

# DISCUSSION ROUNDTABLE

## JUDGES IN THE FIGHT AGAINST VIOLENCE AGAINST ALBANIAN WOMEN AND GIRLS

### Introduction

The Gender Alliance for Development Centre (GADC) has been monitoring the operation of Coordinated Referral Mechanisms (CRMs) in several municipalities since 2017, with the support of the UN Women and funding by the European Union. In these years, special attention has been paid to meeting legal obligations and delivering the role of CRM members in line with the Law on Measures against Domestic Violence (as amended) and DCM no. 334 dated 17.2.2011 "On the mechanism for the coordination of efforts in referring and handling of domestic violence cases" and based on the Objective III of the National Strategy on Gender Equality and its Action Plan 2016-2020. Given that representatives of district courts play a prominent role in CRMs, this workshop brought together judiciary representatives and experts against gender-based violence in order to pinpoint and elaborate the obligations and responsibilities of judges in protecting women and girls who survived violence.



Gender Alliance for Development Center  
Qendra Aleanca Gjimore për Zhvillim



This event was organized under the Project "Providing technical expertise to the government and CSOs for development, budgeting, implementation and monitoring of measures to address violence against women in the new Gender Equality Strategy and its Action Plan", funded by the European Commission and implemented with the assistance of UN Women.

# AGENDA

## JUDGES IN THE FIGHT AGAINST VIOLENCE AGAINST ALBANIAN WOMEN AND GIRLS



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| 09:45-10:00 | Online registration on the ZOOM Platform  |
| 10:00-10:05 | Opening of the activity and moderation, Mrs. Mirela Arqimandriti,<br>Executive Director, Gender Alliance for Development Center   |
| 10:05-10:25 | Greeting speeches<br>Mrs. Naureda Llagami, Chairperson, High Judicial Council<br>Mr. Michele Ribotta, UN Women Representative, Tirana   |
| 10:25-11:00 | Experiences with the judiciary of women's organizations providing services<br>to women and girls surviving violence<br>Mrs. Esmeralda Hoxha, Project Coordinator GADC<br>Mrs. Shpresa Banja, Women's Forume, Elbasan<br>Mrs. Iris Luarasi, Counseling Line for Women and Girls<br>Mrs. Brikena Puka, Vatra Center |
| 11:00-11:30 | Judges' Commitments to Violence Against Women and Girls<br>Mr. Markelian Koça – Durrës District Court<br>Mr. Ledio Sulkuqi – Elbasan District Court<br>Mr. Adriatik Bocaj – Tirana District Court   |
| 11:30-12:00 | Questions and discussions   |
| 12:00       | Conclusions and the closure of the meeting  |





Since its establishment in 1995, the "Gender Alliance for Development" Centre has firmly been a key factor in historical legal amendments and policy interventions in combating violence against women and girls in Albania.

Hundreds of activities, protests and training events have been delivered by our organization to empower stakeholders in fighting violence against women and girls. In the last four years - with the technical support of UN Women in Albania and through several successfully implemented projects - our organization has provided technical expertise to the government and local CSOs in the development, budgeting, implementation and monitoring of measures to address violence against women in the National Strategy on Gender Equality and its Action Plan (2016 - 2020) as well as in the new strategy. During the implementation of these projects, the GADC monitored the operation of referral mechanisms in some municipalities. The monitoring showed the good work done in the protection of survived women and girls, but also the shortcomings. In this context, the judges are amongst the key stakeholders but not very involved in combating violence against women and girls. The workshop dedicated to judges aims to highlight their great role as part of referral mechanisms and the responsibility they must take on as representatives of the Courts. Judges are part of the system and are always there because they have to cope with these occurrences. Judges come close to violent family members and have a very important role in how they handle cases, starting from the documents they prepare and the decisions they make. We have often had cases of extreme violence and murders of women and girls after court hearings.

