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FROM THE AMERICAN PEOPLE

CREATION OF A COMMUNITY COORDINATED RESPONSE TEAM AGAINST DOMESTIC VIOLENCE IN ALBANIA

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A Women's Legal Rights Initiative Publication

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The Women's Legal Rights Initiative (WLRI) produced and published this CREATION OF A COMMUNITY COORDINATED RESPONSE TEAM AGAINST DOMESTIC VIOLENCE IN ALBANIA Manual in furtherance of Women's Legal Rights Initiative mission to develop legislation and methods of stopping domestic violence in Albania. This Manual is the result of the collective efforts of the members of the coordinated response team who actively participated in its development (Mr. Nuri Locaj, Mr. Arjan Kurti, Mr. Gentian Osmani, Mr. Dritan Reshka, Ms. Esmeralda Pifti, Ms. Monika Kocaqi, Ms. Aurela Bozo, Ms. Blerta Picari, Ms. Nazire Bidollari, Ms. Elvana Çibukaj, Mr. Zija Ismaili, Mr. Admir Sinamati), Dianne Post, a U.S. attorney, and was edited by Ms. Emira Shkurti, WLRI Legal Advisor and Ms. Mary Theisen, WLRI Chief of Party. WLR Administrative Assistant, Manjola Orgocka coordinated its publication. The material was translated from English to Albanian by Ms. Ejona Kushi. This Manual represents only the opinions of its authors; it does not represent any official statement of USAID, its mission to Albania or the WLRI project nor is it intended to serve as legal authority.

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I. INTRODUCTION

Domestic violence is an international phenomenon that is no stranger to Albania. Until recently however, it was not the topic of official discussion. In order for Albania to move toward integration into the greater European community, it must adopt international standards on human rights. One such international standard includes ending violence toward women and enforcing women's equal rights.

In October 2006, *The Albanian Institutions for the Protection of Women Against Domestic Violence* was published by the Centre for Civic Legal Initiatives and Albanian Centre for Population of Development. It outlined serious problems in meeting international standards including lack of a national strategy (which is currently being drafted), no definition of domestic violence in current statutes, (a law defining domestic violence in terms of obtaining a protection order is in Parliament but it does not apply to criminal prosecution except upon violation of the protection order), free legal aid is not available for victims, there are few female police officers, the government has undertaken no awareness campaigns to end domestic violence, the state does not provide or fund hotlines, shelters and services as required, research and gathering of statistics is not encouraged or often even possible, and the courts and medical services are inefficient and ineffective for victims.

In November 2006, the OSCE Analysis of the Criminal Justice System of Albania report by the Fair Trial Development Project was released. It too presented a dire portrait of the treatment of domestic violence victims and cases in the criminal courts. The recent publication *International Standards on Domestic Violence and Their Implementation in the Western Balkans*, Belgrade 2006 (a publication of the Humanist Committee on Human Rights), discusses the needs for victims and how they are being addressed. Albania is doing very poorly in meeting international standards.

Research has shown that a holistic system that is coordinated and comprehensive is the best method of tackling domestic violence. In recognition of that, the Draft Law On Measures Against Violence in Family Relations requires that the State establish such a coordinated team. WLRI began this process in May 2006 realizing that with or without a law, this coordination is needed to move forward. Thus an initial conference was held in May 2006 to bring together representatives from the various sectors and international experts from Italy and the United States. In June and July, each sector worked on their individual protocols and procedures to address the problem. In September these were reviewed and refined especially in terms of the structure of current systems and how best the victim may be protected and violence prevented. In November, the members of the team reassembled to broaden and deepen their knowledge and understanding of the reality and dynamics of domestic violence, to strengthen their bonds as a cooperative team and to review all the protocols for coherence and coordination. The result is this manual. It includes the protocols from all five sectors and the draft law. It is a blueprint for coordinated action and the outline for necessary secondary legislation. This manual is intended as a resource for law enforcement, prosecution, the health, social service and NGO sector and the

judiciary to begin the process of improving Albania's response to victims of domestic violence.

II. PROTOCOL FOR LAW ENFORCEMENT

POLICE PROTOCOL

The goal of domestic violence intervention is:

- To prevent and reduce domestic violence in all its forms by appropriate legal means
- To guarantee legal protection, especially safety, to members of the family who are subjects of domestic violence with special attention to children, the elderly and the disabled
- To uphold the law
- To hold the abuser accountable
- To provide an opportunity for abuser rehabilitation if appropriate
- To reduce recidivism and the need to return to the same location repeatedly.
- To prevent serious injury and homicide by intervening at lower levels of assault

Definitions

Domestic violence occurs when any act of violence is committed within the family including but not limited to: (Article 3, On Measures Against Violence in Family Relationships)

Murder (Articles 76 – 83, 85 of Penal Code)

Threat (Article 84)

Torture (Articles 86 and 87)

Wounding (Article 88/b)

Termination of pregnancy without consent (Article 93)

Denial of help (Article 97)

Causing of suicide (Article 99)

Abduction (Article 109, 109/a)

Trafficking (Article 110/1 and Article 114/b, re minors 128/b)

Trespass (Article 112)

Forcing into and exploiting for prostitution (Article 114)

Insult (Article 119)

Defamation (Article 120)

Limitation of the freedom of expression/speech, of movement or assembly (Article 261)

Violation of private life (Article 121)
Rape (Articles 100-107)
Other obscene acts (Article 108)
Abandonment (Article 124)
Denial of living means (Article 125)
Illegal taking of child (Article 127)
Coercion for cohabitation or termination of marriage (Article 130)
Damage to property or economic well-being (Articles 150-154)
Limitation on freedom to administer their income (robbery/theft – (Articles 139 and 134)
Serious intentional injury (Article 88, 88/a)
Non serious intentional injury (Article 89)
Other intentional injury (Article 90)
Serious injury due to negligence (Article 91)
Non serious due to negligence (Articles 92)
Wrongful use of telephone (Article 275)

While the following actions are not listed in the existing criminal code, they are included as domestic violence under the law “On Measures Against Violence in Family Relations:

Prohibition on holding monetary means, despise, direct physical, psychological, sexual and economic abuse of children and putting children in dangerous situations where they witness violence. The last is addressed to the perpetrator of violence not the victim.

AND one of the following relationships applies: (Article 3)

1. “Members of the family” are
 - a. Spouses or cohabitating partners
 - b. Brothers, sisters, relatives of direct blood line, including adoptive parents and children
 - c. Spouses of persons provided in paragraph b
 - d. Persons related by direct blood line, including parents and adoptive children of the spouse or the cohabitating partner,
 - e. Brothers and sisters of the spouse if these have been living together during the last 3 (three) months

Communication Procedure

129 Operator/Dispatch:

- All calls involving a domestic violence incident in progress should be given the same priority as other emergency calls.

- At least two officers should go to every call.
- The operator should not discuss bringing charges or prosecution. An emergency call is for immediate assistance not legal action.
- No comments should be made that blame the victim or suggest the incident is minor or not important.

Operators should obtain the following information:

- What is the emergency?
- Is the caller the victim?
- If not, did the caller see the incident?
- When did the incident occur or is it now occurring?
- Where is the emergency?
- Are there any injuries?
- Is an ambulance needed?
- Are weapons involved?
- What kind?
- Who is the abuser?
- What is the caller's relationship to the abuser?
- Where is the abuser now?
- What is the physical description of the abuser?
- What is the abuser's name?
- Has anyone involved been drinking or using drugs?
- What is the callers name?
- Is there a protection order against the abuser?
- Have the police been called to this address or these people before?
- Are there any other witnesses?

- What are their names?
- Are children there?
 - How old are they?

Patrol Response:

Enforcement of Laws

The criminal law should be applied the same in every case where a crime has occurred. The following factors will NOT influence the officer's actions in a domestic violence case:

- The relationship or marital status of the suspect and victim
- Whether the suspect lives or does not live on the premises with the victim
- The lack of a Protection Order
- The potential financial consequences of arrest
- The victims or suspects emotional state (suspects will often be very calm and in control while the victim having just experienced violence may be agitated.)
- The lack of visible injuries on the victim (many injuries are internal or are not visible for 24 to 48 hours).
- The location of the incident i.e. public or private property
- Speculation that charges may not be brought

The officer will not make statements or threats to discourage victims from reporting the domestic violence such as

- you know we have to arrest your husband and he won't be able to work,
- he'll just be more angry,
- we have to arrest you both and who will take care of the children.

The officer should make it clear that the determination whether to bring charges belongs to the prosecutor and not the police or the victim.

Investigation of Domestic Violence Cases

- Officers should conduct a thorough investigation and prepare the report regardless of the wishes of the victim or the presence or absence of the suspect.
- Officers should approach all scenes with caution and look and listen to what is going on before announcing their presence.
- If possible use a tape recorder to note the time and date and record all subsequent activity including suspect, victim and witness statements especially children.
- Determine the location and condition of the victim and suspect.
- Determine if a weapon is involved or in the home or vicinity.
- Provide aid to injured parties or call an ambulance.
- Document the name and contact information for the doctor that the victim has used.
- Determine if others are in the residence or building.
- Separate the suspect, victim and witnesses in sight and hearing before interviewing them.
- Record their statements verbatim not a summary.
- When interviewing children, ask:
 - What happened?
 - Who did this?
 - Where were you when this happened?
 - When did this happen?
 - Where do you go to school?
- Document the emotional state of all persons.
- If both parties claim violence, note the answers to the following questions:
 - Was one party in actual fear of the other?
 - Did one party escalate the level of violence?
 - Was one party physically bigger and stronger than the other?
 - Was there a history of violence by one party against the other or against other persons?
 - Does one party have a history of being the aggressor?
 - Does one party have more serious injuries than the other?

Do any injuries appear to be defense wounds or escape wounds e.g. bite marks or scratching?

- Document and photograph all injuries. (Criminal Procedure Code 188)
- Document the condition at the scene using photographs and diagrams. (CPC 188)
- Photograph or film any weapons seized and write it in the report.
- Ask who made the 129 call if one was made and if so, get a copy of the Book of Events for the day where the call was recorded.

Protection Orders

If there is no protection order, officers should advise the victim of the possibility of a protection order.

If there is a protection order, officers should read the language of the order carefully to see what victim protections were ordered and what restrictions were placed on the suspect.

If the suspect has violated the protection order, the officer should arrest under Criminal Code 320 for interference with a court order.

Written Incident Reports

On the Victim and Witness sheet, there is a box to check that the incident is domestic violence. The relationship between the parties should be circled.

- Document each element of each offense. Remember there may be more than one.
- Document the violation of the protection order if there is one.
- Document each injury with photos, body maps, and written description.
- Include school information for any children.
- Document and photograph physical evidence such as holes in walls, broken doors, damaged furniture etc.
- Document any history of previous incidents whether or not reported to the police.
- Directly quote victims, suspects and witnesses. Do not summarize.
- Note emotional states of all parties.

- Indicate whether children, elderly people or disabled people were present or injured during the incident.
- Document whether victim says she was pregnant at the time of the incident.

Special Role of Police in Protection of Victims

- Police departments are one of the responsible authorities under the law. (Article 5)
- The Ministry of Interior is responsible to set up special anti-violence units at police stations and train members of the police force to handle domestic violence cases. (Article 9)
- All agencies are required to coordinate services, establish a responsible person, respond to reports filed by victims, keep records, and protect the victim through information, providing transportation or in certain life endangering cases, providing the protection of a police officer. (Article 10)
- Persons who receive reports and fail to take action are liable for administrative or criminal sanctions under 248 or 251 of the Criminal Code. (Article 10)
- Victims and others may report to the police station and the police must record the report and start an investigation. (Article 11)
- Under the protection order law, police may present petitions for protection orders or emergency protection orders. (Article 15) Police should be extremely careful about doing this so as to empower the victim rather than taking away the victims power of decision making.
- When immediate help is requested, the petition may be presented at the nearest police station. (Article 16) The police unit should contact the prosecutor who is on call. The prosecutor then should contact the judge and get the protection order issued. A copy should then be sent immediately to the police and victim in the rural areas.
- The police report may be evidence in court. (Article 18)
- The police will be sent a copy of the order within 24 hours of its issue. (Article 20, 22)
- If the court has a hearing on an emergency protection order and it has been filed by the police, the police may be asked to appear at the hearing. (Article 21)

Special Role of Police in Enforcement of Protection Orders

- Under the protection order law, orders are executive titles and go into effect immediately. (Article 22, 26)
- The order is to be carried out immediately by police departments among others. (Article 20, 26)
- Members of the police force, among others, SHALL take all necessary steps to ensure immediate and continuous implementation/execution of protection measures. (Article 26)
- If the respondent actively interferes with or places obstacles in the way of compliance with the order, Article 320 of the Criminal Code can be applied. (Article 26) It is extremely important that police act swiftly in such cases because it is an extremely dangerous time for the victims.
- Issuance of a protection order or emergency protection order does not in any way inhibit beginning criminal proceedings with regard to acts or omissions classified as criminal offenses. (Article 27) This is often very important as a protection mechanism for victims.

Special Considerations by the Police for Victims of Domestic Violence

Some specific things to think about in domestic violence cases include:

- Is a divorce in process? Often the abuser will increase violence at the time of divorce because of a fear of loss of control over the victim.
- The presence of a weapon is a warning of extreme danger. Be sure to confiscate the weapon. Before returning the weapon, check to see if there is a protection order against the person and if so, do not return the weapon until the expiration of the protection order and only then with a court order. (Criminal Procedure Code 217)
- Refer the victims to the local NGOs who give services to victims.

