



Qendra "Të Drejtat e
Njeriut në Demokraci"

Human Rights
in Democracy Center

STUDY

"RESPECT OF THE RIGHTS OF VICTIMS/ SURVIVORS OF DOMESTIC VIOLENCE IN THE JUDICIAL PROCESS"

Findings and recommendations
from the monitoring of judgments
of Tirana District court

Tirana 2017



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Monitoring period: 01.01.2016- 31.12.2017

Tirana 2017

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ABBREVIATIONS LIST

Law no 9669 “For measures against violence in family relationships”
changed – Domestic Violence Law

KPrP Code of Penal Procedure

KPrC Code of Civil Procedure

HRDC Human Rights in Democracy Centre

DV Domestic Violence

PO Protection Order

IPO Immediate Protection Order



CHAPTER I

AIM and methodology of study

This is the third year that Human Rights in Democracy Centre, thanks to support of the Open Society Foundation has monitored justice system through monitoring of court decisions of Tirana District Court (Family and Criminal Section) regarding the respect of the legal procedures for issuance of protection orders as well as respecting of rights of victims/survivors of domestic violence.

This study was prepared in the framework of the project *“Protection of the rights of marginalized groups, with a special focus on women / girls, in the Municipal Unit no. 6 Kombinat”* which was supported [partly] by the Open Society Institute in cooperation with the Open Society Foundation’s Human Rights Initiative and aims at reducing discrimination and domestic violence through strengthening the Referral Mechanism (which is reactivated by QDNJD in 2015) in the Municipal Unit no. 6, Kombinat.

The first study of 2015 identified problems related to implementation of Law No. 9669, dated 18.12.2006 *“On Measures Against Violence in family relationships”* as amended, such as failure of court to respect procedural terms, postponement of court hearings, reasoning of court decisions, violation of the professional ethics of judges, violation of the right to a due legal process, therefore problematic which arise from violations carried out by the judicial system. Other responsible line institutions, such as police commissariats, health centers or

administrative units, had their problematic which were reflected in first Study of 2015.

During the compilation of this current Study were used direct, analytical, comparative and statistical observation methods depending on the chapter handled. Direct observation of the work of the courts is based on direct monitoring of court hearings by the Center's Lawyers during 2016 and 2017. The HRDC lawyers monitored 1928¹ civil decisions for issuing protection orders (immediate protection orders and protection orders) as well as 930 penal decisions (pursuant to Article 130/a of the Criminal Code) through carrying out of a detailed analysis of the main elements. Extracting of data from each decision was done based on the special form prepared in advance by the HRDC, which lists the data on the parties to the trial, their general characteristics and their social, economic and educational status; representation by lawyer, parties' claims during the proceedings and the entirety of the evidence presented, the court's position and judicial reasoning as well as other elements of a technical nature. The collected data served to draft relevant tables and to draw up the graphs necessary for the practical reflection of the findings related to the court's observance of the rights of the victim of domestic violence.

¹ www.gjykatatirana.gov.al.



In the first preparatory phase, monitors collected the judicial decisions regarding issuance of protection orders as well as criminal decisions under articles 130/a and 321/2 of the Criminal Code, whilst second phase involved monitoring of court sessions. The Human Rights in Democracy Centre for the period under the review has represented free of charge 172 cases to the Tirana District Court, with the object of “issuing protection orders (UMM/UM). 76% of these represented cases are partially accepted/admitted by this Court.

The third phase involved elaboration of data and release of Report

The monitoring covers the period 01.01.2016 to 31.12.2017, which provides the opportunity for the recognition of judicial practice and evaluation of the progress of court sessions in all trial stages including the conclusion of the Appeal court, and has a comparative component with the one of 2015 titled “*Role of Tirana District court in protection from violence in family relationships*”.

The monitoring intends to assess whether the judicial system operates in accordance with domestic violence legislation and international standards for a fair trial. Identifying of issues of legal framework and the implementation of legislation against domestic violence is another objective of this study.

Also, this study aims to identify state structures that have problems in implementing domestic violence legislation. The findings and recommendations of this study will be shared with the responsible institutions in order to improve their work in compliance with Law No. 9669, dated 18.12.2006 “*On Measures Against Violence in Family Relations*”, as amended, and penal legislation.

Lastly, special thanks go to the Open Society Institute in cooperation with the Open Society Foundation Human Rights Initiative (FOSI), which made possible the successful implementation of this project and the relevant study.

Let’s hope that this study will be useful to the reader, and I wish them a pleasant reading.

Thank you,

Aferdita Prroni

Director of HRDC



CHAPTER II

Court's role in implementation of Domestic Violence Law

II. 1 Prevalence and incidence of domestic violence

Changes in recent years in state policies and social attitudes related to gender-based violence have led to an increase in the number of cases of domestic violence which reach out the justice system. Since awareness of domestic violence has increased significantly in recent years, it has become clear that the most effective response to this phenomenon comes when all parts of the justice system coordinate their actions and function in a collaborative effort to address the problem.

The court is an essential part of this system, with concrete responsibility for the results of case management of domestic violence. Moreover, the court may use this interaction in many ways. First, it can address the needs of victims who reach out this institution by providing them with support and referral services. Secondly, it can monitor the behavior of authors and address them to appropriate and specialized interventions. And thirdly, it may use the authority of the judge to publicly demonstrate the commitment of the system to combat and end domestic violence.

For two years, 1928² lawsuits were filed to the Tirana District court with object issuance of the Defense Orders/Immediate Protection

² According to yearly report of court monitoring, for period January –December 2015, 667 issues were submitted to Tirana district court.

Orders (respectively 928 lawsuits for 2016 and 1000 for 2017), 14 of which are the requirements with the object of changing, terminating and extending of the protection order³.

If we compare with the study *“Role of the Tirana Judicial District Court for Protection from Domestic Violence”*⁴, it results that number of issues with object issuance of protection orders is increased by 33%⁵ for period 2015 -2017.

If we compare issuance of types of protection orders, it results that 1416 lawsuits belong to issuance of immediate protection orders (649 lawsuits in 2016 and 767 lawsuits in 2017) and 503 lawsuits belong to issuance of protection orders (237 lawsuits in 2016 and 266 in 2017). Therefore, in 73 % of lawsuits, Police Stations have appraised immediate danger and they have filled out lawsuits seeking immediate protection order. But, HRDC has identified also cases when lawsuit is not filled correctly by Police. For citizen A.M who was granted a one year protection order (through decision no. 3 dated 6.1.2016) Police filled out lawsuit for protection order instead of immediate protection order one. Citizen R.C faced the same problematic, and she was granted a one year protection order by court (through decision no 68 dated on 15.1.2016).

1893 legal cases are terminated and 35 are still ongoing. The Court decided:

- Termination of trial for 261 lawsuits (598 lawsuits for 2016 and 663 for 2017);
- Return of acts for 28 lawsuits in 2016 and 11 in 2017);

³ Article 22 of Law 9669/2006 “For measyres against violence in family relationships”, changed.

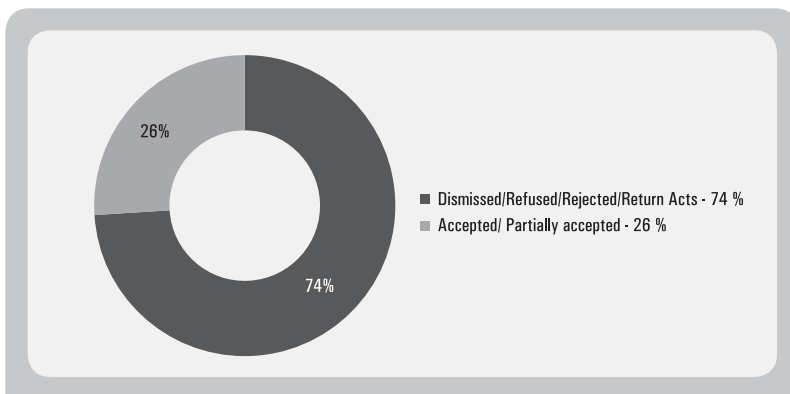
⁴ Study of HRDC, 2015.

⁵ In 2015, 667 were judged in Tirana district court.



- Dropping/refusal/non acceptance of 117 lawsuits (63 in 2016 and 54 in 2017);
- Acceptance of lawsuit for 438 cases (187 cases in 2016 and 251 in 2017);
- Partly acceptance of lawsuits for 46 cases (25 cases in 2016 and 21 in 2017);
- Incompetence -1 case;
- Litigation of cases - 2 cases;
- 35 are not finalized;

Out of 1893 trialed cases, the court has decided for 1404 cases their dismissal/refusal/rejection/return of acts, whereas 484 legal issues were partially accepted/accepted, and in two cases it was decided their unification. For one case court decided incompetence. It turns out that 76% of the cases were dismissed/rejected/returned acts and 24% of them were partially accepted. If we compare with study of 2015, it turns out that 71% of the cases were dismissed/rejected and only 29% of them were partially accepted.



Graph no. 1

Court Decisions - Total number 1890

As such, we notice a 5% drop of accepted cases compared to two years ago period.

Regarding protection measures, the court has ruled in general the protection provisions required by defendant party in accordance with article 10 of Law no 9669 “*For measures against violence in family relationships*” changed (for accepted cases).

In this context, for 438 cases, the court has granted all the protective measures requested by the plaintiff, but also it has granted other protective measures not required by the plaintiff. In 46 cases, the court partially accepted the claim, and provided some of the protective measures required by plaintiff. In about 90% of cases, the court has granted all the protective measures required by the parties. There is a drop out in 6% comparing to two years ago⁶.

HRDC evaluates that court reasoning is in consistence with the purpose of the DV Law, which is to protect the victim.

This court practice contributes to the improving the protection afforded under the system of immediate protection orders and protection orders, which complies with the Recommendation of the Committee of the Parties to the Convention for the Prevention and Combating Violence against Women and Domestic Violence.

II. 2 Analysis of tendency of court to dismiss the trial

The high number of dismissed cases continues to be a alarming issue for issues with object “granting of protection orders”. In 1258 cases, the Court dismissed the cases. Out of 1141⁷ dismissed cases,

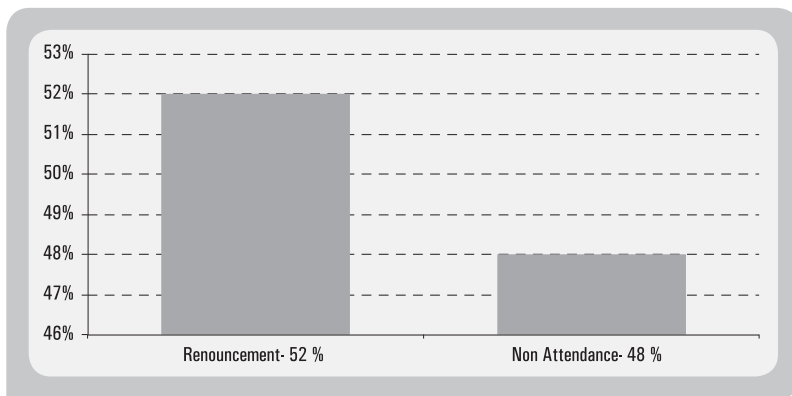
⁶ In approximately 96 % of cases, court provided all protection measures sought by parties in 2015.

