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# THE WOMEN'S LEGAL RIGHTS INITIATIVE

## DOMESTIC VIOLENCE LEGISLATION IN ALBANIA: POST ACTIVITY REPORT

October 2006

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## **THE WOMEN'S LEGAL RIGHTS INITIATIVE**

A Task Order Under the Women in Development IQC

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The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

*The following draft was introduced to the Albanian Parliament in January, 2006. Annotations and suggested changes were written by Ms. Dianne Post, a WLR DV consultant, July 7, 2006*

**(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:

~~†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~~

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

~~economic well-being, limitation on freedom to administer their income or prohibition on holding monetary means~~

- 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)

Prohibition on holding monetary means, despise, direct physical, psychological, sexual and economic abuse of children and putting them in dangerous situations where they witness violence

NOTE: If we cannot persuade them to change to the New Zealand formulation, reference should be made to the criminal code they taking the definitions from in order to make it clear and to make it easier for judges. OSCE does not disagree but wants to make sure there is no confusion that the criminal procedure code does not need to be used. They suggest saying clearly it is a civil remedy. OSCE also pointed out that the respondent should not be called the “perpetrator” throughout since the decision is not final i.e. s/he’s not been found to have committed domestic violence yet. Therefore I did a “find and replace” with the word “respondent” that is the word used in other civil actions in

Albania. Some of the actions listed are not in the criminal code like “despise, children witnessing violence, limits on administering own income and holding monetary means.” Some of the things that should be spelled out such as intentional and unintentional injury and wrongful use of a telephone are not.

3. “**Members of the family**” are<sup>2</sup>:
  - c. Spouses or cohabitating partners or former spouses or cohabitating partners
  - d. Brothers, sisters, relatives of direct blood line, including adoptive parents and children
  - 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

#### h. CHILDREN OF SPOUSES AND CO-HABITANTS

NOTE: We prefer the German version below but if that is not adopted, then add the above to include former relationships and the children of spouses and co-habitants who are often targets of violence precisely because they are not the children of the abuser. It could be argued that Article 3 (2)(a) already includes former relationships because it says “are related or used to be in a family relation”.

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, MINISTRY OF JUSTICE, 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),

NOTE: We felt that Minister of Justice should be added because they control the medical/legal expertise that is needed in the cases, they control the bailiffs who are to

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<sup>2</sup> 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.

serve the orders and they would be the ones to budget the monies for the free lawyers that are required. The Department of Social Services thought the Ministry of Education should be included for prevention which is not focused on in this law.

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.

NOTE: Therefore a “subject” could also be the respondent or abuser because s/he is a person in relationship with the victim. This becomes important when looking at Article 26(6).

## CHAPTER II

### RESPONSIBLE AUTHORITIES

#### Article 5

##### Responsible Authorities

1. The lead responsible authority under this law is “the Ministry of Labour, Social Affaires 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 relations and values AS OUTLINED IN ARTICLE 1 OF THE FAMILY CODE.  
~~such as respect, love, understanding and cooperation between family members, by preventing or taking measures against domestic violence~~

NOTE: We felt we should refer to the already existing Family Code specifically because Article 1 mentions equality in the family and this definition does not.

Family Code **Article 1**

Marriage, as a legal cohabitation, is founded on the moral and legal equality of the spouses, in the mutual sentiment of love, respect and understanding, as the basis of unity in the family. Marriage and family enjoy special protection from the state.

Arta Mandro thinks we should cut and paste the Family code language in rather than referring to the Article.

- 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- Assists 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”<sup>3</sup>
- 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

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

- 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 respondents
- i- Issues licenses to NPOs that will offer social services to victims and respondents

## Article 9

### Duties of other Responsible Authorities

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. MINISTRY OF JUSTICE HAS THE FOLLOWING DUTIES: ADDITION
  - a) train the medical/legal expertise in recognizing, diagnosing, evaluating and reporting on domestic violence and child abuse injuries;
  - b) train the bailiffs on their duty to serve protection orders immediately and to ensure their implementation under Article 26(6) or take appropriate action;
  - c) Budget for the free legal assistance mandated under the act and ensure there are sufficient numbers of trained lawyers to provide said assistance.
  
