

MANUAL HOW TO RESPOND TO DOMESTIC VIOLENCE

**WITH SPECIAL FOCUS TO THE
ALBANIAN STATE POLICE**

TIRANA, 2013

This manual was realized by the Gender Alliance for Development Center under the Project "Support of the Swedish Government for the Ministry of Interior / Albanian State Police on Policing in the Community". This project was financed by SIDA and is implemented by SIPU under the framework of the Program "Support of the Swedish Government for the Ministry of Interior/Albanian State Police on Policing in the Community" (2012/2015).



Gender Alliance for Development Center

Authors:

Prof. Dr. Arta Mandro

Milva Ekonomi

Mirela Arqimandriti

Irena Shtraza



Copyright:

@ Applications for permission to reproduce or translate all or part of this manual should be made to: GADC office

Rr.“Abdyl Frashëri”, P. 10/1, Sh. 1, Ap. 3
P.O.Box 2418, Tirana, Albania
Phone/Fax: +355 4 22 55514/5
E-mail: gadc@gadc.org.al

Design & cover: Elvira Çiraku

ISBN: ISBN 978-9928-08-132-2

S H T È P I A B O T U E S E
mediaprint
info.mediaprint@gmail.com Sh.p.k.

This document is a manual for the practitioners of the Law “On measures against domestic violence” prepared for the Program “Support of the Swedish Government for the Ministry of Interior / Albanian State Police on Policing in the Community”. The opinions or views expressed do not necessarily reflect the opinions of the program itself.

LIST OF ABBREVIATIONS

RED	Regional Education Directorate
DV	Domestic Violence
DC	District's Court
FC	Family Code
PC	Penal Code of the Republic of Albania [Law No. 7895, dated 27.01.1995 / as amended]
PPC	Penal Procedure Code of the Republic of Albania [Law No. 7905, dated 21.03.1995 / as amended]
CRC	UN Child Rights Convention
LDV	Law "On measures against domestic violence", No. 9669, dated 18.12.2006, as amended
MoJ	Ministry of Justice
MoSWY	Ministry of Social Welfare and Youth
MoH	Ministry of Health
CRU	Child Rights Unit
CPU	Child Protection Unit
GADC	Gender Alliance for Development Center
HRDC	Human Rights in Democracy Center
CCLI	Center on Civic Legal Initiative
IPO	Immediate Protection Order
PO	Protection Order
DoCM	Decision of Council of Ministers



ACKNOWLEDGMENTS

This manual was designed by Gender Alliance for Development Center and by a dedicated team of experts in the field of gender equality and domestic violence. We would especially like to thank Prof. Dr. Arta Mandro for the legal expertise and Ms. Milva Ekonomi for the socio-economic perspective during the design of this manual.

Gender Alliance for Development Center would like to thank the following organizations of the civil society, which responded positively to the invitation for cooperation in implementing the focus groups and interviews with the police staff, as well as the other institutions which are part of the coordination mechanism under the Law No. 9669, dated 18.12.2006 as amended, "On the measures against domestic violence".

- Hotline for women and girls, Tirana
- Hotline for men and boys, Tirana
- Center for Legal and Civic Initiatives, Tirana
- "Reflections" Association, Tirana
- Women's Forum Elbasan
- "Woman to Woman" Shkodër
- "Vatra" Psycho-Social Center, Vlora
- Association of Women with Social Problems, Durrës
- "Human Rights in Democracy" Center, Tirana

Gender Alliance for Development Center would like to thank the team of the project "Support of the Swedish Government for the Ministry of Interior / Albanian State Police on Policing in the Community" for the financial support and especially Mr. Thimothy del Vechio and Mr. Robert Korkuti, for their valuable ideas on the structure and content of this manual.

Special thanks go to Ms. Alma Gjurgji and Mr. Ilir Zhurka who provided their contribution for this manual not only as employees at the Sector on Juveniles Protection and Domestic Violence, in the General Directorate of the State Police, but as citizens as well.

We would also like to thank Ms. Enkelejda Lopari, Adviser on Social Affairs at the Ministry of Social Welfare and Youth (MSWY), as well as Ms. Alida Tota and Ms. Etleva Sheshi, employees at the Directory of Equal Opportunities at MSWY.

You also would like to thank Ms. Emira Shkurti and Ms. Ama Kraja, legal experts working respectively at UNDP and OSCE who provided their comments and suggestions on this manual.

This manual would not have been possible without the work of the staff of Gender Alliance for Development Center, who assisted by gathering and elaborating different materials.



TABLE OF CONTENTS

Acknowledgments	5
Table of Contents.....	7
EXECUTIVE SUMMARY.....	9
INTRODUCTION.....	10
PART 1 Domestic Violence:Important information.....	11
1. Definitions of domestic violence under the international and national legislation	13
2. Subjects entitled to protection by legislation.....	14
3. Forms of Violence.....	16
4. Signs (or symptoms) of domestic violence	17
5. The groups most at risk of suffering domestic violence	20
5.1.Violence and women.....	20
5.2.Violence and children	23
5.3. Violence and elderly	25
5.4.Violence and persons with special needs	26
5.5.Other categories of subjects suffering domestic violence	26
PART II:The responsible administrative structures and the role of the Court in implementing the LDV	29
1. The role of administrative authorities against domestic violence	31
1.1 Composition of the referral mechanism against domestic violence in local level	32
1.2 Subjects that can address the referral mechanism	35
1.3 The role of local unit in the referral mechanism	36
1.4 The role of Child Protection Units in referring cases of violence against children	37
1.5 The role of Police in the referral mechanism	40
1.5.1 Assessment of the violence level by police and other stakeholders.....	43
1.6 The role of Health Service Centers in the referral mechanism	44
1.7 The role of non-governmental organizations and legal representative in the referral mechanism ...	46

1.8 The role of the school psychologist in the referral mechanism	47
2. The role of the Court in implementing the LDV	47
2.1. Types of Protection orders and subjects that can address the court; When the case rapporteur addresses the court: judicial proceeding of domestic violence under the LDV	50
2.2. The role of Police in treating the cases of domestic violence under the LDV	51
2.2.1. Before the trial	52
2.2.2. Appearance in Court and during the trial	52
2.2.3. After the trial	52
PART III Domestic violence as a criminal offense and the role of Police	55
3. 3.1. The updates of the penal code on the domestic violence	57
3.2. Denounce for the criminal offense of domestic violence	61
3.3. Police/Judicial police as a subject of penal proceeding	62
PART IV: Step by Step: Police following up the case of domestic violence	67
Meaning of violence cases with/without scene (under DoCM No. 334, dated 17.2.2011)	69
1. Preliminary analysis of the case of domestic violence	71
2. Assessment of risk factors	72
3. When the call for help in cases of domestic violence reaches the emergency number 129	74
4. Procedure to be followed by the operator (129)	75
5. Approaching the scene	76
6. First contact	79
7. Interviewing:	81
· Interviewing the victim: some important advice and techniques	83
· interviewing the witness/es	84
· interviewing children that are witnesses/victims of domestic violence	85
· Techniques related to communication and questions	85
· Witnesses	86
8. Taking information on the PO/IPO and their status in cases of police interventions	86
9. Once again on the documentation	88
Additional information	88
10. Measures to protect the victim	89
11. Measures against the abuser	90
REFERENCES, BIBLIOGRAPHY	92
LEGAL BASIS	95



EXECUTIVE SUMMARY

This manual is designed as a general guideline for all the stakeholders involved in the fight against domestic violence, with a special focus on the staff of the Albanian State Police, taking into consideration that they are the first persons to be contacted in the cases of the domestic violence.

The manual consists of four main parts which provide practical knowledge based on the actual laws in force in the Republic of Albania on the treatment of the victims and different domestic violence situations.

The manual is designed in a way that it can easily be consulted by all the stakeholders that would like to search the right information in it. The Albanian State Police staff can easily find the steps to be followed according to the legislation in force in order to better serve the victims of domestic violence in the fourth part.

The first part provides general information and the main issues that the respective authorities should know regarding domestic violence. The second part of the manual describes the responsible structures and the role of the Court in implementing the Law "On the measures against domestic violence".

The third part speaks on the domestic violence as a criminal offense and the role of the police in the fight against domestic violence. The fourth part focuses on the step by step follow up of a domestic violence case by sharing practical information necessary to the Albanian State Police staff in the fight against domestic violence.

This manual comes at a time where in Albania domestic violence phenomena is widely spread and when the number of the denunciations by the domestic violence victims has increased considerably during the last years. We hope that the manual that you have in your hands will support all the institutions that play important roles in the protection of the domestic violence victims, especially Albanian State Police staff that are the firsts to address domestic violence cases.

INTRODUCTION

The domestic violence, especially the gender - based one, has become a great concern for the Albanian society. The official data from the General Directorate of Police state that there is an increasing trend of reporting the cases of domestic violence in the police, especially after the Law on Domestic Violence has entered into force.

Based on the report of the base study on domestic violence and of the Albanian State Police, conducted by the "Data Centrum" Research Institute, data received from the General Directory of Police, based on the official reported cases from 2008 until 2011 indicated that in 60% of 6218 reported cases of domestic violence, the victim is the wife of the abuser compared to 6% of cases where the victims are the husbands. The same study determines that in 7% of these cases the victims are the children and in 8% are the parents and that the frequency of domestic violence towards men is much lower compared to the one against women. Data provided by the General Directorate of Police, based on the officially reported cases from 2009 until 2011, illustrate that in 81% of the 5396 reported cases on domestic violence, the victims were women.

In many cases the violence is not reported and the reasons why the violence is not been reported are different such as: fear of the victim from the potential increase of the violence or other consequences of reporting due to revenge; feeling hopeless to improve the situation and to guarantee their future and the future of their children; lack of trust mainly towards the respective structures such as the courts; lack of security that the referring structures will keep the confidentiality; feeling ashamed for their dignity and reputation in society and extended family; denial of the violence by the victim itself, psychological dependency and the love for the abuser; archaic mentality of the society which often accepts the violence as normal in a spousal relationship etc.

Taking into consideration the above-mentioned reasons, it is important to understand that the reported statistics on domestic violence do not reflect the real level of violence in our country; they are much higher compared to the actual reported level.

Although in the last years a lot of work has been done to raise awareness in treating the domestic violence as an issue of human rights and public health and not as a private issue, there is still a lot to be done on raising the awareness and preventing this phenomenon. On the other hand all the institutions responsible for preventing and addressing this phenomenon are required to be fully committed by working according to Albanian legislation and by effectively protecting the domestic violence victims.



PART I

DOMESTIC VIOLENCE: IMPORTANT INFORMATION



1. Definitions of domestic violence under the international and domestic legislation.

Council of Europe Convention "On preventing and combating violence against women and domestic violence", otherwise known as the Istanbul Convention [ratified by Law No.104/2012,] Article 3/b stipulates that: "**Domestic violence** shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the abuser shares or has shared the same residence with the victim".

Law No. 9669/18.12.2006, as amended, "On the Measures against Domestic Violence" [hereinafter LDV] provides that domestic violence is any action or lack of action of a person towards another person with whom he has, or has had, a family relation and which brings as a consequence a violation of the physical, moral, psychological, social and economic integrity.

The Penal Code of the Republic of Albania [Law No. 7895, dated 27.01.1995 / as amended (hereinafter the PC), in its Article 130/a highlight that:

Assault, as well as any other violence act towards a person that is the spouse, former spouse, cohabitant or former cohabitant, close relative or close in - law with the author of the criminal offense, resulting in violating the physical, psycho - social and economic integrity of the person, is punished by imprisonment up to two years.

Serious threat to death or heavy injury towards a person that is the spouse, former spouse, cohabitant or former cohabitant, close relative or close in - law with the author of the criminal offense, resulting in violating his/her psychical integrity, is punished by imprisonment up to three years.

Intentional injury towards a person that is the spouse, former spouse, cohabitant or former cohabitant, close relative or close in - law with the author of the criminal offense, causing a temporary disability to work for more than nine days, is punished by imprisonment up to five years.

These offenses committed repeatedly or in presence of children, are punished by imprisonment from 1 to 5 years. We emphasize that this PC article is not the only one punishing the violent acts between family members. In 2012 - 2013, the CP amendments brought in the format of qualifying circumstances several criminal offenses where the author and the victim are related by family. A listing of these provisions is given in part IV of this manual. An important definition of violence can be found in the Law "On the protection of children's rights" [No. 10347/ 04.11.2010].

Violence against children is defined as the intentional use of physical force or other forms of force, either threatening or real, against the child or a group of children, resulting or likely to result in injury, death, psychological damage, bad development or privation. Article 21 of this Law, under the title "Protection from all forms of violence", emphasizes that: The child is protected by any form of: a) physical and psychological violence; b) Body punishment and humiliating and denigrating treatment; c) discrimination, exclusion and insult; ç) maltreatment and abandon; d) disregard and neglect; dh) exploitation and abuse; e) sexual violence.

Violence against children of the family constitutes a criminal offense. Article 124/b of the PC provides that: "Physical or psychological maltreatment of the minor by the parents, sister, brother, grandfather, grandmother, legal guardian or any person obligated to take care of him/her, is punished by imprisonment from three months up to two years." The person exercising parental responsibility, if convicted as an author or collaborator of a criminal offense towards the child, loses the parental responsibility [Article 43/a of the PC].

2. Subjects entitled to protection by legislation

The subjects protected from the domestic violence by legislation are the family members. Thus it is important to understand who is listed in this category as only these subjects are entitled to protection under these Laws. The family is the fundamental unit of the society. The family is a group of persons with blood and/or legal relation. For the purpose of this training manual, in defining this category we will refer to the LDV, Penal Code and the Convention for the Rights of the Child (CRC).



Subjects entitled to protection under the LDV

- Spouses or cohabitating partners, former spouses or former cohabitating partners;
- Brothers, sisters, relatives of direct blood line, including adoptive parents and children;
- Spouses or cohabitating partners of persons indicated in paragraph "b";
- Persons related by direct blood line, including parents and adoptive children of the spouse or of the cohabitating partner;
- Brothers and sisters of the spouse if these have been living together during the last 3 months;
- Children of spouses or of cohabitating partners.