This shows that more efforts are needed in working with judges to understand the socio-cultural side of violence and the importance of law enforcement and their decisions. We often came together and discussed in many activities with citizens, sending messages and encouraging discussions to react to violence. Violent men are a danger to the entire society, as the last case in Elbasan where the killer murdered his wife and then wounded two other citizens. The intentions of these killers must not be missed by our society and institutions. Therefore, awareness should be raised, and cases of violence should not be seen like: it is their business, it is a personal matter and so on. Violence against women and girls is a major issue in Albanian society which must be treated very carefully. Given that some institutions are constantly absent at referral mechanisms meetings at the local level when discussing issues of violence against women and girls, such as representatives of courts, prosecution offices and health and education institutions, we sent suggestions - on the occasion of revision of DCM 334 - to introduce monetary sanctions on absent institution and annual reporting on their presence or not. In the case of courts, protocols should be established, and proceedings must continue even if the woman seeks to withdraw the lawsuit, because domestic violence persists after that and those who suffer besides the direct victim are also the children or relatives.

We must say stop to violence and judges are one of the main pillars in this block of institutions. We as an organization will continue our efforts, delivering training and monitoring by seizing any opportunity. We are close to finalizing a cooperation agreement with the High Judicial Council that aims to establish a protocol and a platform of communication between judges and survivors of domestic violence, based on the main laws of this country. These protocols will build on models from the United States and EU countries.

To conclude, I believe in the cooperation with judges, so that decisions in cases involving violence against women and girls are made unaffected by the environment or empathy that may emerge in any case and only in compliance with the law and will the sole intention to protect abused women and girls and their children. Let this roundtable serve as an important linking point for future collaborations.

We must understand that losses that the judiciary suffered in human resources, in judges, forced it to work beyond the normal capacity in handling the cases, and I am glad to see some representatives of the judiciary present here today.

There is no doubt that the phenomenon of violence is a real threat not only to women and girls, but a threat to our values, family, society and legal order. The reality of current statistics is not at all hopeful. The court statistics show us a reality that must make us reflect further. Gender-based violence has a higher prevalence in urban areas, at least according to statistics.

Statistics reported by courts for 2020, urban areas account for roughly double the cases, or 1,340 cases in urban areas compared to 871 cases in peripheral areas. Affected women and girls are mostly of the age-group 26 to 45 years old who have just started their careers and family life, married women with children, women over 55 years old at the end of their careers and women with only primary or 9-year school education, whose departure from the education and economic system has left them alone in a reality of violence inside the walls of the house. In 2020 alone, the courts granted 1,774 requests for restraining orders and issued 3,200 in total, from which 2,935 immediate restraining orders.

These figures are a load alarm bell for our legal system; despite the importance and application of referral mechanism in cases of violence, domestic violence still remains a challenge for all competent structures, including the judicial system. This holds particularly true when the law and also real possibilities of our courts cannot facilitate special sections on domestic violence.

We are aware that we have not reached the top, there is still work to be done to address domestic violence but above all, we need to work harder on preventing violence, there is a need for more awareness and closer interaction with all communities including police, prosecution offices, courts and local government.

*"The phenomenon of violence is a real threat not only to women and girls, but a threat to our values, family, society and legal order."*

UN Women Albania and I work with these issues every day, and there is always room to learn and understand by sharing experiences and views. The legislation on women's empowerment is good overall, and I think this is the case also for violence against women. Much has been done to align national legislation to international instruments such as the United Nations Convention or the Istanbul Convention and to ensure that legislation is in line with various monitoring reports and recommendations coming from UN agencies, the Grevio Committee, etc.



The challenge in Albania remains in enforcement and it entails many things, from the allocation of resources for legislation enforcement to the capacity building of competent authorities. But what I think is at the heart of today's discussion is how to create a culture of coordination, liaison and synergy with the efforts made to eliminate violence.