Articles of the Criminal Code to Consider in Domestic Violence Cases

Article 17- Often the offender will claim that he is not responsible because he could not control his actions blaming his wife for making him angry. This is not a valid defense. Ask him what he does when gets angry at his boss? Or his friend? Or his neighbour? Most likely he does not hit them. It is only his wife he hits.

Article 18 – The abuser will often claim he is not responsible because he was drunk. That is not a defense and if done deliberately to justify his beating could be an

aggravating factor. Be sure to take an alcohol reading at the scene or later at the station. It will be very useful if the perpetrator tries to use this for a defense.

Article 50 – Aggravating circumstances can be used when the act is against pregnant women or children or other people who cannot defend themselves such as the elderly or people with disabilities. Aggravation can also be present by taking advantage of family relations to do or cover up the act. Be sure to document if such people are present or injured.

Article 93 – Often domestic violence will begin when the woman becomes pregnant and the abuser will often target the stomach. Be sure to document if she is pregnant, if the stomach seems to have been targeted and what injuries resulted.

Article 102-107 – With all sexual offenses, ask whether the victim gave her consent. Simply being the wife or having previously engaged in sexual relations is not sufficient to claim that consent was given.

Article 134 and 150 – In all theft and destruction of property cases, remember that community property belongs equally to both parties and one does not have the right to take, keep or destroy it. (Family Code, Article 73)

Articles of the Criminal Procedure Code to Consider in Domestic Violence Cases

Article 158 – While generally a family member is not obliged to testify against another family member, if they or another family member has been injured, then they must testify.

Article 251 – Even if the crime or attempt does not meet the requirements of paragraphs 1 or 2, the existence of a protection order should meet the requirements of paragraph 3 to allow immediate arrest. If the officer has previous knowledge of domestic violence between these same people, the perpetrator is a repeat offender, or because of the known danger that domestic violence will escalate, that should also be sufficient to allow mandatory arrest under paragraph 3.

Article 285, 286 - Be very suspicious if the victim seeks to waive the right of complaint or tries to withdraw the complaint. It is very likely fear or threats from the abuser that is causing it. The police investigation should go ahead anyhow to protect the victim and prevent re-occurrence of the violence.

III. PROTOCOL FOR PROSECUTION

PROSECUTOR PROTOCOL

The goal of domestic violence prosecution is:

- To prevent and reduce domestic violence in all its forms by appropriate legal means
- To guarantee legal protection, especially safety, to members of the family who are subjects of domestic violence with special attention to children, the elderly and the disabled
- To uphold the law
- To hold the abuser accountable
- To provide an opportunity for abuser rehabilitation if appropriate.

Definitions

Domestic violence occurs when any act of violence is committed within the family including but not limited to: (Article 3, On Measures Against Violence in Family Relationships)

Murder (Articles 76 – 83, 85 of Penal Code)
Threat (Article 84)
Torture (Articles 86 and 87)
Wounding (Article 88/b)
Termination of pregnancy without consent (Article 93)
Denial of help (Article 97)
Causing of suicide (Article 99)
Abduction (Article 109, 109/a)
Trafficking (Article 110/1 and Article 114/b, re minors 128/b)
Trespass (Article 112)
Forcing into and exploiting for prostitution (Article 114)
Insult (Article 119)
Defamation (Article 120)
Limitation of the freedom of expression/speech, of movement or assembly (Article 261)
Violation of private life (Article 121)
Rape (Articles 100-107)
Other obscene acts (Article 108)
Abandonment (Article 124)
Denial of living means (Article 125)
Illegal taking of child (Article 127)
Coercion for cohabitation or termination of marriage (Article 130)
Damage to property or economic well-being (Articles 150-154)

Limitation on freedom to administer their income (robbery/theft – (Articles 139 and 134)

Serious intentional injury (Article 88, 88/a)

Non serious intentional injury (Article 89)

Other intentional injury (Article 90)

Serious injury due to negligence (Article 91)

Non serious due to negligence (Articles 92)

Wrongful use of telephone (Article 275)

While the following actions are not listed in the existing criminal code, they are included as domestic violence under the law “On Measures Against Violence in Family Relations:

Prohibition on holding monetary means, despise, direct physical, psychological, sexual and economic abuse of children and putting children in dangerous situations where they witness violence. The last is addressed to the perpetrator of violence not the victim.

AND one of the following relationships applies: (Article 3)

2. “Members of the family” are
 - f. Spouses or cohabitating partners
 - g. Brothers, sisters, relatives of direct blood line, including adoptive parents and children
 - h. Spouses of persons provided in paragraph b
 - i. Persons related by direct blood line, including parents and adoptive children of the spouse or the cohabitating partner,
 - j. Brothers and sisters of the spouse if these have been living together during the last 3 (three) months

Special Role of Prosecutor in Protection of Victims

- Under the protection order law, prosecutors may present petitions for protection orders or emergency protection orders. (Article 15) Prosecutors should be extremely careful about doing this so as to empower the victim rather than taking away the victims power of decision making.
- The prosecutor may also be heard in court if s/he has presented the petition. (Article 19, 21)
- The prosecutor will be sent a copy of the order within 24 hours of its issue if they presented the petition. (Article 20, 22)
- If the prosecutor presented the petition, they may request it to be amended or terminated but only if there is a fundamental change of circumstances that indicates there is no longer a need for protection. (Article 25) Prosecutors

should be particularly careful about doing this because it could put the victims at more risk of danger.

- If a petition for emergency protection order is presented at a rural police unit, that police unit should contact the prosecutor on call. The prosecutor should contact the judge on call and get the protection order issued. (Article 16)

Special Role of Prosecutor in Enforcement of Protection Orders

- Under the protection order law, orders are executive titles and go into effect immediately. (Article 26)
- If the respondent actively interferes with or places obstacles in the way of compliance with the order, the bailiff is obligated to report that to the prosecutor who then can apply Article 320 of the Criminal Code. (Article 26) It is extremely important that prosecutors act swiftly in such cases because it is an extremely dangerous time for the victims.
- Issuance of a protection order or emergency protection order does not in any way inhibit bringing a criminal charge for the same acts or omissions that might be classified as criminal offenses. (Article 27) This is often very important as a protection mechanism for victims.

Special Considerations by the Prosecutor for Victims of Domestic Violence

Because of the nature of domestic violence, the likelihood that this is not the first offense nor will it be the last, and the ongoing danger to the victim and others, a domestic violence case will be charged if it meets the criteria even if the victim does not wish to proceed with prosecution. Often times the abuser is threatening the victim to withdraw charges and if the prosecutor insists on going forward, the abuser will see that domestic violence is a crime against the state like any other crime and marriage does not give a person a right to violate the law. Further threats and abuse to the victim will not result in charges being dropped but only in more charges being brought.

It is very important to get statements, photos and evidence at the time of the incident because minds quickly change due to threats, a belief that the abuser will change or the necessity to maintain the abuser in the household for income. Speaking to the victim early on will help reduce the fear of the victim and begin to make the victim more comfortable with the prosecutor. Consider asking the court to accept pre-trial admission of evidence because of the likelihood that the victim will be threatened to deny the violence and stop the process. (Criminal Procedure Code Article 316(b))

Some specific things to think about in domestic violence cases include:

- Have there been previous incidents at that address or with those people whether or not charges were filed? Be sure to ask about medical records to find corroborating evidence.
- Does the abuser have a previous criminal history of assault on others? If so, it shows a tendency to use violence to resolve issues.
- Is a divorce in process? Often the abuser will increase violence at the time of divorce because of a fear of loss of control over the victim.
- The presence of a weapon is a warning of extreme danger. Be sure to ask that the weapon is confiscated. (Criminal Procedure Code Article 208)
- Be prepared to impeach the victim at time of trial with earlier statements and evidence.
- Consider having a domestic violence expert testify. Check with the local NGOs who give services to victims. (Criminal Procedure Code Article 314)

Even if it is decided not to file a criminal charge, the victim should be notified and the record should be kept. Domestic violence does not stop by itself and it is likely there will be a repeat incident. The evidence of an earlier incident may be useful or the charge can be refiled. (Criminal Procedure Code 291, 292)

Often the victim of domestic violence is afraid to testify because of threats and intimidation by the perpetrator. Under existing law, there are some ways you can protect the victim:

- Criminal Procedure Code 316 – The prosecutor can ask for pre-trial admission of evidence to preserve the evidence. The perpetrator then has no reason to threaten the victim because the evidence is already admitted.
- Criminal Procedure Code 340 – The prosecutor can ask for a closed hearing to protect the witnesses and victim.
- Criminal Procedure Code 364 – if the victim is a child, elderly or disabled, s/he can be questioned in their own home.
- Criminal Procedure Code 341 – Any person being disruptive in the trial can be removed by the court. For example if the respondent is making faces, gestures or comments to the victim, he should be removed.

Articles of the Criminal Code to Consider in Domestic Violence Cases

Article 17- Often the offender will claim that he is not responsible because he could not control his actions blaming his wife for making him angry. This is not a valid defense. When the same man gets angry at his boss, he does not hit him. When he gets mad at his friends or a stranger in a bar, he does not hit him. It is only his wife he hits because he believes he can get away with it.

Article 18 – The abuser will often claim he is not responsible because he was drunk. That is not a defense and if done deliberately to justify his beating could be an aggravating factor.

Article 30 – Supplementary punishments are often very effective especially for offenders in higher occupational levels. (Article 38-42) Depending on the abuser, Article 43 might be very effective if the abuser is a high level person or in an occupation that commands respect such as a doctor or lawyer.

Article 34 – Fines are not useful punishments for those who have money because the money is just taken from the household budget thereby harming the victims. They are not useful for the poor because they can't be paid anyhow. Further, the message is that society doesn't prevent you from beating your family, just taxes you for it. That is not the message the law should be sending.

Article 48 – Often abusers will express deep repentance but without accompanying actions, it means little. Be very careful of such expressions. Also be very careful if the abuser claims the relationship has returned to normal. Normal means that the abuser is again in control by bullying tactics, threats or actual violence. It is normal only in that the victim has become too frightened to speak out and no new act of physical violence has occurred. You must speak to the victim alone away from the abuser and ask what the situation really is.

Article 50 – Aggravating circumstances can be used when the act is against pregnant women or children or other people who cannot defend themselves such as the elderly or people with disabilities. Aggravation can also be present by taking advantage of family relations to do or cover up the act. Usually by the time the police are called, the violent act has occurred dozens of time previously so this is not the first act.

Article 58 – To prevent loss of a job for the abuser, the sentence can be divided up into two days per week i.e. they can serve it on Saturday and Sunday or whatever their days off from work are. This will prevent loss of family income.

Article 60 – The abuser can be ordered to get education or training such as specific education about domestic violence or child abuse or medical treatment especially for alcohol or drug abuse. If this is part of the sentence, it must be included that the organization delivering the treatment or education report back to the court weekly on the attendance and participation of the defendant. If s/he is not attending or actively

participating, s/he should be arrested and brought to the court to answer for violating the order and other punishments given.

Article 93 – Often domestic violence will begin when the woman becomes pregnant and the abuser will often target the stomach. If the beating causes the loss of the fetus, consider imposing this section.

Article 102-107 – With all sexual offenses, consider whether the victim gave her consent. Simply being the wife or having previously engaged in sexual relations is not sufficient to claim that consent was given. The law does allow prosecution for marital sexual offenses.

Article 110 – If the victim is locked in a house or otherwise not free to move about, consider this section.

Article 119 – Insulting may well apply if done in public.

Article 125 – Remember that denial of child support is a criminal offense.

Article 127 – Unlawful taking of a child is also a crime. Be sure to check if there is a divorce in process or a protection order and what those might require regarding child custody. However, be careful if the victim is hiding a child to prevent further child abuse. In that instance, the action is to prevent crime not to commit one.

Article 134 and 150 – In all theft and destruction of property cases, remember that community property belongs equally to both parties and one does not have the right to take, keep or destroy it. (Family Code, Article 73)

Article 301 – Offenders will often obstruct justice and remove evidence in domestic violence cases.

Article 307 – When victims refuse to testify, it is often because of extreme fear for themselves and the children. The most severe violence usually occurs after the victim has taken steps to escape from the abuser. Thus it would be extremely unjust to charge a victim who is only taking what steps she knows to protect her life and that of her children. (See also Article 165 in Criminal Procedural Code)

Article 311 or 312/a – More appropriate would be to use these articles, depending on the facts, to charge the abuser for threatening the victim.

Articles of the Criminal Procedure Code to Consider in Domestic Violence Cases

Article 58 – The injured person has a right to reimbursement for the injury caused.

Article 61 – Or the injured person may file a civil lawsuit in connection with the criminal.

Articles 169-170 – The process of confrontation is very dangerous for a victim of violence and is not advised. The victim has often for years been subject to abuse from this abuser. She will not feel safe to speak honestly in front of him no matter how much the prosecutor might promise protection. If she does, it is very likely the abuser will become even more violent once he is out of court.

Article 208 – Seizure of a gun or other weapon is recommended as it often leads to more serious violence and often death.

Article 232, 237 – House arrest is never appropriate in domestic violence cases especially if a protection order has been issued.

Article 285, 286 - Be very suspicious if the victim seeks to waive the right of complaint or withdraws the complaint. It is very likely that the abuser is threatening the victim to do so. The prosecutor should go ahead with the prosecution anyhow to protect the victim and prevent re-occurrence of the violence.