The subjects entitled to protection under the Penal Code are the following¹:

- Spouses
- Former spouses
- Cohabitating partners or former cohabitating partners;
- Close relatives

Although the PC does not provide a list, based on the affinitive relations recognized by the Family Code [Law No. 9062, dated 8.5.2003 / as amended] and the Penal Procedure Code [Law No. 7905, dated 21.3.1995 / as amended, Article 16], (hereinafter PPC), we list here the ancestors, descendants, brothers, sisters, uncles, aunts, nephews, nieces, children of brothers and sisters;

- Close in - laws. Even here there is no list, but based on the affinitive relations recognized by the Family Code and the PPC (article 16) as such are included the parents of the spouse, son in-law, daughter - in law and brothers/sisters of the spouse, stepson, stepdaughter, stepmother and stepfather.

By specifying the parents and the legal representative, the CRC extends the community by including: every person the child has been entrusted to! Thus the Convention provides the protection of children from violence even in environments outside the family (schools, other education settings, sport and cultural activities etc.).

According to the LDV, **a victim** is the family member who has been subject to violence. While **an abuser** is the responsible person, the guilty, the author - the family member that has exercised violence.

¹ See Article 130/a of the Penal Code, as amended

3. Forms of violence

Violence does not differentiate any cultural, ethnic, educational or economical setting. While the expression of violence through action is more conceivable, the category of omissions seems difficult. In general such omissions include neglect of children or persons with special needs, not providing moral, emotional support, assistance, service etc.

The effective interventions to assist the domestic violence victims can occur only if the key stakeholders, especially the police officers have understood well what the domestic violence means and have deep knowledge on the procedure to be followed by legislation in cases of domestic violence.

To understand what domestic violence is means to distinguish the violence even when the victim does not have obvious physical signs.

Numerous studies have shown that the domestic violence occurs mainly against women and children. Domestic violence manifests in various forms, including physical, psychological, economic, social, sexual and assisted violence.

The various forms of violence manifestation are briefly explained as follows:

Physical violence includes but is not limited to: scratching, pushing, catching, beating, asphyxiation, pinching, poking, hair pulling, arm torsion, slapping, hitting, burning, stabbing and drowning. The physical violence may include the use of physical size and physical force of a person, constraints or weapons (for example gun, knife or another object) to obtain and maintain control over another person. The physical abuse often causes several forms of damage or injury and can even cause death.

Psychological and emotional **violence** is the destruction of the self-esteem and/or confidence of an individual. This can involve constant criticism, humiliation, contempt of the capabilities of a person, insults, degradation and damaging one's relationship with his/her children. It includes also causing fear through intimidation, threat or physical harm to self, partner, children or partner's family or friends; threat of abandonment; killing home pets and destruction of property; threats of taking the children's custody; forced isolation by family, friends, school and/or work and denial of access to money or economic support.



Economic violence is related to control over the family's financial income or even banning the participation of the partner or family member in the decisions about money spending, even refusing to give money for covering basic household needs, denial of joint ownership on property, damaging or destroying the property, theft of property, not allowing the use of personal income and administration of personal wealth etc.

Social violence is related to the abuser controlling the victim's life and movements. In this case, the abuser attempts to manipulate, isolate or harass the victim. For example, a woman may be prevented to have contacts with her family or friends, not allowed to use the phone or the car. The social abuse is slightly noticed and its impact in the psychological wellbeing of the victim is very big.

The sexual violence involves imposition, forcing or attempt to force sexual contacts or behaviors without the person's consent. The sexual abuse includes but is not limited to marital rape, attacks in sexual parts of the body, the obligation to have sex after physical abuse or treatment of the person in a sexually humiliating way. The sexual abuse is committed by intimate partners and family members within the context of marriage, love and family relations.

Assisted violence: is related to the violation done to a person who is forced to assist to a scene of violence, although he is not the direct subject targeted by the abuser.

4. Signs (or symptoms) of domestic violence

The sooner a domestic violence case is evidenced, the more efficient is the prevention of serious crimes which may occur due to irritation and degeneration of the relationship where the domestic violence has begun. Actions or omissions, considered as domestic violence, often result in a criminal offense. This is why the LDV provides that the issuance of Immediate Protection Order (hereinafter the IPO) and Protection Orders (hereinafter the PO - see detailed explanation in the below text box) by court decision does not stop the start of penal proceeding. Thus, the first and right intervention is important to protect the family and its members. A successful intervention can be done only by knowing the indication signs well and by asking the victim the right questions during the interview.

The Protection Order (PO) is an order issued by court decision, which provides protection measures for the victim/s of domestic violence. The Court reviews the application for issuance of a PO within 15 days after receipt of the request. The petition for issuance of the PO is completed in cases when the risk for the victim's health, safety and wellbeing is not immediate.

The Immediate Protection Order (IPO) is an order issued temporarily (with effect no more than 20 days) by court decision, valid until the confirmation of this order by another court session, which shall take place within 20 days of receiving the first order. The review of the request for the IPO issuance shall be done within 48 hours of receipt of the request when the person violated is an adult and within 24 hours for minors. The petition for the issuance of the IPO is completed when the abuser poses a direct and immediate threat to the safety, health or welfare of the victim and his/her other family members. The direct and immediate risk constitutes the main condition for issuing an IPO. Only if this condition exists, the petition to issue an IPO will be completed; otherwise shall be completed a petition for PO issuance.

Attention! Often the victim is subject to a combined violence. There are times when the violence exercised is visibly manifested to the outside world, but it is very likely that a violated victim does not show the outside world signs of violation, trying to hide them. In families the violence against children is administered or justified under the disciplinary measures taken towards children to "correct bad behavior".

Possible signs of physical violation:

- bruises, hematomas, bruises in the shape of hand or fingers, burns, cigarette burns, burns' blisters, sprains, contortions, bites, cuts, fissures;
- injuries for which the victim is unable to explain how they are caused or when the explanation is not convincing;
- untreated wounds or wounds treated in a unprofessional manner, showing that the victim has avoided the medical authorities;
- Injuries or marks on body parts difficult to be hurt by accident, such as belly, thighs, back, eye hematomas etc.



Possible signs of victim/child's behavior as a result of physical violence:

- Desperate attitudes, retreated or in depression;
- Restless, disturbed sleep;
- Aggressive behavior;
- Behaviors showing experience of fear;
- Fear of returning home or contacting a family member
- Lack of trust or low self - esteem;
- Very passive attitude and continuous complaints;
- Use of drugs and/or alcohol.

An equally serious form of violence is the psychological and emotional violence.

Signs and symptoms of psychological and emotional violence:

- Delay in replying, in the mental and emotional process;
- Constant anxiety;
- Sudden difficulty in speaking and expressing himself/herself;
- Delays in speaking or expressing an opinion;
- Emotional Disorder;
- Low self - esteem.

Possible physical signs of sexual abuse:

- Pain, itching, bruising or bleeding in the genital or anal organs or surrounding areas;
- Genital flow or urinary infections;
- Stomach pain or difficulties when walking or standing;
- Sexually transmitted diseases (infections)

Possible behaviors of the sexually abused victim/child:

- An obvious change in overall behaviors;
- Unusual silence or retreat to privacy;
- Unusual aggressiveness;
- Showing an unexpected fear or expressing lack of trust towards a specific person;
- The victim (happens mainly to children), may use expressions or make demonstrations of a sexual character, mainly when these are not related at all with the age and character;
- The child informs that an adult shows a particular interest for him/her or tells about a certain "secret" friendship with an adult or a young person.

5. Groups most at risk of domestic violence

5.1 Violence and women

Various studies show that the most violated member of the family is a female. According to the data provided by the General Directorate of Police, based on officially reported cases from 2009 to 2011, in 81% of the 5396 cases reporting domestic violence, the victim is female. Data obtained by the same source, based on officially reported cases from 2008 to 2011 show that in 60% of the reported cases of domestic violence, the victim is the wife of the abuser, versus 6%² of cases when the victims are the husbands.

Data obtained from the same source, based on officially reported cases from 2008 to 2011, show that in 60% of 6218 reported cases of domestic violence, the victim is the wife of the abuser versus 6% of cases when victims are husbands.

According to a study conducted recently (July 2013), men's violence against women is usually characterized by privacy, meaning that the abusers tend to avoid the presence of foreign observers, making it thus even more difficult for other persons near or outside the family circle to identify the violence. Women's evidence prove that the abuse is a complex phenomenon, involving various forms, ranging from psychological violence to isolation, forced prostitution, violent sex and physical violence. Abuse of the partner in intimacy is usually part of an abusive and controlling behavior and more than an isolated act of physical aggression.

Following you will find two categories of violence against women that we believe should be treated a little beyond as they are often present in the Albanian society, i.e. forced marriage and violence justified under the defense of honor.

² Hotline for women and girls (HFWG), 2013: A study on the victims of domestic violence crime and sexual assaults.



• **Forced marriage**

An arranged marriage differs from a forced marriage as in the arranged marriage the families take a leading role in choosing the partner, but both partners are free to decide for that marriage to happen. But in some cases, the marriages are done without the consent of both or one of the parties, being forced and under the pressure of the respective families. The pressure exerted by the family can be physical (when the individual is threatened to violence or is violated), or psychological/emotional (the individual is put in such position that he/she feels as the family will be disgraced if he/she does not marry the person chosen by the family). A forced marriage is a violation of human rights and a form of domestic violence and violence against minors. The minor girls are more likely to be subject to this form of violence³.

Forcing a marriage is a criminal offense [Article 130 of the PC⁴]

There are few cases in the judicial practice related to this data. According to the Statistical Yearbook of the Ministry of Justice (hereinafter MoJ), the penal decisions related to the forced marriage are very limited [in 2009 there are 4 decisions; in 2010 there is only one; for 2011 there is no decision]. We must acknowledge that such offenses are reported when associated with other serious consequences such as murder, injury or serious violence against the woman or her family members, which means that the reported cases may not correspond to the reality. Victims give up out of fear, or ask for divorce by presenting it as an arranged marriage and not reporting it for a forced marriage. The forced marriage is one form of domestic violence and violence against women, or abuse with children. Basically it is a violation of fundamental human rights and freedoms and should be treated as such.

-
- 3 Practitioners' guide to domestic abuse" Manual. Bracknell Forest, Royal Borough of Windsor and Maidenhead, Slough (May 2011). (p.26)
- 4 Article 130 of the PC amended provides: Forcing or impeding to cohabit or to commence a marriage or to divorce: "Forcing or impeding to commence or continue the cohabitation, or forcing to commence a marriage or to divorce is a criminal contravention and is punishable by fine or imprisonment up to three months. Intentional request to an adult or child to leave the Albanian territory to enter a marriage is a criminal contravention and is punishable by fine or imprisonment up to three months." The criminal offence of "forcing a marriage" is provided by Article 182 of P.C. 1977.

Case study⁵

In 1993, Y.L. has proposed the citizen R.Gj. to marriage. After her refusal, he threatened her by holding dynamite in his hands. After this fact, the citizen R.Gj. abandoned school and isolated herself at home. In May 1993 the citizen Y.L. was called to conduct the mandatory military service but he did not attend. On 01.12.1993 he has taken his father's rifle and went to the Ndrelalaj neighborhood, where the citizen P.Gj., father of the girl, was pasturing the livestock. When approached in a distance of 3-4 m, the defendant hit him with the rifle and the citizen P.Gj. lost his life.

Case study⁶

G.I., inhabitant of the city of Tirana, cohabited with the citizen E.T., with who he as a child of around 2 years old. Due to various problems, their cohabitation was accompanied with various debates, which led to the victim leaving home several times. The citizen G.I. has consistently forced the victim to continue the cohabitation with concrete actions. He has sent a Sms to the victim's brother, has contacted her father threatening that he would kill them if she would not live with him. The victim addressed the District Court of Tirana, which issued the protection order No. 7041, act dated 17.03.2010, for the period from 17.03.2010 to 08.04.2010. This citizen continued to threaten the victim by meeting her in the street, taking her hand and telling her to not leave or he "would fill her head with bullets". From the report after inspecting the mobile phone in use by the citizen L.T. (brother of the victim), it results that the defendant has sent several messages to this mobile phone. In one of them is specifically written: "I am contacting the entire family, especially "E": come back home, do not destroy me further, every day you are forcing me to be bad with you. However you should know few things and don't say why this happened, why didn't we make peace as I will never leave anyone else enjoy my wife"⁷".

5 Taken from the Decision No. 42/23.02.2011 of the Penal College of the Supreme Court. No. 52102-01216-00-2010 of the Charger Register. No. 00-2011-216 of the Decision (42).

6 Taken from the Decision No. 1169/16.09.2010 of the District Court of Tirana.

7 Note the expressions used: the woman is seen as an item and the man as the owner of the item entitle to enjoy her, has ownership - comment of the authors.



• Violence justified by “honor”

Violence caused by honor is defined as “a crime or incident committed to defend the honor of the family or relatives/community members”. The main victims of the crimes committed for honor are girls and women and they are caused by feelings of shame and humiliations for them. These crimes are often called “honor crimes”. These types of crimes exist in all the culture and in many communities of the South and Easter Europe and may involve crimes such as: kidnapping; isolation of the victims; threats and physical and emotional violence; interrupting the victim’s study and carrier; threats to death; feeding feelings of shame and cheating; pressure to hurt herself; depression; dishonor by separating/divorcing; forced pregnancy etc.

Sh.M. is a minor (14 years old). In June 2012 she filed a case against a citizen for “rape”. She has withdrawn these charges 4 months after due to the pressure of her family. Thus, after the sexual abuse, it seems that Sh.M. became a victim of her family, who “excluded” her with the excuse that she disgraced her family and lost her honor, without even taking into consideration that the minor was a victim of sexual violence. In November 2012 the girl was forced to file a case in the police against her brother as he threatened her continuously. The brother has evicted her from the home from the moment she denounced the rape and threatened her openly even in the police station environments. In the meantime the minor was accommodated in one of the social centers in Tirana and then in Vlora. After she requested an IPO from her brother, the minor, now a contingent at risk of trafficking was transferred in the National Reception Center of Trafficking in Linza. Meanwhile, the IPO issued by the court against her brother, has been violated by him. In the trial her brother stated that: “If I see her, I will cut her head off, not only at home, but even in Kamza, as she disgraced the family”.