⁷ Court does not determine the reasons of dismissal for 117 decisions.



588 cases were dismissed upon the decision of petitioner (52% of cases) and 553 cases were dismissed due to the non-appearance of the offenders.

In 2015, in 47% of cases were dismissed upon decision of plaintiff, and in 53% of the cases as a result of failure of the parties to appear in the trial.



Graph no. 2 1141 Dismissed Cases

Regarding dismissal's decisions, court reasoned issuance of an immediate protection order in 326 cases, but in the stage of confirmation of this Order, the victim has withdrawn or did not show up, which has resulted in the dismissal of the trial. So in 26% of the dismissed cases, the court has ruled immediate protection order. If we compare this statistic to the one of two years ago, the number of immediate protection orders has decreased from 33% to 26%, therefore there is a drop out by 7%.

The fact that in about 26% of the dismissed decisions were equipped with immediate protection order (out of 1258 decisions,

326 have been granted immediate protection order) shows that victims intention was to pursue the case, but different factors have influenced his/her decision to withdraw from the court process.

So, at the end of this analysis, if we refer to cases dismissed after the issuance of immediate protection order, it is found that in 26% of the cases, the parties do not make the essential decisions for domestic violence case, whilst in 74% of the cases, the parties decide termination of trial since their first appearance at the court.

Another indicator relates to fact that in 28% of cases there was at least one (1) postponement of the court session (maximum 7 postponements⁸). These postponements were made for various reasons, such as the parties' failure to show up at court, considering of the "conciliation option" by the judges, lack of identification document, failure to establish the judge's body, official holidays, failure to appoint a lawyer/psychologist/translators 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 put 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 conciliation. The hearing for the issuance of PO/IPO is addressed as other civil processes where the court put efforts to conciliate among parties.

⁸ Decision n o .9637 dated on 16.11.2017, after seven times postponement of the trial's day, the plaintiff did not appear before the court, leading to the dismissal of the trial.



The Istanbul Convention prohibits this procedure⁹. Because of its specificity, conciliation is inappropriate. Actions of reconciliation as foreseen in (articles 158/b and 240 of Civil Procedure Code) are inappropriate in matters of domestic 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 withdrew the legal case twice).

The Court ruled two times in favor of case dismissal regarding (parties F.B and Xh.B) issuance of protection order, respectively on 9.2.2016 and 19.12.2016.

Similar is the case involving M.B and E.B . On 26.2.2016 and 26.4 2016, both cases were dismissed. Such reconciliation situations of parties in most of the cases have temporary result, because the cycles of violence tend to recur. We have also observed other cases involving four dismissals (successive). Court reasons¹⁰ that case is dismissed because petitioner wants to give a chance to abuser to normalize the relations, but in considerable number of cases, we have found the hidden attempts of court to conciliate the parties. On August 2016, all the lawsuits seeking immediate protection orders were dismissed by court.

Judges, as a practice, make efforts to settle the dispute amicably

⁹ Article 48 of Istanbul Convention.

¹⁰ Decision no .1262 dated on 19.2.2016, decision no 6735 dated on 30.7.2016 and decision no 7431 dated on 27.9.2016, and decision 8079 dated on 13.10.2016.

during the preparatory stage regarding cases with object issuance of protection order.

Dismissals of orders should be addressed as highlights the report of High Court of Justice along with their problematic. Report “*On the Situation of Judicial Matters of Domestic Violence*”, dated on 5.01.2018 concludes that “there are two disturbing phenomena: (i) on the one hand, a high number of cases are dismissed and do not result in final adjudication of matter; and (ii) on the other hand, the number of appeals in the higher court’s level is extremely low. The decisive cause of dismissal of cases is the failure of petitioner to show up in court. There are also cases when the court decides to dismiss the case because of the normalization of the relations between the litigants¹¹.”

In many cases represented by HRDC, lawyers noticed the persistence of the court to reconcile. Unjustified attempts of court to influence the will of petitioner sometimes involve the children¹². This is a wrong practice for cases involving domestic violence, where the victim/survivor requests 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 the perpetrator party to issue a statement where he/she 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.

¹¹ High Court of Justice, KLD “*Report on situation of legal cases pertaining domestic violence*”, no.174.Prot, dated on 15.02.2018.

¹² Decision no 9717 dated on 1.12.2016, decision no 5905 dated on 6.7.2016.



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.

HRDC has submitted an official request to Ministry of Social Welfare and Youth¹³ and asked to add a provision to avoid the conciliation of parties because of specificity of issues involving domestic violence. This is also in accordance with urgent recommendations of GREVIO for Albania.

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. In 2015, there was an increase a court sessions conducted in court premises.

Only 10% of the dismissed cases are represented by the lawyer. 4% of them are represented by private lawyer, and 6% are represented by the NGO lawyer.

Lack of free legal aid affects the effective progress of judicial process for victims of domestic violence. In 90% 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 the protection order.

In other cases without the presence of a legal representative, victim

¹³ Actually, Ministry of Health and Social Protection.

of domestic violence admits 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.

New Law on Legal Aid¹⁴ approved on 14.12.2017, which will come into power on June 2018, puts legal responsibilities (as institutions for the administration and functioning of the legal aid system) over the Ministry of Justice, the Legal Aid Department, the National Chamber of Advocates and the competent courts. This law lists victims of domestic violence as the first special category of legal aid beneficiaries¹⁵. This law is expected to bring positive changes in the provision of primary and secondary legal assistance to victims of domestic violence who are in need of such effective and immediate service.

II. 3 Court practice regarding respect of procedural terms

Issuance of immediate protection order is performed 48 hours upon filing out of petition. The order is issued if the court finds that the threat of the perpetrator is direct and immediate for his/her health or well-being. The confirmation of immediate order should be done within 20 days of the issuance of immediate protection order.

Regarding its examination, the court establishes a hearing with regard to a protection order within 15 days from the filing of the petition.

¹⁴ Law no.111/2017 "For Legal Aid guaranteed by state".

¹⁵ Article 11 of Law no.111/2017.



From the analysis of the monitored decisions, it was found that deadlines for reviewing the requests for issuance of protection orders are respected in 94% of the cases. (out of 1928 cases). Legal terms were not respected in 112 cases. It is noted that there is an improvement regarding the respect of the procedural deadlines, since in 2015 these deadlines were respected in 90% of cases.

Thus, a positive practice it is noticed regarding the examination of the lawsuit for the issuance of immediate protection orders. Judges commence the trial within 48 hours from the filing of petition for issuance of immediate protection order, which is in accordance with Article 18 of the Law *“On Measures against Domestic Violence”*, stating that: “The court reaches a decision with regard to emergency protection orders within 48 hours from the presentation of petition. This legal obligation has been met by the court, almost in every case.

From the data analysis it is concluded that violations were found regarding the commencement of the judicial process. Thus, article 16 of the Law no 9669/2006 *“On Measures against Violence in Family Relations”* sanctions that “the court reaches a decision with regard to emergency protection orders within 48 hours from the presentation of petition”

In contradiction to this provision, HRDC has identified several decisions involving commencement of legal case three or five months from the registration of the petition¹⁶. There are also identified

¹⁶ Decision no 360 dated on 26.1.2016 – legal case with object issuance of protection order started to be reviewed by court after three months since its registration to court, decision no 643 dated on 2.2.2016 -, legal case with object issuance of protection order started to be reviewed by court after five months since its registration to court, decision no 1226 dated on 19.2.2016 - legal case with object issuance of protection order started to be reviewed by court after four months since its registration to court, decision no 8823 dated on 25.10.2017, legal case with object issuance of protection order started to be reviewed by court after three months since its registration to court.

repeated cases of violation of procedural term, which may be considered as flagrant¹⁷. Also, the monitoring identified cases¹⁸ of violation of 20 days legal term involving determination of court hearing for the certification /confirmation of the immediate protection order.

Same outcomes were identified in inspection carried out by High Council of Justice¹⁹ over the situation of legal cases regarding domestic violence. The main finding of the inspection is related to systematic breach of legal terms determined by law regarding examination of requests and provision of decisions by court.

During the monitoring period, HRDC noticed a tendency of the court to request from petitioner to withdraw from the trial, in cases when the abuser is arrested²⁰. The Law 9669/2006 *“On Measures Against Violence in Family Relations”* changed, provides that prosecution/examination of domestic violence case may be done concurrently, as procedures do not exclude each other. Article 24 of the Law *“On Measures against Violence in Family Relations”* changed sanctions that “issuance of a protection order or emergency protection order does not inhibit interested parties to also initiate criminal proceedings with regard to acts or omissions that are classified as criminal offences”.

If abuser is imprisoned that does not mean that this measure could not be replaced by a lighter sentencing measure. The purpose of the law is to prevent further events in the future as well as to guarantee

¹⁷ Judicial decision no .9, act dated on 22.1.2016, legal process lasted approx 9 months, from 21.4.2015 – 22.1.2016 and court hearings were postponed six times, decision no 8801 dated on 25.10.2017 – regarding issuance of protection order lasted for eight months.

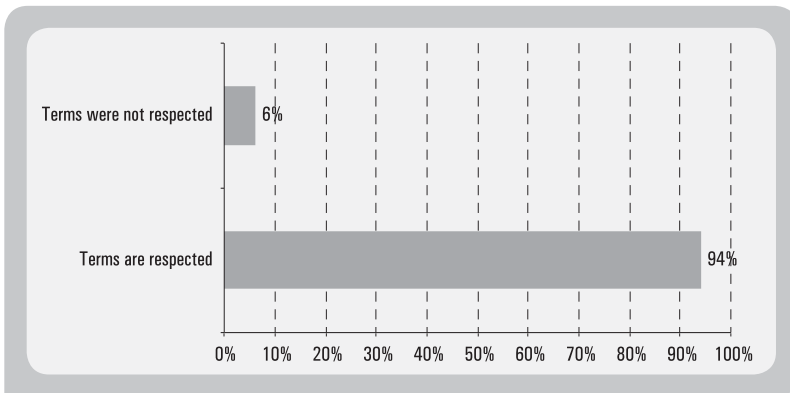
¹⁸ Decision no 7165 dated on 5.9.201, court hearing for confirmation of immediate protection order was determined 34 days after deposit of lawsuit.

¹⁹ High Court of Justice, KLD *“Report on situation of legal cases pertaining domestic violence”*, no.174.Prot, dated on 15.02.2018.

²⁰ Decision no 5516 dated on 24.6.2016.



the safety of the victim as well as its rehabilitation. According to the Council of Europe Convention “*On the Prevention and Fight against Violence against Women and Domestic Violence*”²¹ victims of violence should be guaranteed access to services, which facilitate the rehabilitation of victims by violence.



Graph no. 3 Procedural terms 1928 cases

As a conclusion we can say that we did not notice violation of the legal terms regarding court decision involving issuance of immediate protection order. On the other hand, there were noticed violation of the 20 day deadline for scheduling the hearing. Also, there have been considerable the cases when judges have violated the 15 days legal deadline for taking a decision regarding issuance of protection order. Judges show a formal attention to the procedures for scheduling the first court hearing session within the legal term, but in majority of cases, they fail to take a final decision within the legal term (as

²¹ Article 20. 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.

provisioned in law). The legal provisions “decides on the request within 48 hours”, “decides within 15 days” or “sets out the hearing date within 20 days” has been applied as an obligation by the courts to determine the first court hearing sessions and not to terminate the case and give decisions within these deadlines.

