes aware of cases of domestic violence and estimates intervention to prevent serious events in the future, Police Officer (as a subject) may address to the court the lawsuit for issuing IPO /PO for victims of domestic violence. Such cases can be when the victim is too afraid to address DV to police or court or in cases when he/she did not decide to report violence, but her need is great, and urgent.

Police may also submit to the court a petition for protection of a minor. Since minors are not capable to act, the police as an institution serving citizens and being very close to the community can observe cases of abuse of minors (physical, psychological, forced to work / beg etc.) from parents or members other family. In these cases, the police may apply to the Court with a lawsuit, being in role of “plaintiff”. When the petition for the issuance of IPO / IPO is presented by the police, victim dropping from the legal process does not imply termination of case.

Victims of domestic violence in many cases feel intimidated, abandoned, threatened by the perpetrator and for these reasons they may withdraw from the process; but case will not be dismissed by the court because the plaintiff is the police and consequently the victims will be provided with a PO/IPO.

For the monitored period, the Police did not request in any case a protection order for a minor, or adult. If the Police would have used this prerogative recognized by Law, we would have a reduced number

²³ Article 13 of Law no 9669, dated on 18.12.2006 “For measures against violence in family relationship” changed.



of dismissed cases, for example, the advocates of Human Rights in Democracy Centre have identified the case of E.Sh (minor), violated by her mother (his father died). Police Station refused to fill out an Immediate Protection Order, consequently the case was dismissed by court²⁴. If such case would have been initiated by Police Station, despite the will of minor, court would have taken a final decision.

It results that Police Station no 6 has 30% of successful decisions (accepted/partly accepted). This statistic is related to the establishing of Referral Mechanism for cases of domestic Violence in Municipal Unit no 6 and multidisciplinary addressing of cases by members of mechanism as well as training of Inspector of Police Station by Human Rights in Democracy Centre.

Table no. 3

	Number	In %
Police Station nr.1	24	13%
Police Station nr. 2	23	12.5%
Police Station nr. 3	21	11.5%
Police Station nr. 4	22	12%
Police Station n. 5	34	18%
Police Station nr.6	54	30%
Other	4	2%
Not determined	2	1%
Total	184	100%

²⁴ Decision no 1370 dated on 24.02.2015.

Improving of work of Police Inspectors is clearly reflected in records of successful cases at the court when victims of DV are equipped with protection orders.

Court decisions accepted/partly accepted (along with requests for continuation of effects of protection orders) according to Police Stations of Tirana

II. 10 Protection of victim by Advocate

Law “On measures against violence in family relations”, changed, has foreseen free legal aid for victims of DV. This aid should be realized in application of Law No. 10039 dated 22.12.2008 “*On legal aid*”, which although has entered into force in April 2009, still does not apply in these cases.

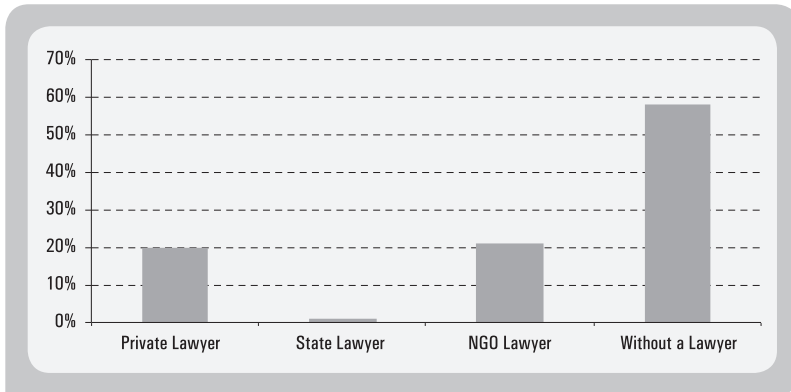
Still, we do not have a list of advocates that provide legal aid for victims of DV. Consequently victims of DV are not represented by the advocate in legal process. Only in 42% of cases, victims of DV are represented by Court. NGOs cover 21% of the represented cases, and other part 20% is covered by private advocates, and only 1% of cases are covered by state lawyers (for minors). Only for minors court has appointed state lawyers (in penal cases). Absence of free legal aid is a hindrance for effective protection of victims of DV. For 58% of cases, such assistance is absent.

The presence of defense lawyer would also affect reducing of dismissed cases and taking of effective measures, as well as respect of terms of trials.

It turns out that non-profit organizations that provide free legal services to victims of domestic violence play an important role, since 21% of accepted /partly accepted are represented by them.



Human Rights in Democracy Center during the monitored period has represented to court 77 victims of domestic violence and prepared 84 legal acts used in legal sessions.



Graph no. 5

Legal representation

II. 11 Other legal Processes involving parties

In 17 % of cases (in addition to protection order process) parties are involved in other legal processes. Mostly parties are involved in process of Divorce

Table no. 4

Other processes	Number
Divorce	23
Property Issues	8
Recognition of parentage	1
Total	32

II. 12 Execution of protection orders

Court decision ruling an immediate protection order or protection order is an executive title and when announced it should be immediately executed.

For this reason, Court should issue an execution order (article 511 of Criminal Procedure Code) at the same time that issues a protection order to facilitate the application and accelerate the process.

Through Law no. 122/2013 dated on 18.04.2013 "For some changes in Law no. 8116, dated on 29.03.1996, Code of Civil Procedure, changed²⁵, court issue execution order at the time it issues the decision (final decision). But problematic is related to execution of protection order in cases the decision is appealed as well as when the trial is conducted in absence of defendant party. We have observed monthly procrastinations of execution of court decision involving a protection order. The reason is conduction of trial in absence of defendant party (term of complaint starts from the day of communication of decision and duration is 15 days). This procedure is in accordance with Code of Civil Procedure. If we consider the specifics of the Law, any delay in execution of protection order is an added risk for security of victim, and such issue is substantial and should prevail above any procedural aspect.