In the meantime, the parents, who were scared by the aggressiveness of their son, stated that they prefer their daughter to stay in the center, where she is safe and protected from her brother and potential trafficking.

5.2 Violence and children

Children are considered all the persons under 18 years old. This is the provision of the CRC (1989) and all the Albanian legislation. According to CRC (1989): “By child is meant every human being under the age of 18 years old, except the cases when the majority is attained earlier” (article 1, CRC). The Albanian Civil Code [Law No. 7850, dated 29.7.1994] provides as majority the age of 18 years old. According to the Family Code [Law No. 9062, dated 8.5.2003/amended] the parental responsibility is legally over when the child reaches the age of 18 years old and marriage can be entered at this age.

The Law "On the protection of the rights of the child" [No. 10347/4.11.2010/d] states: "A child is every person born alive, until the age of 18 years old." This particular age requires a special legal protection. The children are not like adults and for this reason the legislation treats them differently, in a positive way. All the rights are implemented equally and with no discrimination for all the children despite: being born in or outside a marriage; being adopted or not, their origin, race and other causes according to the list of the Law "On protection from discrimination" [Law no. 10221/04.02.2010, Article 1] and any other cause.

If the age of the person is not clear or is not completely determined, but there are reasons to presume that the person is a child, this person is considered a child and benefits from this Law until the moment his/her age if completely determined.

If the domestic violence happens beyond closed doors and the adult victims don't have yet the courage to report it, then what can be said for the violence against children, when often the abusers are the persons that should be their protectors and the reporters of violence or actions against them! In these cases the reporting of violence towards children in families is likely to be hidden or reported only in very extreme cases.

Psychological violence against children: The "psychological violence" involves actions that cause damage of the physical, mental, moral and social health of the child, and that among others, cause the limitation of freedom to move, degrading, threatening, frightening and mocking behaviors, or other forms of hostile or rejecting treatments by parents, sister, brother, grandfather, grandmother, legal representative, a relative or any other person that is obligated to take care of the child.

The PC in its Article 121/a provides the harder punishment for the criminal offense of persecution, which indeed causes the effect of an atrocious psychological violence when this is committed against minors (double of the punishment given). The persecution consists in threatening or harassing through repeated action, aiming to cause a constant and severe anxiety or fear for the personal safety of a relative or a person to whom he/she is spiritually related, or to force him/her to change his/her way of living.

Physical violence towards the child: "Physical violation" is any not accidental tentative, any physical damage or injury of the child, including his/her corporal punishment. "Corporal punishment" is any type of punishment using physical force and that aims to cause pain or discomfort, no matter how light, from parents, sister, brother, grandfather, grandmother, legal representative, relatives or any other person that is legally responsible for the child. The corporal punishment includes forms such as: beating, torture, shaking/pushing, burning, hitting (slap or



kick), pinching, scratching, biting, severe criticism, forcing to carry out an action, use of materials causing pain or discomfort.

Cases when the children shall be considered at risk: "Child at risk" is a child to who are denied or violated the rights and protection provided by this Law and all the legislation in force.

5.3 Violence and elderly

The violence against the elderly is being increasingly recognized as a serious social problem. The range of abuse is similar to the other types of domestic violence and includes the physical, economic, sexual and psychological violence. The elderly are particularly vulnerable to economic violence and neglect. Based on several studies, 4% to 6% of elderly experience domestic violence (World Health Organization & British Medical Journal 1992), including here the percentage of elderly maltreated in institutions. According to a report of GADC (2006)⁸, the economic violence is the most prevalent form of violence against the elderly. The abusers are usually relatives of the victim and may include partners, adult children, relatives, friends, neighbors, health care and social care staff or someone else taking care of them.

Reporting the domestic violence and the violence in the care institutions is often problematic due to the manipulation of the abusers or lack of opportunity to seek help, as well as the problems of communication/speech that the elderly victims might have.

The risk factors that may increase the possibilities of elderly abuse include stress and frustration in taking care of this category, financial (or accommodation) dependence of the caretakers by the elderly or social - economic change factors impacting the families and the communities. The elderly victims of domestic abuse may face some additional obstacles if they want to ask assistance or support from outside: they might have difficulties in relating to a younger person; may think that having endured the abuse for such a long time, the assistance is not worthy anymore; may feel ashamed for accepting the abuse for so long; the abuser might be a person older than them and the referring institutions may not believe the victim; the abuser might be the caretaker of the elderly and the only source of accommodation and economic support, making thus the care institutions the only alternative for the victim⁹.

⁸ Domestic Violence: Presentation of the actual situation"" Gender Alliance Center for Development in collaboration with the MoLSAEO, Tirana 2006.

⁹ Practitioners' guide to domestic abuse' Manual. Bracknell Forest, Royal Borough of Windsor and Maidenhead, Slough (f.18). May 2011.

5.4. Violence and persons with special needs¹⁰

Girls and women with special needs are twice likely to experience various forms of domestic violence. It is also likely that this category experiences maltreatment for a longer period of time and suffer heavier damages caused by violence. According to a study of Nacro (2002), people with special needs are four times more likely to be violently attacked and four times more likely to be victims of sexual abuse compared to the general population. This category is also less likely to report the abuse being afraid that the justice system itself will not consider them. The domestic violence victims with special needs might be particularly vulnerable if the abuser is their caretaker, for example the abuser may use the disability to psychologically and emotionally violate the victim, may deprive him/her of the movement or sensory equipment necessary for the person's independence. It results also that due to the disability/special needs, for a violence victim of this group is more difficult to leave an abusive situation or remain isolated from the society.

For persons with special need, the access to the transport or phone may be difficult, especially if they depend on their abuser. This situation makes the contact with the health professionals difficult, as every contact is possible only if accompanied by their caretaker, eliminating thus the opportunity to ask information and help. The victims might be physically, emotionally and financially dependent on their caretaker and for them is thus difficult to refer their abuse, especially if the only alternative is an institution. Besides this, the service providers may attribute a very self - sacrificing role to the caretaker, mining thus the trust towards the victim. Other obstacles for asking assistance involve the difficulties in communication and/or speech, lack of personal income and the inability to identify some abuse symptoms, some of which are attributed to self - hurting, anxiety, eating disorders, depression symptoms etc.¹¹.

5.5. Other categories of subject suffering domestic violence

While the majority of domestic violence victims are girls and women, men also are subject to violence by members of their family. The prevailing domestic violence forms for men are psychological/emotional and economic violence. Men are prone to not remain for long victims of domestic violence, but this does not exclude the fact that the violence suffered might be of a high level. The statistics of domestic violence against men often do not match from one study to the other and thus is difficult to have precise outcome. It is important to emphasize that

10 The term refers to disabled persons

11 Nacro (2002) 'Access All Areas – A Guide for Community Safety Partnerships on Working Effectively with Disabled People', Crime and Social Policy Section, London.



for men might be more difficult to talk to someone on what is happening or to ask assistance to the respective institutions, making us believe that there is a high level of violence not reported by the male victims. They may use various ways to face the family abuse situation such as: leaving home to live with other family members or friends without giving a reason; accommodation in a car or somewhere else; working long hours to avoid as much as possible the return to home; covering the behavior of the abusing partner or family member; minimizing the violence effects; accepting responsibilities for unfunded accusations; accepting the requirements of the abusing partner/family member, etc.¹²

Everyone might be subject to domestic violence, regardless of the social group, sexual orientation, religion, ethnicity or race. There is no data evidencing that someone belonging to a social group, specific race or culture is exposed to a higher risk of this phenomenon. It is the cultural context where the abuse happens impacting the way the violence is perceived and experienced. Victims from discriminated social groups or minorities might be more hesitating in seeking help for reasons such as: concerns related to the race or sexual discrimination (the cases of domestic violence against the family members belonging to the LGBT community are numerous); escalating the violence to other family members; violence issues due to honor or forced marriages; lack of awareness on supportive services; difficulties in speaking the domestic language (migrants); fear of losing contacts with the family; limited capabilities to a living; lack of employment possibilities; the culture the victim belongs to does not accept divorce; lack of identification documents etc.

12 "Practitioners' guide to domestic abuse" Manual. Bracknell Forest, Royal Borough of Windsor and Maidenhead, Slough (May 2011). (p.17)



PART II

THE RESPONSIBLE ADMINISTRATIVE STRUCTURES AND THE ROLE OF THE COURT IN IMPLEMENTING THE LDV



The legal framework for measures against domestic violence enables the state authorities to intervene to prevent and stop the violence amongst family members. This intervention is done in two directions: administrative and judicial. The first is related to the establishment and operation of a coordinated network of institutions in central and local level. The second direction is related to the protection guaranteed by the justice bodies through: (1) decisions of a civil character or protection orders and/or (2) penal proceedings against the abuser.

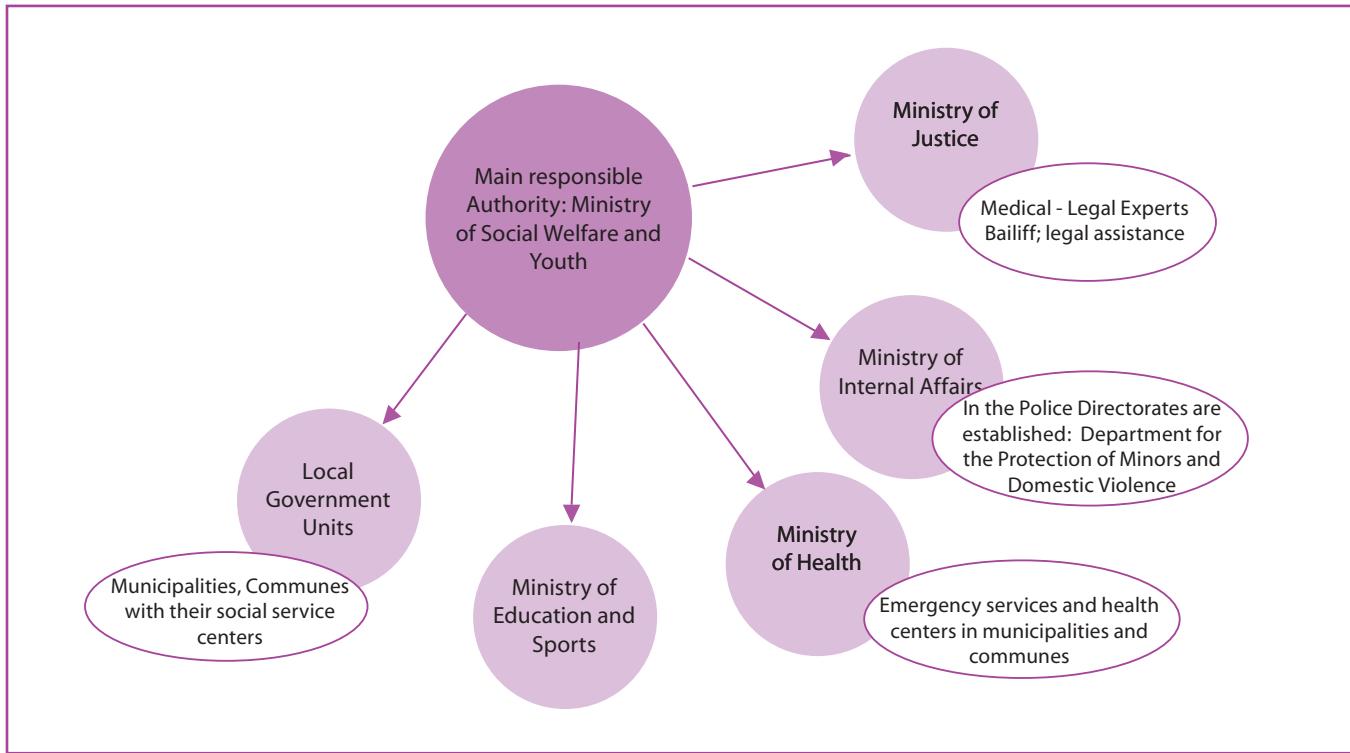
This session presents the role of administrative structures in preventing the violence and the role of the Court in issuing protection orders against the abuser. The intervention through penal proceeding against the abuser is addressed in details in Part III of this manual (see "Domestic Violence as a criminal offense and role of police").

1. The role of administrative authorities against domestic violence

Thus, the main administrative responsible authority is the Ministry of Labour, Social Affairs and Equal Opportunities¹³ and the other central responsible authorities of the line are as follows: Local Government Units; Ministry of Internal Affairs; Ministry of Health; Ministry of Justice; Ministry of Education¹⁴. A scheme of these authorities may be found below.