Article 338 - Efforts for reconciliation are very dangerous for the victim and not advised. Family violence often continues for years before the police are involved therefore this is not the first time. A pattern of abuse and threats has been established. The victim will not feel safe to publicly refuse reconciliation even if the judge or prosecutor promises protection. Violence is often increased or becomes more serious at the time when the abuser fears the victim is escaping his control. He is often very good in presenting a public face of repentance but the facts in the privacy of the home are very different.

IV. PROTOCOL FOR HEALTH SERVICES

HEALTH PROTOCOL ON DOMESTIC VIOLENCE

The goal of domestic violence intervention is:

- To prevent and reduce domestic violence in all its forms by appropriate legal means
- To guarantee legal protection, especially safety, to members of the family who are subjects of domestic violence with special attention to children, the elderly and the disabled
- To uphold the law
- To hold the abuser accountable
- To provide an opportunity for abuser rehabilitation if appropriate
- To reduce recidivism and the need to return to the same location repeatedly.
- To prevent serious injury and homicide by intervening at lower levels of assault

A new law “On Measures Against Violence in Family Relations” outlines very specific measures for health care providers.

Definitions

Domestic violence occurs when any act of violence is committed within the family including but not limited to: (Article 3, On Measures Against Violence in Family Relationships)

- Murder (Articles 76 – 83, 85 of Penal Code)
- Threat (Article 84)
- Torture (Articles 86 and 87)
- Wounding (Article 88/b)
- Termination of pregnancy without consent (Article 93)
- Denial of help (Article 97)
- Causing of suicide (Article 99)
- Abduction (Article 109, 109/a)
- Trafficking (Article 110/1 and Article 114/b, re minors 128/b)
- Trespass (Article 112)
- Forcing into and exploiting for prostitution (Article 114)
- Insult (Article 119)
- Defamation (Article 120)
- Limitation of the freedom of expression/speech, of movement or assembly (Article 261)

Violation of private life (Article 121)
 Rape (Articles 100-107)
 Other obscene acts (Article 108)
 Abandonment (Article 124)
 Denial of living means (Article 125)
 Illegal taking of child (Article 127)
 Coercion for cohabitation or termination of marriage (Article 130)
 Damage to property or economic well-being (Articles 150-154)
 Limitation on freedom to administer their income (robbery/theft – (Articles 139 and 134)
 Serious intentional injury (Article 88, 88/a)
 Non serious intentional injury (Article 89)
 Other intentional injury (Article 90)
 Serious injury due to negligence (Article 91)
 Non serious due to negligence (Articles 92)
 Wrongful use of telephone (Article 275)

While the following actions are not listed in the existing criminal code, they are included as domestic violence under the law “On Measures Against Violence in Family Relations:

Prohibition on holding monetary means, despise, direct physical, psychological, sexual and economic abuse of children and putting children in dangerous situations where they witness violence. The last is addressed to the perpetrator of violence not the victim.

AND one of the following relationships applies: (Article 3)

3. “Members of the family” are
 - k. Spouses or cohabitating partners
 - l. Brothers, sisters, relatives of direct blood line, including adoptive parents and children
 - m. Spouses of persons provided in paragraph b
 - n. Persons related by direct blood line, including parents and adoptive children of the spouse or the cohabitating partner,
 - o. Brothers and sisters of the spouse if these have been living together during the last 3 (three) months

Legal Obligations

The Ministry of Health is one of the responsible line authorities for implementing the law. (Article 3, 5) Specifically the Ministry of Health is obligated to set up necessary structures to handle domestic violence cases at the emergency units and at the Health Care Centres in municipalities and communes with a view to:

- Offer at any time medical and psychological help to domestic violence victims

- To carry out respective examinations at any time and place
- To record domestic violence cases at the respective medical registry
- To provide the victim with a copy of the medico-legal expertise act
- To guide/inform and refer the victim to other support and protection domestic violence services (Article 9.2)
- All authorities are required to coordinate their efforts and nominate specific individuals to ensure implementation of the law. (Article 10, 26.4)
- Authorities are required to respond to any report filed by the victim or another person for cases of violence or threat to use violence, must keep records of said reports, and issue a copy to the person reporting. (Article 10.3)
- Victims have the right to approach the public health centre in their residence or wherever they are situated to ask for the authority to take the necessary measures. (Article 11)
- Failure to respond to a report of domestic violence shall result in administrative and/or criminal responsibility under Articles 248 and 251 of the Criminal Code. (Article 10.6)
- Authorities are required to protect the victim and prevent future violence by:
 - o Informing the victim or person accompanying them on measures that may be taken such as the protection order;
 - o Informing the victim or person accompanying them on existing social services;
 - o Accompanying the victim to such social services if necessary;
 - o Providing transportation of the victim and persons accompanying them to medical or social services.

Some related legal obligations are already in place.

Law no. 8045, dated 7.12.1995 On the Interruption of Pregnancy requires that information and advice be provided to women. (Article 13 and 14) Often violence against women begins when the woman is pregnant and is directed at the stomach and the fetus. Thus women need information about violence and protection measures as well. If the pregnancy is interrupted against the woman's consent by domestic violence, Criminal Code 93 can be applied.

Law No. 8092, dated 21/3/1996 "On mental health" already assigns a social worker to work with clients. (Article 5 and 8) Thus the problems caused by domestic violence should already be addressed by social services.

Health Care Providers Role

Health care providers perform a vital role in identifying, assessing, and intervening with victims of domestic violence. It is clear that many victims of domestic violence will only see a family doctor and never see a medico-legal person for court room expertise. Therefore the family doctor needs to know and understand domestic violence in order to properly treat their patients in a holistic manner. However, when the case is serious or when the victim requests it, the family doctor should refer the case to the district medico-legal expertise for a potential legal case. If the case proceeds to a criminal matter, the report of the medico-legal expert will be necessary and the criminal procedure code will be followed. If the case is a protection order, it remains a civil matter under the civil procedure code but the medico-legal expertise can still be used as evidence.

Though the health care provider is very important, many health care providers fail to properly recognize the signs and symptoms of domestic violence. A study done by the National Association of Social Workers (Albania) titled “Assessment of health care workers’ capacities to address gender based violence problems” and released in June 2006 illustrated serious needs for education of health workers on domestic violence.

The study found:

- 98.3% of the health care providers had heard about GBV.
- Participants had partial knowledge about gender based violence (GBV)
- Only 38% were able to identify all types of GBV.
- Most of the knowledge was through word of mouth and the media
- 69.3% said they encountered GBV cases in their work.
- 70% said they saw a combination of different types of violence.
- Very little formal training existed
- 75.7% had never participated in training programs or had qualifications.
- 91.7% indicated they wanted to participate in such trainings
- 99.7% of participants agreed GBV was a violation of human rights
- But they held certain stereotypes about its existence in all levels of society
- The majority felt unprepared to deal with victims needs now
- 93.3% wanted to improve services

- 92.7% thought the health workers should request information from the patient about GBV
- Victims do not ask for help because they feel ashamed, victims of stereotypes and do not trust professionals
- Professionals often are insensitive
- 93% had no specialized personnel to treat GBV victims but 94.3% thought there should be such persons
- 94% wanted to participate in multi-disciplinary teams
- The lack of institutional protocols on documentation and treatment was a vacuum that needed to be corrected
- 86.7% said there were no referral sources in their area.
- 80.3% said GBV cases are not now registered

Some participants expressed concern about confidentiality. They felt that some medical professionals, including doctors, did not observe the ethics of confidentiality and that would put the victim at risk. Medical professionals must adhere to confidentiality requirements.

Some participants expressed concern about their own safety if they were to report to the police and have to testify in court. See Criminal Procedural Code Articles 178-179, 182-185 regarding expert testimony at the end of this protocol. Medical personnel should coordinate their work with law enforcement to ensure safety for everyone.

The study recommended:

- Improving legislation
- Penalizing violence against women
- Increasing the level of awareness of professionals
- Organizing professional training at all levels
- Establishing coordinated services and multidisciplinary teams
- Establishing experts for GBV
- Compiling statistics

- Drafting protocols on treatment procedures
- Mandate confidentiality
- Increase services

From his study, it is obvious the Ministry of Health has much to do to meet the requirements of the new law. This protocol is one step in that process.

MEDICAL RECORDS

Health care providers treating victims of domestic violence should bear in mind the importance of fact-based documentation in the medical chart. It is recommended that all health care providers ask screening questions as part of every health history.

Victim information can be vital in prosecution and the prevention of further abuse. Documentation is critical even in cases where the victim is unable to cooperate in the prosecution process. Health care providers should utilize a domestic violence screening documentation form to record the essential elements. Medical records may be used as evidence in hearings for protection orders. (Article 18)

ELEMENTS OF DOCUMENTATION

1. History

A patient's history should be broadly developed to better assist in evaluating the patient's situation. Histories should include a specific chronological sequence of events, transport history, identification of family members present at the health care facility, and the patient's demeanor.

- Chief complaint/history of present illness for purposes of diagnosis and treatment. Record Verbatim, use quotation marks, clarify ambiguous statements, and do not use the term "alleged" in the history or final diagnosis.
- Past medical history/review of symptoms
- Sexual history
- Medication history
- Relevant social history
- Safety assessment

2. Physical Exam

Record precise details of findings related to the abuse, including a neurological and mental status exam. Most common areas for injury include: the head, face, chest, breast and abdomen. Most injuries seen are: contusions, sprains, minor lacerations, fractures, abdominal injuries, gunshot or knife wounds and strangulation.

Injuries, including tenderness, should be described in narrative that includes location, measurement in centimetres, descriptions, and mechanism or cause if known.

Use a body map: Body maps are extremely useful when documenting sites of injury and assist the health care provider in recalling the physical condition of the patient.

Photographs: whenever possible, photographs of injuries are instrumental in assisting in the prosecution. Photographs should be of the actual injuries, with a color spectrum bar to better assist in the evaluation of the type and nature of injuries. Law enforcement may assist with this process.

3. Laboratory and other Diagnostic Procedures

- Record the results of any lab test, x-rays, or diagnostic procedures.

4. Safety Assessment

- Is the abuser present at the location of the exam?
- Assess and record information pertaining to the patient's risk for suicide or homicide and potential for serious harm or injury.
- Determine if it is physically/psychologically safe for the victim to go home. Are the children or other dependents safe?
- Assess the victim's degree of entrapment and level of fear.
- It is critical to obtain the history from the patient alone and in a confidential setting regarding the current injuries and events.
- Do not use a family member as a translator for this process.

5. Police Report

- Medical staff should be aware of legal reporting requirements in Albania. See Criminal Procedural Code Articles 159 and 282 at the end of this protocol.
- Note whether a police report was filed and record the name of investigating officers and actions taken.
- Note whether a protection order was requested and the court or police unit at which it was requested.

6. Options discussed and referrals offered

Health care providers should request a consult by social workers, case managers or other specialized resources that deal with violence against women if possible to review options and local referrals.

7. Arrangements for follow-up/discharge information and safety plans

- Health care providers should give the victim clear follow up and discharge information.
- Health care providers should also discuss safety with the victim and if possible assist her with a safety plan.

Signs and Symptoms to Recognize if the Patient is a Victim of Domestic Violence

1. History
 - a. Traumatic injury or sexual assault
 - b. Was this a suicide attempt, drug overdose, or does the victim have suicidal thoughts. Note that causing suicide is a crime under Criminal Code Article 99.
 - c. Vague or non-specific complaints
 - d. Injuries inconsistent with patient history
 - e. Delay in seeking needed care
 - f. Repeated visits
 - g. Physical symptoms related to stress
2. Physical Clues
 - a. Patient is reluctant to speak in front of partner
 - b. Patient may be evasive in responses
 - c. Partner is over-protective or controlling (partner will try and answer questions for the patient) If the partner answers and gives false information, it is possible he could be charged with violation of Article 271 in the Criminal Code that punishes giving false information to emergency units.
3. Verbal Clues
 - a. Directly or indirectly brings up the subject of abuse.
 - b. Include specific quotes used by the patient.

Health Care Issue for Domestic Violence Victims

1. Health Impact
 - a. Sleep disturbances
 - b. Drug abuse
 - c. Chronic pain
 - d. Disorders
 - e. Anxiety, panic attacks
 - f. Depression
 - g. Post-traumatic stress disorder
 - h. Hyper vigilance
 - i. Dissociation during medical procedures
 - j. Suicidal ideation or attempts
 - k. Unwanted pregnancies

- l. Miscarriages
 - m. Sexually transmitted infections
2. Barriers to Care
 - a. System Issues
 - i. Time demands
 - ii. Confidentiality issues
 - iii. Role definition for health plans
 - iv. Hospital infrastructure
 - v. Community infrastructure
 - vi. Money
 - vii. Society and culture
 - b. Provider Issues
 - i. Provider/patient relationship
 - ii. May be the health plan for the abuser
 - iii. May know the family socially
 - iv. Time restraints for screening and responding, especially in ensuring follow-up
3. Screening – How to Ask
 - a. Direct Questions
 - i. At any time, has a partner hit, kicked or otherwise hurt or frightened you?
 - ii. Has your partner or ex-partner ever hit you or hurt you?
 - iii. Has he/she threatened to hurt you or someone close to you?
 - iv. Has your partner ever tried to restrict your freedom or keep you from doing things that were important to you?
 - b. Indirect questions
 - i. When I see a woman with an injury like yours, it is sometimes because someone hurt her. Has someone been hurting you?
 - ii. How has the abuse affected the patient's health?
 - c. Current Episode questions
 - i. What happened?
 - ii. How were you hurt?
 - iii. Were alcohol or drugs involved?
 - iv. Was a weapon involved?
 - v. Was the use of pornography involved (when sexual assault)?
 - d. Follow up questions
 - i. Have your children ever seen or heard the abuse?
 - ii. Have your children ever been threatened or hurt?
 - iii. Have you sought help in the past?
 - iv. Have you ever tried to leave? What happened?
 - v. What resources are available to you in the community?
4. Lethality Assessment – Homicide Risk
 - a. How has the control or violence changed in frequency/severity?
 - b. Does the abuser use drugs and/or alcohol?