DV Law foresees collision of two articles that deal with issue of execution of decision. Respectively article 21 paragraph 3 of Law sanctions the appeal does not affect the implementation of the

²⁵ Article 310/1 "The court decision which requires the issuing of an execution order, according to the fourth part of this Code, is always accompanied with a copy of the execution order, compiled and signed by the judge or the presiding judge who gave the ruling. The copy of the execution order is stored in the court secretariat and notified to the parties according to the rules envisioned in Article 316, only after the decision becomes final and is confirmed by the chancellor.



protection order or emergency protection order”. Interpretation of this disposition and spirit of Law implies that court decision involving a Po/IPO decision is an executive title since it is announced and should be executed immediately. But article 23, paragraph 2 of the DV Law sanctions that “The judicial decision containing the protection order is an executive title and should therefore be carried out immediately by bailiffs according to the Civil Procedure Code, by police departments, local government authorities (municipality, commune) or the perpetrator voluntarily. The court shall issue an execution order at the same time that it issues a protection order. According to Code of Civil Procedure Article 443 - Timescale for appeal - (Added paragraph IV, amended paragraph II by law no. 8812, 17.5.2001, Articles 72, 126)

“Appeals against final decisions of the First Instance Court must be filed with the Court of Appeal within 15 days”. Application of such disposition brings delays in execution of decision. So, there is an urgent need for a legal amending for suprimation of this disposition.

Bailiff Office of Tirana asks from victims of DV payment of taxes²⁶, whilst by law the victims of DV are excluded from the financial obligations, since 2010. Bailiff Office as well has problems in application of DV Law.

²⁶ Citizen M.L has paid for execution of decision no .4521 dated on 01.06.2015.



KREU III

Social Profile of victim and perpetrator

From 667 lawsuits filed in Court, in 582 cases the plaintiffs are women and only 84 claimants are men. In only one case, plaintiff is an institution specifically “The Orphanage Zyber Hallulli”. So, in 87% of cases the plaintiff is a woman and only in 13% of cases, the claimant is a man²⁷. These data testify the fact that domestic violence is gender-based violence.

III.1 Family relation among victim and perpetrator

If we refer to relations victim - perpetrator, as subject of DV Law, we may say that relation spouse/ex spouse prevails in 56% of cases, and in 9 % of cases, relationship is cohabitants-ex cohabitants. In 10% of cases, sister in law/brother in law are perpetrators (the one who exercise violence in family). Law has determined the

Law has set as criteria “*living together during the last 3 months in the same residence*” to be subject of Law, this definition did not hamper the court to issue protection order for these subjects, in some cases, contrary to the law. These relations are very conflicting and as such this time limitation should be omitted though a legal amending.

²⁷ According to yearly report of court for 2014, it results that in 87 % of cases, plaintiff is a woman, and rest is man (13 %).

Table no. 5

	Number	%
Husband	81	44%
Ex-husband	22	12%
Co-habitant	11	6%
Ex – cohabitant	6	3%
Brother in law /sister in law	18	10%
Brother /sister	12	7%
Son/daughter	15	8%
Stepson	1	0.5
Ex- father in law	6	3%

III.1 Family relation among victim and perpetrator

If we refer to relations victim - perpetrator, as subject of DV Law, we may say that relation spouse/ex spouse prevails in 56% of cases, and in 9 % of relationship is cohabitant – ex-cohabitant. In 10% of the cases, sister in law/brother in law are perpetrators (the one who exercise violence in family).

Law has set as criteria “*living together during the last 3 months in the same residence*” to be included as subject of Law, but this definition²⁸ did not hamper the court to issue protection order for

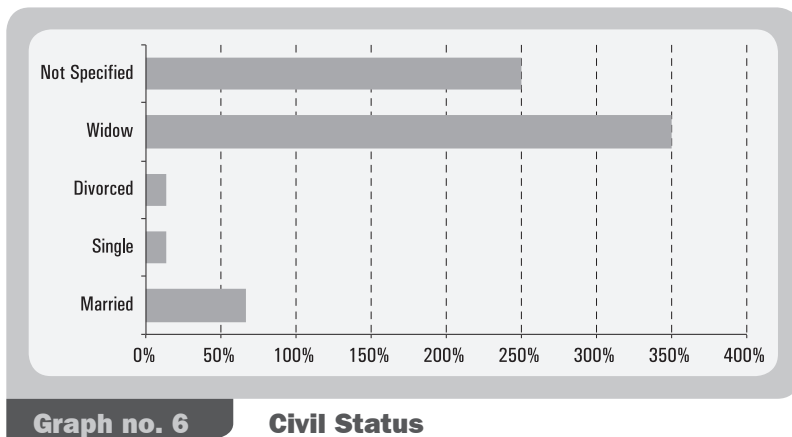
²⁸ Decision no 5126 dated on 1.06.2015. court did not take into consideration the term foreseen in DV Law.



these subjects, in some cases, contrary to the law. Considering that these relations are very conflicting, time limitation should be omitted though a legal amending.

III.2 Civil status of victim of domestic violence

If we refer to civil status of a victim of violence, we may say that in 67% of cases of domestic violence, victim is married and in 14% of cases is divorced. Monitoring data show that violence is present in the highest proportion between spouses / former spouses concluding the fact that the relationship between victim and perpetrator is mainly the relation between spouses / former spouses.



III. 3 Types of violence

Decisions provide data on forms of violence. Exercised violence is different, and often combined. In 55% of cases we have simultaneous exercise of physical and psychological violence.

Whilst, there is a growing trend of issuing of protection orders involving psychological violence²⁹ (27.5%).