13 Now the Ministry of Social Welfare and Youth

14 Now the Ministry of Education and Sports

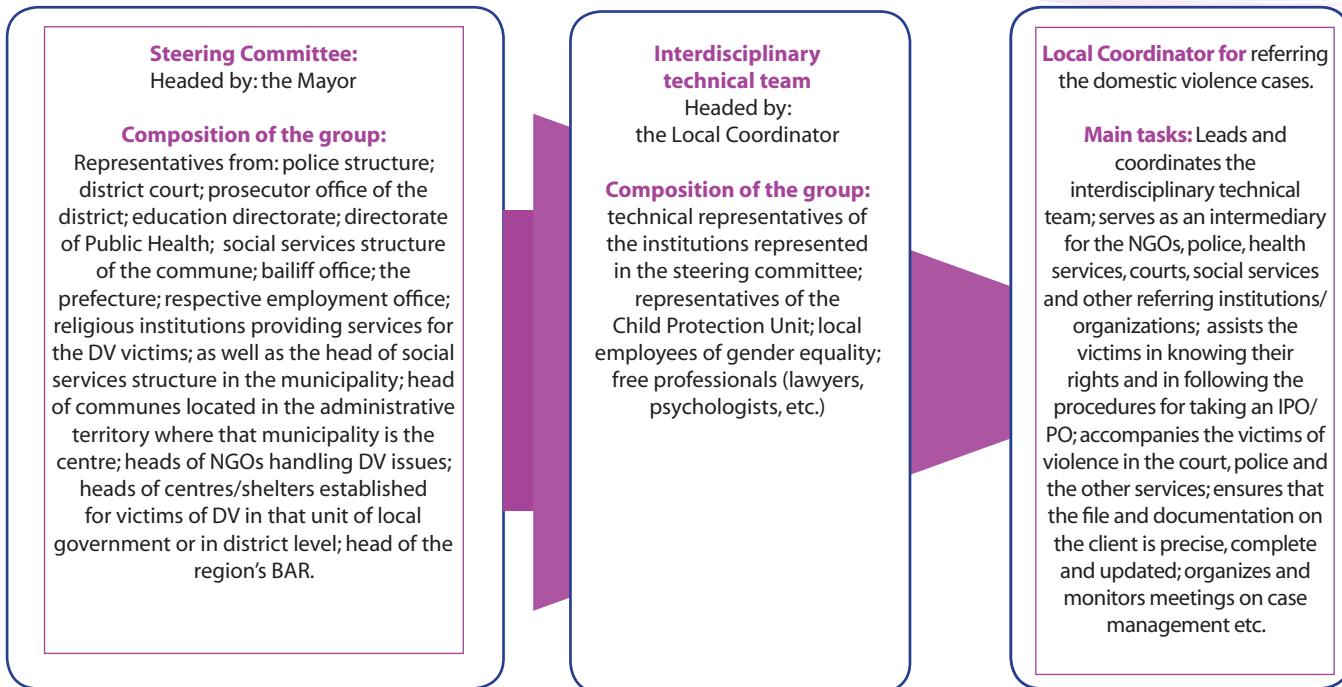


1.1 Composition of the referral mechanism against domestic violence in local level

Apart the central level administrative responsible authorities, a **local level referral mechanism** operates also against domestic violence. This mechanism is composed of three structures, respectively: steering committee, technical team and local coordinator, who collaborate to assist the victims of violence. The content, duties and activities of each are regulated under the LDV and DoCM No. 334/2011¹⁵. Their composition is schematically presented below:

¹⁵ Decision of the Council of Ministers No. 334, dated 17.02.2011 "On the mechanism of work coordination with reference to the cases of domestic violence and its way of proceeding". LDV, Article 8, paragraph 8 provides that "the work coordination mechanism between the agencies responsible of referring the domestic violence cases, as well as the way of proceeding to support and rehabilitate the victims of violence, are determined by decision of the Council of Ministers".





It is important to highlight that the fundaments of the technical level mechanism include:

- Police
- Prosecutor Office
- Court
- Legal representative/lawyer
- NGOs specialized in this field
- Coordinator of domestic violence in the local government units
- Specialist of the Child Protection Unit (CPU) in the municipality
- The school psychologist

The duties and activity of the Steering Committee [ad hoc] mainly consist in:

- Identifying the domestic violence problems and proposing on their solution;
- Assessing the work of the interdisciplinary technical team and taking decisions for improving its functioning;

- Adopting in principle the collaboration agreements between the state institutions;
- Organizing jointed interdisciplinary trainings for their staff and informing the citizen on the functions, composition and the necessary contacts in case of violence;
- Adopting rules and procedures for the functioning of the interdisciplinary technical team;
- Quarterly reports to the Ministry of Labor, Social Affairs and Equal Opportunities¹⁶

Duties and activities of the multidisciplinary technical team in general consist in:

- Following up the case and fulfilling the victims' needs, ensuring also their connection with the appropriate services;
- Coordinating and supervision the delivery of services;
- Case management;
- Forwarding the data for concrete cases to the leaders of the interdisciplinary technical team;
- Monitoring and reporting to the steering committee the coordination of responsible authorities' institutions activity in local level and referring the domestic violence cases, taking care to preserve the confidentiality of the victims' personal data.

Main duties and activity of the local coordinator

The local coordinator is the representative of social services office in every municipality or the social administrator of the social services office in the commune. Some of the main duties are as follows:

- Leads the work of the interdisciplinary technical team;
- Coordinates the interdisciplinary technical team for cases requiring immediate intervention and provides reference resources or services for individuals seeking accommodation, free legal assistance, counseling and other necessary support;
- Serves as an intermediary with the NGOs, police, health services, courts, social services and other referring institutions/organizations to give information, connect the victims with the services and to ensure the continuity of care towards them;
- Assists the victims in recognizing their rights and in following the necessary procedures to receive an IPO/PO as well as the steps to follow if the order is violated;
- Accompanies the victims of violence to the court, police and other services;
- Ensures that the files and documentation on clients is precise, complete and updated, as well as maintains copies of the court decisions and the required documentation;
- Updates the data for all the cases of domestic violence treated by the interdisciplinary technical team in an

16 Now Ministry of Social Welfare and Youth



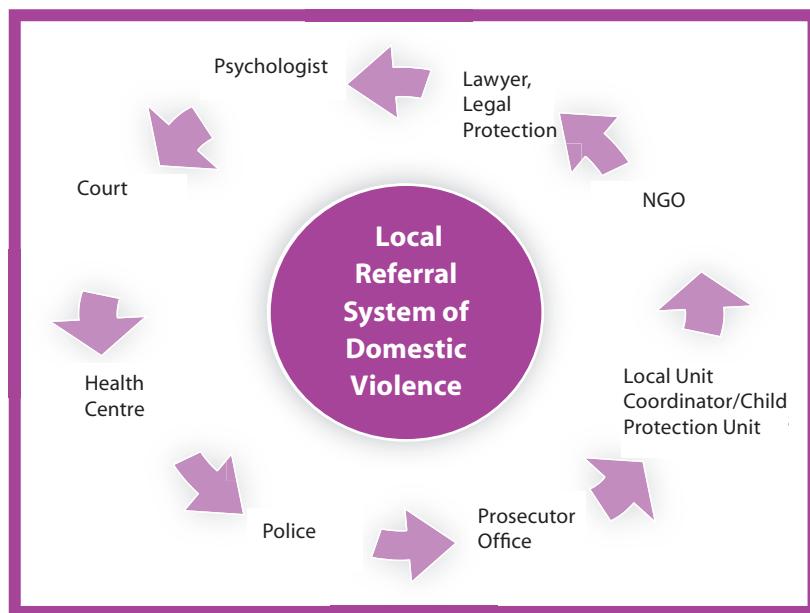
electronic database of recordkeeping.

- Ensures the victims receive the request to appear in court, orders issued by the court to follow the right steps in case the court decisions are violated, as well as ensures that all the necessary interventions are done in compliance with the law;
- Proposes the establishment of necessary services for victims of domestic violence to the social services structure in the local unit by which it operates etc.

The mechanism and its components are part of the whole. Wherever you “knock” means that according to the case, you have set in motion even the other links. The interaction is presented in the attached scheme. The police have without doubt a primary role, not due to the hierarchy within the system, but due to being informed and legal prosecution of the case.

1.2 Subjects that can address the referral mechanism

According to the LDV, the domestic violence can be reported by the victim and everyone in all the institutions that are part of the referral system. Thus, the police staff should accept every reporting on violence regardless of who reports it, means (phone, e-mail, sms, fax, live) or way of reporting used (verbally or in writing). Thus, according to the LDV (Article 9), it may happen that besides the victim, this reporting can be done by teachers, relatives, neighbors, the children itself, either as victims or as witnesses of domestic violence etc.



Except for the court, where the subject that can address it are specifically determined under the PO/IPO, in the other cases the victim and whoever identifies a case of domestic violence, may address for assistance to each link of the referral mechanism.

The conception of the referral system is such that if the reporting is done in one of the links of this system, this is automatically forwarded to the other links in order to assist the victim in a comprehensive way.

Attention! The police should accept every reporting, even if done by a victim whose residence belongs to another police station unit.

For cases requiring an urgent intervention, regardless of which institution of the referral system the victim (and whoever reports the domestic violence) addresses to, each of them is obligated to inform the **local coordinator of violence** in order for him/her to reach the scene with the police when this is possible, and for the immediate addressing of the violated case, according to the duties determined by the LDV for the responsible authorities.

Attention! The police should act immediately in cases when a victim of domestic violence calls or seeks assistance in this institution. The police respond to the citizen in any time.

1.3 The role of local unit in the referral mechanism

When a victim of domestic violence (and whoever may report domestic violence) addresses to the local coordinator in the municipality/commune, the local coordinator and the police representative conduct a preliminary analysis of the case, which according to the case may involve some or all of the following: a one to one interview with the victim, with the abuser as well as with other family members; an assessment of the violence level; careful documentation of the facts; completion of the standard form; accompanying the victim in the primary health institutions (if necessary); as well as transporting the victim of violence in a safe location.

As representatives of the inter-institutional team, the coordinator and the police officer will determine which additional members and what resources are needed for the first and/or immediate intervention following. After giving the victim of violence the first aid, the violence coordinator raises the case for review in the meeting of the interdisciplinary technical team.

Note: For cases not requiring an urgent intervention, is required to respect the will of the adult victim on referring the case, involving even notifying the coordinator. Therefore, all the components of this system, exercising their activity in the territory where the municipality, prosecutor office, court, lawyer, NGO specialized in this field, specialist of the Child Protection Unit in the municipality or the school psychologist extend their jurisdiction, by respecting the will of the violence (adult) victim, inform the local violence coordinator, who raises the case for review in



the interdisciplinary technical team meeting. These are cases when the domestic violence does not constitute a criminal offense and there are possibilities to address it even without a PO/IPO. There are cases in everyday life that may/should be evaluated as such. This is the case of completely random and disconnected episodes where the abuser's "aggressiveness" and the victim's injury may be part of treatment and "therapy" outside the court. No doubt that for this is required a lot of seriousness and care for the special protection of the family and its members.

In the meetings convened to hear the case, the interdisciplinary technical team members design a jointed intervention plan for a long-term solution of the addressed case.

1.4 The role of Child Protection Units in referring cases of violence against children¹⁷

One of the LDV goals is to guarantee the protection with legal measures for family members, victims of domestic violence, paying special attention to the children. The stakeholders that set into motion the court by requesting a PO/IPO in the case of a violated child are numerous and the time available to the court in case of an IPO is only 24 hours.

The mechanism for coordinating the work in referring the cases of children at risk is composed of:

1. Steering Committee "For coordinating the work between the responsible state authorities at local level in referring the cases of children at risk";
2. Multidisciplinary Technical Team
3. Child's Rights Unit in district level (CRU);
4. Child Protection Unit in municipality/commune level (CPU);

According to the Article 38, Law No. 10347/4.11.2010 "On protecting the rights of the child", the Child Protection Unit in the municipality/commune functions as a special unit or as an unit in charge of the social affairs within the administrative structure of the municipality/commune. The Child Protection Unit of the municipality/commune should have at least an employee graduated in the social work field.

¹⁷ For more information see "Manual of the child protection staff" (2009); "Practical guide to child protection", Manual for professionals working in the child protection field (2009); "Guide for the establishment and operation of the Child Protection Units in local level" (December 2012).

Some of the CPU duties are as following:

- Assess and constantly monitor the situation of families of children at risk until the child is considered “not at risk”;
- Identify and coordinate in a multidisciplinary way the protection, referral and analysis of the cases in the municipality/commune territory;
- Serve as an information centre where the children and families residing in the municipality/commune territory may get information or refer to other supportive services according to their needs.

According to the DoCM No. 265/12.04.2012¹⁸“a child in an emergency situation is considered a child who, if left in the actual circumstances, with no protective intervention, may die, be damaged or heavily injured, or be victim of maltreatments considered as criminal offences under Article 124/b of the Penal Code, as amended”. Each child in an emergency situation shall be taken under immediate protection by the police structures in collaboration with the CPU and the State Social Services, even outside official working hours. The child in an emergency situation is immediately provided with accommodation, food, health care and legal support.

According to the DoCM No. 265/12.04.2012, **the procedure for intervening in assisting children at risk** emphasizes that:

1. The referral to the CPU for an assessment if the child is at risk can be done by the child, parent or legal guardian/legal representative, every person who becomes aware of the violation of the rights because of his/her duty or function, any other person having a kinship relation with the child, any physical person who becomes aware of the violation of a child’ right, anonymous subject.
2. The CPU starts the assessment procedure when there are referrals or when it suspects that there has been a violation of rights, with the consent of the child, parent, guardian or legal representative of the child.
3. In specific cases of violations of the rights of a child, made public, the CPU starts the procedure of case assessment on its initiative, even if there were no referrals by the subjects define in Article 1 of this Chapter, or when the legal guardian/representative of the child does not act. The CPU may request the consent of the child victim in cases when his/her age and maturity allow it.
4. After giving the immediate assistance, within 48 hours, the CPU sets the meeting of the Multidisciplinary Technical Team members that are more necessary for the immediate treatment of the child. The Multidisciplinary Technical Team is an ad hoc team operating in the municipality/commune, called based on the initial assessment, headed by the Director/Responsible of social services in the municipality/commune and has the following composition:

¹⁸ Decision of the Council of Ministers No. 265, dated 12.04.2012 “On the creation and functioning of the mechanism of work coordination between the State Responsible Authorities for referring the cases of children at risk as well as the way it its proceeding”.



- a. Child Protection Employee in the Municipality/Commune;
- b. Representatives of the Police structure;
- c. Representative of the Regional Social Service
- d. Representative of the Regional Education Directorate (RED);
- e. Administrator of the economic assistance and social services in the municipality/commune where the child lives;
- f. Parents/legal guardians/legal representatives of the child or family members; kindergarten educator or school teacher of the child;
- g. Coordinator of the DAR psychologists; school psychologist;
- h. Health specialists; family doctor or a specialist that has checked or evaluated the child;
- i. Coordinator of domestic violence issues in the municipality/the commune social administrator in charge of the violence issues for the commune;
- j. Every specialist that knows the child or that can discuss a problem concerning the child (lawyer, psychologist, social worker, specialists providing specializes service on child development, etc.);
- k. NGOs providing services for the child, public and private providers of the social services;
- l. The child, based on his/her age and the maturity and taking into consideration the protection of his/her best interest.

In the meetings of the Multidisciplinary Technical Team are also invited to attend representative of the justice bodies, operating in the territory of the District, including the municipality/commune and persons or institutions, whose attendance is deemed necessary for the case management. In these meetings are invited to attend the members necessary to manage the case of the child at risk.