- c. (If sexual abuse) Does the abuser use pornography?
- d. Has s/he ever threatened or tried to kill you or others close to you?
- e. Do you believe he is capable of killing you?
- f. Is there a firearm in the home?
- g. Have you ever been threatened with a weapon or has a weapon been used on you?
- h. Are you planning to leave/divorce him? Is s/he aware of your plans?
- i. Is it safe for the victim to go home? How much danger is the victim in if she stays/leaves?
- j. Are there warning signs that allow her/him to anticipate impending danger? Does the victim have a safety plan?
- k. What kind of access does the perpetrator have to the victim?

SPECIFIC ALBANIAN LAWS OF RELEVANCE

Reporting and confidentiality requirements

Article 159 Criminal Procedure Code Maintaining professional secrecy

1. May not be compelled to testify on what they know due to their profession, except in cases where they have the obligation to report to proceeding authorities:
 - a) religious representatives, whose statutes are not in contravention of the Albanian legal order;
 - b) attorneys at law, legal representatives and notaries;
 - c) physicians, surgeons, pharmacists, obstetrics and anyone who exercises a medical profession,
 - d) those who exercise other professions, which the law recognises them the right not to testify on what is related to professional secrecy.
2. When the court has reasons to suspect that the claim made by these persons in order to avoid the testimony has no grounds, orders the necessary verification. Where it (claim) results baseless, the court orders the witness to testify.
3. Provisions provided under paragraph 1 and 2 shall also apply to professional journalists pertaining to the names of persons whom they have got information from during the course of their profession. But, when the information is indispensable to prove the criminal offence and the truthfulness of the information may only be proved through identification of the source, the court orders the journalist to reveal the source of his information.

Article 282 Criminal report from medical personnel

1. The medical personnel that is legally bound to lodge a criminal report, must present it within forty-eight hours and send it to the prosecutor or any judicial police officer of the place where he has intervened or provided the assistance and, when the delay may bring any danger, to the nearest judicial police officer.

2. The medical personnel criminal report stipulates the person to whom the assistance was given and, when it is possible, his personal details, residence and anything else that serves to identify him, circumstances of the act, means used to commit it and its consequences.
3. When several persons have provided their medical assistance in the same case, all of them are obliged to make a criminal report, with the right to draft and endorse a single document.

Expert Witness Testimony

Article 178 Criminal Procedure Code

Object of Expert Examination

1. Expert examination is allowed when it is necessary to carry out researches or to acquire information or evaluations that require special technical, scientific or cultural knowledge.
2. Expert examination to determine the professionalism in the (commission) of the criminal offence, criminal drive, the character and personality of the defendant and, in general, the psychological features that do not depend on pathological causes, are not allowed.

Article 179

Assigning of Expert

1. An expert is assigned by selecting him among persons recorded in certain books for this purpose or among those who have special knowledge in the relevant subject. When the expert examination is declared invalid or new examination is needed to be performed, the proceeding authority takes measures, when possible, that the new task shall be entrusted to another expert.
2. Notice of the proceeding authority decision to assign an expert shall be served to the defendant or his defence counsel, informing him that he has the right to ask for disqualification of the expert, to propose other experts, to take part in expert examination, when possible, and to present questions to the expert.
3. When researches and evaluations seem very complex or require different knowledge in several subjects, the proceeding authority entrust the performance of examination to several experts.
4. Expert is bound to perform his task, except in cases where there exists one of the grounds that excludes him from being an expert or when he claims that he is not competent or does not have the ability to perform the expert examination and his request is accepted by the proceeding authority.

Article 182

Provision on proceeding authority

1. The proceeding authority orders the expert examination by a reasoned decision, which contains the assigning of expert, a brief presentation of the case, the day, time and venue assigned for the appearance of the expert.

2. The proceeding authority summons the expert and takes the necessary measures for the appearance of persons subject to expert examination.

Article 183
Assigning the task

1. The proceeding authority, after being ensured on the expert's identity, asks him whether there are grounds of disqualification for the task of expert, warns him on the obligations and liabilities provided for by the criminal law, drafts the requests for expert examinations and invites him to make the following statement: "Being aware of the moral and legal responsibility of the task I am undertaking, I shall perform it with honesty and fairness and I shall keep the secrecy of all the actions connected to the examination".
2. Remuneration of the expert is determined by an order of the authority that ordered the expert examination.

Article 184
Expert Actions

1. In order to answer the requests for examination, the proceeding authority may authorise the expert to look into acts, documents and anything else included in the prosecutor's or court file.
2. The expert may also be authorised to take part during the questioning of parties and obtaining of evidence.
3. When the expert requests information from the defendant, injured person or other persons, the information will be used only for the purposes of expert examination.
4. When for the needs of expert examination it is necessary to destroy or change the essence of an item, the experts, when possible, are bound to preserve the rest of the item, evidence the part used for the examination, informing the proceeding authority and the parties as such.

Article 185
Expert examination report

1. The expert opinion is given in writing.
2. When the assigned experts are more than one and they have different opinions, each one of them presents his opinion in a separate report.
3. Where facts are complex and the expert cannot give an immediate answer, the proceeding authority gives him a period of time not longer than sixty days. In case of need for especially complex verifications, this period of time may be extended for more than once for periods of time not longer than thirty days, but not exceeding the maximum period of time of six months.

EXPERT

Civil Procedure Code Article 80

When specific knowledge in the field of science, technology or art is requested for the assessment or clarification of facts related to the dispute in trial, the court will call one or more experts.

Experts are selected from among persons registered in special lists and in conformity with the rules determined in this Code.

Article 81

The expert gives his opinion in writing, but may be heard in a court session and be asked by the court and the parties.

The opinion of the expert is not mandatory for the court and when the court has a dissenting opinion with that of the expert, it must reason in details such an opinion in the final decision or in the decision given during the trial.

It is not up to the expert to give a juridical opinion.

Article 82

The expert is obligated to fulfil the tasks given by the court except for when he presents justified grounds which are accepted by the court.

The failure of the expert to appear in court without legitimate grounds, causes his bringing to the court by enforcement.

The dismissal of the expert from his participation in trial is made when the conditions provided in Article 72 of this Code are met.

Responsibility of the expert

Article 83

The expert bears responsibility in conformity with the Penal Code in case he refuses to perform the task he has been given to him or performs a false expertise.

The expert is obligated to compensate damages, which have been caused to the parties or other participants in the process because of his guilt.

V. PROTOCOL FOR NON-GOVERNMENTAL ORGANIZATIONS WORKING ON THE ISSUE

NGO PROTOCOL ON DOMESTIC VIOLENCE

The goal of domestic violence intervention is:

- To prevent and reduce domestic violence in all its forms by appropriate legal means
- To guarantee legal protection, especially safety, to members of the family who are subjects of domestic violence with special attention to children, the elderly and the disabled
- To uphold the law
- To hold the abuser accountable
- To provide an opportunity for abuser rehabilitation if appropriate
- To reduce recidivism and the need to return to the same location repeatedly.
- To prevent serious injury and homicide by intervening at lower levels of assault

A new law, "On Measures Against Violence in Family Relations" outlines very specific measures for NGOs providers.

Definitions

Domestic violence occurs when any act of violence is committed within the family including but not limited to: (Article 3, On Measures Against Violence in Family Relationships)

- Murder (Articles 76 – 83, 85 of Penal Code)
- Threat (Article 84)
- Torture (Articles 86 and 87)
- Wounding (Article 88/b)
- Termination of pregnancy without consent (Article 93)
- Denial of help (Article 97)
- Causing of suicide (Article 99)
- Abduction (Article 109, 109/a)
- Trafficking (Article 110/1 and Article 114/b, re minors 128/b)
- Trespass (Article 112)
- Forcing into and exploiting for prostitution (Article 114)
- Insult (Article 119)
- Defamation (Article 120)

Limitation of the freedom of expression/speech, of movement or assembly (Article 261)
 Violation of private life (Article 121)
 Rape (Articles 100-107)
 Other obscene acts (Article 108)
 Abandonment (Article 124)
 Denial of living means (Article 125)
 Illegal taking of child (Article 127)
 Coercion for cohabitation or termination of marriage (Article 130)
 Damage to property or economic well-being (Articles 150-154)
 Limitation on freedom to administer their income (robbery/theft – (Articles 139 and 134)
 Serious intentional injury (Article 88, 88/a)
 Non serious intentional injury (Article 89)
 Other intentional injury (Article 90)
 Serious injury due to negligence (Article 91)
 Non serious due to negligence (Articles 92)
 Wrongful use of telephone (Article 275)

While the following actions are not listed in the existing criminal code, they are included as domestic violence under the law “On Measures Against Violence in Family Relations:

Prohibition on holding monetary means, despise, direct physical, psychological, sexual and economic abuse of children and putting children in dangerous situations where they witness violence. The last is addressed to the perpetrator of violence not the victim.

AND one of the following relationships applies: (Article 3)

1. “Members of the family” are
 - a. Spouses or cohabitating partners
 - b. Brothers, sisters, relatives of direct blood line, including adoptive parents and children
 - c. Spouses of persons provided in paragraph b
 - d. Persons related by direct blood line, including parents and adoptive children of the spouse or the cohabitating partner,
 - e. Brothers and sisters of the spouse if these have been living together during the last 3 (three) months

NGOs Role in Protection of the Victim

The law gives NGOs a very specialized and particular role:

- A petition for protection order may be presented on behalf of a minor by NGOs licensed by the Department for Prevention and Reduction of Domestic Violence (Article 15)

- o An NGO should think very carefully and take into account the following factors before presenting such a petition:
- What is the capacity of the shelters?

At this time, there are only 3 in Albania and they only have for women with 2-3 children.

- Is there a possibility that State Services will take the children and if so, is this a positive outcome?

There are no government shelters for children only orphanages. These have been known to have substandard care and there have been scandals especially regarding sexual abuse.

- What is the reason the protective parent is not making the petition?

Is the protective parent unable to request a protection order because of physical or mental incapacity, is the person in jail, is the person prevented from leaving the house by the abuser?

- A petition for an emergency protection order may be presented by NGOs licensed by the Department for Prevention and Reduction of Domestic Violence. (Article 15)
 - o The NGO should be very careful about using these provisions so as not to disempower the victim or make the situation more dangerous. The following factors should be considered:
 - Is there a life endangering situation?
 - Is there a medical exam or documentation/proof of the abuse?
 - Does the victim already have a plan to deal with the situation?
 - What will be attitude and likely action of the judge or police unit where the victim must ask for the order?
 - Will the victim be able to take her children with her if she leaves the home?
 - Does the victim know she can request such protection?
 - What are the services the victim will be able to access?
 - How safe will the victim be even after getting an order?
- Documents from NGOs may become evidence in the hearing. (Article 18)
 - o The NGO must be mindful of the confidentiality requirements and safety issues before turning over documents and may need to retain their own attorney.
 - o Articles 59, 159, 282, 283, 284 from the Criminal Procedure Code outline the law regarding reporting and testimony requirements in

Albania. These are attached at the end of this protocol. Be sure that these are read and understood.

- o The NGO must also be mindful of the ethics codes relating to certain professions such as legal, medical and social workers.
- The representative from the NGO may be called as a witness in the hearing. (Article 19)
- o The person must be mindful of the confidentiality requirements and safety issues before testifying and may need to retain their own attorney.
- o Articles 59, 159, 282, 283, 284 from the Criminal Procedure Code outline the law regarding reporting and testimony requirements in Albania. These are attached at the end of this protocol. Be sure that these are read and understood.
- o The NGO must also be mindful of the ethics codes relating to certain professions such as legal, medical and social workers.

NGOs Role in Implementation of the Order

The law gives NGOs tasks in implementation of the order as well:

- NGOs shall implement measures established by the court decision and shall coordinate with local government and police. (Article 26)
 - o This must be read in conjunction with existing law regarding confidentiality requirements.
 - o It must also be read in conjunction with existing reality. If a court orders a victim to stay at a shelter and there is no room, a privately funded NGO cannot be expected to comply without state support.
 - o Likewise if a court orders victim or perpetrator to rehabilitation services and none exist due to lack of funding, capacity or expertise, an NGO cannot be expected to deliver what does not exist.

In addition, other areas of the law indirectly impact NGO's.

- Article 10(4) says that line government authorities are to provide transportation to victims to medical or social service centers. Currently most shelters have confidential locations which are not even disclosed to law enforcement. Neither hospitals nor law enforcement are safe places for victims nor can confidentiality be trusted. The present system works through NGO referral only. Without adequate infrastructure, it is suggested that this system continue.
- Article 6(g) and 8 (i) require that the MOLSAEO, Department of Prevention and Reduction of Domestic Violence will license shelters and rehabilitation facilities. NGOs are not currently involved in this process which is not open and transparent. NGOs need to be involved in the decision making to ensure that licensing standards incorporate Best Practices.

- A uniform method of keeping statistics needs to be developed among the NGOs and the regional hotlines under Article 9(3). In addition, since many women in the rural areas do not have access to telephones, a method of access needs to be devised for them.