The legal provision (20 days deadline) for scheduling of a court hearing has been implemented by the court. In majority of cases, the first hearing is scheduled formally but the confirmation procedure lasts unreasonably.

Respect of deadlines seems also to be a matter of mentality of judges with the justification that their violation of legal deadlines does not bring obvious consequences. This conclusion is based on monitoring findings, where there are cases of violations of terms due to weekly day offs, official holidays, annual leave or other engagements of judges, such as participation in training.

II. 4 Reasons and consequences of court hearings postponements

Scheduling of court hearing is conducted in edge limit of legal deadlines. Each procedural issues that hampers termination of the trial within a session is a violation of the legal deadline. Regarding legal issues where violations of legal deadlines are found, we have noticed that judge fails to terminate the case sessions through one sessions for various reasons.

Grounds for postponement of these sessions are lack of announcement of the parties, lack of presence of both parties, lack of ID, officials holidays, demands of parties for lawyers, request of lawyer to get acquainted with case, request of parties to introduce evidences and witnesses, provision of time to introduce final claims



in written form, psychological evaluation reports of children, and lack of presence of judges.

Resolving of the case outside the court²², and attempts to conciliate are also reasons of postponements of trials²³. 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 time²⁴.

The decisive reason of the violation of the legal deadlines is the failure to notify the parties, but there are no extra procedural reasons as well, such as “the secretary is with a medical report”.

Problem of court hearings postponements is noticed in 36 % of monitored cases (696 decisions and postponement interval vary from 1 to 13 times).

In 2015, postponements of court hearings for the issuance of protection orders are noticed in 10% of monitored cases.

The reasons for postponement of court hearings are different, and decision is taken under an unjustified period of time, a period which can not be considered “*within a reasonable time*”. As such there is a violation of the constitutional right to a fair legal process, where the main component of this right is precisely the conduction of the trial within a reasonable time. Lengthy postponements

²² Decision no .3831 dated on 6.5.2016.

²³ Decision no 7527 dated on 28.9.2016.

²⁴ Judicial decision no .6034 dated on 8.07.2016, court postponed 12 times court hearings and granted a final decision after 5 months, or decision no 5116 dated on 7.6.2017- which was postponed 9 times and lasted months, decision or. 5310 dated on 13.6.2017, court postponed 13 times the court hearings.

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 session²⁵. Reasons are linked with fear of victim from perpetrators, menace, doubts to forgive the perpetrator, uncertainty or doubt in the justice system, etc.

II. 5 Court reasoning's

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 77 decisions ((22 decisions belong to 2016 and 55 to 2017).

Despite the number of decisions referring to Istanbul Convention is limited, it is positive the fact that there is an increase comparing to 2015, when we have only 13 decisions when this Convention is used.

To be appreciated is the fact that for this period the Court has conducted an extended interpretation of the law by creating new positive practices. Thus, the Court considered violence as an interference in the life of the other²⁶. The Court has established a new practice in terms of protective measures in favor of the well-being of a victim of domestic violence, such as “municipality of Tirana is charged for the housing and economic assistance of a victim of domestic violence²⁷ or the placement of abused children in the Institution, and

²⁵ Decision no 6705 dated on 28.7.2016 – court hearings were postponed six times successively, and finally one of parties did not show up, and case was dismissed.

²⁶ Decision no 6801 dated on 2.9.2016.

²⁷ Decision no 7061 dated on 15.9.2016, decision no 9871 dated on 6.12.2016.



supervised meetings with children²⁸ or participation in rehabilitation programs of psychological counseling aiming at strengthening parental ability²⁹. There has also been an increase in the number of cases where the perpetrator has been removed³⁰ from the apartment or has been assigned to pay the minor's³¹ child pension. The temporary abolition of parental responsibility is a new measure that has started to be applied by the court³².

Another provisioned measure applied by court is the one "*perpetrator should not alienate the common property*".

From monitoring³³ of decisions of court, is concluded that we have well-argued decisions in 70% of the cases, whereas for remaining, we have noticed various problems such as lack of data of parties³⁴, truncated decisions³⁵, placement of offensive and discriminatory expressions³⁶ of the parties in the decision, inadequate protective measures³⁷, protective measures in favor of the perpetrator³⁸, errors in the legitimization of the parties³⁹, procedural violation referral⁴⁰ to

²⁸ Decision no 1397 dated on 27.2.2017.

²⁹ Decision no 9613 dated on 16.11.2017.

³⁰ Decision no 4541 dated on 27.5.2016.

³¹ Decision no 4207 dated on 18.5.2016.

³² Decision no .6336 dated on 15.7.2016, decision no 7708 dated on 3.10.2016.

³³ Decision no 3 dated on 6.1.2016.

³⁴ Decision no 4295 dated on 22.5.2016 – data of parties lack in this decision, as well as reasons of violence, etc.

³⁵ Decision no 6412 dated on 19.7.2016.

³⁶ Decision no 18 dated on 12.1.2016, decision no 7977 dated on 29.9.2017.

³⁷ Decision no 8462 dated on 25.10.2016 – court ruled an unsuitable protective measure for perpetrator, saying that perpetrator should stay home from hour 22.00 pm- 7 30 am, reasoning that he has no place to stay. Decision no 4981 dated on 9.6.2016 – court decided meetings/and sleeping over with mother/perpetrator and vacations – decision 1815 dated on 8.3.2017, each parent takes the custody of one of the children and they meet when they can.

³⁸ Decision no .6810 dated on 5.9.2016.

³⁹ Decision no 3724 dated on 3.5.2016, legitimating of parties in done contrary to law, because cohabitant of ex-spouse are not subject of this Law.

⁴⁰ Decision no 9082 dated on 11.11.2016, minor is not represented by lawyer.

the provisions of the Civil Code on the issue of property⁴¹ ineffective decisions⁴². In 2015, 75% of the monitored cases were well-argued.

Another issue observed by monitoring is related to fact that only in three cases court granted the decision for inclusion of perpetrator in rehabilitation programs against alcohol (perpetrator should receive medical treatment to quit alcohol). Monitoring revealed that 18 % of perpetrators are regulars users of alcohol /drugs⁴³.

The fact that a minimal number of court judgments include anti-alcohol rehabilitation measures contradicts the “spirit” of domestic violence legislation and policies that pay attention not only to the victim’s rehabilitation but also to the abuser. Another measure that can be applied within the rehabilitation of the perpetrator is the “individual/group counseling”.

There is no single case when court has ruled as a measure “*rehabilitation of the perpetrator*” by providing individual/group counseling.

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 from nonprofit organization. Monitored decisions do not reflect granting of such measure for the abuser/perpetrator.

In 2017, Tirana district court decided removal from the apartment of the perpetrator in 46 cases. It turns out that this measure was

⁴¹ Decision no 8462 dated on 25.10.2016.

⁴² Decision no 8860 dated on 7.11.2016 is non effective, because of the protective measure granted by court is meeting of father/perpetrator with his minors children anytime he can/and want.

⁴³ Decision no 7255 dated on 21.9.2016; Decision no 9426 dated on 21.11.2016, and decision no 10279 dated on 19.12.2016.



provided for 17% of the decisions. In relation to previous years, we have noticed an increase regarding application of this measure.

Another issue which deserves attention is the request of court for administration of common ownership documentation (residence) when such protection measured is requested:

- Removing immediately the defendant (perpetrator) from the residence for a Certain period of time (article 10 point c)
- Ordering of the defendant (perpetrator) to allow the victim to victim to possess the commonly used residence or part thereof;

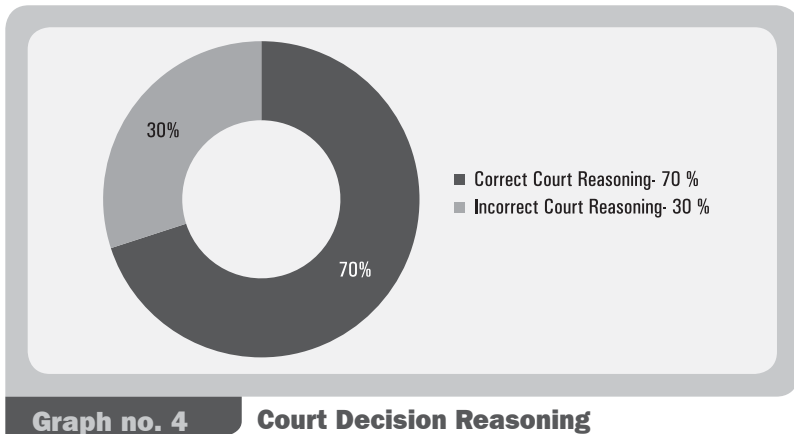
Such requests not only procrastinate the legal process, but are contrary to DV Law, because the law intentionally use the term “owned” but uses the term “commonly used”⁴⁴. These restrictions over the right to property under the law will be carried out “regardless of the rights of ownership or possession of the offender”, which means that if we put compare ownership of the offender with the victim’s health or life safety, victim’s protection is more important.

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 derogate lex generalis*”, including joint ownership relationship recognized by the Civil Code and the Constitution.

⁴⁴ Decision no 10092 dated on 13.12.2016 – court asked for ownership documents in court hearings – decision no 296 dated on 23.1.2017.

According to the law in question, the limitations of these rights in relation to the rights guaranteed by this law are temporarily regarding time, quality and/or quantity and intent 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.

The issues which are noted in the monitored decisions are as follows:



II.6 importance of administration of written evidence and witnesses

In legal cases involving protection orders, the court has the discretion to decide for the issuance of protection order based on its internal orientation 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 the 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 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 70% of cases, and only in 30% of cases, court has reasoned based on the judge’s internal orientation.

If we refer to written evidence, we may mention the special medical report issued by health centers, according to article 7 of the DV 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 2015, revealed that “*medical report*” is presented as written evidence only in one case.

In period 2016 -2017, seven medical reports were issued. We may mention reports issued by Kombinat⁴⁵ Health Centre no 6 and Health Centre no 10⁴⁶ in Tirana. Reports are issued thanks to functioning of Referral Mechanism reactivated by HRDC in Kombinati area.

DV Law entered into force since 2006, still health institutions did not undertake concrete steps to implement it, as such there is an urgent need that 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 provisioned in the Law.

This interpretation is in line also with urgent recommendations of GREVIO⁴⁷ according to which Albanian authorities should bring the health care system to the forefront of efforts to combat all forms of violence against women paragraph (98).

In a considerable number of cases, the court has decided to overturn based on the lack of evidence⁴⁸. Court has supported its decision on these types of written documents:

- Police Reports;
- Process –verbal of incident issued by Police;

⁴⁵ Decision no 7758 dated on 04.10.2016.