Duties of the Multidisciplinary Technical Team:

- a. Reviews and evaluates the CPU proposals bases on the initial assessment conducted by this unit;
- b. Analyses the situation by discussing the ways of intervention;
- c. Discusses and approves the Individual Plan for the Child Protection considering the best interest of the child;
- d. Ensures the service provision and coordination bases on the Individual Plan for the Child Protection;
- e. Meets periodically and reviews the Individual Plan for the Child Protection, adopting to the changing needs of the child and the family;
- f. Approves the closure of the case when deeming that the child is not at risk.

DoCM No. 265/12.04.2012 emphasizes also that in case of children at risk, when the Multidisciplinary Technical Group compiles an Individual Plan for the Child Protection, but the case needs are not fully addressed by the existing services, than the Child Protection Units informs and requires the collaboration of the CRU in district level to call the Steering Committee according to paragraph 5, letter "b" of this decision.

When protecting the child at risk and the municipality/commune where the child is located has not yet established a CPU, the district CRU collaborates with one of the CPUs within the district territory to assess the situation and follow the steps for the case management.

1.5 The role of Police in the referral mechanism

The domestic violence is in any case a negative phenomenon that affects an important institution, the family and its members. The family has a special protection by the government, meaning that the "correction" measures for the abuser and the protection of the victim should be appropriate and identified after a careful analysis, suggesting thus the best relation of the measure with the protection provided for the violated member and the family as such. Depending on many circumstances and factors, this "correction" can be done through the method considered as most effective for this case. From a thorough analysis of the Albanian legislation on the domestic violence, is understood exactly this goal of the legislator, which puts in our disposition and tools that we should know to select when a case is reported to us as police officers.

All the police actions in case of domestic violence should aim to protect the family. The family is composed of its members, among whom there are women and children, elderly, persons with or without special needs. All the family members deserve to be protected by the violent behaviour and actions of another member.

When a family/marriage relation degenerates or goes through a crisis, it is very likely that violence is the symptom showing that is very important to find appropriate way to protect its victims and preserve the family life standards.

If we compare the violence to disease, we all know that there are diseases that can be prevented by prophylactic measures; there are others that are light and can be cured just by taking "an aspirin, vitamins and warmth". There are some other cases where the situation is more serious, requiring an ambulatory treatment and in more serious cases, hospitalization and intensive therapy. The same happens with addressing domestic violence.

If we compare the violence to disease, we all know that there are diseases that can be prevented by prophylactic measures; there are others that are light and can be cured just by taking "an aspirin, vitamins and warmth". There are some other cases where the situation is more serious, requiring an ambulatory treatment and in more serious cases, hospitalization and intensive therapy. The same happens with addressing domestic violence.



The most appropriate intervention methods in cases of violence are different. They depend on the type of violence, the severity of means used, frequency, reclaim, reflecting and repentance of the abuser, tools, risk for the victim, fulfilment of criminal offense elements, the opportunities or the inability of the family to self - cure the violence.

Thus, even the **police staff**, who is in most of the cases **the first** to become aware on violence, seeing violence as something that needs to be addressed professionally and legally, **shall assess if the protection is better realized through:**

- Outside the court:** here we take into account measures of administrative character and the care of responsible authorities to prevent the domestic violence and make other interventions to appease the parts. In this case we do not have an emergency. The police officer indeed is not a social worker, educator, psychologist or intermediary, but however he is able to understand objective and subjective reaction. In addition, to appease the parties by convincing them to start a healthy relationship, the referral system has actors that can perform this role better; it is sufficient to just only to involve them. It is not easy for anyone to address the authorities, but when this happens, the authorities should act carefully. See the techniques of preliminary analysis of the incident and risk factors to decide on the best way and mean of reaction (Part IV of this manual).
- Through the court:** this is related to the judicial - civil addressing of the violence case through the PO/IPO under the LDV. For this, besides this part, see also the part on treating the violence as a criminal offence, as provided by the PC for the criminal offense of domestic violence, Article 130/a, but also other provisions (see part IV of the manual).

Sometimes the three interventions should be done at the same time in parallel, thus the administrative, the judicial - civil and the judicial - penal ones. In some other cases only one intervention may be successful. It is an indisputable attribute of the police **to know to select the most effective intervention.** The police mission is to maintain public order and safety, in compliance with the Law and by respecting the human rights and freedoms. While it should be noted that the police it is not alone in this assessment as the system is composed even of other intervention links which assist in the right assessment of each case with its specifics. On the other hand, if the Law "On State Police" does not clearly contain the police duties on some categories or very specific cases, for example related to the accommodation of children whose parent exercise violence towards each other, here apply the general conventional and legal principles of protecting the best interest of the child, evaluated by the police until a final decision of the court is issued.

In any case it is important that the victim of the domestic violence is informed by the police officer. Thus, the victim should be clearly informed on all the opportunities, means of protection and response by explaining their effect and their time of action. Very often the victim thinks that completing a claim to issue a PO includes also the claim for divorcing and that it regulates consequences settled by the divorce, including here the division of the patrimonial property¹⁹. Also, if an IPO is requested, it needs to be explained that this is only for 20 days and that this order needs to be certified in a further court trial, which administers various evidences such as documents and witnesses, held not later than 20 days from the trial when the IPO has been issued. The links of the referral system, including the police, should inform the victim on the inclusion in the economic assistance, according to which the victims of domestic violence having a PO/IPO decision shall benefit economic assistance²⁰ for the entire period of the PO validity.

There are cases when the police may let the victim decide on the PO/IPO, as there are other cases when this decision should be taken by the police and submit a file in the court. Often the violence victim is fragile and is prone to let go, but the risk is high and the situation might get worse.

One of the most evident cases is when the child is violated by the parent and the case is submitted to police. This is the moment that the police should accordingly submit a request for IPO or PO in order to protect the child. From a concrete case we got to learn that in May 2013, the teacher of a child who came to school with signs of physical violence filed a case in the police station. As the parents were divorced and the minor was entrusted to the father for upbringing and education, the police informed immediately the mother of the child. It resulted that the children met their mother secretly and this was the reason the father has violated them by living visible signs on them. The request to the court to issues an IPO was submitted by the mother, but such action should have been done immediately by the police forces.

19 See monitoring reports of the CLCI, HRDC etc. related to the confusion of the domestic violence victims by asking in the process of the PO issuance the dissolution of the marriage or division of the matrimonial property, leading thus to the court rejecting the petition.

20 Law No. 10399 dated 17.03.2011 "On the Social Assistance and Services"; 70% of the police staff interviewed by the HRDC responded negatively to the question if they were aware on the economic assistance the victims of domestic violence benefit after the amendments in Law "On the Economic and Social Assistance". To receive this assistance, a notarized copy of the passport and a notarized copy of the Court decision to issue the PO or the IPO are presented to the local government units in the municipality/commune. The amount of economic assistance for the victims of the domestic assistance is 3000 (three thousand) ALL per month.



The orientation of the victim to collect evidence is of a particular importance²¹.

We emphasize that it is very important that the staff of police structures gets to know the monitoring reports, situation reports or studies published time after time by the NGOs or other institutions. The recommendations of these publications may visibly impact in the further improvement of the service provided by the state police structures²².

1.5.1 Assessment of the violence level by police and other stakeholders

The assessment of the violence level enables effective intervention and defining the means to prevent further violence acts. To assess the violence level, the following aspects need to be considered:

Firstly, the victim “who” is at risk. Each victim is an impersonal case. The previous experience of our job should not lead us in generalization as every case has its specifics. If the victim is a minor, a pregnant woman, a person with special needs or an elderly, this has definitely to be considered as a high risk situation. **Secondly, the abuser “Who is the abuser”**, what does he/she represent physically and emotionally, the access at weapons, previous behaviours etc.

A person with emotional and psychological imbalance, repeater of violence and violent acts, problematic,

21 The evidence that should be provided to the court to issue a PO/IPO can be: evidence, police reports, medical report, photos of the injuries, sms or electronic mail communication, examining, statements, explanation of the parties, documents issued by the social services office in the local units, documents issued by NGOs.

22 For example: “Domestic Violence and the Albanian State Police” Study (October 2012); “Study on the victims of domestic violence crime and sexual assaults” (July 2013); “Monitoring Report of the District Court of Tirana decisions for the issuance of POs/IPOs (November 2010); “Court trial where the children are involved as victims and witnesses of the criminal offense (2009), etc.

Before intervening in the domestic violence case, a quick analysis on risk and problem treatment is conducted based on three questions:



Identify the answer for the three question:

Who? Why? What?

And based on these answers we decide on “how” we are going to intervene?

physically strong, alcoholic, possessor of weapons etc., without doubt is likely to react harshly and cause more serious consequences to the victim's life and health. If he/she is a police officer, there is risk of use of weapons.

Why and in What conditions and circumstances has occurred or is occurring the domestic violence?

If the violence is exercised after a PO or IPO or during the procedures to dissolve the marriage, this shows a prominent aggressiveness of the abuser and a higher risk for the victim, his/her relatives or the authorities assisting him/her.

"What" type of violence is it?

All types of violence are traumatizing for the victim, but some of them that put at risk the life and health should be evaluated at higher risk. How severe was the violence? What means were used or might be used? What is the frequency of the violence? What is the chronicle of the violence?

All these aspects lead us to a more precise evaluation of the type and measure of intervention, aiming to take care of the family and member/s in danger.

1.6 The role of Health Service Centres in the referral mechanism²³

According to the LDV (Article 7, paragraph 2, letter d) the personnel of the health centre where the victim is addressed, is obligated to refer and orient the victim to the other services of support and protection by the domestic violence. Based on Article 130/a of the PC, in cases of the criminal offense of "domestic violence" the doctor is legally obligated to file a report and submit it within forty eight hours (Article 282 of the PPC) to the prosecutor office or to the judicial police officer [see the part on the penal code]. The health care service staff should also provide their service in accordance with the standards defined by the Law No. 10107/30.3.2009 "On health care" and other laws of this field.

According to the MoH Order²⁴ No. 15, dated 24.01.2008²⁵ aiming to provide medical and psychological service for the persons subject to domestic violence:

23 Further details on the health service and the domestic violence may be found in the manual "Gender - Based Violence," a Manual for the health personnel, National Association of Social Workers in Albania, Tirana (2008)

24 The Ministerial orders are part of the continuous review of the institution's dynamics of a problematic and thus should be always in the attention of the health structures for their update.

25 Minister of Health Order No. 15, dated 24.01.2008 "On the medical treatment of persons subject to domestic violence in the public health institutions," pursuant to Article 4, paragraph 102 of the Constitution, article 7, paragraph 2.a of the Law no. 9669, dated 18.12.2006.



- Every person subject to domestic violence, receives at any time medical and psychological assistance by the public health institutions;
- The treatment of persons subject to domestic violence shall be free of charge in the health centres of municipalities and communes, emergency services, day hospitals, municipality hospitals, district hospitals;
- The treatment expenses for these persons are covered by the Ministry of Health and the Institute of Health Care Insurance.
- Pursuant to MoH Order No. 14 (2008)²⁶, all the cases of persons subject to domestic violence receiving medical assistance in the public health institutes shall be evidenced.

According to the MoH Order No. 13, dated 23.01.2008²⁷, every person subject to domestic violence, receiving a diagnostic and medical treatment in the public health institute **shall be equipped with the relative medical report**. Each diagnostic medical action that the health personnel performs on the persons subject to domestic violence is noted in the register for evidencing victims of domestic violence and in the individual file on victims of domestic violence.

The doctor informs the victim through the relative report on the diagnosis, examination, treatments conducted and advice and reference provided to the victim of domestic violence.

According to the MoH Order no. 410, dated 12.07.2010²⁸, the health personnel working in the public and private Health Institutions (health centres, emergency services, regional hospitals, private clinics) is obligated to provide medical and psychosocial assistance at any time for the persons subject to domestic violence. According to the same Order, all the cases of domestic violence evidenced in the register on victims of violence (Order No. 14), shall be reported quarterly to the Public Health Directorate in the MoH²⁹.

Attention! The personnel of public health institutions shall not refuse to give emergency assistance to any subject of domestic violence, in any location and under any circumstance. On request of the victim, he/she should provide the victim with the relative medical report, regardless of his specialization.

26 MoH Order No. 14, dated 23.01.2008 on "Registration of domestic violence cases in the register and individual file for domestic violence victims"

27 MoH Order No. 13, dated 23.01.2008 "On equipping the persons subject to domestic violence with the relevant medical report"

28 MoH Order No. 410, dated 12.07.2010 "On Reorganizing the Health and Psychosocial Service for Persons Subject to Domestic Violence Appearing in the Health Institutions".

29 MoH Order No. 410, dated 12.07.2010 "On Reorganizing the Health and Psychosocial Service for Persons Subject to Domestic Violence Appearing in the Health Institutions".

The medical personnel should ensure privacy and confidentiality. Therefore he needs to speak to the patient in a separated room, ensuring that the door is closed, speaking privately to the patient and request any person accompanying him/her, even persons of the same gender, to leave the room and wait outside. When a patient is checked for violence in intimate relations, the patient is not asked on the violence if he/she is accompanied by another adult or by children (except the case when the child is an infant).

1.7 The role of non-governmental organizations and legal representatives in the referral mechanism

According to the LDV (Article 8, paragraph 7), the personnel of social service and care for victims of domestic violence, licensed non - profit organizations, lawyers and legal representatives of the victims of domestic violence (as well as the personnel of social service and care in the public institutions) maintain the confidentiality on the personal data and information the victim provides on his/her situation, unless otherwise determined by the victim in writing. The victim of domestic violence or any person who notes a domestic violence case, may address for assistance even to the non-governmental organizations or legal representatives (lawyers) (DoCM No.334/17.2.2011 / Part II). For cases requiring immediate intervention, the nongovernmental organization or the lawyer contacted by the victim is obligated to inform the local coordinator of violence, in order that he/she reaches the scene with the police and for the immediate handling of the violated person under the duties defined by the LDV for each responsible authority³⁰.

The referral mechanism authorities should know the NGOs providing services and be careful in addressing the victims to them³¹. In our country the non - profit organizations provide from many years various services such as counselling, legal assistance, psychological assistance, accommodation and rehabilitation for children, youth, women, elderly, persons with special needs, and now even for male abusers³².