RECORDS

NGOs working with victims of domestic violence should bear in mind the importance of confidentiality for victims. Often victims will not come to a NGO unless they are assured of anonymity because they are too ashamed to have it known publicly that there is violence in the family. This is difficult to maintain in a small country and may not be practical.

One problem that has already arisen is if the victim flees, especially with the children, and the perpetrator then goes to the police to report her disappearance as a crime, what information should the shelter or the lawyer provide to the police. The suggestion is if possible to have a central point where law enforcement can call e.g. a law office who can then find the information and reply to law enforcement only the information that we know nothing about her or she and the children are safe. If there is no central point, it is recommended that the shelter should say they cannot confirm if the woman is in the shelter or not, but they will put up a notice on a public notice board and she may call them. The shelter should then talk to the woman if she is there and tell her what her husband has done and let her decide how to respond. If she does not want to call law enforcement, ask if the NGO can call and just tell them she and the children are safe.

Because the necessary infrastructure does not exist, it is probable that the NGO will be the only place that accurate records are kept for domestic violence victims. At the same time, problems exist regarding confidentiality for women at a shelter. These problems may become more acute as the legal infrastructure develops and comments made during counselling or at a shelter can be used against the victim. There are several methods to resolve this.

The shelter could consider not using names on their records but only referring to them by number so the person cannot be identified. The shelter could consider having two files. The official file would have only demographic information in it and general information. While a separate non-official file could be kept by the social worker that would have more detailed data including personal details that might cause problem for the victim at a later date. All files may be kept by the lawyer thereby creating a lawyer client relationship that is confidential. An NGO should have a consistent format and train its staff on that. All information should be kept in locked cabinets with limited access to only certain personnel. A victim should have access to her own record at any time.

Below are some suggested questions to assist NGO staff in getting necessary information.

1. Safety Assessment
 - Is the abuser present at the location of the exam?
 - Assess and record information pertaining to the person's risk for suicide or homicide and potential for serious harm or injury.
 - Determine if it is physically/psychologically safe for the victim to go home. Are the children or other dependents safe?
 - Assess the victim's degree of entrapment and level of fear.
2. Police Report and Protection Order
 - The victim should be assisted in filing a police report if she chooses to but should never be pressured to do so. Under no circumstances should use of the facility or services be limited to those who have filed police reports.
 - The victim should be assisted to file a protection order if she chooses to but should never be pressured to do so. Under no circumstances should use of the facility or services be limited to those who have filed protection orders.
 - Staff should be aware of legal reporting requirements in Albania. See Criminal Procedure Code Articles at the end of this protocol for more information.
 - Note whether a police report was filed and record the name of investigating officers and actions taken.
 - Note whether a protection order was requested and the court or police unit at which it was requested.
3. Screening – How to Ask
 - Direct Questions
 - i. At any time, has a partner hit, kicked or otherwise hurt or frightened you?
 - ii. Has your partner or ex-partner ever hit you or hurt you?
 - iii. Has he/she threatened to hurt you or someone close to you?
 - iv. Has your partner ever tried to restrict your freedom or keep you from doing things that were important to you?
 - Indirect questions
 - i. When I see a woman with an injury like yours, it is sometimes because someone hurt her. Has someone been hurting you?
 - ii. How has the abuse affected the patient's health?

- Current Episode questions
 - i. What happened?
 - ii. How were you hurt?
 - iii. Were alcohol or drugs involved?
 - iv. Was a weapon involved?
 - v. Was the use of pornography involved (when sexual assault)?
 - Follow up questions
 - i. Have your children ever seen or heard the abuse?
 - ii. Have your children ever been threatened or hurt?
 - iii. Have you sought help in the past?
 - iv. Have you ever tried to leave? What happened?
 - v. What resources are available to you in the community?
4. Lethality Assessment – Homicide Risk
- How has the control or violence changed in frequency/severity?
 - Does the abuser use drugs and/or alcohol?
 - (If sexual abuse) Does the abuser use pornography?
 - Has s/he ever threatened or tried to kill you or others close to you?
 - Do you believe he is capable of killing you?
 - Is there a firearm in the home?
 - Have you ever been threatened with a weapon or has a weapon been used on you?
 - Are you planning to leave/divorce him? Is s/he aware of your plans?
 - Is it safe for the victim to go home? How much danger is the victim in if she stays/leaves?
 - Are there warning signs that allow her/him to anticipate impending danger? Does the victim have a safety plan?
 - What kind of access does the perpetrator have to the victim?

Specific Albanian Laws of Relevance

The first set of laws relates to when a person has to report a crime, what kinds of crimes they are obligated to report and what are the legal protections for professionals regarding confidentiality.

Article 159 Criminal Procedure Code Maintaining professional secrecy

1. May not be compelled to testify on what they know due to their profession, except in cases where they have the obligation to report to proceeding authorities:
 - a) religious representatives, whose statutes are not in contravention of the Albanian legal order;
 - b) attorneys at law, legal representatives and notaries;
 - c) physicians, surgeons, pharmacists, obstetrics and anyone who exercises a medical profession,
 - d) those who exercise other professions, which the law recognises them the right not to testify on what is related to professional secrecy.
2. When the court has reasons to suspect that the claim made by these persons in order to avoid the testimony has no grounds, orders the necessary verification. Where it (claim) results baseless, the court orders the witness to testify.
3. Provisions provided under paragraph 1 and 2 shall also apply to professional journalists pertaining to the names of persons whom they have got information from during the course of their profession. But, when the information is indispensable to prove the criminal offence and the truthfulness of the information may only be proved through identification of the source, the court orders the journalist to reveal the source of his information.

Article 282 Criminal report from medical personnel

1. The medical personnel that is legally bound to lodge a criminal report, must present it within forty-eight hours and send it to the prosecutor or any judicial police officer of the place where he has intervened or provided the assistance and, when the delay may bring any danger, to the nearest judicial police officer.
2. The medical personnel criminal report stipulates the person to whom the assistance was given and, when it is possible, his personal details, residence and anything else that serves to identify him, circumstances of the act, means used to commit it and its consequences.

3. When several persons have provided their medical assistance in the same case, all of them are obliged to make a criminal report, with the right to draft and endorse a single document.

Comparing these two Articles, it seems that IF there is a specific law that requires a medical personnel to report, then they have to do so in accordance with Article 282. But since there is no such law, they are not required to report or testify as in Article 159.

The next laws apply to when a crime has to be reported.

Article 283 Criminal report from citizens

1. Any person that has received notice of a criminal offence prosecuted ex-officio must lodge a criminal report of it. In cases specified by law, lodging of criminal report is compulsory.
2. The criminal report is lodged orally or in writing to a prosecutor or to a judicial police officer, personally or through a representative.
3. Anonymous criminal reports may not be used except in cases provided for by article 195.

Those crimes that are prosecuted ex-officio are those where a complaint from the victim is not necessary.

Article 59 Aggrieved person private prosecution

1. One who is aggrieved by the criminal offences provided for by articles 90, 91, 92, 112, first paragraph, 119, 120, 121, 122, 125, 127, 148, 149 and 254 of the Criminal Code, has the right to apply in court and take part in the trial as a party to prove the charge and claim the reimbursement of the injury.
2. The prosecutor participates in the trial of these cases and, as the case may be, request for the conviction or acquittal of the defendant.
3. If the private prosecutor or his defense counsel assigned by him does not appear during the session without reasonable grounds, the court dismisses the case.

Thus the crimes listed in Article 59 are private prosecution claims that can go forward only if the victim brings the complaint. Therefore, they DO require a complaint from a victim. Therefore they are NOT ex officio and information about these crimes does NOT need to be reported under Article 283.

These crimes are:

- Other intentional harm (90)
- Serious injury due to negligence (91)
- Non serious injury due to negligence (92)
- Breaking and entering into a home (112)
- Insulting (119)
- Libel (120)
- Intruding into someones privacy (121)
- Spreading personal secrets (122)
- Denial of support (125)
- Failing to inform of the changing of domicile (126)
- Unlawfully taking of child (127)
- Publication of another persons work with own name (148)
- Unlawful reproduction of the work of another (149)
- Infringing the inviolability of a residence (254)

Article 284 also requires that a complaint must be filed by the injured person before a criminal charge can begin. These crimes DO require a victim complaint and cannot be brought ex officio. Therefore, information about them does NOT need to be reported.

These crimes are:

- Non serious intentional injury (89)
- Non-consensual sexual intercourse with a mature woman (102.1)
- Sexual or homosexual intercourse through abuse of office (105)
- Sexual or homosexual intercourse with extended family members or under custody (106)
- Forcing or impeding to cohabit or divorce (130)
- Abuse of telephone calls (275)

Article 284 Complaint

1. The prosecution for the criminal offences provided for by articles 89, 102, paragraph one, 105, 106, 130, 239, 240, 241, 243, 264, 275 and 318 of the Criminal Code, may commence only with the complaint of the injured person, who may withdraw it at any stage of the proceedings.
2. The injured person lodges a statement with the prosecutor or judicial police in person or through a special representative, in which he expresses his willingness to prosecute an act provided by law as a criminal offence.
3. When the complaint is made orally, the records kept for this purpose are endorsed by the complainant or his representative.

4. The one who receives the complaint ensures the identity of the complainant and submits the documents to the prosecutor.
5. In cases provided for by article 59, the complaint is filed with the court by the injured private accuser (private prosecutor).

The next laws relate to the possibility that a person from an NGO could be called as an expert witness on domestic violence. The following articles of the Criminal Procedure Code outline the process and requirements of such expert witness.

Article 178 **Object of Expert Examination**

1. Expert examination is allowed when it is necessary to carry out researches or to acquire information or evaluations that require special technical, scientific or cultural knowledge.
2. Expert examination to determine the professionalism in the (commission) of the criminal offence, criminal drive, the character and personality of the defendant and, in general, the psychical features that do not depend on pathological causes, are not allowed.

Article 179 **Assigning of Expert**

1. An expert is assigned by selecting him among persons recorded in certain books for this purpose or among those who have special knowledge in the relevant subject. When the expert examination is declared invalid or new examination is needed to be performed, the proceeding authority takes measures, when possible, that the new task shall be entrusted to another expert.
2. Notice of the proceeding authority decision to assign an expert shall be served to the defendant or his defence counsel, informing him that he has the right to ask for disqualification of the expert, to propose other experts, to take part in expert examination, when possible, and to present questions to the expert.
3. When researches and evaluations seem very complex or require different knowledge in several subjects, the proceeding authority entrust the performance of examination to several experts.
4. Expert is bound to perform his task, except in cases where there exists one of the grounds that excludes him from being an expert or when he claims that he is not competent or does not have the ability to perform the expert examination and his request is accepted by the proceeding authority.

Article 182
Provision on proceeding authority

1. The proceeding authority orders the expert examination by a reasoned decision, which contains the assigning of expert, a brief presentation of the case, the day, time and venue assigned for the appearance of the expert.
2. The proceeding authority summons the expert and takes the necessary measures for the appearance of persons subject to expert examination.

Article 183
Assigning the task

1. The proceeding authority, after being ensured on the expert's identity, asks him whether there are grounds of disqualification for the task of expert, warns him on the obligations and liabilities provided for by the criminal law, drafts the requests for expert examinations and invites him to make the following statement: "Being aware of the moral and legal responsibility of the task I am undertaking, I shall perform it with honesty and fairness and I shall keep the secrecy of all the actions connected to the examination".
2. Remuneration of the expert is determined by an order of the authority that ordered the expert examination.

Article 184
Expert Actions

1. In order to answer the requests for examination, the proceeding authority may authorise the expert to look into acts, documents and anything else included in the prosecutor's or court file.
2. The expert may also be authorised to take part during the questioning of parties and obtaining of evidence.
3. When the expert requests information from the defendant, injured person or other persons, the information will be used only for the purposes of expert examination.
4. When for the needs of expert examination it is necessary to destroy or change the essence of an item, the experts, when possible, are bound to preserve the rest of the item, evidence the part used for the examination, informing the proceeding authority and the parties as such.

Article 185
Expert examination report

1. The expert opinion is given in writing.
2. When the assigned experts are more than one and they have different opinions, each one of them presents his opinion in a separate report.
3. Where facts are complex and the expert cannot give an immediate answer, the proceeding authority gives him a period of time not longer than sixty days. In case of need for especially complex verifications, this period of time may be extended for more than once for periods of time not longer than thirty days, but not exceeding the maximum period of time of six months.

If the case is a civil one e.g. a protection order hearing, the following is the law related to expert testimony in civil cases.

ALBANIAN CIVIL PROCEDURE CODE

EXPERT

Article 80

When specific knowledge in the field of science, technology or art is requested for the assessment or clarification of facts related to the dispute in trial, the court will call one or more experts.

Experts are selected from among persons registered in special lists and in conformity with the rules determined in this Code.

Article 81

The expert gives his opinion in writing, but may be heard in a court session and be asked by the court and the parties.

The opinion of the expert is not mandatory for the court and when the court has a dissenting opinion with that of the expert, it must reason in details such an opinion in the final decision or in the decision given during the trial.

It is not up to the expert to give a juridical opinion.

Article 82

The expert is obligated to fulfill the tasks given by the court except for when he presents justified grounds which are accepted by the court.

The failure of the expert to appear in court without legitimate grounds, causes his bringing to the court by enforcement.

The dismissal of the expert from his participation in trial is made when the conditions provided in Article 72 of this Code are met.

Responsibility of the expert

Article 83

The expert bears responsibility in conformity with the Penal Code in case he refuses to perform the task he has been given to him or performs a false expertise.

The expert is obligated to compensate damages, which have been caused to the parties or other participants in the process because of his guilt.