4. 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 respondents 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 LSAEO 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 respondent 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 **IN A WRITTEN REPORT REGISTERED BY THE POLICE AUTHORITY. THE INCIDENT NUMBER FOR THE REPORT SHOULD BE GIVEN TO THE VICTIM.**

NOTE: We wanted a written report for two reasons. First, many police will find reasonable doubt and this gives a paper trail to identify those officers and perhaps train them again or if necessary invoke Article 10(6) regarding failure to do their jobs. Second, the best indicator of violence is past violence and if there are several previous reports that did not result in an action, that is still good evidence that violence is and has been occurring in that home. The police agreed with this suggestion. ICITAP suggests actually naming the document. The TIMS system will be organized by incident number and thus the victim will need to know the incident number.

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

NOTE: Article 251 of the Criminal code is more narrow and relates to law enforcement, prosecutors and judges who fail to do their duty. Article 248 is broader and could relate to medical doctors, social workers, teachers etc.

## **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 UNIT (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 respondent, 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 IN A WRITTEN REPORT REGISTERED WITH THE POLICE AUTHORITY and start investigations upon their own initiative (*sua sponte*). THE POLICE MUST GIVE AN INCIDENT NUMBER TO THE VICTIM.

NOTE: The police suggested changing “station” to “unit” because the unit is what is closer to the people. There are only 12 police stations in the country.

## **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) RESPONDENT to refrain from committing or threatening to commit an act of domestic violence against the victim or other family members of the victim AS DEFINED IN ARTICLE 3 OR AS NAMED IN THE ORDER.
  - b. Forcing the respondent to refrain from harming, harassing, contacting or communicating directly or indirectly with the victim or any other member of (her) CHANGE “HER” TO “THE” TO AVOID GENDER BIAS family AS DEFINED IN ARTICLE 3 OR AS NAMED IN THE ORDER
  - c. Removing the respondent 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 respondent to be within a certain distance to the victim or the members of her family AS DEFINED IN ARTICLE 3 OR AS NAMED IN THE ORDER
  - e. Immediately forbidding the respondent 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 respondent to see the victim's child based on appropriate conditions
- h. Prohibiting the respondent 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 respondent may have over these.
- i. Ordering a court authorized person (member of the police or bailiff) to accompany the victim or the respondent to the victim's residence and to supervise removal of their personal belongings or those of other persons
- j. Ordering the respondent to allow the victim to possess the commonly used residence or part thereof
- k. Ordering the respondent 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 respondent as well as the victim to sell any of their property until a certain period of time~~

1. SO LONG AS THE PROTECTION ORDER IS IN EXISTENCE, THE PROPERTY REGIME SHALL BE IN ACCORDANCE WITH FAMILY CODE ARTICLES 57-58 AND 60.

NOTE: Often the victim needs to sell things to survive as the perpetrator does not pay child support. The Family Code does allow exceptions to be made for selling items for necessity such as medical care and education. By referring to the already existing code, it makes it easier for judges and allows the victim to have these already existing exceptions.

- m. Transferring the temporary child custody rights to the victim and temporarily removing parental rights for the respondent (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

NOTE: We and OSCE agreed that mediation should not be a term that the court can order as it is not appropriate in family violence cases. We know that judges have already asked about it so suspect they will do it just as the judges in the U.S. did before we passed laws prohibiting it. Mediation must be voluntary and if after she goes to a support center she decides to do it, that is her choice but it should not be ordered by a court. Mandro pointed out that in a divorce if there is violence, the judges do not insist on the conciliation procedures so neither should they here.

- o. Ordering the respondent 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 respondent) 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 respondent to participate in rehabilitation programmes. IF THE RESPONDENT IS ORDERED TO A REHABILITATION PROGRAM, THE PROGRAM IS REQUIRED TO REPORT WEEKLY TO THE COURT ON WHETHER THE RESPONDENT IS ATTENDING AND PARTICIPATING. IF THE RESPONDENT IS NOT, THE COURT WILL SUMMON THE RESPONDENT TO COURT AND ISSUE ADDITIONAL SANCTIONS.
- r. NEW Ordering the law enforcement officers to seize or the respondent to surrender any weapons belonging to the person, in the persons control or accessible to the person.

NOTE: All agreed that weapons are many in Albania and their possession in domestic violence situations is very dangerous and this type of provisions should be included. We also know from experience in the U.S. that it is very important to ensure respondent's attendance and participation in the rehab programs and the only thing that does it is reporting to the court for further sanctions.