The Court therefore does not necessarily require the existence of physical violence to issue a protection order being PO/IPO. Sexual violence is hardly reported (only 3 cases³⁰). Economic violence occurs mainly in combination with other forms of violence and is observed in 14% of cases³¹.

Data about the proliferation of various forms of violence are presented in the following table (accepted/partly accepted):

Table no. 6

Types of violence	Number	In %
Physical	2	1%
Psychological	50	27.5%
Economic	1	0.5%
Physical/ Psychological	101	55%
Physical/ Psychological/Economic	13	7%
Psychological/Economic	12	6.5%
Physical/ Psychological/Economic/sexual	3	1.5%
Not determined	2	1%
Total	184	100%

²⁹ Decision no. 6818 dated on 18.09.2015.

³⁰ Decision no. 9981 dated on 18.12.2015.

³¹ Decision no. 9981 dated on 18.12.2015.

III. 4 Causes of Domestic violence

Main reasons/causes of domestic violence are violent character, jealousy, property conflicts, conflicts during or after divorce, betrayal, unemployment, economic situation, emigration, family conflicts, mentality, gambling, conflicts for child custody, forced cohabitation, etc.

In 18% of cases, perpetrators are regular users of alcohol/drugs, in 1.5 % cases, they engage in gambling activities, and 4 % of them they are mentally ill. Regarding mentally disabled people, HRDC has concluded a very concerning problematic. Out of monitoring, it comes out that 4% of them (perpetrators) are mentally ill persons.

In the case of abusers with mental disorders, the practice followed by the police (as the subject that has the right to seek a protection order), is the completion of the petition³² for the issuance of an order of protection and its appearance before the court. This practice is unified and followed regardless of the person's mental condition. The court issues the protection order by enlisting the appropriate protective measures. These measures not only cannot be applied, but are completely ineffective in the case of a person who suffers from mental health disorders. In many cases they are active subjects of serious criminal offenses within the family.

Law "On Measures against Domestic Violence" as a special law which regulates the entire spectrum of this phenomenon, does not contain any provision to handle³³ specifically offenders with mental health disorders. Such law does not foresee any special provision for people with mental health disorders; in cases they exercise violence to

³² Article 13 of Law No. 9669 dated on 18.12.2006 "For measures against violence in family relationship" changed.

³³ Article 10 of Law No.9669 dated on 18.12.2006 " For measures against violence in family relationship" changed.

other family members. As such court decides protective measures which remain only on paper.

Court decision is indented to protect the victim, but in such cases, victim faces a potential risk for repetition of acts of violence, as the perpetrator does not understand the consequences of a judicial decision.

Table no. 7

Causes	Number	In %
Alcohol/Drugs	32	18%
Jealousy	16	9%
Violent character	25	14%
Forced co-habitation	2	1%
Unemployment	3	1.5%
Economical situation	3	1.5%
Property disputes	33	18 %
Conflicts during/after divorce	21	12 %
Betrayal	10	5.5%
Mentality	4	2%
Child custody disputes	5	2.5%
Gambling	3	1.5%
Health disorders	8	4%
Emigration	5	2.5%
Family disputes	6	3%
No data	8	4%
Total	184	100%



The fact that protection orders are not effective in cases involving mental disorders persons is shown I huge number of cases of recurrence or aggravation of these acts during the period of validity of the order of protection.

Considering that in cases when mental disorders persons are perpetrators, issuance of an order of protection is not effective, HRDC is of the opinion that DV Law should be amended, adding a special disposition regarding the treatment of violators having mental disorders.

III.5 Age of victim and perpetrator

Age of plaintiff party mostly facing DV is 41 – 50 years old; in 29% of cases; in 27 % of cases, age is 31 -40 and in 22% of the cases the age of plaintiff belongs to age group 18 -30.

Table demonstrates that with increasing of age, the level of violence decreases.

12 % of plaintiff belongs to 51-60 years old, 4 % of plaintiffs belong to 61-70 years old 3.5 % of plaintiffs belong to 71-80 years old, and 0.5 % belongs to 81-90 age groups.

Although in low percentages (recent one listed), these data show presence of violence against the elderly in our society.

If we refer to perpetrators, age group 41-50 year old occupies the first place (38 % of perpetrators), 29 % of perpetrators belong to 31-40 years old, 14 % belong to 51-60 years old. 0.5 % of perpetrators are above 70 years old.

With increasing of the age, the level of violence decreases.

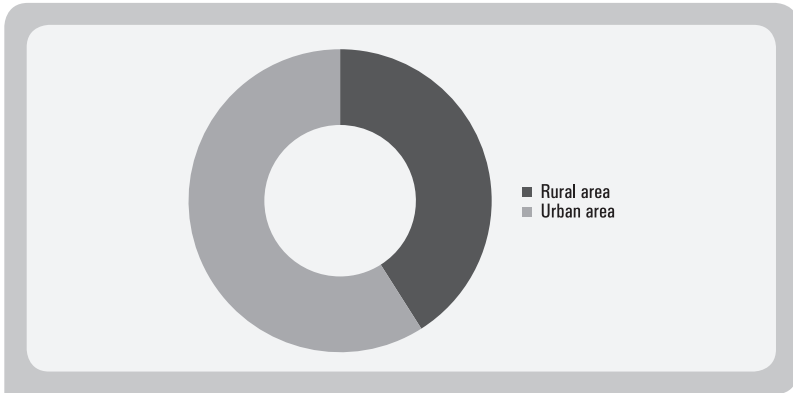
Violent minors account 1.5% of the total.