Each actor in the Coordinated Referral Mechanism has an important role to play, especially at the local level, and if one member lacks proper understanding of his role or sufficient resources and capacities to enforce the law, then that chain link is broken and adversely impacts the work of other members. If the municipality does not do the job properly, then the social workers are the ones affected, if the police do not take action on the identified cases, then a number of actors cannot prosecute the case, and the result is that women suffer, women are at risk and women have to deal with abusers.

One of the campaigns that UN Women has promoted in recent months worldwide and in Albania has a logo that says, "**Break the Silence**". Now, breaking the silence is essential if we want to protect women from the whip of violence. But for women to break this silence they must have the opportunity to trust every link in the chain to which we are referring. If A woman does not feel that her complaint will be handled quickly, in a timely manner and effectively then that woman will no longer speak, and this is a big problem. Therefore, the only chance we have for women to come out of the darkness and seek the protection and assistance to which they are entitled, is that the institutions do their job and understand what their responsibilities are.

*"I think the essence of today's discussion is how a culture of coordination, liaison and synergy can be created with the work that is being done to eliminate violence."*



The monitoring of the Coordinated Referral Mechanisms resulted in the findings and recommendations listed below about the involvement of the judiciary in the management and treatment of women and girls victims of domestic violence.



### **Key Findings**

- Restraint Orders often do not have all contact details of the victim (because police officers who filled out the form did not insert them) which makes case handling by the local coordinator against violence and service provision difficult;
- Number of cases with alternative sentences given (with the coordination of the Probation Service) is quite low;
- Removal of the abuser from the house - very few cases identified since the introduction of new amendments to the law on domestic violence;
- Given the absence of a risk assessment by police, the court finds it difficult to order a rehabilitation and/or de-toxication program for the perpetrator;
- For most referral mechanisms monitored, the court is the institution with the lowest attendance in the meetings of the Interdisciplinary Technical Teams convened by the local coordinator against violence.
- There are no statistical offices at some district courts in Albania;
- Cooperation between the Courts and the Bailiff Service, although improved in recent years, still remains problematic in the identification and enforcement of restraining orders by the bailiff service;
- Not all courts recommend that perpetrators receive psychological treatment or other specialized services for their rehabilitation.

### **Key Recommendations**

- It is recommended to implement all measures provided by Article 10 of the Law on protection measures against domestic violence;
- Statistical aggregation of the first phase (Immediate Protection Order) and the second phase (Protection Order) because statistics obtained from courts are sometimes ambiguous about rejections and dismissals;
- It is recommended that the court appoint a permanent representative to attend the regular and ad-hoc meetings or meetings of the CRM Interdisciplinary Technical Team;
- Lawyers to assist victim - 90% of victims are not assisted by lawyers, so it is recommended that courts intervene to appoint assisting lawyers;
- Closer cooperation with the Bailiff Office and/or the Probation Service;
- Establishment of a statistical office in each court in Albania is a must.



**Some positive findings:**

Woman's Forum in Elbasan (FGE) set up and operates a Regional Network with actors from public and non-public institutions since 2012, financially supported by the EU and the Swedish Government. It meets quarterly and analyzes difficult cases that require further support after benefiting FGE services. Elbasan Court is one of the most active and supportive actors that is never absent.



Since 2020, some judges (not all) have begun to approve judicial expenses (court complaint and psychologist for victims of domestic violence) for divorce cases brought forward by the Woman's Forum. In 2020, for the first time in the history of FGE, we have a written agreement with the Elbasan Prosecution Office to work together to help women and girls faced with violence, in accordance with the Istanbul Convention, applicable domestic legislation and the National Strategy on Gender Equality.

**To be improved:**

The court does not see the restraining order as a preventive measure but issues it when physical violence is involved, while other types of violence very present today - especially the psychological one - is overlooked by many judges.

Psychologists are not called to court when there are children needing a restraining order. In most cases, children are present when violence occurs. For this reason, the police and the FGE lawyer include the children when drafting the Restraining Order together. The court does not require a psychologist to question these children and children are not included in these orders in most cases.