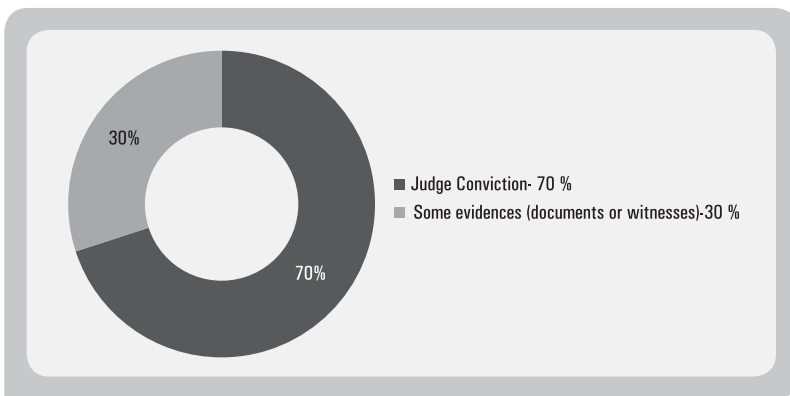
⁴⁶ Decision no 8013 dated on 12.10.2016.

⁴⁷ Group of Experts on Action against Violence against Women and Domestic Violence (GREVIOs Violence against Women and Domestic Violence).

⁴⁸ Decision no 2636 dated on 30.3.2016- despite it occurred a conflict in courtroom and police intervened, court overturned the lawsuit by arguing that there is no evidence. Decision no 204 dated on 20.1.2016 – although court concludes that situation is not secure, and there are elements of economical violence, still it overturns the case, because plaintiff has no evidence to support this, decision no .7332 dated on 11.9.2017 same above argument, but the court has discretion to decide base on internal orientation.



- 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;
- 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.

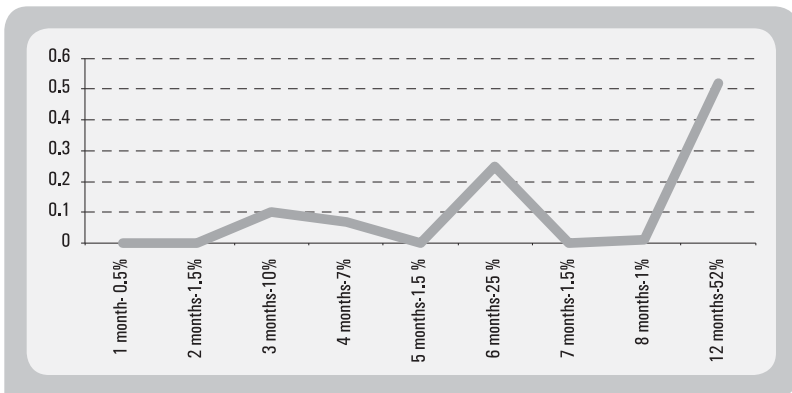


Graph no. 5

Total - 394 cases

II. 7 Terms for issuance of protection order

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 regarding 376 legal cases for which court acceptance or partly acceptance of case (108 court decision does not foresee the duration of protection order). HRDC observed that in 52% of cases, the court has issued a protection order with a maximum term (1 year) and only in 0.5% of cases, court has decided minimum 1 month term.



Graph no. 6 Protection Order Duration - 376 Decision

II. 8 Police Stations as procedural subjects and public lawsuit

In 99 % of cases, victims/survivors of domestic violence had reported violence to the Police Stations. In only two cases, the Administrative Units have initiated the judicial process for issuing protection orders, namely Administrative Unit No. 2, which has requested the issuance of immediate protection order and



Administrative Unit No. 11⁴⁹. In one occasion, the National Shelter for Treatment of Victims of Domestic Violence has demanded the issuance of immediate protection order⁵⁰.

Police Stations⁵¹ fill out the petition for issuance to seek the Immediate Protection Order/Protection Order on its own initiative⁵² when it concludes that family members are affected by violence. 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 for security 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

⁴⁹ Decision no 6791 dated on 26.8.2016 – failure of administrative unit to show up.

⁵⁰ Decision no 5116 dated 7.6.2017.

⁵¹ Decision for issuance of immediate protection order no 6744 dated on 3.8.2016.

⁵² Article 13 of Law 9669/2006 “For measures against violence in family relationships”, changed.

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 of dismissed cases.

It turns out that Commissariat no. 6 has 22% of successful decisions (partially accepted/accepted by court). This is related to the support of the functioning of the Referral Mechanism of Domestic Violence cases at the Administrative Unit No. 6 by HRDC, and the multidisciplinary treatment of domestic violence cases. Also, staff of this Police Station was trained by the HRDC.

Improving the work of police officers is clearly reflected in the number of successful court cases where victims of domestic violence are provided with the Protection Order.

Table no. 1

	Number	In %
Police Station no .1	64	18 %
Police Station no .2	45	12 %
Police Station no .3	46	12.5%
Police Station no .4	75	21%
Police Station no .5	46	12.5%
Police Station no .6	79	22 %
Police Station of Vorë	8	2%
Total	363	100%



Court decisions partially accepted /accepted (also requests for continuation of the effects of protection orders according to police commissariats.

The following table gives us information on the commissariat that has filed a claim for the period under review. There are 363 cases for which the Tirana District court has decided to accept the request or partial admittance (as in 121 decisions the police commissariat has filed a claim for the issuance of PO/IPO).

II. 9 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 43% of cases, victims of DV are represented by Court. NGOs cover 20% of the represented cases, and other part 20% is covered by private advocates, and only 1% of cases are covered by National Shelter. Only in one case the Commission for Legal Aid had represented the respondents party⁵³. 1% of cases are represented by state appointed lawyers (minors). Only for minors (victims/abusers), court has appointed lawyers (from the list of advocates) mainly in penal legal process, in accordance with dispositions of the law.

⁵³ Decision no 862 dated on 20.10.2016.

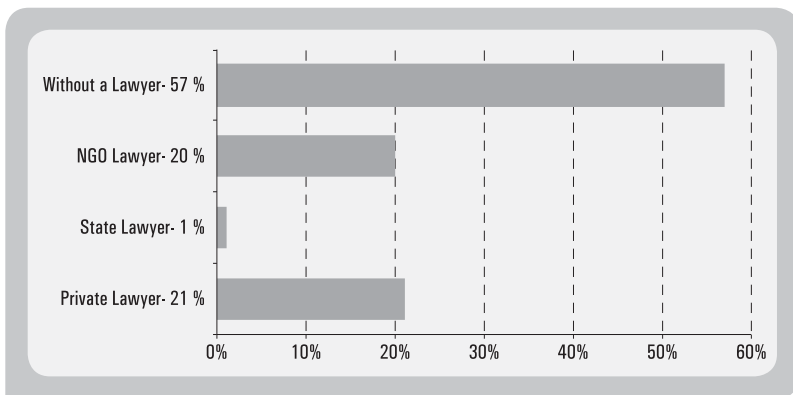
Absence of free legal aid is a hindrance for effective protection of victims of DV. For 57% of cases, such assistance is absent.

It is noticed almost the same trend with the one of 2015, where 58% of victims of domestic violence are not represented by the lawyer.

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 20% of accepted /partly accepted are represented by them.

Human Rights in Democracy Center⁵⁴ during this two years monitoring period has represented to court 172 victims/survivors of domestic violence.



Graph no. 7

Legal Representation - 394 Cases

⁵⁴ Decision no 729 dated on 4.2.2016 as well as decision no 9082 dated on 11.11.2016.



II. 10 Other legal Processes involving parties

In 32 % of cases (in addition to protection order process) parties are involved in other legal processes. Mostly parties are involved in process of divorce. In 2015, we have a lower number of other legal processes which involve victims of domestic violence – in 17% of cases. Therefore we notice a considerable number of cases when parties are involved in other legal processes in addition to issuance of protection orders.

Table no. 2

Other legal processes	Number
Divorce	61
Ownership	24
Removal of paternity rights	2
PO/IPO/other	11
Child custody	4
Penal Process	54
Total	156

II. 11 The right to Appeal the Court Decision

Article 21 of the Law “On Measures Against Violence in Family Relations”, as amended, provides the right of a victim of domestic violence to appeal the decision of the Court regarding issuance of immediate protection order or against the decision for issuance of protection order.

It happens very often that the right to a appeal within 5 days from the decision is ineffective. Court of Appeal initiates the case once the case has been completed and the decision of the Court for the issuance of emergency orders is not valid anymore. In such a case, the Court decides not to accept the appeal as it is a decision that is no longer in force. Therefore, there is need for a legal intervention in this provision by setting up a deadline for judgment of the case at the Court of Appeals. In this way, the right to special appeal will also be effective.

For the reviewed period, Court of Appeal reviewed 98 complaints regarding Tirana court decisions (involving domestic violence cases). Out of 98 cases, 86 decisions remained into force, whilst 12 decisions have been truncated. The causes relate to the lack of proper judicial reasoning, poor application of the substantive law, different assessment of evidence, and new circumstances created after the first instance decision. Against the decisions of the Tirana Court of Appeal, it was found that there had been a recourse for nine cases.

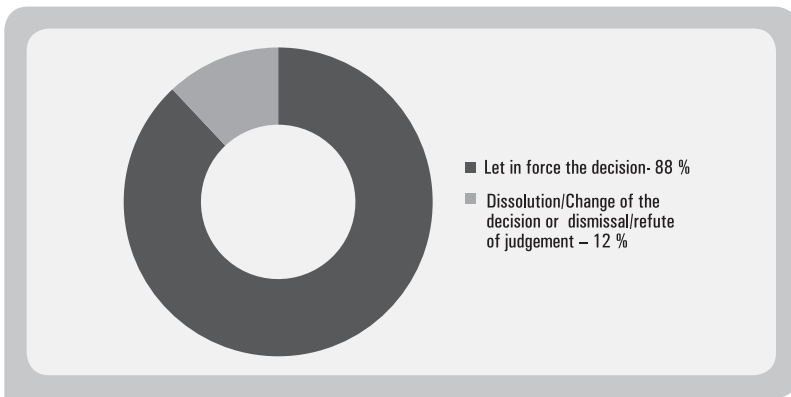
The lack of exercise of the right to complain by victims of domestic violence in 76% of cases is a serious problem regarding judicial procedures for issuance of protection orders, and questions the effectiveness of the legal protection mechanism against domestic violence and at the same time also hampers the assessment of the quality of the Court of Appeal's decision-making. Formally, the conclusion is that the decision-making of the Tirana Court of Appeal essentially is in compliance with the law because of the fact that it has not been argued by higher stages of courts.

The lack of appealing process seems to be a serious concern that questions the effectiveness of the court's implementation of certain measures. On the other hand, due to this anomaly, there can not be



drawn reliable conclusions over the quality of decision-making of a judge through appeal.

Thus it turns out that only 24% of the decisions have been appealed. While recourse was exercised in only 9 issues - 2% of the issues. The trial of the cases at the High Court in most cases violates the victim's right to a due legal process due to the length of this process (over 3 years)⁵⁵.



Graph no. 8

Judicial Appeal - 98 Court Decisions

II. 12 Execution of protection orders

Court decision involving/ruling an immediate protection order or protection order is an executive title and when it is 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.

⁵⁵ No of case 11243-03287-00-2015, registration date 22.10.2015. No date is appointed yet.

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*”⁵⁶, changed, court issues execution order at the time it issues the decision (final decision). 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 procedure⁵⁷ 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.

The HRDC has found one case where citizen, B.H, client of HRDC who was granted a immediate protection order and her case was suspended because the responded party appealed the case. Argument was appealing of immediate protection order, and the case is suspended for an indefinite term. This practice of the Court is in contradiction with the law no 9669/2006 “*On Measures against Violence in Family Relations*”, according to which the filing of an appeal does not suspend the execution of the decision and can endanger the victim’s life.