30 For more details see the OSCE Manuals (2008): "How to ask protection from domestic violence" - A manual for victims and non - profit organizations; OSCE (2013) "How to ask protection from domestic violence".

31 Attached to this manual find a list of all the centers providing social services in 12 districts of the country, listed according to the services they provide.

32 Lately a "Hotline for men" has been opened, providing counselling and advice for abusing boys and men. To contact with the Hotline please call: 04 23 63 712



1.8 The role of the school psychologist in the referral mechanism³³

According to the Family Code, Article 6, "in every procedure concerning a minor, the presence of a psychologist is mandatory to assess the minor's expressions, in accordance with his/her mental development and social situation". The same principle is found even in the Law "On the protection of the rights of the child".

The victim of domestic violence or any person who notes a case of domestic violence can address for assistance (DoCM No. 334/17.2.2011, Part II) even to the school psychologist in cases when the domestic violence affects (even) children. For cases requiring an immediate intervention, the school psychologist contacted by the victim, as well as the other stakeholders involved in the case referral, are obliged to inform the local coordinator of violence (DoCM No. 334/17.2.2011, Part II). Referring also to the DoCM No. 265/12.04.2012³⁴ in cases when the victim is a child, the school psychologist (as well as any other person informed on the violation of a right of a child) refers the case to the Child Protection Unit of the commune/municipality, which follows all the further necessary steps to assess and address the case (for more refer to paragraph 1.4)

2. The role of the Court in implementing the LDV

2.1 Types of Protection orders and subjects that can address the court;

When the case rapporteur addresses the court: judicial proceeding of domestic violence under the LDV

After the LDV was issued, the domestic violence cases are increasingly becoming object of the judicial review. In these cases the court operates with decisions having a specific denomination: PO and IPO. These decisions contain civil protection measures.

A protection order (articles 10, 17) is an order issued by court decision that determines some protection measures for the victim of domestic violence. This order is issued after a hearing and concluding that (a) there are reasonable doubts to believe that the abuser can carry out any domestic violence act; (b) the issuance of the protection order is necessary to protect the victim's safety, health and welfare.

An immediate protection order (articles 18, 19) is a court order issued temporarily and valid until the issuance of a regular protection order. This order is issued under the same condition, only in this case the court has at

33 For more information see "Child Protection, Manual for Schools", Ministry of Education and Science and Terres des Hommes, Tirana (2007); "Practical guidelines for child protection"; "Manual for professionals working in the child protection field", Tirana, (2009).

34 DoCM No. 265/12.04.2012 "On the creation and functioning of the mechanism of work coordination between the State Responsible Authorities for referring the cases of children at risk as well as the way it its proceeding".

its disposition 48 hours for every case or 24 hours in cases of violence against children to take a decision after receiving the request , this depending on the protected subject. The law provides that a date shall be set for the confirmation of the order, which is 20 days from its issuance. The abuser has only 5 days to appeal the decision. Who can address to the court? The court acts only if addressed by the subjects legitimated under the LDV, which is a specific law only for these matters. As it can be noticed on the following table, these subjects are numerous and might be different depending on the subject intended to be protected from violence and type of order requested. Depending on the case, the subjects are individuals or institutions (their representatives)

Note! The claim can be submitted to each district court and not only on the one where the victim lives. This means that if the victim is away from his/her residence, he/she can address to any court that is closer to his/her location.

The claim formats are available in every court or police station.

List of the subject that address the court according to the type of protection order and specifics of the victim		
PO	PO for Children	IPO
<ul style="list-style-type: none"> • Victim itself 	<ul style="list-style-type: none"> • The minor's parent or guardian • Persons legally responsible for the children • The victim's legal representative or lawyer • Police/prosecutor³⁵, relatives • Representatives of the social services office in the municipality or commune, where the victim resides temporarily or permanently, who are aware of the violence acts; • Centres and services for the protection and rehabilitation of the victims of domestic violence, recognized/ licensed by the MoLSAEO³⁶ 	<ul style="list-style-type: none"> • Victim itself; • The victim's legal representative or lawyer; • Police/prosecutor office • Person with whom the victim has a familial relationship; • Representatives of the social services office in the municipality or commune, where the victim resides temporarily or permanently, who are aware of the violence acts; • Centres and services for the protection and rehabilitation of the victims of domestic violence, recognized / licensed by the MoLSAEO³⁷
<ul style="list-style-type: none"> • Deadlines: the review of the request to issue a PO is within 15 days of receipt of the request 	<ul style="list-style-type: none"> • Deadlines: The IPO is issued within 24 hours for cases of violence against children and 48 hours for other cases. 	

³⁵ Police can find cases of minor's abuse (physical, psychological violence, obligation to work/beg etc.) from the parents or other members of their family. In this case the police can address the court with a claim as a plaintiff. Thus the litigant formed is different, as it is the state (police station) facing the abuser (defendant) and not directly the victim.

³⁶ Now the MSWY

³⁷ Now the MSWY



PO/IPO for children	IPO
The parties may submit a request to change the PO while this order is in force, but the conditions and circumstances have changed. Also, based on Article 22 of the LDV, the victim of domestic violence may address the court with a request for extending the effect of the existing PO in cases when the situation of violence risk is evident. This should be done 15 days before the PO effects ³⁸ expire.	The IPO confirmation is done within 20 days from the decision.
Within 24 hours of issuing the order, the court sends a copy of the PO/IPO to the police station (Articles 19, 17 and 22 of the LDV).	

How to address to the court? Legitimated subjects, including here the police, may address to the court with a request for PO/IPO as appropriate, at any time. Any request for PO/IPO is noted in a special register and protocolled on the submission day. **Making a request from police (prosecutor) etc., is not to be confused with the available formats of claims completed by the victim in the police station.** The first case is a public claim. This might happen when the victim is very scared to address the police or the court, or when he/she has not yet taken the decision to denounce the violence, but his/her need for safety is big and urgent. While in the second case this is a claim completed by the victim and the police assists him/her in the process by putting in disposition a ready-made format. This might be the case when the court is far or the victim needs assistance in this phase. Towards trial, the effects are different from one to the other.

If the request is presented by the police/prosecutor, the victim's withdrawal does not stop the process.

The elements related to the claim besides the PCC one, are listed in article 14 of the LDV. This include: personal date on the family or relative relations between the victim and the abuser; clear description of facts and circumstances where the domestic violence act has happened, including the reasons that clarify the violation of the victim's safety, health or welfare by the defendant (abuser); specific protection measures requested; signature of the applicant.

Among others, the manual of the judge on issuing protection order, prepared by the OSCE presents a detailed and structured analysis on the procedure followed for a court hearing session, possible measures under the LDV and the caution the court should show in giving the right measure for the concrete case, relating this measure even with concrete solution that do not exist in reality. For this, an updated list of these services should be available to the court. Thus, for example there is a possibility to decide for the abuser to participate in a rehabilitation program, which was not possible before due to the lack of programs. After the filing of the claim, the court will review the claims of the parties for issuing the protection order, allowing obtaining written and material evidence and/or the

³⁸ In these cases the court decides to review the request within 15 days from the date of receipt and at the end of the review, the court decides:a) confirmation of interruption of the protection order on the date its effects conclude; or b) continuing the effects of the decision for issuing a PO if the criteria defined in the paragraph 17 of the LDV are met.

hearing of witnesses or experts. It may happen that the abuser in the quality of civil defendant does not attend. The court proceeds with the hearing even in his/her absence. The session concludes with the court decision, which issues or not the protection order based on the understanding it creates from the judicial review³⁹

The court taxes and fees for the court expenses, as well as those for the bailiff services for the PO/IPO proceedings do not apply to the applicant. The court expenses when a PO/IPO is issued are charged to party exercising domestic violence.

The victims of domestic violence are entitled to free legal assistance. The judicial and administrative proceedings are often too complex and the victims need legal assistance and advice to exercise their rights. This is an immediate right. The applicant is assisted by a lawyer free of charge in any link of the process, from designing the claim, preparing the acts to submitting them to the court. The National Bar Association and the State Commission for Legal Assistance inform the courts on the list of lawyers authorized to provide free legal assistance.

2.2 The role of Police in treating the cases of domestic violence under the LDV

The victims and anyone that witnesses a case of domestic violence address mainly to the police stations in writing or verbally. Therefore the police are almost "the first" to be informed. In the cases requiring immediate assistance, the request for the PO/IPO can be completed and submitted to the nearest police station and the police officer shall act in compliance with the Law "On the State Police", and if the case, even by submitting the PO/IPO request to the court.

The police duties impacting the court hearing can be classified according to the time of intervention/contribute in three stages: before the trial, after the trial, after the issuance of POs/IPOs. However, in order to have a comprehensive view, despite the division and structuring provided in this manual, the duties of the police should be thoroughly recognized as they are part of the same process.

39 See "Manual of the Judge on issuing protection orders" For the content of this manual, see <http://www.osce.org/sq/albania/33045>



2.2.1 Before the trial

Being a responsible authority, the police have the obligation to respond to any report made by the victim or other persons in cases of violence or threat to violence. If there is a doubt that the abuser has threatened to or has committed domestic violence, the police authorities will conduct the immediate ascertainment.

The police authorities have the duty to record the relevant ascertainment in a written report and begin main investigations. The victim is informed by the police about the relevant number of the reported incident. The police register every case denounced (even when it does not start the main investigations) and a copy is given to the victim or the person accompanying him/her.

As a responsible authority, the police use reasonable measures to protect the victim and to prevent further violence by:

- a. Informing the victim or the person accompanying her for the ways that can be followed and the measures that shall be taken according to the legislation in force, as well as on the institutions he/she should address to. The police officer shall evaluate the specific circumstances of each case and choose whether the completion of the claim should be left to the victim's will, or to submit it by him/herself when the case circumstances are such that cannot be left on the victim's free will. For the police officer it is important to know that the effects of submitting the claim by the victim or police are crucial or the continuation of the court trial.
- b. Informing the victim or the person accompanying him/her about the existing social services and accompanying him/her to the relative centres or institutions. For this the police should dispose an updated list of licensed NGOs that provide their services throughout the country or that are closer to the residence/accommodation of the victim (please refer to the Annex on existing social services for each district);
- c. Providing transportation for the victim and the person accompanying him/her to the medical or social service centres;
- d. Putting in disposition a police officer in cases of danger to life.

The police officer shall inform and advise the victim on the possibilities to receive a PO/IPO. The State Police Staff has a legal obligation to guide and inform the victim of domestic violence on the legal processes (civil, penal) that can be initiated on the fact that he/she has been violated.

When **immediate assistance is required**, the claim for a PO/IPO can be completed and submitted to the nearest police station and the police officer acts in accordance with the Law "On the State Police".

In the context of reasonable measures to protect the victim [LDV, Article 24] with regards to acts or omissions that are classified as criminal offenses, the judicial police, being a proceeding authority, has the right to initiate the penal proceeding on its initiative [see part III of this manual].

The police officers, who become aware due to their duty or the authority in charge of implementing the LDV and do act to implement it, are charged with administrative and/or penal responsibilities, applying the sanctions defined in the article 248 and 251 of the Penal Code.

2.2.2. Appearance in Court and during the trial

Although often the victim takes the initial courage to file a report, even in cases of severe and repeated violence, he/she tends to withdraw from the trial. In these cases **it is the duty of the police to file itself a request for PO/IPO**. The request for a protection order can be submitted at any time. When the request has been submitted by the police/prosecutor, if the victim withdraws from the process, the commenced proceeding continues.

The police reports are evidence in the court trial [LDV, Article 15]; therefore they should be recorded according to the legal provisions in force. When from the data of the claim results that the police station have written evidence on the domestic violence, they immediately issue a certified copy (stamped copy) based on the request submitted by the applicant or the court itself. In case the abovementioned document is not issued, the responsible person will be liable under the provisions of the Administrative Procedure Code.

During the trial for issuing the protection order, the court calls and hears the police representatives [LDV, Article 16/2 ç], which accordingly submit evidence and facts.

According to the LDV, within 24 hours from issuing a PO/IPO, the court sends a copy to the police station where the victims and the other persons mentioned in the decision reside temporarily or permanently.

The issuance of a PO/IPO by court decision does not prohibit the start of penal proceedings concerning acts or omissions that are classified as criminal offenses. This often is very important as a protection mechanism for the victims. Therefore, the police structures are obligated to keep the relative records and to start temporarily the procedure for prosecution, as well as the procedures for issuing the protection orders.

2.2.3 After the trial

As a responsible authority, the police have the obligation to respond to every report made by the victim or other persons in cases of a PO/IPO violation. In case the subjects to whom the decision is communicated choose to not execute it, it is important for the police to act quickly as this is a very dangerous moment for the victims.



Normally the victim possesses two original copies of the PO/IPO in order to make one available to the police the moment it is needed. If there is doubt that the abuser has violated the protection orders, issued by court decision, the police authorities shall do immediate ascertainment. If there is a protection order, the police officer shall read the order carefully to identify what protection is provided to the victim and what restrictions/obligations are defined for the abuser.

The police staff takes all the necessary measure for the immediate and constant execution of the protection measures set under Article 10 of the LDV even for the case of POs and IPOs. Based on the measures provided, the police ensure to coordinate with the other links of the mechanism.

The IPO is final and is considered as an executive title from the moment it is declared (or notified to the parties).
The PO is considered as an executive title after it becomes a final verdict.

However, the court issues an execution order at the same time of issuing the protection order. If during this period is found that there is domestic violence, the police officers may act according to the legal obligations under the Law "On State Police"; request an IPO or/and commence the criminal proceeding for the criminal offence of "domestic violence", and operating with the tools recognized by the law for these situations, in order to protect the victim's safety and life.

Against the persons responsible for not implementing the court decision (institutions and the defendant) are applied the relative sanctions provided in the Articles 321 of the Penal Code, as amended on 2012⁴⁰ concerning "Actions contrary to the court decision" and 320/a⁴¹, as well as sanctions provided by Article 606/3 of the Code of Civil Procedure.