Table no. 8

Age group	Plaintiff	In %	Respondent	In %
Below 18 years old	3	1.5%	3	1.5 %
18-30 years old	40	22%	17	9 %
31-40 years old	50	27%	57	31 %
41-50 years old	54	29%	69	38%
51-60 years old	22	12%	27	14 %
61-70 years old	7	4%	5	3%
71-80 years old	6	3.5%	1	0.5
81-90 years old	1	0.5%	0	0
No data	1	0.5%	5	3%
Total	184	100%	184	100%

III. 6 Residence of Victims of violence

From monitoring results that in 59 % of cases, plaintiff resides in city and in 41 % of cases in outskirts. The fact that the vast majority of cases who have reported domestic violence live in urban areas show their level of awareness on this issue. This fact does not indicate that violence in rural areas has lower levels but it is not reported for various reasons such as lack of information on legislation, protections measures, mentality, and geographical remoteness from support services etc.



Graph no. 7 Place of living

III.7 Education of Victim and perpetrator

In 37% of cases, plaintiff has completed elementary education, in 27% of cases the plaintiff has completed secondary education and in 20% of the cases the plaintiff's education is university. Only 4% of the cases, the victim have no education or completed elementary education. Thus, from the monitored decisions that a high percentage of cases, 12% for the plaintiff / in and 32% for the respondent / RA, the court decision does not provide any information on education litigants. So, we conclude that in general, battered / plaintiff is an 8-year-old woman with education.

The percentage of 27% of claimants / plaintiffs with secondary education and 20% of claimants / plaintiffs with higher education shows that domestic violence is present, regardless education level.

In 4% of cases, victim of DV has completed elementary education, or has no education. This fact demonstrates that an un-properly educated woman has less employment opportunities, and is economically dependent o spouse or other members of family. This

Table no. 9

Degree of education	Plaintiff	In %	Defendant	In %
No education	1	0.5%	2	1%
Elementary	7	3.5%	4	2%
8th grade	68	37%	52	28%
College	49	27%	57	31%
High school	36	20%	11	6%
Not determined	23	12%	58	32%
Total	184	100%	184	100%

dependence makes her vulnerable and silent, also. In 31 % of cases, defendant has completed secondary education (college) and in 28 % of cases has 8th grade education. In 6 % of cases, defendant is graduated. Only 3 % of perpetrators have completed elementary education or are not educated at all. Domestic violence happens despite education level.

III. 8 Employment of victims and perpetrators

In 41 % of cases, the victim of DV is employed, and in 36.5 % of cases is unemployed. We have no data about 14 % of cases (if plaintiff is employed). The fact that employees have the highest percentage of applications for protection orders may be linked to their independence to use legal means. This group has higher awareness to report violence. As for perpetrators, we can say that 36% of them are unemployed and only 25.5% are employed. About 33% of cases,



there are no data regarding the employment. This fact shows that unemployment is one of the factors that increase the rate of domestic violence, since the majority of abusers are unemployed.

Table no. 10

Employment	Plaintiff	In %	Defendant	In %
Un-employed	67	36.5%	66	36%
Employed	75	41%	47	25.5%
Pupil	2	1%	1	0.5%
Retired	14	7.5%	9	5%
No data	26	14%	61	33%
Total	184	100%	184	100%

III.9 Minors and domestic violence

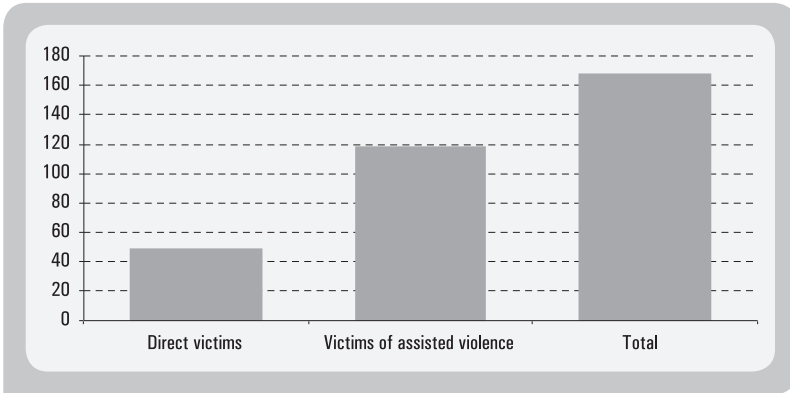
If we refer to number of children of victims of DV, we may say that 43% of them have two children. 22 % of them have one child, in 14 % of cases have three children, in 7 % of cases, victim has 4 children, in 2 % of cases, victim has 5 children, and in 1.5 % of cases, victim has 6 children. 8 % of cases have no children. In 2.5 % of cases is not determined the number of children of victim.

175 minors are victims of domestic violence. Out of this figure, 168 of them are involved directly in episodes of domestic violence as victims of violence or victims of assisted violence. So we have 49 children who have suffered violence and 119 others have been present at such events, occurring in family. 64% of abused children are involved in protection orders along with their family members

Table no. 11

Number of Children	Number	In%
No children	15	8%
1 children	41	22%
2 children	79	43%
3 children	25	14%
4 children	13	7%
5 children	4	2%
6 children	3	1.5%
No data	4	2.5 %
Total	184	100%

who have requested protection orders (92 children involved in the Order of Protection). Actual number of victims of domestic violence is much higher if we take into account the children involved in protection orders. HRDC through court representation tool has observed contradictory decisions on issues of minors. Such decisions do not provide protection for minors, but rather put them in a greater risk of potential violence. Court through decision no.2297 dated on 23.03.2015 issued a protection order (with 6 months validity) for three minors as well as foresaw the right of meetings (including overnight staying) at the violent parent who had just completed the sentence for the offense of “Maltreatment of Minors “provided by article 124 / b of the Criminal Code.



Graph no. 8

Minors

Only 29 children have been assisted by one psychologist (2 of them are perpetrators). Lack of providing psychological assistance in all cases involving minors is not only a violation of procedural nature but also a violation of children's rights. In this context a very concerning problem observed by HRDC, is the issue of payment of psychologist fees for victims of domestic violence in the judicial process with object issuance of the Order of Protection.