⁵⁶ 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.

⁵⁷ Legal case no 13766, registration date 18.10.2016.



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 protection order or emergency protection order. Interpretation of this disposition and spirit of Law implies that court decision involving a protection order 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 continues to ask occasionally from victims of DV payment of taxes whilst by law the victims of DV are excluded from the financial obligations, since 2010⁵⁸. Bailiff Office as well has problems in application of DV Law.

⁵⁸ Citizen R.C, client of HRDC is asked from Bailiffs to pay the execution fee for decision no 68 dated on 15.1.2016.



CHAPTER III

Social Profile of victim and perpetrator

From a gender perspective, the most violated family member is woman. Out of 1928 cases filed to court, 1696 plaintiffs are women and 232 plaintiffs are men⁵⁹. In three cases, the plaintiff is Administrative Unit No. 2 and No. 11 and National Center for the Treatment of Domestic Violence Cases. In 88% of cases, plaintiffs is a woman and in 12% of the plaintiffs it is a man. These data testify the fact that domestic violence is gender-based violence.

III. 1 The most violated family member in the context of family ties

If we refer to relations victim-perpetrator as subject of the law 9669/2006 “*On Measures Against Violence in Family Relations*” as amended, we may say that relation spouse/ex spouse prevails in 63% of cases, and in 6.5 % of cases relation is cohabitant – ex-cohabitant. It is interesting⁶⁰ the fact that in 5% of the cases, sister in law/brother in law are perpetrators (the one who exercise violence in family).

⁵⁹ According to Study of HRDC “Role of court decisions of Tirana in dealing with cases of domestic violence” it results that in 87 % of cases, plaintiff is a woman, and in 13 % of cases, plaintiff is man.

⁶⁰ In 56 % of cases, perpetrator is spouse/ex spouse of victim and in 9 % of cases is co-habitant, ex co habitant of victim.

Despite the Law⁶¹ has set out as criteria “*living together during the last 3 months in the same residence*” (to be considered as the subject of Law) this definition did not hamper the court to issue protection order for even for these subjects, in some cases, contrary to the law. In some cases, the court did not respect the issue of legitimating of parties involved, and in some cases trespassed the circle of subjects which enjoy protection⁶² by law. Considering that these relations are very conflicting, time limitation should be omitted though a legal amending. In 81 decision, we do not have a definition regarding relations between victim and perpetrator.

Table no. 3

	Number	In %
Spouse	198	49%
Ex-spouse	57	14%
Cohabitant	20	5%
Ex –cohabitant	7	1.5%
Son in law/daughter in law	20	5 %
Brother/sister	14	3.5%
Son/daughter	23	5.5%
Granddaughter	4	0,5
Ex – father in law	15	3.5%
Ex/sons wife	13	3%

⁶¹ According to Study of HRDC, 2015 “Role of court decisions of Tirana in dealing with cases of domestic violence” it results that in 10 % of cases, son in law, daughter in law exercise domestic violence.

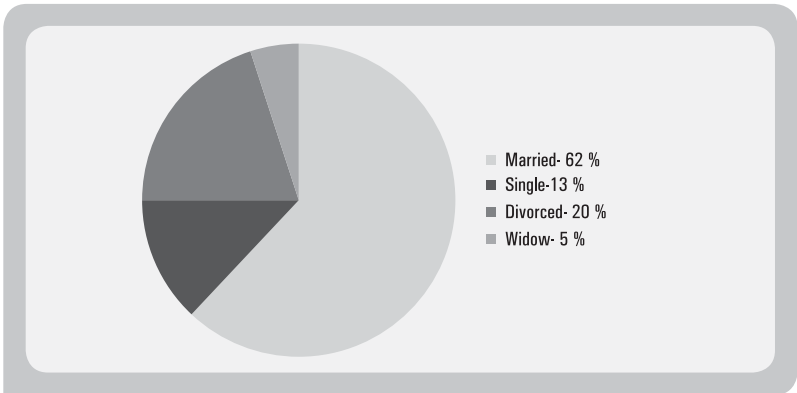
⁶² Decision no 6034 dated on 8.7.2016 – court issues protection order, whereas defendant party is ex-spouse of cohabitant or decision no 3724 dated on 3.5.2016, where defendant party is cohabitant of ex spouse.



Mother /father	26	7%
Uncle/aunt	2	0.5%
Grandfather	1	0.5%
Boyfriend	1	0.5%
Stepmother	1	0.5 %
Cousin	1	0.5 %
Total	403	100%

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 62% of cases of domestic violence, victim is married and in 20% of cases is divorced⁶³. Monitoring data show that violence is present in



Graph no. 9 Civil Status - 391 Cases

⁶³ According to Study of HRDC, 2015 “Role of court decisions of Tirana in dealing with cases of domestic violence” it results that in 67 % of cases, victim of domestic violence results married and in 14 % of cases results divorced.

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. 93 decisions do not determine civil status of victim of domestic violence.

III. 3 Types of violence

World statistics show that maltreated women do not experience only one of the types of domestic violence such as psychological violence, physical violence, economic violence or sexual violence, but often they experience multiple forms of violence.

Generally, the court decisions provide information on forms of violence. In 91 decisions we do not have data regarding the form of violence. Various forms of violence are combined. Thus in 61% of cases we have combination of physical and psychological violence. We have noticed a growing tendency of the Court to issue protection orders, in cases where the victim suffered from psychological violence (in 26% of cases⁶⁴). Thus, the Court does not necessarily require the existence of physical violence to issue a protection order. There is an increase of the number of cases denouncing sexual violence in 2.5%. In 2015, 1.5%⁶⁵ of cases were related to sexual violence. Economic violence occurs mainly in combination with other forms of violence and is observed in 10% of cases⁶⁶.

Data on the dissemination of various forms of violence in the trialed cases (acceptance/partly acceptance) are presented in the following table

⁶⁴ Decision no 10284 dated on 19.12.2016.

⁶⁵ Decision no 5516 dated on 24.6.2016.

⁶⁶ Decision no 5397 dated on 22.6.2016.

Table no. 4

Forms of violence	Number	In %
Physical	1	0.5%
Psychological	100	26 %
Economic	2	0.5 %
Physical - Psychological	239	61%
Physical – Psychological – economic	30	7.5%
Psychological – economical;	11	2%
Psychological – sexual	4	1%
Physical – Psychological – sexual	6	1.5 %
Total	393	100%

III. 4 Types of violence

Main reasons/causes of domestic violence are violent character, jealousy, property conflicts, communication problems, creating of a new relationship, conflicts during or after divorce, disloyalty. unemployment, economic situation, debts, emigration, family disputes, mentality, gambling, conflicts of custody of children, forced cohabitation, educational divergence/communication problems, living in an apartment between two generations, violence as a form of education etc.

There are identified also new causes reflected in court decisions as shameful acts/distribution of personal data, intimate pictures on social networks in 1.5% of cases or obligation to beg in 1.5% of cases, breach of mutual trust/ accusations related to moral, in 1.5%

of cases, criminal punishment of the perpetrator in 1.5% of cases, contradictions with perpetrator's family in 3% of cases. Jealousy and fanaticism occupies 7% of the causes of violence, while economic hardships or unemployment accounts for 6.5% of the causes of violence. Conflicts of ownership occupy 11.5% and conflicts over or after divorce occupy 8.5% of the causes of violence.

In 18% of cases, abusers are regular users of alcohol/drugs, in 3.5% of cases they spend their profits in gambling activities and in 3.5% of cases they suffer from mental health problems.

Regarding persons with mental health disorders, the HRDC has noted a rather worrying problematic. From the monitoring of the decisions of the Tirana District Court results that 3.5% of perpetrators have mental health problems.⁶⁷

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 petition for the issuance of an order of protection⁶⁸ and its appearance before the court. This practice is unified and is 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 9669/2006 "On Measures against Domestic Violence"* as a special law which regulates the entire spectrum of this phenomenon, does not contain

⁶⁷ According to Study of HRDC, 2015 "Role of court decisions of Tirana in dealing with cases of domestic violence" it results in 15% of cases, perpetrators are regular users of alcohol/drugs, and in 1.5 % of cases they engage and spend their money on gambling, and 4 % of them have mental health problems

⁶⁸ Article of Law no. 9669/2006 "*For measures against violence in family relationships*", changed.



any provision to handle specifically offenders with mental health disorders. DV law does not foresee any special provision⁶⁹ for people with mental health disorders; in cases they exercise violence to 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.

The fact that protection orders are not effective in cases involving mental disorders persons is reflected in considerable 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.

If we refer perpetrators who are regular alcohol users, we can say that this category has increased compared to 2015. The relationship between alcohol use and domestic violence is complex. One of the myths that exist for domestic violence is that alcohol is one of the main causes of domestic violence. Indeed, it is not the alcohol that causes domestic violence, although some abusers use alcohol simply as a pretext to become violent. Although the use of alcohol may affect the degree of violence, it is not a determinant factor of violence. Alcohol consumption does not

⁶⁹ Article 10 of Law no. 9669/2006 "For measures against violence in family relationships", changed.

cause the abuser to lose control. Rather, domestic violence is used to exercise power and control over another person and does not represent a loss of control.

Table shows main reason of domestic violence which is reflected in court monitored decisions:

Table no. 5

Reasons	Number	In %
Alcohol/Drugs	98	18%
Jealousy – Fanaticism	36	7%
Violent character	64	12%
Obligation to cohabit	9	1.5%
Unemployment/economy, debts	35	6.5%
Penal sentencing of perpetrator	9	1.5%
Property disputes	61	11.5 %
Conflicts during//after divorce	46	8.5 %
Betrayal	12	2.5%
Mentality	8	1%
Child custody disputes /food pension	22	4%
Gambling	18	3.5%
Mental health issues	19	3.5%
Emigration	9	1.5%
Old family disputes	5	1%
Query to ask for money	9	1.5%
Failure to provide financial contribution	11	2 %



Forced begging	7	1.5 %
Shameful acts/dissemination of personal data, photos in social media	7	1.5%
Serious health diseases on one party	4	1%
Education discrepancies,/Problems with communication	11	2%
Contradicts with family of perpetrators, co living of two generations in the same house	18	3%
Breaking of mutual trust/accusations of morality	7	1.5%
New relationships	5	1%
Violence as an education tool	7	1.5%
Total	537	100%

III.5 Age of the victim and perpetrator

This chapter analyzes whether there are significant differences in women 's experiences with domestic violence regarding age.

The age group of the plaintiff who faces violence in family relationships is the age group 31 - 40 years old. This age group accounts for 28% of cases. Meanwhile, 22% belong to age group 18-30 and 23% belong to 41-50 years old. What emerges from the table is that with the rise of the age group, the level of acts of violence decreases.

13% of the plaintiffs belong to the age group 51-60 years old, 5% of the plaintiffs belong to age group 61-70 years old, 3.5% of the plaintiffs belong to the age group 71-80 years old and 1.5% belong to age group 81-90 years old.

If we make a comparison with the survey of 2015, it turns out that the age group of the plaintiff who faces mostly violence in family relationships is the age group 31 - 40 years old and this age group occupies 28% of the cases.