40 Article 321 of the PC: **Actions contrary to the Court Decision**" (Added paragraph with the Law No. 23/2012, dated 1.3.2012, article 44: "Committing actions contrary to the court decisions with respect to obligations arising from additional punishment given by the court, constitutes a criminal offense and is punished by fine or by imprisonment up to two years. Acting contrary to the court decision on the obligations arising from the protection orders given by court, constitutes a criminal offense and is punished by imprisonment up to two years.

41 Article 320/a "**Not executing a court decision without good cause**": (Amended by Law No. 8733/24.1.2001, Article 78). Not executing a penal or civil decision of the court without a good cause by the person in charge of executing the decision, constitutes a criminal offense and is punished by fine or imprisonment up to two years. When this is done for profiting reasons or any other given or promised interest, as well as for favoring persons that are interested to have the decision not executed, is punished by fine or imprisonment up to three years.



PART III

DOMESTIC VIOLENCE AS A CRIMINAL OFFENSE AND THE ROLE OF POLICE



3.1 The updates of the penal code on the domestic violence

The Penal Code has introduced a new gender dimension⁴². For the first time, amendments and additions made almost consecutively in 2012 and 2013 provide and punish the domestic violence as a specific criminal offense and qualify other criminal offenses where the author and the victim are family members.

Some of the most important articles of the penal code to be considered, although given in this manual and treated in a non - exhaustive way⁴³, as articles punishing the domestic violence, are as follows:

- Article 130/a of the Penal Code provides that: "**Beating, as well as any act of violence** against a person who is a spouse, former spouse, cohabitant or former cohabitant, close relative or close in - law with the offender, violating his/her physical, psycho - social and economic integrity, is punished by imprisonment up to two years. **A serious threat to death or serious injury** against a person who is a spouse, former spouse, cohabitant o former cohabitant, close relative or close in - law with the offender, violating his/her psychical integrity, is punished by imprisonment up to 3 years. **Intentional injury** against a person who is a spouse, former spouse, cohabitant o former cohabitant, close relative or close in - law with the offender, causing a temporary inability to work for more than 9 days, is punished by imprisonment up to 5 years. **The same offenses committed repeatedly or in presence of children** are punished by imprisonment from 1 to 5 years".

⁴² Article 130/a PC, Law No. 23/2012 and Law No. 144/2013 "On some amendments and changes in the Law No. 7895/27.1.1995, "Penal Code of the Republic of Albania", amended.

⁴³ Termination of the pregnancy without the consent of the woman (article 93); Article 95: Providing the tools to terminate a pregnancy; Denial of assistance (Article 97); Kidnapping (Articled 109, 109/a); Trespassing (Article 112); Violation of privacy (Article 121); Abandonment (Article 124); Not giving living means (Article 125); Unfair taking of the child (Article 127).

- **For murder due to domestic relations,** Article 79/c of the Penal Code provides that: "Premeditated murder of a person that is a spouse, former spouse, cohabitant or former cohabitant, close relative or close in - law to the offender is punished by imprisonment of not less than 20 years or a life imprisonment".
- Article 88 of the Penal code punishes **the criminal offense of serious intentional injury** and its second paragraph provides that: "When the same act has been committed against several persons or against the person that is a spouse, former spouse, cohabitant or former cohabitant, close relative or close in - law to the offender, or when it caused death, it is punished by imprisonment from five to fifteen years".
- Paragraph 99 of the Penal Code on **causing suicide** provides that: "Causing a person to suicide or attempt suicide by systematically maltreating or by other systematic behaviours which seriously affect the dignity of the person, committed by the person from whom the victim depends or by the person with whom the victim is related by family or cohabiting, is punishable by imprisonment from three to seven years.
- Article 102 of the Penal Code **on non-consensual sexual relations with adults** sentences: "Performing non - consensual sexual relations with adults or among spouses or cohabitating persons without the consent of one of them⁴⁴".
- Article 108 of the Penal Code **on immoral acts** provides that: "Conducting immoral acts with minors under the age of fourteen years old, is punished by imprisonment from three to seven years. But when this offense is conducted on a minor that is under the age of fourteen years old and with whom the offender has a familial relation, shall be punished by imprisonment from five to ten years".
- Article 114 of the Penal Code **on exploitation of prostitution** provides that: "inducing, mediating or reward for exercising prostitution is punishable by imprisonment from two to five years. The same offence, when conducted with minors, against some persons, persons with close kinship, in - law, guardianship relations, by benefitting from official relations, or conducted in collaboration or more than once, or by persons in charge of state and public functions, it shall be punished by imprisonment from seven to fifteen years".

⁴⁴ We emphasize that the prosecution for this offense may start only on complain of the victim, who can withdraw it at any phase of the proceeding;



- Article 121/a of the Penal Code on prosecution provides that: "Threatening or harassing a person through repeated actions, with the intention to cause a consistent and severe situation of anxiety or fear for personal safety, the safety of a relative or a person to whom is spiritually related, or to force him/her change his/her way of living, is punished by imprisonment from six months to six years. When this offense is conducted by former spouses, former cohabitant or the person having spiritual relations with the victim, the punishment increases by one -third of the punishment given. When this offense is conducted against a minor, pregnant woman or a person unable to defend himself, as well as when conducted by a masked person or is associated by holding or using a weapon, the punishment increases up to one - half of the punishment given".

Success case

Although the criminal offense of "prosecution" has been included only recently in the provisions of the Penal Code, the judicial practice has received the first cases. Thus, by the Court Decision NO. 1084/09.09.2013, the District Court of Tirana has pleaded guilty the defendant Q.H. for committing the criminal offense of "Prosecution" provided by Article 121/a of the Penal Code. The factual circumstances conclude that the citizen L.G. has met the citizen Q.H. 12 years ago in random circumstances. She has worked around two years as a salesperson in Lapraka neighbourhood and during this period that had a relationship which was discontinued after two years as the denunciator has left that job and started to work as waitress in one bar of the capital. According to the denunciator, due to termination of the relations with the defendant, the latter threatens and offends her continuously by visiting her in her workplace, as well as pressurizes her in various forms of psychological and physical violation, aiming to have back the relationship. The court deems that the prosecution body has evaluated the case correctly, as it is deemed that the actions of the defendant Q.H. contain the full elements of the criminal offense of "Prosecution", provided by Article 121/a of the Penal Code, both the ones related to the object and the objective side of the criminal offense, as well as the ones related to the subjects and her subjective side.

- Article 130 of the Penal Code on forcing or impeding to cohabit, to marry or to divorce⁴⁵ provides that: "Forcing or impeding to commence or continue a cohabitation, or forcing to enter a marriage or to divorce, is a criminal offense and is punished by fine or imprisonment up to three months. Intentional request to an adult or child to leave the Republic of Albania in order to force him/her to marriage is a criminal offence and is punished by fine or imprisonment up to three months".

⁴⁵ We emphasize that the prosecution for this offense may start only on complain of the victim, who can withdraw it at any phase of the proceeding.

- Article 321 of the Penal Code on **action contrary to the court decision** states that: "Committing actions contrary to the court decisions with respect to obligations arising from additional punishment given by the court, constitutes a criminal offense and is punished by fine or by imprisonment up to two years. Acting contrary to the court decision on the obligations arising from the protection orders given by court, constitutes a criminal offense and is punished by imprisonment up to two years".

According to Article 130/a of the PC, for the "domestic violence" to be qualified as a criminal offence, it should meet the conditions for penal liability well-known by the penal theory and legislation, such as **object, objective side, subject and subjective side. The penal responsibility is a legal obligation for everyone who violates a penal normative regulation** to submit to the punitive and preventive legal consequences.

Given the importance of the penal proceeding authorities during the entire activity of penal proceeding, the high intensity of limiting the fundamental rights and freedoms of the submitted subjects and the need to develop a proceeding that is fair, regular and fully compliant to the Law, the Penal code has provided some cumulative conditions to be met in every penal proceeding. The interpretation of the above provision shows that the lawmaker has provided in the Article 130/a of the PC a special legal protection for two objectives: provide protection of the family relations and protect the person's health, integrity etc. from the criminal actions or omission. From the objective side, the domestic violence is realized mainly through active actions (hitting with the fist, kicking etc.) that violate the physical and psychological integrity of the victim, causing physical and psychological traumas.

The subject of this criminal offence (besides the age for penal liability and being accountable) has special familial relations with the victim. From the subjective side, the criminal offense is intentional, direct or indirect.

After the adoption of the Law "On measures against domestic violence", these penal provisions empower the range of legal instruments to fight effectively the domestic violence, by addressing the protection to a penal provision dedicated to these situations. In addition, this change strengthens also the protection of women and children, who are the most violated subjects in the family relations.

Aiming a special protection for the family and its members, the Penal Code provides that "the normalization of relations between the offender and the victim shall not be considered as a mitigation circumstance if the person has committed a criminal offence towards children or a criminal offence of domestic violence [Article 48 of the PC].



Article 50 of the Penal Code provides a “new aggravating” circumstance. “Committing a criminal offense during or after receiving the court order for protection from domestic violence [Article 50/e/1,2013] constitutes an aggravating circumstance. An aggravating circumstance is provided even when “the criminal offense has been committed benefiting from the familial relationships of cohabitating, friendship, welcoming” [Article 50/g, 2013].

Article 59/a on “Home arrest” provides that “In the circumstances provided in letters “a”⁴⁶ and “b”⁴⁷ of the first paragraph of this Article, the Court cannot decide on the punishment of home arrest for the detainees that have committed a crime against the spouse, cohabitant or his/her child”.

Another important aspect of the new gender dimension of this code is introduced even with the Annex 65/a, which guarantees the safety period under the alternatives to imprisonment. Therefore, the court is authorised to determine a period of safety during which the application of Article 64 of the Penal Code (early release on parole) cannot be applied for cases when the criminal offense is committed against children, pregnant women or person that due to various reasons cannot protect themselves; **has been committed by taking advantage of the familial or cohabitation relationship**, as well as when the commitment of the criminal offense has been driven by motives related to gender, race, religion, nationality, language spoken, political, religious or social belief. Thus, this can be seen as a very important measure against discrimination, which serves to prevent discrimination and protect from domestic violence.

3.2 Denounce of the criminal offense of domestic violence

The police has various means and ways to be informed directly on the criminal offenses committed, including here the family violence. The nature of its job makes it in general the first to be informed.

The information on the criminal offense can also come from other sources. All the links of the referral system, including also the coordinator, inform the police on the domestic violence, even when the action/omission constitutes or does not constitute a criminal offence. When the information on the criminal offence is done by “others”, then this is the case of denouncement of criminal offense.

⁴⁶ For pregnant women or mother of children under the age of 10 years living with her.

⁴⁷ For fathers that have parental responsibility for the child under the age of 10 years living with him, when the mother has died or is incapable of taking care of the child.

"According to Article 130/a of the PC, the domestic violence is a criminal offense that is prosecuted ex officio. Therefore, in this case neither the denouncement nor the authorization for proceeding from the victim is necessary as the prosecution is done ex officio.

The denouncement is done in the prosecution office or to the judicial police officer by:

- Public servants, when during the exercise of their duties, functions or services, they are made aware of the criminal offense of domestic violence [Article 281 of the PPC];
- The health personnel, who are legally bound to denounce, shall submit it within 48 hours [Article 282 of the PPC];
- Every citizen who is made aware on a criminal offense of domestic violence, denounces in written or verbally, personally or through a representative to the judicial police or prosecutor;
- Even the victim submits a written or verbal claim on the criminal offense of domestic violence to the prosecutor office or judicial police through a declaration, personally or through the special representative. Attention: for the criminal offense of "domestic violence", the prosecution does not necessarily require the victim to denounce or authorise the prosecution, as it is exercised ex officio. However, receiving the denouncement from the victim is important, as the data that can be obtained at this moment should be as precise as possible so they can be verified during the preliminary investigations.

Our procedural Law treats the "denouncement" as an act of procedural importance, as it serves as the basis for commencing the prosecution. But **it needs to be emphasized that the denouncement is not evidence**, therefore every data obtained by it should be verified in order to ensure evidence or sources of evidence.

Attention! In reference to articles 59 and 284 of the PPC, under Article 130/a of the PC, the criminal offense of "domestic violence" is not among those offenses that are prosecuted on request of the denouncing victim.

3.3 Police/Judicial police as a subject of penal proceeding

The PPC lists the "Judicial Police"⁴⁸ among the subjects of criminal proceedings. In exercising its duties and functions, the judicial police depend from and is directed and controlled by the prosecutor.

⁴⁸ PPC and Law No. 8677/2.11.2000 "On the organization and operation of the judicial police" (amended by Law No. 9241/10.6.2004; and by Law No.10301/15.4.2010) do not give a precise definition of what the term "judicial police" represents.



According to the Law No. 9749, dated 04.06.2007 "On state police", each police officer has the attributes of judicial police under the PPC and the Law on the organization and functioning of this police [Article 4/3 of this Law].

Referring to the content of these two laws, it is noticed that the "judicial police" is one of the subjects of penal proceeding and in exercising its functions, it becomes aware of the criminal offense, takes care to prevent further consequences of the criminal offenses, searches for the authors of criminal offenses, as well as performs any other procedural action required by the Law⁴⁹. According to the Law "On State Police" (2007), even the police with all its structures is responsible to protect the people's life, safety, prevent, discover and investigate criminal offenses and their authors in compliance with the penal law and the Penal Procedure Law [Article 4].

On becoming aware on the criminal offense of domestic violence, on his initiative or the notice received by others, **the police/judicial police officer** acts immediately and has the obligation to:

- Inform immediately the prosecutor on the criminal offense. In such cases there is no time to lose and the prosecutor should be informed immediately on the criminal offense [Article 287 of the PPC]. This procedural moment is important as determines the commencement of the penal proceeding by legitimating the judicial office and the prosecution office to collect useful evidence and data for investigating the criminal offense;
- Document every action.

What is important to be emphasized is that the judicial police can commence the criminal proceeding even on its initiative, regardless of the victim's will to denounce or not, because, as mentioned before, this is an offense prosecuted ex officio.

As the activity initiated by the judicial police is controlled and directed by the prosecutor, the police has the obligation to inform the prosecutor immediately on the arrest on the spot and detaining the suspect [Article 255 of the PPC], urgent checks and confiscation, requesting their validation [articles 300, 301 of the PPC].