VI. PROTOCOL FOR SOCIAL SERVICES

SOCIAL SERVICES PROTOCOL ON DOMESTIC VIOLENCE

The goal of domestic violence intervention is:

- To prevent and reduce domestic violence in all its forms by appropriate legal means
- To guarantee legal protection, especially safety, to members of the family who are subjects of domestic violence with special attention to children, the elderly and the disabled
- To uphold the law
- To hold the abuser accountable
- To provide an opportunity for abuser rehabilitation if appropriate
- To reduce recidivism and the need to return to the same location repeatedly.
- To prevent serious injury and homicide by intervening at lower levels of assault

A new law, "On Measures Against Violence in Family Relations" outlines very specific measures for social service providers.

Definitions

Domestic violence occurs when any act of violence is committed within the family including but not limited to: (Article 3, On Measures Against Violence in Family Relationships)

Murder (Articles 76 – 83, 85 of Penal Code)

Threat (Article 84)

Torture (Articles 86 and 87)

Wounding (Article 88/b)

Termination of pregnancy without consent (Article 93)

Denial of help (Article 97)

Causing of suicide (Article 99)

Abduction (Article 109, 109/a)

Trafficking (Article 110/1 and Article 114/b, re minors 128/b)

Trespass (Article 112)

Forcing into and exploiting for prostitution (Article 114)

Insult (Article 119)

Defamation (Article 120)

Limitation of the freedom of expression/speech, of movement or assembly (Article 261)

Violation of private life (Article 121)
 Rape (Articles 100-107)
 Other obscene acts (Article 108)
 Abandonment (Article 124)
 Denial of living means (Article 125)
 Illegal taking of child (Article 127)
 Coercion for cohabitation or termination of marriage (Article 130)
 Damage to property or economic well-being (Articles 150-154)
 Limitation on freedom to administer their income (robbery/theft – (Articles 139 and 134)
 Serious intentional injury (Article 88, 88/a)
 Non serious intentional injury (Article 89)
 Other intentional injury (Article 90)
 Serious injury due to negligence (Article 91)
 Non serious due to negligence (Articles 92)
 Wrongful use of telephone (Article 275)

While the following actions are not listed in the existing criminal code, they are included as domestic violence under the law “On Measures Against Violence in Family Relations:

Prohibition on holding monetary means, despise, direct physical, psychological, sexual and economic abuse of children and putting children in dangerous situations where they witness violence. The last is addressed to the perpetrator of violence not the victim.

AND one of the following relationships applies: (Article 3)

2. “**Members of the family**” are
 - f. Spouses or cohabitating partners
 - g. Brothers, sisters, relatives of direct blood line, including adoptive parents and children
 - h. Spouses of persons provided in paragraph b
 - i. Persons related by direct blood line, including parents and adoptive children of the spouse or the cohabitating partner,
 - j. Brothers and sisters of the spouse if these have been living together during the last 3 (three) months

Legal Obligations

The Social Services Sectors at the local government units are one of the responsible line authorities for implementing the law. (Article 3, 5) Specifically local authorities are obligated to:

- Set up social services structures for domestic violence cases (Article 9)

- Install regional 24 hour toll free telephone lines with links to other services(Article 9).The most effective and efficient role of local authorities is to provide funding for the NGOs who are already doing the tasks of assisting victims of violence to establish the hotlines and coordinate them nationwide.
- Establish social and rehabilitation centres for victims and perpetrators and coordinate efforts with existing ones specialized in respective fields giving them priority (Article 9)
- All authorities are required to coordinate their efforts and nominate specific individuals to ensure implementation of the law. (Article 10, 26.4)
- Authorities are required to respond to any report filed by the victim or another person for cases of violence or threat to use violence, must keep records of said reports, and issue a copy to the person reporting. (Article 10.3)
- Failure to respond to a report shall result in administrative and/or criminal responsibility under Articles 248 and 251 of the Criminal Code. (Article 10.6)

Some related legal obligations are already in place.

Law no. 8045, dated 7.12.1995 On the Interruption of Pregnancy requires that information and advice be provided to women. (Article 13 and 14) Often violence against women begins when the woman is pregnant and is directed at the stomach and the fetus. Thus women need information about violence and protection measures as well. If the pregnancy is interrupted against the woman’s consent by domestic violence, Criminal Code 93 can be applied.

Law No. 8092, dated 21/3/1996 “On mental health” already assigns a social worker to work with clients. (Article 5 and 8) Thus the problems caused by domestic violence should already be addressed by social services.

Social Service Providers Role in Protection of the Victim

The law gives social services a very specialized and particular role:

- A petition for protection order may be presented on behalf of a minor by representatives of the Social Services Office where the minor resides temporarily or permanently when they have knowledge of the violence perpetrated (Article 15)
- A petition for an emergency protection order may be presented by representatives of the Social Services Department where the victim temporarily or permanently resides who have knowledge of domestic violence incidents that have occurred. (Article 15) The social worker should be very careful about using this provisions so as not to dis-empower the victim or make the situation more dangerous.

- Documents from social services may become evidence in the hearing. (Article 18) At this point, there is no precedent or procedure for keeping such documents so they may be used in the hearing. Therefore, the social service providers need to develop such a consistent procedure nationwide.
- The representative from social services may be called as a witness in the hearing when the petitioner is a minor or legally incapacitated or when the violence affects this category of persons. (Article 19)

Social Service Providers Role in Implementation of the Order

The law gives social services very specific tasks in implementation of the order as well:

- When the court grants a protection order, the court shall send within 24 hours a copy to the social services department of the municipality or commune. (Article 20, 22)
- Social workers shall take all necessary steps to ensure immediate and continuous implementation/'execution of the protection order. (Article 26) These steps shall be limited to those within the area of expertise and responsibility of the social services.
- Service centres shall implement measures established by the court decision and shall coordinate with local government and police. (Article 26)

Local Gaps in Knowledge of Domestic Violence

A study done by the National Association of Social Workers (Albania) titled "Assessment of health care workers' capacities to address gender based violence problems" and released in June 2006 illustrated serious needs for education of health workers on domestic violence.

The study found:

- 98.3% of the health care providers had heard about GBV.
- Participants had partial knowledge about gender based violence (GBV)
- Only 38% were able to identify all types of GBV.
- Most of the knowledge was through word of mouth and the media
- 69.3% said they encountered GBV cases in their work.
- 70% said they saw a combination of different types of violence.

- Very little formal training existed
- 75.7% had never participated in training programs or had qualifications.
- 91.7% indicated they wanted to participate in such trainings
- 99.7% of participants agreed GBV was a violation of human rights
- But they held certain stereotypes about its existence in all levels of society
- The majority felt unprepared to deal with victims needs now
- 93.3% wanted to improve services
- 92.7% thought the health workers should request information from the patient about GBV
- Victims do not ask for help because they feel ashamed, victims of stereotypes and do not trust professionals
- Professionals often are insensitive
- 93% had no specialized personnel to treat GBV victims but 94.3% thought there should be such persons
- 94% wanted to participate in multi-disciplinary teams
- The lack of institutional protocols on documentation and treatment was a vacuum that needed to be corrected
- 86.7% said there were no referral sources in their area.
- 80.3% said GBV cases are not now registered

Some participants expressed concern about confidentiality. They felt that some medical professionals, including doctors, did not observe the ethics of confidentiality and that would put the victim at risk. Medical professionals must adhere to confidentiality requirements.

Some participants expressed concern about their own safety if they were to report to the police and have to testify in court. See Criminal Procedure Code Articles 178-179, 182-185 regarding expert testimony at the end of this protocol. Social services personnel should coordinate their work with law enforcement to ensure safety for everyone.

The study recommended:

- Improving legislation
- Penalizing violence against women
- Increasing the level of awareness of professionals
- Organizing professional training at all levels
- Establishing coordinated services and multidisciplinary teams
- Establishing experts for GBV
- Compiling statistics
- Drafting protocols on treatment procedures
- Mandate confidentiality
- Increase services

From his study, it is obvious that there is much to do to meet the requirements of the new law. This protocol is one step in that process.

RECORDS

When developing the record keeping system, social service providers treating victims of domestic violence should bear in mind the importance of fact-based documentation in the records. It is recommended that all service providers ask screening questions as part of every history. Victim information can be vital in prosecution and the prevention of further abuse. Documentation is critical even in cases where the victim is unable to cooperate in the prosecution process. Social Service providers should utilize a domestic violence screening documentation form to record the essential elements. Social Service records may be used as evidence in hearings for protection orders (Article 18)

ELEMENTS OF DOCUMENTATION

5. History

A client's history should be broadly developed to better assist in evaluating the situation. Histories should include a specific chronological sequence of events, transport history, identification of family members present at the facility, and the patient's demeanor.

Chief complaint/history of present issues for purposes of diagnosis and treatment. Record Verbatim, use quotation marks, clarify ambiguous statements, and do not use the term "alleged" in the history or final diagnosis.

- Past history/review of symptoms
- Sexual history
- Medication history
- Relevant social history
- Safety assessment

6. Physical Exam

While the social services personnel do not do medical exams, they can record visual observations. Most common areas for injury include: the head, face, chest, breast and abdomen. Most injuries seen are: contusions, sprains, minor lacerations, fractures, abdominal injuries, gunshot or knife wounds and strangulation.

- Injuries, including tenderness, should be described in narrative that includes location, descriptions, and mechanism or cause if known.
- Use a body map: Body maps are extremely useful when documenting sites of injury and assist the social worker in recalling the physical condition of the patient.
- Photographs: whenever possible, photographs of injuries are instrumental in assisting in the prosecution. Photographs should be of the actual injuries, with a color spectrum bar to better assist in the evaluation of the type and nature of injuries. Law enforcement may assist with this process.

7. Safety Assessment

- Is the abuser present at the location of the meeting?
- Assess and record information pertaining to the client's risk for suicide or homicide and potential for serious harm or injury.
- Determine if it is physically/psychologically safe for the victim to go home. Are the children or other dependents safe?
- Assess the victim's degree of entrapment and level of fear.
- It is critical to obtain the history from the client alone and in a confidential setting regarding the current injuries and events.
- Do not use a family member as a translator for this process.

8. Police Report
 - Social service staff should be aware of legal reporting requirements in Albania. See Criminal Procedure Code Articles at the end of this protocol.
 - Note whether a police report was filed and record the name of investigating officers and actions taken.
 - Note whether a protection order was requested and the court or police unit at which it was requested.
9. Options discussed and referrals offered
Social workers should review options and local referrals.
10. Arrangements for follow-up/discharge information and safety plans
 - Social workers should give the victim clear follow up and discharge information.
 - Social workers should also discuss safety with the victim and assist her with a safety plan.

Signs and Symptoms to Recognize if the Client is a Victim of Domestic Violence

4. History
 - a. Traumatic injury or sexual assault
 - b. Was this a suicide attempt, drug overdose, or does the victim have suicidal thoughts. Note that causing suicide is a crime under Criminal Code Article 99.
 - c. Vague or non-specific complaints
 - d. Injuries inconsistent with history
 - e. Delay in seeking needed care
 - f. Repeated visits to doctor
 - g. Physical symptoms related to stress
5. Physical Clues
 - a. Client is reluctant to speak in front of partner
 - b. Client may be evasive in responses
 - c. Partner is over-protective or controlling (partner will try and answer questions for the patient) If the partner answers and gives false information, it is possible he could be charged with violation of Article 271 in the Criminal Code that punishes giving false information to emergency units.

6. Verbal Clues
 - a. Directly or indirectly brings up the subject of abuse.
 - b. Include specific quotes used by the client.

Health Issues for Domestic Violence Victims

5. Health Impact
 - a. Sleep disturbances
 - b. Drug abuse
 - c. Chronic pain
 - d. Disorders
 - e. Anxiety, panic attacks
 - f. Depression
 - g. Post-traumatic stress disorder
 - h. Hyper vigilance
 - i. Dissociation during medical procedures
 - j. Suicidal ideation or attempts
 - k. Unwanted pregnancies
 - l. Miscarriages
 - m. Sexually transmitted infections
6. Barriers to Care
 - a. System Issues
 - i. Time demands
 - ii. Confidentiality issues
 - iii. Role definition for health plans
 - iv. Hospital infrastructure
 - v. Community infrastructure
 - vi. Money
 - vii. Society and culture
 - b. Provider Issues
 - i. Provider/patient relationship
 - ii. May be the health plan for the abuser
 - iii. May know the family socially

- iv. Time restraints for screening and responding, especially in ensuring follow-up
7. Screening – How to Ask
- a. Direct Questions
 - i. At any time, has a partner hit, kicked or otherwise hurt or frightened you?
 - ii. Has your partner or ex-partner ever hit you or hurt you?
 - iii. Has he/she threatened to hurt you or someone close to you?
 - iv. Has your partner ever tried to restrict your freedom or keep you from doing things that were important to you?
 - b. Indirect questions
 - i. When I see a woman with an injury like yours, it is sometimes because someone hurt her. Has someone been hurting you?
 - ii. How has the abuse affected the patient's health?
 - c. Current Episode questions
 - i. What happened?
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 - iii. Were alcohol or drugs involved?
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 - i. Have your children ever seen or heard the abuse?
 - ii. Have your children ever been threatened or hurt?
 - iii. Have you sought help in the past?
 - iv. Have you ever tried to leave? What happened?
 - v. What resources are available to you in the community?
8. Lethality Assessment – Homicide Risk
- a. How has the control or violence changed in frequency/severity?
 - b. Does the abuser use drugs and/or alcohol?
 - c. (If sexual abuse) Does the abuser use pornography?
 - d. Has s/he ever threatened or tried to kill you or others close to you?
 - e. Do you believe he is capable of killing you?
 - f. Is there a firearm in the home?