While referring to the perpetrators, we can say that the age group 41-50 years old is more violent, which accounts for 33% of perpetrators. 28% of the perpetrators belong to age group 31-40 years old, and 16% belong to the age group 51-60 years. old

1% of the perpetrators are above 70 years old. Thus, with aging, it decreases the number of perpetrators. The age-group that exercises mostly violence for 2015 is the same age group 41-50 years old, and accounts for 38% of perpetrators. Violent minors occupy only 0.5% of the total number.

Table no. 6

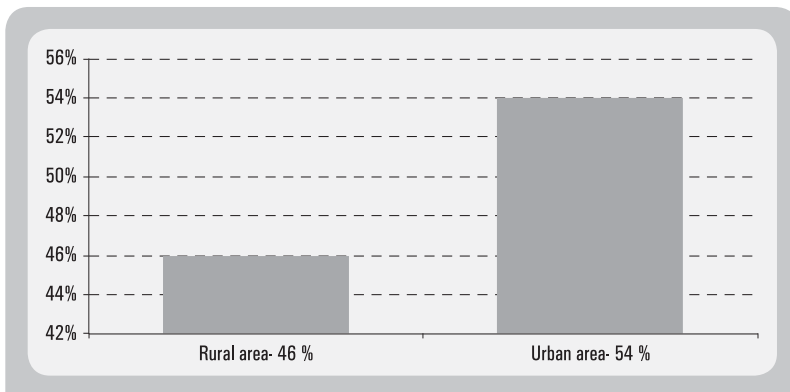
Age group	Plaintiff	In %	Perpetrator	In %
Under 18	10	4%	1	0.5 %
18-30 years old	58	22%	41	16 %
31-40 years old	74	28%	72	28%
41-50 years old	60	23%	85	33%
51-60 years old	35	13%	42	16 %
61-70 years old	14	5%	10	4%
71-80 years old	9	3.5%	3	1%
81-90 years old	4	1.5%	4	1.5%
Total	264	100%	258	100%



III. 6 Residence of Victims of violence

54 % of plaintiffs reside in cities and 46 % of them reside in outskirts. In we make a comparison with 2015, 59% of plaintiffs resided in the city and 41% of them resided in the suburbs. The fact that majority of cases that denounced domestic violence reside in urban areas indicate their level of awareness on this issue. This fact does not indicate that violence in rural areas has lower levels but is not denounced for various reasons such as lack of information on the legislation that protects victims of domestic violence, mentality, distance to the location of support services etc.

What is noticeable for this period of monitoring is the fact that residents of other cities⁷⁰ or abroad⁷¹ has sought protection in Tirana. This is related to the jurisdiction of the Tirana Court to review the request for the issuance of protection orders for permanent or temporary residents.



Graph no. 10

Place of living - 387 Decisions

⁷⁰ Decision no 5523 dated on 26.6.2016.

⁷¹ Decision no 6733 dated on 29.7.2016.

III.7 Education background of petitioner and plaintiff

In the highest percentage of cases, in 39% of them, it results that the plaintiff has completed eight years education, in 33% of cases the plaintiff has completed secondary education and in 21% of the cases the plaintiff is graduated. In 7% of cases, the victim has no education or has completed elementary education. So, we conclude that in general, violated/plaintiff, is a woman who has completed eight year education. For 2015, the victim of domestic violence has completed eight years education in 37% of cases. Fact that 33% of plaintiffs had completed secondary education and 21% of plaintiffs has completed higher education shows that domestic violence is present regardless of the educational level.

In 7% of cases the victim of domestic violence has completed primary education or has no education. This is a clear indication of the fact that a woman who lacks education has fewer job opportunities and demonstrates an economic dependence on her spouse and other family members. This dependence makes her vulnerable, silent and less willingness to denounce the violence.

In the highest percentage of cases, 42%, the perpetrator has completed 8 years of education and 38% of them have completed secondary education. In 14% of the cases, the respondent has completed higher education. Only 6% of abusers have primary education or have no education, at all. Whilst for 2015, it turns out that in 31% of cases, the respondent has completed secondary education and 28% of them have completed 8 years education. The phenomenon of domestic violence occurs regardless of the educational level. In an almost equal percentage we are dealing with perpetrators who have completed 8 years and secondary education.



Table no. 7

Education	Plaintiff	In %	Perpetrator	In %
No education	3	1%	6	3%
Elementary	13	6%	6	3%
8 grade	85	39%	82	42%
College	72	33%	74	38%
graduated	47	21%	27	14%
Total	220	100%	195	100%

III. 8 Status of employment of victims and perpetrators

Regarding the employment of victims of domestic violence, the monitoring shows that in 52.5% of cases, the victim of domestic violence is employed. While in 33.5% of cases the victim of violence is unemployed. In 2015, 41% of victims of domestic violence were employed.

The fact that employees have higher percentage of protective order requests can be linked to their independence to use legal tools. This group has higher awareness to denounce violence. While referring to the abusers, 51% of them are unemployed and only 40% of them are in employment relationships. Regarding the employment of abusers for 2015, 36% of them are unemployed. This fact shows that unemployment is one of the factors that increase the rate of domestic violence, as the largest number of perpetrators are not in work relationships.

Table no. 8

Employment	Plaintiff	In %	Perpetrator	In %
Unemployed	75	33.5%	102	51%
Employed	118	52.5%	81	40%
Students /pupils	9	4%	2	1%
Invalids	4	1.5%	4	2%
Retired	19	8.5%	12	6%
Total	225	100%	201	100%

III.9 Influence of domestic violence to children

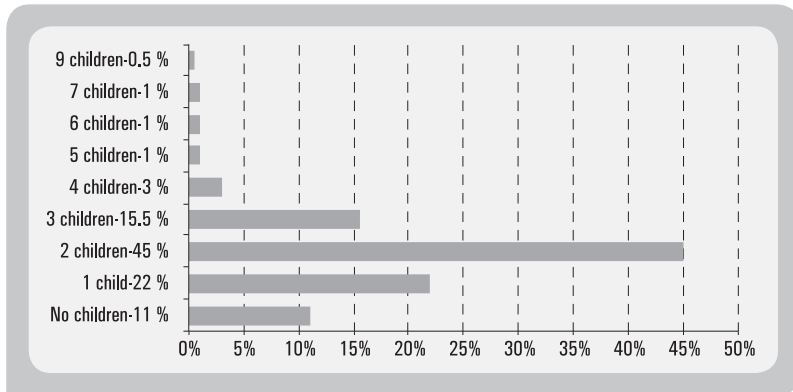
Domestic violence does not affect only women who are abused and maltreated, but has negative consequences on their children as well. International studies have shown that children who grow up through domestic violence are often affected by this behavior and have greater risk of being mistreated and neglected in the family. In particular, being often witness of domestic violence, makes children vulnerable, so they have social, emotional, and developmental problems. Likewise, it teaches children that violence is a common way of life and increases the risk of transmitting it continuously.

If we refer to the number of children, victims of domestic violence, we can say that the highest percentage of victims of violence has two children (45%). In 22%⁷² of cases, victim has one child, in 15.5% of cases victim has three-children, and in 3% victim of violence has four children. In 1% of cases, victim has more than 5 children and

⁷² According to HRDC study, 2015, it results that 43 % of victims have two children.



only 0.5% of the cases the victim has nine children. 11% of parties have no children.



Graph no. 11

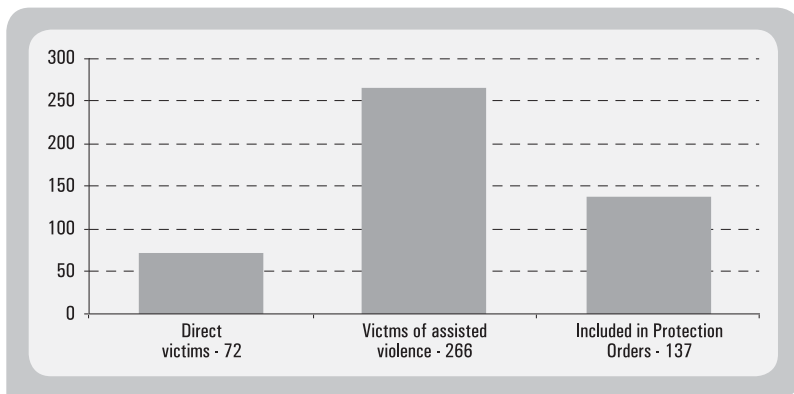
Number of children - 337 Decisions

338 minors were involved in violence episodes. Out of 338 children⁷³, 72 of them were involved (in domestic violence episodes) as direct victims of violence and 266 children assisted in violence episodes. 41% of these violated children are included in the protection orders along with their family members who have requested the protection order (137 children were involved in the Protection Order). In 2015, we have a higher number of minors involved in protection orders 64% of them. Real number of victims of domestic violence results much higher if we consider the children involved in the protection orders. It has been noted that in some cases the victim of domestic violence who has sought protection is underage and the court has asked to pay the psychologist's fee⁷⁴. We have noted cases,

⁷³ According to same study, 175 minors are involved in violence episodes.

⁷⁴ Decision no 5516 dated on 24.6.2016, decision no 5978 dated on 29.6.2017, decision no 7064 dated on 31.7.2017.

when minors, victim of domestic violence is not represented to the court by a lawyer⁷⁵. Based on the practice of court representation, advocates of HRDC have identified contradictory decisions regarding legal matters of minors. Such decisions not only do not protect minors, but rather put them at a potential risk for further exercising of violence. The court through its decision no.4981, dated 9.6.2016, issued a six-month protection order for two minors and their sister and at the same time provisioned the right to sleep at their parent (mother) and spending vacation with her, at a time when children were under the effects of protection order.



Graph no. 12 Minors

64 of these children were assisted by a psychologist during the trial. The new measure applied for this period is the meeting of the child in the presence of the Psychologist of the Shelter⁷⁶, treatment by a Clinic Psychologist⁷⁷ in the shelter, participation in rehabilitation

⁷⁵ Decision no 9082 dated on 11.11.2016.

⁷⁶ Decision no 6328 dated on 15.7.2016.

⁷⁷ Decision no 8070 dated on 14.10.2016.



programs of psychological counseling aiming at strengthening parental ability⁷⁸, accommodation of children in the institution and conducting of supervised meetings of children with the abusive parent⁷⁹. This practice is expected to be improved due to the implementation of the Psychologist Order, which started operating in 2016.

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.

A new and positive practice observed during the monitoring period is related to the fact that the questioning of minors by the psychologist (as witnesses or passive subjects of domestic violence) is carried out through payment of the psychologist by the Court and not by the victim as it was in 2015. Psychologist fee is covered by the Court's funds. However, this practice only applies to the question of minors at court hearings and if a psycho social assessment report is required, then the payment is charged on the victim of violence. Even when the victim of domestic violence is questioned, the payment of a psychologist's fee is conducted by her, at her own expenses.

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 the fee is not paid. Consequently the victim of DV can not present this important record to the judge

⁷⁸ Decision no 9613 dated on 16.11.2017.

⁷⁹ Decision no 1397 dated on 27.2.2017.

(psychological report). 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” changed*, 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, the 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 right

Another finding of this monitoring is also related to the fact that its has started the practice of participation of other responsible institutions in the court hearings. Thus administrative unit staff attended in nine cases, and representatives of Police attended five cases.