HRDC has concluded through court representation, that plaintiff is requested to pay the psychologist fee in cases minors are questioned (in role of witnesses or passive subject of violence) . psychologist refuses to draft the Report if fee is not paid. Consequently the victim of DV can not present this important record to the judge. The access to the court of victim is infringed as well as the constitutional right for fair trial.

Payment of psychologist fees by victim of domestic violence is contrary to article 2, point c of Law no 9669 "*For measures against violence in family relationship*" which provisions "to ensure/guarantee quick, affordable and simple services to the victims of Domestic

violence provided by courts and other law enforcement agencies in Compliance to the law”. Also article 14 point 4 of this Law foresees *“The petitioner is exempt from court taxes/fees. Upon issuance of the protection. Order, court expenses are charged on the party who committed domestic violence”*.

Council of Europe Convention on preventing and combating violence against women and domestic violence ratified by Albania by Law 104/2012, dated 8.11.2012 foresee provision of effective services, inclusive, and coordinated one for victims of DV. Article 20 of this Convention states “Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counseling, financial assistance, housing, education, training and assistance in finding employment.

Parties shall take the necessary legislative or other measures to ensure that victims have access to health care and social services and those services are adequately resourced and professionals are trained to assist victims and refer them to the appropriate services.

In these conditions, when the law explicitly exempts victims of domestic violence from all duties taxes and judicial services, victims of domestic violence should be offered a quick, the inexpensive and simple service in accordance with the legal provisions in force.

Another observation of the monitoring is related to the fact that representatives of the Units for the Protection of Child Rights (NJMF) did not participate in any legal case. These Units are part of the Local Government Units, and have well defined tasks for protection children’s rights.



CHAPTER IV

Domestic violence as a criminal ACT

IV. 1 Domestic violence according to article 130/a of Criminal Code

With amending of Criminal Code (Added by law no.23/2012) *“For some changes in Law 7895, dated on 27.1.1995 “Criminal Code of Albania”, changed, domestic violence is a penal act. Also, it is added article 130/a “Domestic Violence after article 130 “Forcing or impeding to cohabit or divorce.*

This article is separated in three paragraphs respectively battering, beating, and injury has an identical formulation with article 90 *“Other intentional harm*, 84 *“Threat”*, and article 89 *“Non-serious intentional injury”*.

So, three other articles of Criminal Code are merged in article 130/1 *“Domestic Violence”*. The sole change is those active subjects of penal acts in case of article 130/a *“Domestic Violence”*. *Shall be special subjects* (spouse, former spouse, cohabitant or former cohabitant, close relative or close in-law to the perpetrator of the criminal offence.

And not general subjects according to Law 90 *“Other intentional harm”*, 84 *“Threat”*, and article 89 *“Non-serious intentional injury”*.

Another change is that legislator has toughened the punishment for beating (article 130/a) in relation to equivalent article of Penal Code for this act, article 90 *“Other intentional harm*. Article 130/a foresees *“Battering, beating and any other act of violence against a person*

who is a spouse, former spouse, cohabitant or former cohabitant, close relative or close in-law to the perpetrator of the criminal offence, resulting in violation of his or her physical, psychosocial and economic integrity, shall be punished by imprisonment of up to two years.

Prosecutor Office has submitted to Tirana district Court 413 files (422 defendants) for penal act “*Domestic Violence*” divided according to paragraphs, respectively “*battering, beating, and injury*”, as well as committing of these acts repeatedly.

Division of 413 legal issues:

- 210 cases for penal act of beating (article 130/a/1 of Penal Code);
- 23 cases for penal act of threatening (article 130/a/2 of Penal Code);
- 39 cases for penal act of injury (article 130/a/3 of Penal Code);
- 118 legal cases for penal act of repetition of these acts, article 130/a/4 of Penal Code);

(The same offences which are committed repeatedly or in the presence of minors shall be punishable by one to five years of imprisonment).

Table no. 12

Penal Acts	Number of Cases
Article 130 a/1 (beating)	210
Article 130 a/2 (Threat)	23
Article 130 a/3 (injury)	39
Article 130 a/4 (Repetition)	118
Article 321 (violation of PO)	23
Total	413



338 issues are closed, whilst 75 legal issues are in process. Out of 422 defendants for penal act “domestic violence”, 39 of them are women/girls (therefore, 9 % of them).

Sentence applied according to article 130/a/1 are the following:

Table no. 13

Measure of sentence	Number	In %
1 month	5	3 %
2 month	7	4 %
3 month	37	23 %
4 month	4	2.5%
5 month	2	1%
6 month	58	36%
7 month	4	2.5 %
8 month	4	2.5 %
9 month	17	11 %
10 month	2	1 %
11 month	2	1%
12 month	16	10%
13 month	1	0.5 %
15 month	3	2 %
Total	162	100%

Margin of applied sentence for this penal act is from 1 month to 1 year and 3 months. Most often applied sentence for penal act “domestic violence” foreseen in article 130/a/1 of Penal Code is 6 months imprisonment. Therefore, 36 % of sentence for this penal act is 6 months and in 23 % of cases, court has ruled 3 months sentence.

Sentence applied according to article 130/a/2 of Penal Code:

Table no. 14

Sentence	Number	In %
2 month	1	5%
6 month	6	29 %
9 month	3	14%
10 month	3	14%
12 month	4	19%
15 month	1	5%
18 month	2	9%
3 years	1	5%
Total	21	100%

Margin of applied sentence for this penal act is from 2 months to 3 years. Most often applied sentence for penal act foreseen in article 130/a/2 of Penal Code is 6 month imprisonment. 29 % of sentences for this penal act correspond to 6 months, and in 19 % of cases, court rules 1 year imprisonment.