- 2. Protection orders may include several of the protection measures mentioned in paragraph 1
- 3. Emergency protection orders may contain several of the protection measures mentioned under point a through i of this article AND MAY INCLUDE POINT r. OR MOVE POINT R TO IMMEDIATELY AFTER I.

NOTE: It is most important that weapons be seized immediately.

- 4. IF CONTACT IS NECESSARY BECAUSE OF THE WORK SITUATION, THE ORDER REMAINS IN FORCE EXCEPT FOR THE SHORTEST POSSIBLE TIME WHEN THE PARTIES MAY NEED TO BE IN PROXIMITY.

NOTE: OSCE suggested removing this completely from the list so as not to confuse that it would apply to any other provision but the physical proximity during work related situations. Post suggested putting it in so that the order is not invalidated by a work relationship. As it is currently written, we don't know what happens if the contact is work-related. It just says it doesn't apply.

- 5. IF WEAPONS HAVE BEEN SEIZED, THEY WILL BE RETURNED ONLY AFTER THE TERMINATION OF THE PROTECTION ORDER AND RECEIPT OF A COURT ORDE.
- 6. IF WEAPONS HAVE BEEN SEIZED AND THE PERSON HAS A WEAPONS AUTHORIZATION CARD, THE COURT - see differing options:
  - i. SHALL NOTIFY THE APPROPRIATE ADMINISTRATIVE AUTHORITY. The prosecutors thought that the judge could not revoke the weapons permit because it was an administrative action and they could not interfere with that. So they could only notify the proper agency.
  - ii. SHALL SUSPEND THE CARD UNTIL THE TERMINATION OF THE PROTECTION ORDER AND FURTHER HEARING. The judges thought they could suspend or revoke the card. This needs to be determined.

NOTE: This was the procedure law enforcement, prosecution and the judges felt was most appropriate. If the weapons are illegal, the police will seize them and keep them

and charge the person. If they are legal, the police will store them and return only with a court order. If the person is law enforcement or military, the administrative authority should be notified and they then take further action about what to do with the person since s/he doesn't have a gun. They all favored checking the gun in and out at work while Post prefers depriving of a gun all together and giving them a desk job.

ICITAP worried about seizing the guns i.e. unlawful search or with only one parties consent but the police said they are doing it now so it's no problem. ICITAP also worried about storage space but the police said it was no problem.

From the Draft Law on State Police, the police have the right under articles 108 and 109 to banish him, and 110 to take protective measures, and 112 to impound objects, and 115 they can search without permission of owner to prevent immediate threat so legally there is no problem if the State Police law passes.

### **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 PERMANENTLY affect property or custody rights.

NOTE: the order clearly does affect property and custody rights so we thought the meaning was that it didn't permanently affect them.

## **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 DISTRICT court, family section

NOTE: There was some discussion regarding Civil Procedure Code 349 that outlines the competence of the judges in "Disputes Relating to the Family". The petition order regime is not mentioned. Some thought the Civil Procedure code should be amended to include it. Others thought it was not a problem.

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

NOTE: This provision conflicts with Civil Procedure Code Article 42 that says the territorial jurisdiction is the residence of the respondent not the victim. Several different opinions have surfaced about this issue. The drafter said they did discuss it and the judges and professors did not think it was a conflict. Some lawyers argued



that because it was a specific law, newer than the CPC and on the particular topic of the family which has special protection, it could be argued that it prevails over the CPC. The judges we talked to thought it did conflict and suggested that it be resolved by allowing an emergency order in the place of the victim but the regular order in the place of the respondent. This will cause lots of problems in the victim having to travel and in the judge in the respondent's location not being informed on the previous order. It will also affect record keeping i.e. an order which is essentially the same will appear in two different districts and it will be difficult to count it as one or two orders issued. OSCE believes it is possible to change the Civil Procedure Code and that is what should be done. Another suggestion was to talk to the codification department of the Ministry of Justice.

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/prosecutor

NOTE: The functions of the prosecutor are outlined in Criminal Procedure Code Article 24 and do not include this. But in Article 59(2) they can participate in private prosecutions and also appear in family law cases so they see no problem with this. The inclusion of the police/prosecutor was to deal with the "no drop" policy i.e. it takes the responsibility away from the victim. If she wants the police or prosecutor to file it, then it won't be dropped, will be taken more seriously and she can then tell the abuser, well there is nothing I can do about it. The prosecutors also felt that the only time the prosecutor is likely to file a petition is when they are already involved in a case and following it closely e.g. when they are involved in a criminal case with this family. Thus it would not be often done except on the request of the victim.