CHAPTER IV

Sentencing of perpetrators – regarding the penal act “domestic violence”

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, article 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 only change is the active subjects of penal acts (in case of article 130/a *“Domestic Violence”*) *are 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 930 files (944 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 499 legal issues:

- 499 cases for penal act of beating (270 cases for 2016 and 229 cases for 2017) article 130/a/1 of Penal Code);
- 32 cases for penal act of threatening (article 130/a/2 of Penal Code);
- 64 cases for penal act of injury (36 cases for year 2016 and 28 for year 2017 article 130/a/3 of Penal Code);
- 308 legal cases for penal act of repetition of these acts, 161 cases for 2016 and 147 for 2017 article 130/a/4 of Penal Code);

Table no. 9

Penal act	Number of cases
Article 130 a/1 (beating)	499
Article 130 a/2 (threat)	32
Article 130 a/3 (injury)	64
Article 130 a/4 (recurrence)	308
Article 321 (violation of protection order)	27
Total	930

750 legal issues were finalized, whereas 180 others are in process of reviewing. Out of 944 defendants of DV penal act, 55 of them are women/girls- 6 % of them. HRDC noticed an increase of number of cases submitted to Tirana district court in comparison to 2015 – there is 18 % increase.

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

Table no. 10

Measure of sentencing	Number	In %
15 days	3	1%
1 month	10	2.5%
1 month and 15 days	4	1%
2 months	13	3.5%
2 months and 15 days	1	0.5
3 months	52	14.5 %
4 months	9	2.5%
4 months and 15 days	10	2.5
5 months	3	1%
6 months	101	28%
7 months	7	2%
7 months and 15 days	8	2%
8 months	9	2.5 %
8 months and 15 days	2	0.5%
9 months	48	13 %
10 months	5	1.5 %

10 months and 15 days	5	1.5%
11 months	9	2.5%
11 months and 15 days	1	0.5%
12 months	43	12%
13 months	1	0.5 %
15 months	8	2%
1 year and 6 months	7	2%
2 years	1	0.5%
Total	360	100%

Sentencing ranges from 15 days up to two years. The most applied sentencing is the six months ones (article 130/a/1 of Penal Code). Around 28 % of sentencing for this penal act is 6 months and in 14.5 % of cases the court applied 3 months sentencing. One year sentencing is applied in 12 % of cases. It is obvious that more severe punishments such as penalties of over one year have started to be applied (in 12% of cases).

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

Table no. 11

Sentencing	Number	In %
1 months and 15 days	2	8.5%
3 months	1	4 %
4 months	2	8.5%
6 months	4	16.5%



8 months	1	4%
12 months	10	42%
15 months	2	8.5%
18 months	1	4%
3 years	1	4%
Total	24	100%

Sentencing ranges from one month and 15 days to years. The most applied sentencing is the twelve months ones (article 130/a/2 of Penal Code) . Therefore 42% of sentencing related to twelve months and in around 16.5 %, the court applied 6 months sentencing.

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

Table no. 12

Sentencing range	Number	In %
1 month	1	2 %
2 months	2	4.5 %
3 months	1	2 %
4 months	2	4.5%
6 months	9	21%
7 months	2	4.5%
8 months	1	2%
9 months	7	16%
1 year	12	27.5%

1 year and 6 months	4	9.5%
2 years	2	4.5%
2 years and 6 months	1	2%
Total	44	100%

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

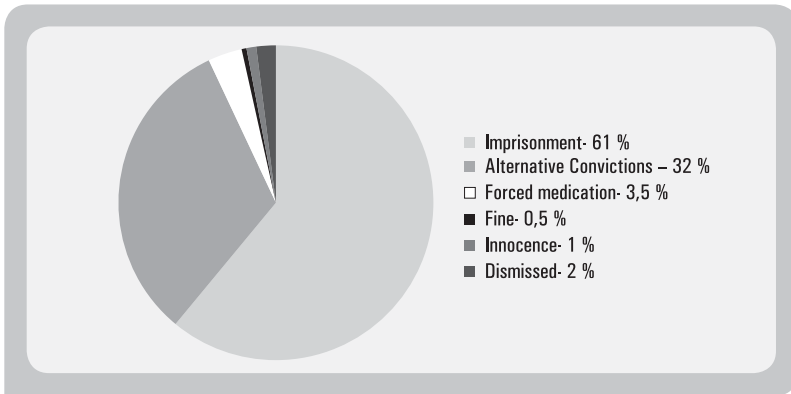
Table no. 13

Sentencing	Number	In %
3 months	2	1%
8 months	1	0.5%
9 months	1	0.5 %
10 months	1	0.5%
1 year	114	51%
13 months	2	1%
1 year and 3 months	20	9%
1 year and 6 months	55	25%
2 years	14	6%
2 years and 6 months	6	2.5%
3 years	5	2%
21 months	2	1%
Total	223	100%



Sentencing ranges from 3 months to three years. The most applied sentencing is the twelve months ones (article 130/a/4 of Penal Code) . Therefore 51 % of sentencing related to one year and in around 25 % of cases, the court applied one year and 6 months sentencing.

Types of applied sentencing



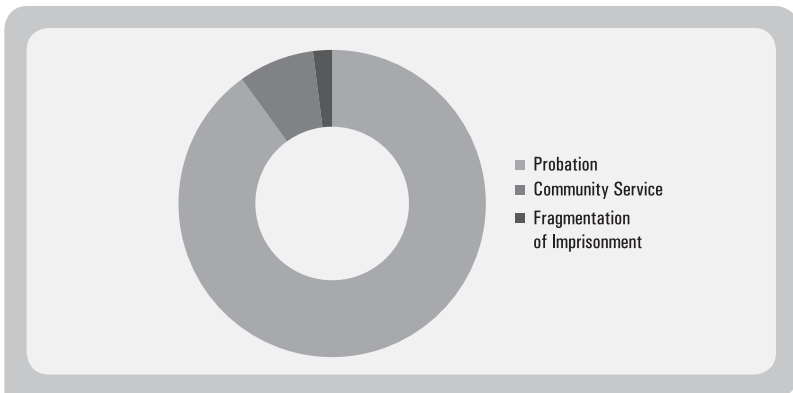
Graph no. 13 Types of convictions

In 61% of cases the Court has decided the application of imprisonment sentences for offenders. In 32% of them, court did apply alternative penalties such as suspension of execution of sentence of imprisonment and probation (90% of cases), 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 % of cases), according to Article 63 of the Criminal Code.

Positive tendency has been noted regarding the imposition of the measure of non-use of alcoholic drinks or narcotics by perpetrators (in 13 cases) at a time when 18% of perpetrators are found to be

users of these substances. Also, a new applied new measure is the conduct of professional activities for young abusers (5 cases). While in 2% of cases half-freedom is applied. Alternative sentences have been applied in a more limited number of cases than 2015. This Court's tendency should be assessed positively. As it turns out that a relatively high figure of abusers, 61% of them have served the sentence in prison. In this way, it is reduced potential risk of repeating acts of violence.



Graph no. 14 Types of Alternative Sentences - 213 Decisions

For monitored period, it should be appraised the increasing of cases of domestic violence, which are prosecuted. Also the application of imprisonment sentence for 61% 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”.

For two years (2016 -2017), Prosecutors Office submitted to court 27 cases regarding breach of protection order with object article 321/2 of the Criminal Code “Acts opposing court’s decision” 22 cases with this object are terminated whereas five others are still on trial.

Sentencing applied for article 321/2 Of Penal code - “Acts opposing court’s decision”

Table no. 14

Sentencing ranges	Number	In %
1 months and 15 days	2	9%
2 months	8	37%
3 months	1	4.5%
6 months	4	18%
9 months	1	4.5%
1 year	1	4.5%
Penalty	1	4.5%
Suspended /amnesty	4	18%
Total	22	100%

Average sentencing for this penal act ranges from one month and 15 days to one year. Most often applied sentencing regarding article 1321/1 of Penal Code is “two months imprisonment”. 37 % of decisions correspond to two months imprisonment, and for approximately 18 % of cases, court ruled out 6 month’s imprisonment



CHAPTER V

Conclusions and Recommendations

At the conclusions of this study, which has used direct, analytical, comparative and statistical observation methods, there is a need to draw some recommendations which aims at fulfilling of legal responsibilities by responsible institutions, as well as increasing of the effectiveness of protection orders.

First, regarding the role of judicial power

Compared to the findings of the study conducted in 2015, there is an increase of 33% of the number of cases judged by Tirana District Court. On the other hand, it is worth mentioning that there is decrease with 5% of case which were admitted/partly admitted by court compared to 2015. The number of cases dismissed/ceased/returned acts continues to remain high, respectively 76% of the deposited cases. The main reason of case dismissal is the failure of plaintiff to show up, or plaintiffs' withdrawal from the case, however there are some other cases when the Court decides the dismiss the case because of the normalization of relations between the litigants, after following the standard reconciliation procedure of the parties. Although, the Istanbul Convention prohibits the parties 'conciliation procedure, it is evident that the legal trial for issuance of protection order in many cases is treated as other civil processes, where efforts are made to reconcile the parties, and in some cases is also noted

the persistence of the court for reconciliation. This finding of the study is in line with one of the Grevio Committee's recommendations, according to which *"the authorities should take appropriate measures in legislation to clearly exclude the applicability of conciliation in the course of the proceedings for the issuance of protection orders"*. Situation of parties conciliation in most of cases result temporarily and the victims of violence start again from the very beginning the procedures for issuance of protection orders. This is translated in cost for the system and at the same time for the victim of domestic violence, which may face a higher risk at the time of reconciliation, after using its legal remedies.

- It is noted that the number of appeals in higher courts for legal cases with object issuance of protection order is low. 24% of the court decisions have been appealed whilst recourse was exercised in 2% of the cases. This fact shows that there is a problem with the access to justice for victims of domestic violence.
- Regarding the duration of protection orders, the Court has seriously evaluated the risk of victims and has anticipated reasonable duration of protection orders for of each case. It is noted that in 52% of cases the court has issued a protection order with a maximum term (1 year) and for 0.5% of cases have appointed a minimum term (1month).

The court has established a positive practice regarding provision of all protective measures required by the plaintiff (victim of domestic violence) in 90% of the cases. Judge's attentive review and provision of combined number of protective measures increases the effectiveness of protection orders. The Court has the right to impose protective measures other than those required by victims



of domestic violence. Monitoring reveals that 18% of perpetrators are regular users of alcohol/drugs but only for three cases the Court has foreseen rehabilitation measures. If we refer to the right to be protected by a lawyer, we note that in only 10 % of dismissed cases the victim of domestic violence is represented by a lawyer and if we refer to accepted cases, we notice that victim of domestic violence is supported by a lawyer in 43% 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 judicial process for issuance of protection orders. For 1% of cases the Court has appointed a state lawyer, but only for cases involving minors. Still we do not have a list of lawyers who would provide free legal assistance to victims of domestic violence. This finding of the study is in line with one of Grevio's recommendations, according to which *"it should be taken the measures to establish and fund appropriately an effective system of legal aid for the victims of all the forms of violence against women covered by the Convention"*.