Sentence applied according to article 130/a/3 of Penal Code:

Table no. 15

Sentence	Number	In %
3 months	1	2.5 %
5 months	1	2.5 %
6 months	5	14 %
7 months	1	2.5%
9 months	7	19%
1 year	14	38%
1 year and 6 months	5	14%
2 years	1	2.5%
2 ears and 3 months	1	2.5%
3 years	1	2.5%
Total	37	100%

Margin of applied sentence for this penal act is from 3 months to 3 years. Most often applied sentence for penal act foreseen in article 130/a/3 of Penal Code is one year imprisonment. 38 % of sentence corresponds to one year and for 19 % of cases, court ruled out 9 months imprisonment.

Sentence applied according to article 130/a/4 of Penal Code:

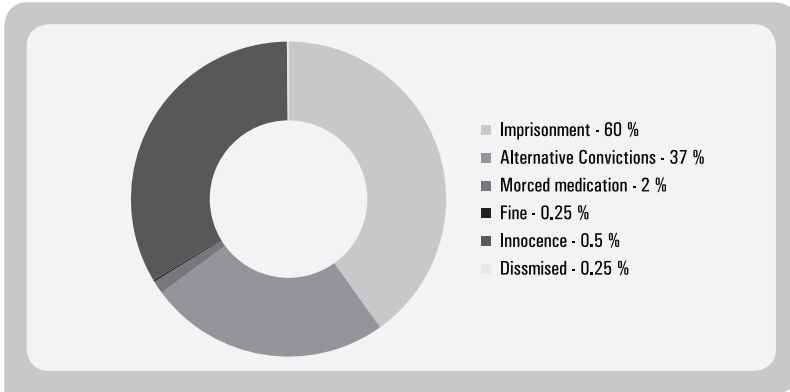
Table no. 16

Sentence	Number	In %
6 months	1	1%
10 months	2	2%
1 year	40	41.5%
1 year e 3 months	12	12%
1 year e 6 months	22	22.5%
1 year e 9 months	1	1%
2 years	12	12%
3 years	6	6%
4 years	1	1%
4 years e 6 month	1	1%
Total	98	100%

Margin of applied sentence for this penal act is from 6 months to 4 years and 6 months. Most often applied sentence for penal act foreseen in article 130/a/4 of Penal Code is one year imprisonment. 41.5 % of decisions corresponds to 1 year imprisonment, and for approx. 22.5 % of cases, court ruled out 1 year e 6 months imprisonment.



Types of sentence applied are these:



Graph no. 9

Types of convictions

In 60% of cases the Court has decided the application of imprisonment sentences for offenders. A good part of these penalties, 37% of them are suspended by applying alternative penalties such as suspension of execution of sentence of imprisonment and probation (119 issues), according to article 59 of the Criminal Code (*Suspending the execution of a sentence*) Another sentence applied by court is suspension of the imprisonment and compulsion to perform labor work in favor of the public interest (8 issues), according to Article 63 of the Criminal Code.

The fact that a relatively high figure (37% of perpetrators) did not serve in prison but against them are applied alternative sentences conflict with the right of a victim of domestic violence to receive protection from the state by placing him/her in a potential risk for recurrence of acts of violence.

For monitored period, it is to be appraised the increasing of cases of domestic violence, penally prosecuted. For period January -

December 2014, the number of prosecuted cases is 314, so there is an increase of about 100 legal cases for 2015. Also the application of imprisonment sentence for 60% of legal cases should be appraised, as it is a step forward in the fight against domestic violence. Even the measure of punishments applied to defendants in domestic violence has increased compared to last year. So there is a tendency for the punishment of perpetrators of these criminal acts that pose high social risk, while the offense is committed between family members.

IV. 2 Breaches of protection orders

There are many cases when although victims of domestic violence are equipped with protection order (by court), they are violated during the period of its validity. If the perpetrator has violated an order of protection, according to Article 320/2 of the Criminal Code, it should be initiated prosecution against him for “obstruction in the execution of court decisions”.

Article 23 of Law No. 9669 dated 18.12.2006 *“On measures against violence in family relations” changed*, provides that authorities shall proceed with forced implementation/execution pursuant to Civil Procedure Code provisions. In these

Cases sanctions established by article 321/2 of the Criminal Code.

Court has used as legal basis article 321/2 of the Criminal Code *“Acts opposing court’s decision” and not article 320 of the Penal Code “Preventing the enforcement of court decisions”*. With recent changes of Penal Code of 2012 through law no. 23/2012, violation of protection orders should be prosecuted according to article 321/2, second paragraph of Penal Code, which stipulates *“Committing acts that oppose a court’s decision about obligations arising from additional*

punishment ordered by it, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment.

In this context, violation of protection orders should be proceeded according to article 321/2 of the Penal Code in connection with article 130/a, fourth paragraph of Penal Code which states *“the same offences which are committed repeatedly or in the presence of children, shall be punishable by one to five years of imprisonment”*.

Although the Penal Code has been amended since three years, the court decisions involving issuance of protection order, or immediate protection order refer that “violation of court decision is penal acts according to article 320 of Penal Code “Preventing the enforcement of court decisions”.

Table no. 17

Sentence degree	Number	In%
1 months	4	20%
2 months	1	5%
3 months	6	30%
4 months	1	5%
6 months	5	25%
7 months	1	5%
1 year	1	5%
1 year and 6 months	1	5%
Total	20	100%

23 cases are submitted to court by Prosecutors Office involving breaching of protection order (immediate and usual one), for one year. Violators of protection orders are penalty prosecuted as foreseen in article 321/2 "*Committing acts that oppose a court's decision*", 20 cases have terminated, and 3 there are still on trial.