- g. Have you ever been threatened with a weapon or has a weapon been used on you?
- h. Are you planning to leave/divorce him? Is s/he aware of your plans?
- i. Is it safe for the victim to go home? How much danger is the victim in if she stays/leaves?
- j. Are there warning signs that allow her/him to anticipate impending danger? Does the victim have a safety plan?
- k. What kind of access does the perpetrator have to the victim?

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1. The expert opinion is given in writing.
2. When the assigned experts are more than one and they have different opinions, each one of them presents his opinion in a separate report.
3. Where facts are complex and the expert cannot give an immediate answer, the proceeding authority gives him a period of time not longer than sixty days. In case of need for especially complex verifications, this period of time may be extended for more than once for periods of time not longer than thirty days, but not exceeding the maximum period of time of six months.

ALBANIAN CIVIL PROCEDURE CODE

EXPERT

Article 80

When specific knowledge in the field of science, technology or art is requested for the assessment or clarification of facts related to the dispute in trial, the court will call one or more experts.

Experts are selected from among persons registered in special lists and in conformity with the rules determined in this Code.

Article 81

The expert gives his opinion in writing, but may be heard in a court session and be asked by the court and the parties.

The opinion of the expert is not mandatory for the court and when the court has a dissenting opinion with that of the expert, it must reason in details such an opinion in the final decision or in the decision given during the trial.

It is not up to the expert to give a juridical opinion.

Article 82

The expert is obligated to fulfil the tasks given by the court except for when he presents justified grounds which are accepted by the court.

The failure of the expert to appear in court without legitimate grounds, causes his bringing to the court by enforcement.

The dismissal of the expert from his participation in trial is made when the conditions provided in Article 72 of this Code are met.

Responsibility of the expert

Article 83

The expert bears responsibility in conformity with the Penal Code in case he refuses to perform the task he has been given to him or performs a false expertise.

The expert is obligated to compensate damages, which have been caused to the parties or other participants in the process because of his guilt.

November, 2005

(TRANSLATION PROVIDED BY WOMEN'S LEGAL RIGHTS INITIATIVE)



**REPUBLIC OF ALBANIA
THE PARLIAMENT
DRAFT LAW**

No. _____ of _____ 2005

“ON MEASURES AGAINST VIOLENCE IN FAMILY RELATIONS”

Based on articles 78 point 1, 81 point 1 and 83 of the Constitution, upon the proposal of 20 000 voters and of a group of MPs

**THE PARLIAMENT
OF THE REPUBLIC OF ALBANIA**

DECIDED:

CHAPTER I

GENERAL PROVISIONS

**Article 1
Scope**

The purpose of this law is:

1. To prevent and reduce domestic violence in all its forms by appropriate legal means,
2. To guarantee legal protection to members of the family who are subjects of domestic violence, paying particular attention to needs of children, the elderly and the disabled.

Article 2

Objectives

1. Objectives of this law are:
 - a. To set up a coordinated network of responsible authorities for protection, support and rehabilitation of victims, mitigation of consequences and prevention of domestic violence,
 - b. To direct efforts for the set up of responsible structures and authorities at the central and local level in support of victims and prevention of domestic violence,
 - c. To empower the judiciary in taking protection measures against domestic violence, and

- d. 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
2. Activities of all persons and authorities under the obligation to implement this law, in fulfilment of their functions are guided by the scope provided in article 1.

Article 3 **Definitions**

Under the meaning of this law, unless specified otherwise in specific provisions thereof, by the following terms we shall understand:

1. Under this law “**Violence**” is considered an act or omission of one person against another, resulting in damage to the physical, moral, psychological, sexual, social and economic integrity of the individual (the target of violence).
2. By “**Domestic violence**” we understand:
 - a. Any act of violence between persons who are related or used to be in a family relation,
 - b. Acts or omissions that constitute **domestic violence** include but are not limited to:¹: murder, threat, torture, wounding, termination of pregnancy, denial of help, causing of suicide, abduction, trafficking, trespass, forcing into and exploiting for prostitution, insult, defamation, limitation of the freedom of expression/speech, of movement or assembly, despise, violation of private life, rape, other obscene acts, threat for abandonment, denial of living means, illegal taking of the child, direct physical, psychological, sexual and economic abuse of children and putting them in dangerous situations or in situations where children witness violence against other members of the family, coercion for cohabitation or termination of marriage, damage to property or economic well—being, limitation on freedom to administer their income or prohibition on holding monetary means
3. “Members of the family” are²:
 - c. Spouses or cohabitating partners
 - d. Brothers, sisters, relatives of direct blood line, including adoptive parents and children

¹ (First version according to reference of Criminal Code of the Republic of Albania (Second version New Zealand)

² According to the German law (Second version)

- a. Persons who are or were related in family relations, such as engagement, cohabitation or marriage
- b. Persons using the same residence and related by blood, marriage, adoption or guardianship, including parents, grandparents, children, nephews/ grandsons, nieces/ granddaughters, uncles and aunts or other relatives with which they live.

- e. Spouses of persons provided in paragraph b
- f. Persons related by direct blood line, including parents and adoptive children of the spouse or the cohabitating partner,
- g. Brothers and sisters of the spouse if these have been living together during the last 3 (three) months
- 4. “**Victim**” is the person who has been subject to violence mentioned under point 1 of this article
- 5. “**Lead Responsible authority**”, on the basis and for implementation effects of this law and other normative acts, is The Department of Prevention and Reduction of Domestic Violence within the Ministry of Labour, Social Affaires and Equal Opportunities”,
- 6. “**Other responsible line authorities**” are the Ministry of the Interior and the Ministry of Health as well as structures under their line of authority, such as Police Departments, Emergency Rooms and local government units (municipalities, communes),
- 7. “**Protection order**” is an order issued by a court providing protection measures for the victim.
- 8. “**Emergency protection order**” is a temporary court order valid until the court issues a protection order.

Article 4 Subjects

Subjects that will enjoy protection under this law will be all those who are subject to violence in the family premises or family relations (in conformity with article 3)

All other persons, members of the family with which the victim is or has been in one of the relationships provided in article 3/3 of this law.

CHAPTER II
RESPONSIBLE AUTHORITIES

Article 5

Responsible Authorities

1. The lead responsible authority under this law is “the Ministry of Labour, Social Affairs and Equal Opportunities (MOLSAEO) — the Department for Prevention and Reduction of Domestic Violence”,
2. Other responsible line authorities are:
 - a. Social Services Sectors at the Local Government Units,
 - b. Police Departments under the hierarchy of the Ministry of the Interior and
 - c. Health Centres under the supervision of the Ministry of Health

Article 6

Lead Responsible Authority Objectives

1. On the basis and for implementation of this law and other normative acts “the Lead Responsible Authority” the Department for Prevention and Reduction of Domestic Violence has the following objectives:
 - a. To support and protect family values and relations, such as respect, love, understanding and cooperation between family members, by preventing or taking measures against domestic violence
 - b. To support the family members who need help because of domestic violence
 - c. To support victims of domestic violence through medical care and social rehabilitation programmes
 - d. To help abusers with different medical and social treatments
 - e. To protect the victims of domestic violence, especially the children, women and the elderly, by safeguarding their privacy
 - f. To prepare policies and strategies with a view to prevent and take measures against domestic violence
 - g. To cooperate with the other line authorities and with the licensed NGOs in order to undertake concrete measures against domestic violence and to supervise the implementation of strategies and policies by them.
2. The state shall ensure the drafting and implementation of programmes and strategies to prevent domestic violence and to provide support and help to its victims, and shall include this issue in its social services programmes.

Article 7
Hierarchy and functioning of the Lead Responsible Authority

1. Leading structures and other employees of the Responsible Authority enjoy civil servant status in reference to law no. 8549 of 11.11.1999 “On the Status of the Civil Servant”. The Responsible Authority is under the supervision of the MOLSAEO, which is under the obligation to set up a separate section at the department level with the responsibility to fight and prevent domestic violence
2. The composition, duties, functions and budget of this authority are under the structure of the MOLSAEO.

Article 8
Duties of the lead Responsible Authority

The lead Responsible Authority has the following duties:

- a. Designs and implements strategies and national programmes for the protection of and care for domestic violence victims
- b. Supervises the implementation of respective rules and activities of all local authorities nation—wide
- c. Finances or co—finances projects for the protection and consolidation of family relations and care for domestic violence victims
- d. Organises the creation of complementary/aiding structures and the whole necessary infrastructure to support and fulfil all needs of persons subject to domestic violence, **including financial assistance as well as medical and social services**. These subjects will be part of the assistance to persons in need according to the law “On the Social Services in the Republic of Albania”.³
- e. Organises training courses on domestic violence with social services workers attached to local government units, structures of the Ministry of Public Order, and representatives of licensed NPOs providing services
- f. Keeps statistics on the level of domestic violence
- g. Assists and supervises the set up of rehabilitation centres for victims of domestic violence
- h. Assists and supervises the set up of rehabilitation centres for perpetrators
- i. Issues licenses to NPOs that will offer social services to victims and perpetrators

Article 9
Duties of other Responsible Authorities

³ (we have requested that domestic violence subjects become part of the categories covered by the above mentioned law)

1. The Ministry of the Interior has the following duties:
 - a) Shall set up special anti—violence units at the police stations
 - b) Shall train members of the police force to handle domestic violence cases
2. Ministry of Health shall set up necessary structures to handle domestic violence cases at the emergency units and at the Health Care Centres in municipalities and communes, with a view to:
 - a) Offer at any time medical and psychological help to domestic violence victims,
 - b) To carry out respective examinations at any time and place,
 - c) To record domestic violence cases at the respective medical registry,
 - d) To provide the victim with a copy of the medico—legal expertise act,
 - e) To guide/inform and refer the victim to other support and protection domestic violence services
3. Local authorities (Municipalities, Communes) have the following duties:
 - a) Shall engage in setting up social services structures for domestic violence cases
 - b) Install regional 24 hours toll free telephone line, which will then establish links to local units, police, medical emergency units and NPOs, thereby coordinating their actions
 - c) Establish social and rehabilitation centres for victims and perpetrators and coordinate efforts with exiting ones specialised in respective fields giving them priority

Article 10
Duties of all Responsible Authorities

1. The Department for the Prevention and Reduction of Domestic Violence Police stations, public health centres and local government authorities nation—wide are legally required to coordinate efforts with a view to take the necessary steps to involve all the structures needed to take action in order to improve the situation or to follow further legal procedures, regardless of who/which structure first learns about violence against a person
2. Each of these authorities has the duty to set up the necessary governmental structures and to nominate those individuals responsible for the implementation of this law. The Ministry of LSCEO shall supervise fulfilment of this obligation.
3. Line government authorities shall respond to any report filed by the victim or other persons indicated by this law, for cases of violence or threat to use violence, including cases of violation of protection orders and emergency protection orders. These authorities keep due records and issue a copy to the victim or to the person accompanying them

4. Line government authorities utilise reasonable means to protect the victim and prevent ongoing violence through:
 - a) Informing the victim or the person accompanying them on the measures to be taken according to the law and authorities they should refer to
 - b) Informing the victim or the person accompanying them on existing social services and accompanying them to appropriate centres and institutions
 - c) Providing for transportation of the victim and the person accompanying them to medical or social services centres
 - d) Providing them with the protection of a policeman in life endangering cases
5. When there is reasonable doubt that the perpetrator has threatened to or has committed domestic violence or has violated a protection order, police authorities shall immediately verify and take note of this fact
6. Persons who receive reporting because of their function or authority to implement this law and fail to act in its implementation shall be held administratively and/or criminally responsible, applying sanctions of article 248 and 251 of the Criminal Code

Article 11

Subjects who may report to responsible authorities

1. In the occurrence of a domestic violence act, the victim may approach/address the nearest police station (to their residence or wherever they are), their local government unit (municipality, commune), public health centre in their residence or wherever they are situated or the district court of their permanent or temporary residence or that of the perpetrator, to take the necessary measures.
2. In case they witness a domestic violence case a relative, neighbour, teacher may present a request to the authorities mentioned above to take the appropriate measures
3. Police authorities shall also record their findings and start investigations upon their own initiative (sua sponte)

CHAPTER III
PROTECTION MEASURES

Article 12
Protection measures against DV

1. Protection against domestic violence shall be ensured by/through:
 - a. Immediately ordering the defendant to refrain from committing or threatening to commit an act of domestic violence against the victim or other family members of the victim
 - b. Forcing the perpetrator to refrain from harming, harassing, contacting or communicating directly or indirectly with the victim or any other member of her family
 - c. Removing the perpetrator from the residence for a certain period of time, determined in the court order and restricting their re—entrance without court authorization
 - d. Prohibiting the perpetrator to be within a certain distance to the victim or the members of her family
 - e. Immediately forbidding the perpetrator to approach/get near the house, workplace, the original family residence or the future couple’s residence or that of other persons and moreover the children’s school or any other place commonly frequented by the victim, unless this happens for work—related reasons
 - f. Placing the victim and the children or the other family members who did not commit violence in temporary shelters always keeping in mind the best interest of the child
 - g. Limiting or prohibiting the perpetrator to see the victim’s child based on appropriate conditions
 - h. Prohibiting the perpetrator to enter or stay in the temporary or permanent residence of the victim, or in any part thereof, regardless of any property or possession rights the perpetrator may have over these.
 - i. Ordering a court authorized person (member of the police or bailiff) to accompany the victim or the perpetrator to the victim’s residence and to supervise removal of their personal belongings or those of other persons
 - j. Ordering the perpetrator to allow the victim to possess the commonly used residence or part thereof
 - k. Ordering the perpetrator to pay the rent for the permanent or temporary residence of the victim as well as paying support obligations to the victim, children or other members of the family under their responsibility
 - l. Prohibiting the perpetrator as well as the victim to sell any of their property until a certain period of time

- m. Transferring the temporary child custody rights to the victim and temporarily removing parental rights for the perpetrator (This is to be carefully confronted with the Family Law provisions)
 - n. Deciding and ordering — depending on the case (under the competence of the court) — the intervention of public or private social services or of a centre of *family mediation* or of organizations whose objective is to support and shelter subjects of domestic violence
 - o. Ordering the perpetrator to effectuate a periodic payment in favour of cohabitating persons, who as a result of the above mentioned measure, remain deprived of living means. To secure the payment the court may order the employer (of the perpetrator) to transfer the payment directly to the beneficiary. This order shall be an executive title.
 - p. Sending the victim of domestic violence to rehabilitation programmes
 - q. Ordering the perpetrator to participate in rehabilitation programmes
4. Protection orders may include several of the protection measures mentioned in paragraph 1
 5. Emergency protection orders may contain several of the protection measures mentioned under point a through i of this article

Article 13

Effects of the protection order

1. Notwithstanding any other order or decision issued by the court or any other institution, a protection order containing the above mentioned measures shall be issued by the court in the cases provided by this law.
2. The protection order or the emergency protection order upon its issuance or expiration shall not affect property or custody rights.