The Mayor sent a request to the Ministry of Justice asking that psychologists from NGOs and State institutions provide free psychological support. The Ministry's response was that psychologists should be licensed. But are there licensed psychologists to offer free services in Albania? Why did the Ministry not license the two FGE psychologists to provide this free service to survivors of domestic violence?

*"Women's Forum has a written agreement with the Elbasan Prosecution Office to work together to help women and girls faced with violence, in accordance with the Istanbul Convention, applicable domestic legislation and the National Strategy on Gender Equality."*



## I. Issues with the implementation of the Law no. 111/2017 "On State-guaranteed legal aid".



- Judges are reluctant to examine requests for exemption from judicial expenses when such request is presented in the course of proceedings but require that it be filed as a separate one and not be addressed to the judge handling the case in which exemption is sought.
- Judges rarely admit requests for secondary legal aid when the requestor does not belong to the category of beneficiaries, regardless of their income. In most cases, they ask for documents which the parties are unable to obtain or reject the request where the requestor owns a house albeit his/her income is lower than the minimum threshold provided in Law no. 111/2017.
- Judges do not inform the parties of the right to receive secondary legal aid and exemption from judicial expenses even where they belong to the category of beneficiaries regardless of their income according to Law no. 111/2017.

## II. Issues with the implementation of the Law no. 9669 dated 18.12.2006 "On measures against violence in family relations" as amended recently by Law no. 125/2020.

- There are still cases where the court - in contradiction to Law no. 9669 dated 18.12.2006 as amended - holds a reconciliation session and decides to terminate proceedings when litigants declare to have reconciled.
- The court often fails to inform the victim of domestic violence that he/she is entitled to free secondary legal aid according to Law no. 111/2017 "On State guaranteed legal aid".
- The court often fails to comply with the time-limit set by the Civil Procedure Code to reason the decision. There were cases where a decision granting a restraining order was reasoned when it had already ceased to be effective.
- There are cases where the court, in contradiction to the law, issues a restraining order even to a litigant who did not seek a restraining order but did so during the submissions; the perpetrator claims to have been abused by the victim and it happened that the court issued restraining orders to both litigants.
- There are cases where the court, in contradiction to the law, fails to take protection measures for the children where the victim states that violence occurred in the presence of children, although the law empowers the court to do this ex officio, so even where the party does not request it by the court finds out from the statements of litigants.
- There are cases where the court does not decide the child support obligation on the perpetrator during the validity of the restraining order, considering that this claim must be raised in a separate lawsuit and not during the restraining-order proceedings.

*"One of the problems we have identified is the removal of perpetrators from the apartment, which has not worked."*



Vatra statistics for 2021 indicate that Vlora District Court granted 86% of requests for immediate restraining order filed mainly by the police or even Vatra Centre where victims of violence turned to it for protection. But the situation for restraining orders is different; in many cases, we noticed that some judges do not take the issue of domestic violence seriously and display a masculism mindset and expressions that intimidate the victims of violence in the courtroom.



Often, courts do not consider the psychological violence, insult or verbal threat on the victim. There were cases where victims paid for the judicial expenses to receive a restraining order. They lack information and secretaries in most cases do not inform them – maybe because they are unknowing themselves -that all these expenses are free. Even in this regard, our center reacted and sent recommendations to the court.

Measures taken by the court are often disproportionate to the severity of the situation; we often see the same orders in every court decision. Regarding other measures prescribed by law, we are all aware of Article 10 of the Law on Family Relations which provides for a range of measures that judges can impose on the perpetrator, including their rehabilitation. However, cases where the court orders the perpetrator to undergo psychological treatment offered by specialized organizations are very rare.

Children are often excluded from the restraining order, although they often are the direct victim of domestic violence; this issue starts with the police who do not include children in the completed requests. Victims of domestic violence have no faith in the justice system: roughly 80% of them file for divorce and do not initiate proceedings to obtain an immediate restraining order or criminally report the domestic violence.