From the monitoring findings, it result that the legal term for examination of requests of protection orders is respected in 94% of cases, while the postponement of judicial session is observed in 36% of monitored cases. The ongoing postponements of court hearings result in granting of final decision after an unjustified period of time, a period of time that can not be considered "within a reasonable time" because of the specifics that such cases bear. Also, postponements of court hearings for issuance of protection orders lead to withdrawal of the victim and failure to show up in court the next session. One of the main findings of this monitoring *is the systematic violation of procedural terms foreseen in law regarding examination of lawsuits and granting of judicial decisions.*

Judges show a formal attention to the procedures for scheduling the first court hearing session within the legal term, but in majority of cases, they fail to take a final decision within the legal term (as provisioned in law). The legal provisions “decides on the request within 48 hours”, “decides within 15 days” or “sets out the hearing date within 20 days” has been applied as an obligation by the courts to determine the first court hearing sessions and not to terminate the case and give decisions within these deadlines.

The legal provision (20 days deadline) for scheduling of court hearing has been implemented by the court. In majority of cases, the first hearing is scheduled formally but the confirmation procedure lasts unreasonably.

Respect of deadlines seems also to be a matter of mentality of judges with justification that their violation of legal deadlines does not bring obvious consequences. This conclusion is based on monitoring findings, where there are cases of violations of terms due to weekly day offs, official holidays, annual leave or other engagements of judges, such as participation in training/seminars.

Domestic violence hearings are of a specific nature and are built by the legislator to be completed within few sessions, which involves the co-ordination of all actors starting from the state’s police to the defenders who should provide correct addresses and a complete set of probative documentation at the time of submission the case to the court. Consequently, there is a need for precision of the law of this procedures.⁸⁰

Comparing to 2015, there is an increase of judges referral to Istanbul Convention, ratified by Law no. 104/2012, dated

⁸⁰ HCJ, Report on the situation of domestic violence cases, no. 174. Prot, dated 15.02.2018.



08.11.2012 *“The Council of Europe Convention on the Prevention and Combating Violence against Women and Domestic Violence”*, but still referral is limited to 77 decisions.

From monitoring of decisions of court, is concluded that we have well-argued in 70% of the cases, whereas other remaining we have noticed various problems such as lack of data of parties, truncated decisions, placement of offensive and discriminatory expressions of the parties in the decision, inadequate protective measures, protective measures in favor of the perpetrator, errors in the legitimization of the parties, procedural violation referral to the provisions of the Civil Code on the issue of property ineffective decisions.

From monitoring of all judicial decisions of Tirana District Court, it is observed that court has consolidated the practice of judging based on written documentation/witnesses in 70% of cases and only in 30% of cases the court have ruled out on basis of judge’s internal orientation. It has also been noted cases when the Court has decided to turn down the petition on the grounds of lacking written evidence. The Law nr. 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.

Monitoring revealed the Court’s tendency to seek the administration of ownership documents, in cases where such protective measures are required such as removal from the apartment of the perpetrator or ordering the perpetrator to allow the victim to use the apartment or part of it.

Such requests not only procrastinate the legal process, but are contrary to DV Law, because the law intentionally use the term *“owned”* but uses the term *“commonly used”*.

During the monitoring period, HRDC noticed a tendency of the court to request from petitioner to withdraw from the trial, in cases when the abuser is arrested. The Law 9669/2006 *“On Measures Against Violence in Family Relations”* changed provides that prosecution/examination of domestic violence case may be done concurrently, as procedures do not exclude each other. Article 24 of the Law *“On Measures against Violence in Family Relations”* sanctions that “issuance of a protection order or emergency protection order does not inhibit interested parties to also initiate criminal proceedings with regard to acts or omissions that are classified as criminal offences”.

If abuser is imprisoned, that does not mean that this measure could not be replaced by a lighter sentencing measure. The purpose of the law is to prevent further events in the future as well as to guarantee the safety of the victim as well as its rehabilitation. According to the Council of Europe Convention *“On the Prevention and Fight against Violence against Women and Domestic Violence”* victims of violence should be guaranteed access to services, which facilitate the rehabilitation of victims by violence.

Real number of victims of domestic violence is much higher if we consider the children involved in the protection orders. 41% of these violated children are included in the protection order along with their family members who have sought protection order. Out of this figure, only 19% of them are assisted by a psychologist. A new positive practice observed during this period of monitoring is related to the fact that the questioning of minors over 10 years old by the psychologist (as witnesses or passive subjects of domestic violence) in a court session is carried out with the payment of a psychologist by the Court. Whereas in cases when a psychological evaluation report is required for minors outside the court session, the psychologist asks



for fee from the victim of domestic violence as a plaintiff. This practice of the Court is in open contradiction with the GREVIO Committee's Recommendation that "compulsory psychological reporting fees should not constitute an obstacle to access to justice".

The Court does not respect in every case the obligation provided in Article 19 of the Law "*On Measures Against Domestic Violence*" changed - the court sends within 24 hours a copy of the emergency protection order to the Police stations and social services department of the municipality or commune of the location where the victim or other persons mentioned in the protection order reside temporarily or permanently.

This lead to limitation of access of victims of domestic violence to access services such as economic aid and social housing programs.

If we refer to the conviction of perpetrators of domestic violence offenses (according to articles 130/a and 321/2 of the Criminal Code), there is an increase in the number of domestic violence cases for which criminal prosecution has initiated (18 %) compared to 2015. Only 6% of the defendants are women/girls. Also, the application of imprisonment measure for around 61% of the cases is a step forward in the fight against domestic violence. We have noticed application of more severe punishments such as sentencing over one year in 12% of cases. Thus, there is a tendency to punish the perpetrators of these offenses which pose a high social risk. We have noticed an increase in the number of cases where perpetrators have been granted sentencing compared to 2015.

In 61% of cases the Court has decided the application of imprisonment sentences for offenders. In 32% of them, court did apply alternative penalties such as suspension of execution of sentence of imprisonment and probation (90% of cases), according to article 59 of the Criminal Code (*Suspending the execution of a sentence*)

Another sentencing applied by court is suspension of the imprisonment and compulsion to perform labor work in favor of the public interest (8% of cases), according to Article 63 of the Criminal Code.

HRDC recommendations regarding Tirana district court

- Increasing efficiency of court regarding final adjudication of legal cases, 76% of judged cases are dismissed.
- Exclude the applicability of conciliation in the course of the proceedings for the issuance of protection orders.
- Increasing the access of victims of violence in other levels of judgment.
- Application of protective measures for the rehabilitation of perpetrator, especially for those who are alcohol/and drug users.
- Provision of a list of free advocates for victims of domestic violence.
- Respect of procedural terms.
- Increase the efficiency of the Court in terms of accurate procedures to avoid several court hearings.
- Application of Istanbul Convention as legal base as well as continuous training of judges.
- Attention to the reasoning of court decisions as well as the avoidance of such issues as lack of litigants data, material mistakes, inappropriate protective measures, errors in legitimizing parties, ineffective decisions.
- Use of the Court's mandate to decide on the basis of internal evaluation, which is explicitly provided by DV law.
- Avoidance of administration of property documentation in legal process with object issuance of protection order.
- Continuation of court proceedings for issuance of protection



order despite the granting of sentence of imprisonment to perpetrator.

- Provision of a list of psychologists, free of charge, for victims of violence.
- Sending within a legal deadline of copies of the court decisions to social services office (local units) and the Police Stations.
- Moderated application of alternative sentencing for perpetrators who are penally sentenced.

Secondly, regarding the role of Police Stations

Police is the key actor, where victims of domestic violence seek protection. In 99 % of cases, victims/survivors of domestic violence report violence to the Police Stations.

Police Stations responds the reporting through filling out of the petition for issuance of protection order on its own initiative when it concludes that family members are affected by violence.

The monitoring of judicial decisions of the Tirana District Court regarding issuance of protection order did not reveal any case when Police have filed a public lawsuit.

The state's police as the first contact of victim/survivor of domestic violence, completes the documentation and presents them administratively to the court. In the vast majority, such cases are dismissed by court, because victim/survivor of violence shows lack of will to continue the legal process. The case dismissal by the side of court contradicts the purpose of the law, which in article 13, point 4 of the law *"On Measures against Violence in Family Relations"* changed, says *"when the petition is presented by the police/prosecutor, the victim's wish to drop the case does not have an effect on the continuation of the judicial process."*

In such cases, court reasons that there is no room to apply article 13, point 4 of the 9669/2006 Law, because the Police Station is not in position of petitioner in such cases. If the police would have used this right (explicitly recognized by law) we might have a smaller number of dismissed cases.

Since the Police is the first contact of a victim of domestic violence, it is of particular importance to refer cases of domestic violence to other actors of Referral Mechanism of Domestic Violence Cases. The police should also conduct referral of victims of domestic violence that present physical injuries to the Health Centers for the provision of Special Medical Reports and referral to institutions providing support services. The referral of the victim of domestic violence to benefit economic aid, legal aid, psychological services, etc. is duty of Police, as the first and most important link in dealing with a case of domestic violence.

HRDC recommendations regarding the work of Police Stations

- Increasing the active role of Police Stations as a subject entitled to seek protection orders on its own initiative (public lawsuit).
- Referral of domestic violence cases to other actors of Referral Mechanism of Domestic Violence Cases.
- Provision of victims of domestic violence with written evidence and orientation for their collection (written evidence/witnesses).
- Referral of victims of domestic violence who have physical injuries at health centers, to be equipped with special medical reports.
- Referral of the victim of domestic Violence for the benefit of economic, legal and psychological assistance.
- Referral to other institutions that provide support services.



Thirdly, regarding the 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 this monitoring period it is noted the positive role of Child Protection Units (NJMF) to participate in the legal proceedings involving issuance of protection orders called by the Court as persons who have information about the case.

For this reason it is recommended:

- Fulfilling of the responsibilities to inform, support and refer cases of domestic violence to other responsible institutions.
- Submission of requests for protection orders.
- Providing of economic assistance to victims of domestic violence as provisioned in the Law.
- Increasing the active role of Child Protection Units (NJMF) in the judicial process of issuance of protection orders in cases when minors are involved.

Fourth, regarding the role of Health Centers

From the monitoring of the decisions of Tirana District Court for the issuance of PO/IPO for the monitoring period, it results that only seven medical reports (issued by the Health Centers) are used by court as evidence. These reports have been issued thanks to the functioning of the Referral Mechanism for Domestic Violence cases which is supported by the Human Rights in Democracy Center, in the Administrative Unit no. 4 and 6 in Tirana municipality.

Under these conditions, taking into consideration the fact that the law *“On Measures against Violence in Family Relations”*, as amended, has entered into force since 2007 and still the Health Institutions

(Health Centers) have not taken concrete steps to implement legal duties, we recommend the proper intervention of the Ministry of Health aiming at taking over their legal responsibilities by enabling victims of domestic violence to have access to these support services, according to the legislation into power.

This would bring the health care system to the forefront of efforts to combat all forms of violence against women, and as such it will apply the recommendations of Grevio Report (paragraph 98).⁸¹

Fifth, Bailiff Offices

In same cases, the Bailiff Office of Tirana have requested from the victims/survivors payment of taxes for execution of decisions with object issuance of protection orders, while the victims are exempted from taxes since 2010. We recommend the training of Bailiff Officers regarding executing of judicial decisions for victims of domestic violence.

⁸¹ Recommendation of Group of Experts on Action against Violence against Women and Domestic Violence.



LITERATURE

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