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THE WOMEN'S LEGAL RIGHTS INITIATIVE

ALBANIA HEALTH PROTOCOL ON DOMESTIC VIOLENCE

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ALBANIA 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)

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

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:
 - Informing the victim or person accompanying them on measures that may be taken such as the protection order;
 - Informing the victim or person accompanying them on existing social services;
 - Accompanying the victim to such social services if necessary;
 - 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. Yet 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 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.

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.