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 respondent;
  - 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 respondent (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 UNIT.

NOTE: What happens then? Do the police file it? This should be clarified.

Suggested language:

IF IMMEDIATE HELP IS NECESSARY DURING A TIME WHEN THE COURT IS CLOSED, THE POLICE SHALL CONTACT THE JUDGE WHO IS ON CALL. THE POLICE SHALL PRESENT TO THE JUDGE THE STATEMENTS IN THE PETITION AND THE EVIDENCE AVAILABLE. THE JUDGE SHALL MAKE A DECISION AND AUTHORIZE THE POLICE TO ISSUE A PROTECTION ORDER. THIS ORDER SHALL BE IN EFFECT UNTIL CLOSE OF BUSINESS THE NEXT DAY THE COURT IS OPEN. OR FOR 7 DAYS

SINCE IT MAY BE QUITE A DISTANCE TO TRAVEL TO COURT AND QUITE DIFFICULT.

NOTE: Mandro says that there is a judge on call at all times. Thus the police can phone that judge, assuming they know who it is or how to get ahold of that person, and get authorization. This would require that the police units have orders on hand to sign of course. And telephones that work.

OPTION: Whenever immediate help is requested, the petition may also be compiled and presented at the nearest police unit and the police will act in accordance with Articles 108 through 1110 of the Law on State Police.

NOTE; This is the provision in the draft law on state police that allows them to banish for 10 days, to take protective measures against someone who is a harm to self or others, and to impound objects.

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

NOTE: The judges mentioned that if there are easy do it yourself forms to file, the attorneys will be angry that business is taken away from them. This same argument was made against do it yourself in Arizona. The answer was, these people don't have money to pay you anyhow so you wouldn't be getting that business. Those who do have money will hire lawyers.

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 respondent

NOTE: Here we have a disagreement that the burden of proof can be put on the respondent. By law, both sides have the burden of production and the petitioner has to provide a prima facie case. No agreement was reached but it was suggested to either remove this completely or use some language similar to the anti-discrimination

law that shifts the burden after presentation of a prima facie case. Another idea was to look at the labor code and how it treats sexual harassment and shifting the burden and/or to look at the ILO conventions regarding sexual harassment and see how it treats shifting the burden. Since Albania has ratified the ILO conventions, they then cannot object to using that standard.

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) “UNITS” TO BE CONSISTENT, 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 respondent, his or her representative or attorney
  - c. The prosecutor, when he or she filed the petition

NOTE: The prosecutor is involved only when s/he has filed the petition which won't be often. Interestingly they don't hear from the police even if they have 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 respondent 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

NOTE: This remains a problem because often the respondent will prevent the victim from attending the hearing. Better to reverse the burden and say the order remains in effect until the victim appears and convinces the judge it should be dropped.

## **Article 20**

### **Court decision for protection orders**

1. The court shall issue a protection order only against the respondent 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 FINDS that

NOTE: This was a simple mistranslation.

- a. There is sufficient basis to believe that the respondent may commit an act of family violence (as described in article 3 of the present law) OR
- b. Issuance of the protection order is indispensable NECESSARY 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

NOTE: It was felt that there should be “or” between the conditions as either should be sufficient and both should not be required. It was felt that “indispensable” is too high a standard for issuance of an order. Necessary is a lower standard.

- ~~2. Notwithstanding any other criminal procedure against the respondent, the court shall not prejudice the decision to issue the protection order~~

NOTE; this is a repetition of Article 13(a) and it’s not clear at all. Suggested language is:

2. A court shall not deny a protection order because of the existence of any other pending action involving any party.

3. The final decision to issue the protection order shall contain:

NOTE: should this say “in addition to the requirements of Civil Procedure code 310” which outlines what must be in any order including reasoning for clarity’s sake?

- 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 respondent 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

NOTE: there was suggestion here to combine 4 and 6 and refer to Civil Procedure Code and state that all efforts have been made to serve the respondent. Also a suggestion that the court should issue two originals to the victim so that if and when she sees him, and if the police show up, she can give the police one and they can serve him with it and then he is served.