*"Children are often excluded from the restraining order, although they often are the direct victim of domestic violence"*



Durrës District Court is coping with a heavy workload and increased number of immediate protection orders (IPOs) issued. In 2020, this court examined 479 requests for IPOs with most of them being granted, except for only 10 rejections and 43 terminations. The fact that most requests were accepted by the court shows that despite issues in filing it and expedited proceedings that make obtainment of evidence difficult, there was added attention and readiness to handle them carefully.



As for cases terminated due to reconciliation or claimant's failure to appear at the hearing for the examination of the IPO request, I consider your monitoring finding to be correct, because the law stipulates that IPO must be issued even where the parties declare to have been reconciled or resolved their dispute, therefore, the court has the obligation to examine the request and issue the IPO where the request is based on law and evidence.

Exclusion of the reconciliation or mediation by law; this means that the abused person may claim at the hearing that the parties reconciled, and the conflict is settled; still the court must express itself about the merits of the case, i.e., the restraining order.

It was also argued here that proceedings must continue even where the claimant fails to appear at the hearing scheduled for the restraining order. The reason is that the abused party (claimant who put the court in motion through her court complaint) may be forced or pressured by the abuser not to go to court. In this case, the Court refers to both the specific law and the Civil Procedure Code. Unless the Court establishes that the abused victim who got the restraining order failed to attend the hearing because of psychological pressure, failure to attend is equal to abandonment of the initial complaint and this triggers termination of proceedings, termination of the restraining order or rejection to issue it. Frankly speaking, the Protection Order renewal process leaves to be desired in terms of evidence filed with the court. In most cases, abused persons appear in court alone (unassisted by lawyers) after the police completes the court complaint. The Court must examine the Immediate Protection Order request within 48 hours from the moment it is filed; this significantly limits its room to investigate and the litigant's possibilities to present substantial evidence behind the existence of physical or other violence to support the IRO.

The same applies to hearings where Protection Order renewal is sought, where no fresh evidence is filed, but the entire probative value is given to the initial statements given by the litigants to the police. 99% of court complaints come to us only with the statements made (by the abused and abuser) at the police, meaning that it is the word of one against the other and the court must play the impartial referee in this situation.

*"Durrës Court is going through a difficult situation in recent years because it is working with 10 judges instead of 17. This increases the workload and shrinks the time available to judges to handles cases with the deserved care, because the workload at this pace will soon became uncontrollable."*



Courts have a big problem with local police directorates because inspectors responsible for domestic violence and restraining orders either do not fill out the standard form at all, in the worst case, or fill it out with mistakes in the best case. We believe that they lack training and fail to understand the importance of the formal aspect. When this request reaches the court for the judge to examine it, he/she reads a form marred with errors, without addresses and with hardly any procedural elements; these often make communication with the parties difficult.



The police form on domestic violence must be considered and really is an adversary court complaint, therefore, it warrants serious effort and legal training. Elbasan Court received 250-300 requests for Protection Orders (PO) and Immediate Protection Order in the last couple of years, but only half of them were granted.

It is very difficult for a judge to understand whether a situation really requires a PO, because judicial review is based mainly on statements given by the parties. For cases of domestic violence, the prosecution office initiates criminal proceedings under Article 130/a/b/c of the Criminal Code.

PO requests involve also domestic violence (if the information is cross-checked) and POs were issued in 70% of cases. If we include the civil cases for resolution of marriage, the picture of the situation would be clearer.

So, domestic violence, protection orders and marriage resolution must be seen and handled in most cases as three components of a major issue.