Margin of applied sentence for this penal act is from 1 month to 1 year and 6 months. Most often applied sentence for penal act foreseen in article 1321/1 of Penal Code is "3 months imprisonment". 30 % of decisions correspond to 3 months imprisonment, and for approx. 25 % of cases, court ruled out month's imprisonment



CHAPTER V

Conclusions and recommendations

Taking into account some of the conclusions reached during the monitoring of the decisions of the Tirana District Court, there is a need to make some recommendations aimed at fulfilling the legal responsibilities of each of the institutions charged with law, as well as increasing effectiveness of protection orders.

First, regarding legal changes

Law no. 9669, dated 18.12.2006, "*On measures against violence in family relations*", changed is an administrative civil law, which take under protection the family members.

Law can be considered complete especially in its procedural aspect, but HRDC thinks there is room for improvement of some of its dispositions, and inclusion of new elements.

This study reveals that it lacks any disposition for treatment of mental disorders persons, when they are perpetrators. HRDC has revealed that in 2015, 4 % of the violators have mental disorders.

Another problematic found, for which we think there is a need for legislative improvement is the circle of subjects that enjoy protection by law. In 10% of the cases, sister in law/brother in law are perpetrators (the one who exercise violence in family).

Law has set as criteria *“living together during the last 3 months in the same residence”* to be included as subject of Law, but this definition did not hamper the court to issue protection order for these subjects, in some cases, contrary to the law. *Considering that these relations are very conflicting, time limitation should be omitted though a legal amending.*

DV Law foresees collision of two articles that deal with issue of execution of decision, respectively Article 21, Paragraph 3, and Article 23, Paragraph 2, which conflicts each other, which bring delays in execution of decisions. In this situation, it is needed a legal amendment for suppressing the second disposition (article 23, paragraph 2).

Legal changes are recommended for issue of treatment of perpetrators with mental disorders, and extension of subjects that law protects as well as accuracy of dispositions for execution of judicial decisions.

Second, regarding role of judicial power

It is positive the fact that there is an increase of 3% of cases with object issuance of protection orders (accepted/partially accepted PO/ IPO) from 2012 to 2015. But there is still much work to be done by all institutions responsible for increasing access victims of domestic violence in court and other supporting services, as *71% of cases deposited at the court are dismissed / ceased / returned acts, which is quite a high figure.*

It is evident that the legal trial for issuance of PO/ IPO in many cases is treated as other civil processes, which involve settlement



effort, and in some cases is also noted the persistence of the court for reconciliation. Reconciliation for these cases is inappropriate. For this reason we recommend avoiding of such procedure for legal cases with object issuance of IPO/PO. Situations of reconciliation have temporary result in most of the monitored cases, because the cycles of violence recur.

It is to be appraised the tendency of the court to award all protective measures required by the plaintiff (victim of domestic violence), in 96% of cases. Carefully review and provision of combined number of protective measures increases the effectiveness of protection order. The Court has the right to impose protective measures other than those required by victims of domestic violence. Monitoring reveals that 18% of abusers are regular users of alcohol / drugs but only for two cases, the Court has foreseen rehabilitation measures. *Therefore, we recommend to the Court to include in protection measures the rehabilitation of perpetrators.*

The Court has rightly evaluated the risk of DV victims, and has anticipated reasonable duration of protection orders for each case. It is observed that in 59% of cases, the court has issued a protection order with a maximum term (1 year) and only 1.5% of cases have appointed a minimum of 1 month.

In only 9% of dismissed cases, the victims of domestic violence are represented by a lawyer. If we refer to statistics of “accepted cases” which can be considered as successful one, we note that victims of domestic violence are supported by a lawyer in 42% of cases. The fact that the dismissed cases have a much lower percentage of legal representation shows the importance of the presence of a lawyer in such processes. Only for 1% of cases the Court has appointed a state lawyer (for minors). *Still we do not have a list of lawyers who*

would provide free legal assistance to victims of domestic violence. Victims of domestic violence are not represented legally in the judicial process. Therefore we recommend taking of appropriate measures for free representation of victims of domestic violence, free legal representation would have considerable impact in reducing cases of termination of the trial, taking of effective measures, as well as respect of legal terms.

Term for examination of requests for protection orders is respected in 90% of cases. Postponement of judicial sessions is observed in 10 % of monitored cases.

The successive postponements of court hearings result in late final decision after an unjustified period of time, a period that can not be considered „*within a reasonable time*“ because of the specifics that present such issues. Also postponements of court hearings for issuance of IPO result in the withdrawal of the victim, and failure to show up in court the next session. Therefore, we recommend the Court to pay due importance to the special observance of the procedural deadlines. Failure to respect them violates the constitutional right to a fair legal process, jeopardizes the safety of the victim and result in a loss of confidence of public to justice system.

Although comparing to 2014, there is an increase of cases (reasoning) referring to Istanbul Convention ratified by Law no. 104/2012 dated 08.11.2012 “*The Council of Europe Convention on the Prevention and Combating Violence against Women and Domestic Violence*”, such referral corresponds only got 13 decisions.

We recommend the judges to use in any case as legal base the Istanbul Convention, as well as training of judges by Magistrates School, aiming at recognition of this Convention and obligations of state according to Convention, and court reasoning.