CHAPTER IV
JUDICIAL PROCESS FOR PROTECTION ORDERS

Article 14

Competent authority to issue protection orders for domestic violence cases

1. The competent authority to issue protection orders in domestic violence cases is the civil court, family section
2. The competent court to issue a protection order in domestic violence cases is the district court of the actual residence of the victim or of their workplace or the court of the district where the petition for the restriction order is presented
3. The court issues **protection orders** or **emergency protection orders** to establish the security measures mentioned under article 12 of this law
4. The interested party may request, in conformity with this law, the issuance of a protection order without prior request for an emergency protection order.
5. After the court has issued an emergency protection order, the interested party may request issuance of a protection order as provided by this act. The subsequent protection order serves to reconfirm the continuance of the emergency protection order and provides for protection measures indicated in article 12 of this law

Article 15

Subjects entitled to request for protection orders

1. The petition for protection orders may be presented by:
 - a. The victim themselves
 - b. The victim's legal representative or attorney
 - c. The police / the prosecutor
2. The petition for protection orders on behalf of the minor may be presented by:
 - a. The minor's parent or guardian
 - b. The minor's legal representative or attorney
 - c. Relatives of the minor
 - d. Representatives of the Social Services Office at the Municipality or Commune, where the minor resides temporarily or permanently, when they have knowledge of the violence perpetrated
 - e. DV victim protection and rehabilitation centres and services recognised/licensed by the Department for Prevention and Reduction of Domestic Violence
3. The petition for emergency protection orders may be presented by:
 - a. The victim herself or himself
 - b. The victim's legal representative or attorney

- c. The prosecutor
- d. The police / the prosecutor
- e. A family member of the victim, and
- f. Representatives of the Social Services Department of the municipality or commune, where the victim temporarily or permanently resides who have knowledge of domestic violence incidents that have occurred
- g. DV victim protection and rehabilitation centres and services recognised/licensed by the Department for Prevention and Reduction of Domestic Violence

Article 16

The form of the petition

1. The petition for protection and emergency protection orders, in addition to elements provided by Article 154 of the Civil Procedure Code shall contain the following:
 - a. Personal data on the family or blood relations between the victim and the perpetrator;
 - b. A clear presentation of the facts and circumstances in which the domestic violence incident occurred, including the reasons why the petitioner fears their security, health or well-being is in danger from the perpetrator (mentioned under article 3/1 and 2 of the present law)
 - c. Specific protection measures requested
 - d. Petitioner's signature
2. The petition for protection orders may be presented at any time to the court by the persons who are legitimized to do so. Whenever immediate help is requested the petition may also be compiled and presented at the nearest police station
3. The petitioner is assisted by a lawyer free of charge for the preparation of the petition, completing the necessary documents and filing them in the court
4. The petitioner is exempt from court taxes/fees. Upon issuance of the protection order court expenses are charged on the party who committed domestic violence. When the petition is not sustained the petitioner is required to pay for court expenses.
5. Petitions shall be recorded in a special register to the date of their completion

Article 17

Summoning

1. The respondent in a domestic violence case is summoned in court through a subpoena.
2. The contents of the subpoena and summoning rules should be in accordance with the provisions of the Civil Procedure Code.

Article 18
Evidence during the hearing

1. In the hearing for the protection order, the burden of proof stands on the perpetrator
2. Necessary evidence may be: witness statements, police reports, medical reports, acts of expertise (expert witness declarations) examinations and statements/explanations by the parties, other documents issued by the social workers of the social services department at the municipality and commune, documents issued by legal persons (NPOs) legally registered.
3. When the data in the petition point out that police departments, local government offices or health centres possess written proof of the occurrence of domestic violence, these shall immediately issue a certified copy thereof (with official seal) upon the request from the petitioner or the court. Failure to issue such a document causes the responsible persons to be sanctioned according to Administrative Procedure Code.
4. When evidence mentioned under paragraph 2 of this article is missing, the court issues the protection order based solely on the description of circumstances and facts related to the occurrence of violence in the family and on their own conviction

Article 19
The hearing for protection orders

1. “The court establishes a hearing with regard to a protection order within 15 days from the filing of the petition”.
2. While examining the petition the court may hear testimony from the following persons:
 - a. The victim, her or his legal representative or attorney
 - b. The perpetrator, his or her representative or attorney
 - c. The prosecutor, when he or she filed the petition
 - d. The representative of the social services department at the municipality or commune of the temporary or permanent residence of the petitioner when the petitioner is a minor, when the petitioner is legally incapacitated or when the domestic violence affects these categories/persons
 - e. Health centres employees who assisted the victim because of domestic violence
 - f. Witnesses deemed necessary by the court
3. The hearing takes place in absentia of the perpetrator when they have been properly summoned pursuant to the procedural laws
4. When the petitioner or their legal representative do not appear in court during the hearing for the protection order, without proper notification of the reasons of

their absence, the process is terminated with the possibility to re—present the same petition

Article 20
Court decision for protection orders

1. The court shall issue a protection order only against the perpetrator mentioned in the petition. This order may only include measures described in article 12 of this law. The court shall issue a protection order containing one or more of the measures provided in article 12, if it proves that:
 - a. There is sufficient basis to believe that the perpetrator may commit an act of family violence (as described in article 3 of the present law)
 - b. Issuance of the protection order is indispensable to protect direct and indirect the security, health and well—being of the victim. Based on the court conviction, the protection order may include other persons family or intimately connected to the victim that may become subjects to domestic violence
2. Notwithstanding any other criminal procedure against the perpetrator, the court shall not prejudice the decision to issue the protection order
3. The final decision to issue the protection order shall contain:
 - a. The measure determined by the court
 - b. Time limits for this protection order which should not exceed 12 months, but with a possibility of extension
 - c. A remark that violation of a protection order shall be considered a criminal offence under article 320 of the Criminal Code
 - d. A note on the right to appeal the protection order within 15 days from its approval or notification to the parties
4. The perpetrator who failed to appear at court for the hearing on the petition shall be notified immediately of the issuance by the court of the protection order
5. The court shall send within 24 hours a copy of the protection order to the following persons:
 - a. The victim and other persons mentioned in the protection order
 - b. The prosecutor, when they present the request
 - c. 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
 - d. The police department of the location where the victim or other persons mentioned in the protection order reside temporarily or permanently
6. The protection order shall enter into force immediately after issuance by the court and its application starts regardless of its notification (or lack thereof) to the perpetrator

Article 21
The hearing for emergency protection orders

1. The court reaches a decision with regard to emergency protection orders within 24 hours from the presentation of petition
2. In the hearing for the emergency protection order the court hears the following persons:
 - a. The victim, their legal representative or attorney
 - b. The perpetrator, their representative or attorney
 - c. The prosecutor, if participating
 - d. Other petitioners mentioned in article 15 of this law
 - e. Witnesses deemed necessary by the court

Article 22
Issuance of emergency protection orders

1. The court issues the protection order including one or more measures described in article 12 of this law, if it **finds** that:
 - a. There is sufficient basis to believe that the perpetrator has committed or threatened to commit an act of family violence
 - b. The perpetrator presents a direct and inevitable threat to the security, health or well-being of the victim or their family members
 - c. Issuance of the emergency protection order is indispensable to protect the security, health and welfare of the victim or their family members who need protection through this order
2. Notwithstanding any other criminal procedure against the perpetrator, the court shall not prejudice the decision to issue the emergency protection order
3. The final decision to issue the protection order shall contain:
 - a. The measure determined by the court
 - b. Time limits for this emergency protection order which expires at the moment a protection order issued by the court is implemented
 - c. A remark that violation of an emergency protection order constitutes a criminal offence, pursuant to article 320 of the Criminal Code
 - d. A note on the right to appeal the protection order within 5 days from its approval or notification to the parties
 - e. The date for the verification of the emergency protection order, which should take place within 20 days from the issuance of the emergency protection order
4. The protection order issued by the court should be sent immediately to the perpetrator

5. The court sends within 24 hours a copy of the emergency protection order to the following persons:
 - a. The victim and other persons mentioned in the emergency protection order
 - b. Petitioners under the meaning of article 15 of this law
 - c. 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
 - d. The police department of the location where the victim or other persons mentioned in the protection order reside temporarily or permanently
6. The court decision issuing an emergency protection order is considered an executive title and shall be implemented immediately according to the Civil Procedure Code (article 510 and the following)

Article 23

The hearing for the verification of the emergency protection order

1. Once the hearing for the issuance of the emergency protection order terminates the court should proceed with the hearing for the protection order based on the petition mentioned in article 19 of this law. At the end of the hearing the court may:
 - a. Decide the withdrawal and termination of the effects of the emergency protection order issued previously by the court when there is no evidence to sustain it
 - b. Refuse to issue a protection order when evidence does not support the previously issued emergency protection order
 - c. Issue a protection order pursuant to article 20 of this law. This court decision may alter terms and conditions of the previously issued emergency protection order, as needed.

Article 24

The appeal

1. Special appeal may be filed against the decision for the emergency protection order pursuant to the Civil Procedure Code.
2. The court decisions on the protection order or on the emergency protection order may be appealed according to the time limits and rules set out in the Civil Procedure Code
3. The appeal does not affect the implementation of the protection order or emergency protection order

Article 25

Circumstances for amendment, termination or continuation of protection orders

1. In case of fundamental change in circumstances, the victim (or their representative) or the prosecutor may present the request for termination or amendment of the protection order
2. Once this request for termination or amendment of the protection order is received the court examines it according to article 19 of the present law. At the end of the examination the court may:
 - a. Decide the protection order should stay in force
 - b. Decide the protection order should be amended, if circumstances have fundamentally changed
 - c. Decide the termination of the protection order if the criteria established under article 12.1 are no longer valid because of fundamental change in the circumstances
3. The request for the amendment or termination of the protection order does not suspend the implementation of the protection order
4. Fifteen days prior to expiration of the protection order, the victim or the person authorised by them may present the request for the continuation of the protection order. When no such request is presented the protection order terminates automatically on the expiration date.
5. Once the court receives the request for the continuation of the protection order, it examines it according to article 19 of this law. At the end of the process the court may:
 - a. Certify the termination of the protection order up to the expiration date or
 - b. Decide the continuation of the protection order if the criteria of article 20/1 are met

Article 26

Implementation of judicial decisions

1. The judicial decision containing the emergency protection order is considered an executive title from the moment it is declared by the court or notified to the parties
2. 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, Police Departments, local government authorities (municipality, commune) or the perpetrator
3. Social workers and members of the police force shall take all necessary steps to ensure immediate and continuous implementation/execution of protection measures determined pursuant to article 12 of this law.
4. Institutions, shelters, service centres, NPOs licensed to offer services shall implement measures established by the court decision and shall coordinate their

actions with the local government authorities and police departments, which are the direct implementers of these decisions

5. Forced execution of the court order shall be carried out by the Bailiff Services Office, pursuant to Civil Procedure Code provisions (articles 510 and the following)
6. When subjects notified of the court orders refuse to comply voluntarily, authorities shall proceed with forced implementation/execution pursuant to Civil Procedure Code provisions. In these cases sanctions established by article 320/a of the Criminal Code or article 606/3 of the Civil Procedure Code shall apply against the persons who do not respect/abide by the law.

CHAPTER V
FINAL PROVISIONS

Article 27
Criminal Proceedings

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.

Article 28
Secondary legislation

The Responsible Authority and other responsible line authorities shall prepare all the necessary secondary legislation to the implementation of this law within 3 months from its entry into force.

Article 29
Entry into force

This law shall enter into force 6 months after its publication in the Official Gazette.

SPEAKER
JOZEFINA TOPALLI

P.S. Violations of the protection order and emergency protection orders by the perpetrator or law implementation authorities shall be considered separate criminal offences (amendments to the Criminal Code) in the framework of amendments to the Criminal Code and other laws upon entry into force of this law. Similarly, the new law on Social Services includes victims of domestic violence under the category of "persons in need", etc.