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) UNIT 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 respondent

## **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 respondent, 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 respondent has committed or threatened to commit an act of family violence OR

- b. The respondent presents a direct and inevitable IMMEDIATE threat to the security, health or well-being of the victim or their family members OR
- c. Issuance of the emergency protection order is indispensable NECESSARY to protect the security, health and welfare of the victim or their family members who need protection through this order

NOTE: As above, we felt the three conditions for the issuance are independent and thus the word OR should be put in between them so judges were not confused that they had to find all 3 conditions before issuing. Likewise we changed “inevitable” to “immediate” and “indispensable” to “Necessary” to lower the standard for granting the order.

~~2. Notwithstanding any other criminal procedure against the respondent, the court shall not prejudice the decision to issue the emergency protection order~~

2. A court shall not deny a protection order because of the existence of any other pending action involving any party.

NOTE: Same wording as in Article 20(2) for the same reason.

3. The final decision to issue the protection order shall contain:

NOTE: Similar to above, should this state “in addition to the requirements of Civil Procedure Code 310”?

- 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 respondent

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) UNIT 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)

NOTE: there was discussion with police, prosecutors and judges about whether the wording in the law is sufficient to ensure immediate service of the order and if it should state 24 hours instead. The police wanted 24 hours and wanted secondary legislation. The judges and prosecutor thought it was not necessary because the term “immediate” is commonly used in Albania and since it says immediate in the law, secondary legislation is not needed. However, it should be stated in any protocol drawn up by the officers anyhow.

### **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 IF the prosecutor HAS BEEN PARTICIPATING S/HE may present the request for termination or amendment of the protection order

NOTE: it was thought that the prosecutor should be able to ask for termination or amendment of the protection order only if s/he had been participating consistent with



Article 19 and 21. Since both of those say the prosecution is in the hearing only if s/he has been participating, surely they must mean that for this article too.

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. **THE COURT SHALL ISSUE AN EXECUTION ORDER AT THE SAME TIME THAT IT ISSUES AN EMERGENCY PROTECTION ORDER.**
  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 respondent. **THE COURT SHALL ISSUE AN EXECUTION ORDER AT THE SAME TIME THAT IT ISSUES A PROTECTION ORDER.**
- NOTE: If the court does not issue an execution order at the same hearing, and the respondent does not obey the order, under existing Civil Procedure, the victim would have to return to court to get an execution order which would be a waste of time, dangerous, and often very inconvenient for the victim. By issuing it at the same time, it saves time and effort for the court as well as the victim.
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)

NOTE: Aurelia suggested that we needed to delete Article 510 from here but I'm not sure why.

6. When (subjects) PERPETRATORS 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) AS WELL AS (translation error) article 606/3 of the Civil Procedure Code shall apply against the persons who do not respect/abide by the law.

NOTE: It is VERY IMPORTANT to change this from 320/a to 320. 320/a relates to an "employee" who does not carry out his order to deliver a paper. It does not relate to the perpetrator who does not obey the order. It has to be changed to 320 which relates to interference with a court order. As it is now, there is no penalty at all for a perpetrator who does not comply with the order.

The word "subjects" would refer back to Article 4 where it describes the "subjects" of the law. It includes both victims and perpetrators and other members of the family. However, victims and other members are not to be ordered to do anything under this law. Therefore, they should not be included in forced execution procedures. It could be very confusing for bailiffs and unfortunately lead to the victim being arrested for something she was never ordered to do or never should have been ordered to do e.g. go to family mediation. Backlash against the victims is very common and any reason is often found to arrest them.

Also the prosecutor explained the reason that both Article 320/a of the Criminal code and article 606/3 of the Civil Procedure code are listed. If the respondent does not comply with the order, the bailiff can order the civil penalty which is 50,000 lek. If the respondent actively interferes with or places obstacles in the compliance with the order, the bailiff is obligated to report that to the prosecutor who then can apply Article 320/a of the criminal code.

## **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.

NOTE: Secondary legislation identified thus far is:

An agreement between the Minister of Interior, Minister of Justice, Prosecutor-General, and Judiciary on using, inputting and accessing for TIMS forms and information

Minister of Interior policy on seizure of weapons and discipline of law enforcement who have protection orders against them.

Minister of Interior policy on service of protection orders immediately

This was disputed. The police thought they needed it and prosecutors and judged didn't because it's in the law. At any rate, it should be in the police protocol.

## **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 respondent 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.*