From monitoring, we have observed that in 75 of cases, decisions are well argued, and others not. We may mention lack of data of parties, material mistakes, confusion, inappropriate legal measures, mistakes in legitimating of parties, and non effective decisions. *We recommend the court should pay greater attention to reasoning of decision and avoiding of above mentioned problematic.*

From monitoring, we have observed that court has consolidated the practice of judging based on written documentation/witnesses in 71% of cases and only in 29% of cases, the court have ruled out on basis of judge's cogency. We have also noted cases, when Court has decided to turn down the petition on the grounds of lacking written evidence. The law No. 9669 dated on 18.12 2006 „*On measures against domestic violence*“ changed, provisions the right of judge to decide even based solely on the description of the circumstances and facts on which it was committed domestic violence. **Therefore we recommend the Court to use its prerogatives to decide on the basis of cogency, as this right is provided by the law explicitly, since violence mostly occurs behind closed doors without the presence of witnesses, and as such it is quite difficult to prove.**

From monitoring, we have observed the tendency of court to ask submission of property documentation (over joint residence) in cases is asked the removing the defendant (perpetrator) from the residence for a certain period of time, or ordering the defendant (perpetrator) to allow the victim to possess the commonly used residence or part thereof. Such requests procrastinate the legal process, and are contrary to Law, because law intentionally uses the term “in ownership”, and not “in common ownership”. We recommend the court to avoid administration of property documentation (over joint residence) in such legal processes, because such request brings

procrastination of process. And wrong interpretation of Law “*On measures against domestic violence*” changed.

Real number of victimism of DV is much higher if we take into account the children included in protection orders, 64% of violated children are included in protection order along with other family members. Only 17% of them are assisted by a psychologist, who in most of the cases sought the payment fee (as plaintiff they have the burden of proof role). Lack of provision of psychological assistance is not only a procedural violation but also violation of children rights. **We recommend taking of all appropriate measures for provision of free psychological assistance. Approval of Psychologist Code would serve better to this cause.**

Regarding the punishment of perpetrators of domestic violence (*Article 130 / a and 321/2 of the Criminal Code*), we have noted the increasing number of cases of domestic violence, penally prosecuted. This increase amount 24% comparing to 2014. Only 9% of the defendants are women / girls. Also the application of imprisonment measure in 60% of cases is a step forward in the fight against domestic violence. Even punishments applied to the defendants in domestic violence have increased compared to last year. So there is a tendency for the punishment of perpetrators of these criminal acts that pose a high social risk. But it is evident that 37% of perpetrators did not serve to prison, as alternative sentencing is applied to them, such as probation, or performing of tasks for public interest. Alternative penalties conflict with the right of a victim of domestic violence to receive protection from the state by placing him/her in a high risk for recurrence of acts of violence. Therefore we recommend the court, application of alternative sentencing in a more moderate way.



Third, role of Police Stations

Police is the key actor, where victims of domestic violence seek protection. In about 98% of cases of domestic violence victims appear at police stations to report the violence. Police respond with drafting of petitions seeking protection orders.

Police belongs to the category of entities entitled to seek the Immediate Protection Order / Protection Order on its own initiative, when it concludes that family members are affected by violence. Police did not submit any petition to the court (public lawsuit) for the monitored period. It is recommended to increase the active role of the police stations as a subject entitled to submit lawsuit for PO at court. If the police would have used this right (recognized by law) probably we would have a smaller number of dismissed cases.

As the Police is the first institution faced by victim of domestic violence, we recommend fulfillment of this legal obligation for referring cases of domestic violence to other actors of Referral Mechanism (domestic violence cases). The police should also conduct referring of victims of domestic violence who have physical injuries at health centers, to be equipped with special medical reports, as well as to other institutions which provide support services, such as **referral of victim to be profit economic assistance, legal assistance, psychological, etc. remains another task of the Police Stations, as they are the first and most important actors of handling a domestic violence cases.**

Fourth role of Local Power Structures

Role of Social Services departments at municipal level is still vague regarding drafting and submission of lawsuits seeking protection orders and its execution.

In any case, representatives of Units for the Protection of Child Rights (NJMF) did not participate in any legal case. These Units are part of the Local Government Units, and have well defined tasks for protection children's rights.

We recommend the Municipal structures should fulfil better obligation deriving from Domestic Violence Law which are related not only with information, support, and referral of DV cases to other support services but also filing of petitions seeking protection orders. Local power structures should fulfil their legal obligations and provide economic aid to victims of DV as provisioned in the Law.

NJMF (Child Protection Unit) should play an active role in process of issuance of protection orders in cases minors are involved.

Fifth, role of Health Centres

As a conclusion, monitoring of the decisions of the Tirana District Court for the issuance of protection orders reveal that only one health centre issued a Special Medical Report

(Health Center No. 6 Kombinat). This report was issued thanks to the functioning of the Referral Mechanism Case of Domestic Violence and Discrimination activated by the Human Rights in Democracy Centre, the Administrative Unit No. 6.

Law "On measures against domestic violence" changed, has entered into force since 2007, but still health institutions (health centers) have not taken steps to implement it. **HRDC recommends appropriate intervention of Ministry of Health so these institutions take their legal responsibilities enabling victims of domestic violence having access to these support services, according to DV law.**



Sixth, Bailiff Offices

As the Bailiff Office in some cases have requested from victims payment of taxes for execution of decisions with object issuance of protection orders, whilst the victims are exempted from taxes since 2010; HRDC recommends the training of Bailiff Officers regarding executing of judicial decisions for victims of DV.



LITERATURE

Legislation

Constitution of Republic of Albania

European Convention of Human Rights;

Law no 9062 dated on 08.05.2003 *"Family Code"*, changed;

Law no 7895 dated on 27.01.1995 *"Criminal Code of Albania"*, changed

Law no 8116, dated on 29.03.1996 *"Civil Procedure Code"* changed;

Law no 9669 dated on 18.12.2006 *"For measures against violence in family relationship, changed;*

Law no 104/2012, dated on 08.11.2012 *The Council of Europe Convention on the Prevention and Combating Violence against Women and Domestic Violence*

Law no 10039 dated on 22.12.2008 *"On Legal Aid"*;

Law no 10347 dated on 04.11.2010 *"For protection of Children Rights"*;

Studies:

Report of Monitoring of decisions of Tirana District court. January-December 2014, Human Rights in Democracy Centre";

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