*"The police form for Domestic Violence should be considered and is in fact a lawsuit claim with opposing parties, and therefore requires seriousness and legal training."*



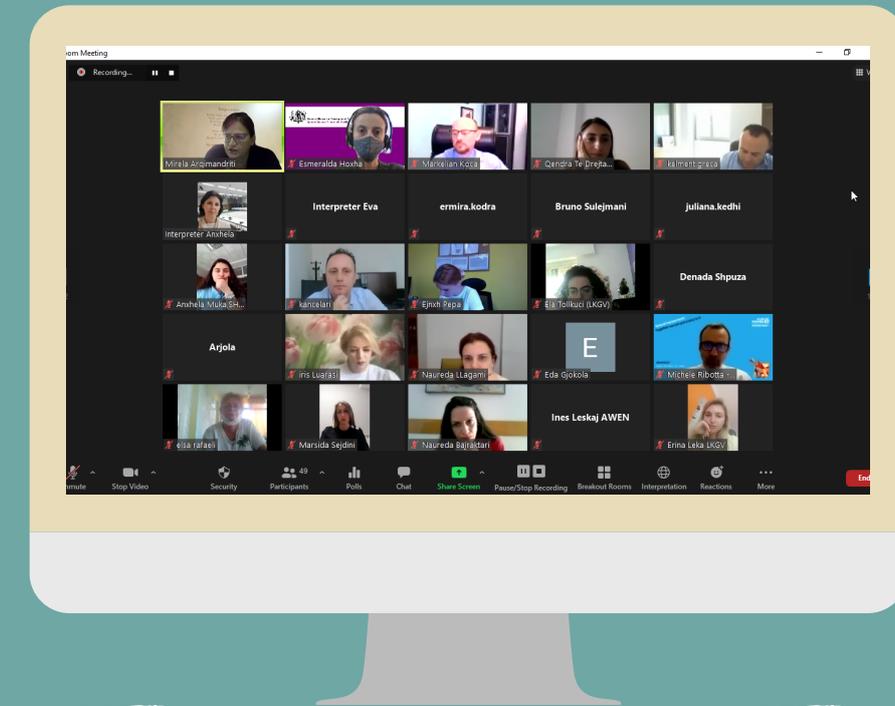
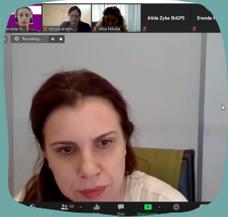
I want to give a little input from my experience since 2006 when the law on measures against domestic violence was adopted which should be seen more carefully and interpreted. Our investigations on domestic violence are very complex and we do a visual inspection of the victim and we have always written the results of these inquiries quite clearly in the decisions.

Meanwhile, all parties are heard directly in court hearings; even if there is no evidence, only from the debate by the parties, the court comes to a clear conclusion that there is violence. It is the judges who hear and analyze violence, while lawyers pursue only the procedural side of the case.

I would gladly participate in other round tables like this, but it is indispensable that you plan these meetings at least two months in advance, because we schedule court hearings for 3-4 months and would not like to have overlapping, otherwise we cannot follow you. The concern that CSOs must raise and insist on is the police, because there are police officers with very sketchy knowledge on how to complete documents and collect first evidence in cases of violence.

Another problem with abused women is the lack of an address to serve social decisions, because the Tirana Court established the practice in which we proceed with the IRO even if the claimant or perpetrator or absent. The order is served to the parties, but they often claim to not have received it precisely because of the wrong or no address at all. There are big issues, but we all try to do our best under a big workload, sometimes examining 5-6 cases a day, but the court based on evidence and hearings is always on the right side.

*"... all parties are heard directly in court hearings; even if there is no evidence, only from the debate by the parties, the court comes to a clear conclusion that there is violence."*



*This newsletter comes within the project “Providing technical expertise to the government and CSOs for development, budgeting, implementation and monitoring of measures to address violence against women in the new Gender Equality Strategy and its Action Plan” The project is funded by the European Commission and implemented with the support of UN Women. The content of this article is the sole responsibility of GADC, and does not necessarily reflect the views of the European Union or Un Women.*