The judicial police may investigate, provide sources of evidence and collect the necessary data by submitting the case to the prosecutor after completing all the possible investigations. In this regards, the actions and positioning of the judicial police have a primary importance, especially for the criminal offenses of "domestic violence".

⁴⁹ Article 3 and 4 of the Law No.8677, dated 2.11.2000 "On the Organization and Functioning of the Judicial Police",as amended.

The judicial police conducts urgent and necessary investigation actions such as:

- Preserve the scene (see part IV of the manual);
- Searches for, fixes, preserves the items and traces of the criminal offense (see part IV of this manual);
- When it is the case, confiscates material evidence or items related to the violence by documenting them in the records and informs the prosecutor immediately;
- Conducts the mandatory escort of the suspect for the criminal offense of violence. He informs the prosecutor on the escort and release, who verifies the regularity of the action;
- Detains the person suspected as abuser in the family when he/she is suspected of beating, serious threatening to death, murder or serious injury and there is a risk of escaping;
- the detention is carried out by order of the prosecutor;
 - Exception: in urgent cases, when the police cannot wait for the order, the detention is done on their initiative. The detention act shows the emergency situation [Article 253 of the PPC].
- Performs a mandatory arrest of whoever is caught on the act when the domestic violence is intentionally committed or attempted, when it is repeated or in presence of children, because in this case the Law provides the punishment of imprisonment of not less than five years. The arrest in the act is not a safety measure, but an action initiated by the proceeding authority. The court decides on the legality of this action [Article 251 of the PPC]. In this case the person should be put in the disposition of the prosecutor as soon as possible.
- In case of the very necessity, because of the importance of the fact or dangerousness of the offender, which is motivated by a special act, the officers and agents of the judicial police have the right to arrest anyone caught in the act, even when the circumstances of the above paragraph do not exist [Article 251/3 of the PPC].

The police officer should focus on the victim of violence, his/her protection and treatment with dignity.

After the intervention of the prosecutor, on his authorization, the judicial police has the right to conduct all the investigation acts ordered or delegated by him/her. The delegation of these duties is done verbally or in writing. The investigation act is the activity that the proceeding authority performs to discover facts, circumstance, authors and evidence related to the domestic violence as a criminal offense.

As a result of the investigation actions, certain acts are “produced” specific acts, named procedural acts. These procedural acts document the investigation activity conducted by the judicial police, under the control and direction of the prosecution office, as well as by the prosecutor of the criminal case himself.



Attention! It should be noted that the judicial police should be careful in documenting the investigation actions, as disregarding the form of procedural act is sanctioned by the invalidity of this act.

The procedural law provides that in exercising their functions, the judicial police and the prosecutor office document all the investigation actions conducted by them. Based on Article 303 of the PPC, the Police has the obligation to keep records on:

- a. Denunciations and complaints submitted verbally;
- b. Summarised data and statements obtained by the person under investigation;
- c. Data obtained by persons who can explain useful circumstances for the target of investigation;
- d. Surveys, recognitions, inspections and confiscations;
- e. Acts for the identification and recognition of the person under investigation and for imposing the confiscations;
- f. Investigation actions delegated by the state prosecutor.

The documentation of the judicial police actions, material evidence and items related to the criminal offense are made available to the prosecutor. The success of a criminal proceeding is closely related to the efficiency of collaboration between the judicial police and the prosecutor office.



PART IV:

STEP BY STEP: POLICE FOLLOWING UP THE CASE OF DOMESTIC VIOLENCE



Whenever there is domestic violence, whether it constitutes or it does not constitute a criminal offense, there are some preliminary actions and procedures that are almost the same. In both cases it happens that the prosecutor and the police become aware on domestic violence on their own initiative or by the report/denouncement done by others.

Meaning of violence cases with/without scene (under DoCM No. 334, dated 17.2.2011)

By scene is meant the place where the domestic violence act or the domestic violence as a criminal offense has happened, as well as the place where there are discovered circumstances related to it or its consequences, regardless of the distance between them. The examination of the scene is an irreplaceable investigation action used by the proceeding authority to:

- Check directly the settings where the domestic violence happened;
- Discover, collect and fix traces and material evidence;
- Clarify the mechanism of the event and important circumstances to the case.

The examination is the first investigation action laying the foundations for the future investigation.

Any institution that becomes aware on domestic violence, either from the victim or other persons, should be able to conduct a preliminary analysis on whether the intervention is urgent or not.

Attention! If the intervention is urgent, there is no need for the victim to approve the intervention, but the case is referred to the coordinator of the referral system and the police. If the intervention is not urgent, notifying the links of the referral system requires the victim's consent.

When urgent intervention is required, any institution (including police) that becomes aware on the case of domestic violence informs immediately the local coordinator. The police becomes aware of the case directly or from the referral system. As a rule, the coordinator arrives on the scene along with the police.

Attention! For emergency cases, the local coordinator and the police representative conduct a preliminary analysis of the case.

If there is no scene, then it is the case of violence acts that do not have a scene for examination. This means that the police should not undertake the procedural action of the examination as the "scene" does not meet the conditions to give information on traces, material evidence, etc.

Attention! This does not mean that there is no analysis for the domestic violence case. This does not mean that we are dealing with an offense has a low risk or a lower risk than the case with a scene.

Therefore, except the actions closely related to the scene, everything else should go through the same serious analysis. So, except the examination of the scene, every other procedural action is the same as in cases with a scene. Therefore, the general principles are valid.

In such cases, the victim, injured persons, goes directly to the police authorities and the self-reporting of the injured/violated person, signs of physical violence, consequences of the psychological violence and the trauma displayed in actions and omissions are live evidence that obligate the police authorities to undertake the procedural actions provided by the law, by assisting in services according to the case and legal protection through the request for an PO/IPO according to the case, etc.

We repeat! Be careful in informing the prosecutor (see part III of the manual);

Then, depending on the nature of crime, and the direct or delegated discretion, the police officer conducts actions provided by the law, such as:

- Ask the injured person and the persons that might be aware of the fact;



- Provide/issue a decision/forensic expertise;
- Submit a request to the court for a potential check of the residence aiming to find traces of the crime (crime weapon, biological evidence, etc.).

If the above actions conclude that the crime has happened and the injured person attributes this to a specific person, the following action may be carried out:

- If the conditions exist, propose to undertake security measures or issue a protection order;
- The further actions are the routine actions of completing the evidence framework and propulsive acts that take the proceeding forward, up to taking a decision of sending the case to the court or closing the case.

1. Preliminary analysis of the case of domestic violence

What does the case preliminary analysis include? What does it consist of?

The case analysis is a complex of actions and acts aiming to prevent the violence, stop it from further advancing, carrying out the legal procedural actions and adequate measures to assist the victim, measures against the abuser, protection of children, coordination with the structures etc.

To make a proper analysis, resulting in conclusions on the current and the perspective, for this case and the typology of violence cases in general, the following should be done:

- Evaluate the level of violence and risk factors;
- Hold an one to one interview (separate) with the victim, abuser, as well as other family members in order to make a correct analysis;
- Document facts, complete the standard forms;
- Accompany the victim to the primary health institutions (if necessary);
- Transport the victim/s of violence in a safe place;
- Define if are needed additional members and resource for the first and/or immediate intervention.

DoCM No. 265/12.04.2012 emphasises also that in case of children at risk, when the Multidisciplinary Technical Team designs an Individual Plan for the Child Protection, but the case needs are not completely fulfilled by the existing services, the CPU informs and seeks the collaboration of the District CRU to convene the meeting of the Steering Committee according to paragraph 5, letter "b" of this decision for:

- a. Protecting the Child;
- b. Periodic meeting and reviewing the Individual Plan for the Child Protection, adapting to the changing needs of the child and the family;
- c. Approving the closure of the case when deemed that the child is not at risk.

2. Assessment of risk factors

- **The safety of the victims should be the core of any intervention against domestic violence.** All the authorities, not only the police, assess and design efficiently a plan to manage the safety risk a specific victim faces in case to case situations, based on the standardized procedures and in collaboration and combination with each other.
- It is very important that all the risk assessments and their management examine the probability of repeated violence, especially the violence causing death, and adequately assess the gravity of the situation.
- The risk assessment should be carried out with the goal to manage the identified risk by designing a safety plan for the victims, in order to guarantee coordinated safety and support, if needed. It is very important that the measures taken to protect the victim do not lead to the extreme consequences of its reactivation.

Attention! The assessment of violence and its risk depends on the type of violence: harshness and aggressiveness of the violence, tools used, the situation of the victim and abuser, repetition, consequence, frequency up to making it chronic, conditions of the victim. Be careful in assessing the eminent risks threatening the victim.

More specifically:

- **The risk from firearms must be assessed.** Measures should be taken to confiscate them. Remember that in Albania there are still illegal weapons remaining from the opening of the ammunition depots. Reliable information on the authors keeping firearms must be taken in consideration. The authors keeping firearms not only constitutes a powerful tool to exercise control on the victims, but also increases the risk of murder. This happens especially in situations after the conflict or in places/areas where the authors have more access to these illegal or legal weapons. But this does not exclude also the other places.



- **The presence of a legal or illegal firearm in the residence where the incident happens is a sign of an extreme risk.**
- **Care should be taken in the first moments of confiscating the weapon.** This should be done based on a regular legal documentation. Among the protective measures, the court decision provides the suspension of the weapon permit up to the expiry of the protection order, as well as informing the respective administrative authority if the weapon has been confiscated and the person has a permit to carry a weapon.
- In case of a permit to carry a weapon, before returning the confiscated weapon, it should be checked if there is a protection order against the person, and if this is the case, the weapon should not be returned until the expiry of the protection order⁵⁰. Thus, the confiscated weapon is returned only if the person has a permit to carry weapons and only after the deadline defined in the protection orders has expired.
- Assess the risk from other weapons.

It is very important to get information and consider all the weapons that can be used in serious cases of violence, mainly knifes used for fighting, ashes, cutting tools (light and small weapons), etc. The authorities and the police are encouraged to take into account as much as possible the possibility the abuser has to keep or access such weapons.

- Assess the risk that might arise after denouncing the violence, after issuing a PO or an IPO, after serving the sentence, or during and after the process of divorce because of violence.

The risks that might emerge in all the investigation phases and enforcement of the protection measures should be objectively assessed. For example, when issuing a PO or IPO, regardless of the punishment and in cases of serving the sentence after the penal conviction, the authorities, and especially the police, should implement a plan of measures that might be necessary to enable the immediate confiscation of firearms and munition. Often the abuser increases the level of violence at the moment of divorce, being afraid of losing control on the victim. The international experience has showed aggressiveness with dramatic consequences exactly after the civil measures or the penal conviction terminate.

- Assess the risk that arises when the victims address to an NGO or state structures providing services for victims of domestic violence.

⁵⁰ According to the Penal Procedure Code, Article 217 and Article 10 of the Law No. 9669, dated 18.12.2006 "On measures against domestic violence".

- **The risk of the abuser murdering the victim is high and should be considered very seriously when the abuser: has access to weapons of any type, has threatened the victim to death, uses drugs and/or alcohol, is recognized as a violent person even outside the family.**

3. When the call for help in cases of domestic violence reaches the emergency number 129

The person who first receives the phone call has a critical role in receiving, transmitting and recording the reports of domestic violence. These persons should be aware on the potential risk the domestic violence cases have and should be trained year after year on this.

The police stations everywhere **should record the data of the “case report”** (applying for all the criminal offenses, including even the cases of domestic violence) **in the TIMS system⁵¹** established in all the Police Stations. Every police officer having access to the TIMS can carry out the necessary verifications and see if the abuser has previous recorded cases of domestic violence.

*The possibility to apply additional data in the section “Case report” after the issuance of the PO/IPO and inserting these additional data in TIMS, in order to inform the police officers at any moment on the recorded active IPOs/POs based on the name of the abuser and the victim might be taking into consideration.

A person receiving a report for domestic violence should immediately sent the police officer to the scene for any incident.

Attention! The phone calls for domestic violence should be treated with the same priority as all the calls for life at risk.

Preferably there should be two police officers going to the reported scene. Even if the victim calls again and cancels the request for help, the police officer (operator) receiving the phone call shall not call the police officers back, but inform them on the second phone call and advise they proceed to the scene, check it and see if there is need for further investigation or care.

⁵¹ The TIMS System, established with the assistance of the U.S. Government realizes a series of computerized services for the Albanian police.



4. Procedure to be followed by the operator (129)

During the first phone call for help, the person receiving the call should attempt to gather as much information as possible on the incident and on previous stories among the involved parties. The operator should communicate this information to the other officers going to the scene. The below information should be obtained based on importance for as long as the time and circumstances allow:

Data should be obtained for the below situations:

- Nature of the incident?
- Address?
- Number of building/apartment
- Is there need for an ambulance?
- Are weapons involved in the fight? If yes, what kind of weapons?
- A phone number of the caller
- Is the suspect present? Name of the suspect?
- Description of the suspect, and if not present, where might he/she be?
- Is the suspect under the effect of drugs or alcohol? If yes, what kind of substance?
- Are children present in the scene?
- Does the victim have a protection order against the suspect?
- Is the caller the victim or a witness?
- Has the victim been sexually attacked?

Attention! The operator should not ask the victim if she wants to report, denounce or prosecute the case. Every type of comments on legal actions in the conversation with the victim is inappropriate.

Attention! The operator should collect as much data as possible from the phone call and forward it to his/her colleagues, because in cases of domestic violence, the life of his/her colleagues is at risk from the condition of the abuser, the same as the victim's life.

The main concern of the operator receiving the phone call should be to protect the life of the victim of domestic violence, even when the risk is immediate or distant. If the person calling is the victim itself, the operator should try to keep him/her on the line as long as possible and inform that the police officers are on the way and that they should reach at any moment. The operator should advise the victim to secure the surrounding environment and stay on the line until the police officers reach, wait in the neighbours' house or to the nearest shop, or to just leave the house.

If the phone call interrupts immediately, the chances are that the abuser is back. The operator should be careful in taking the information by asking the victim to answer with a "Yes" or a "No" on the questions, or decide on another code. For example, if the abuser is back, the victim should reply with a number from 1 to 5 on how at risk she feels, where 5 is the worst.

If the person calling is a witness of a domestic violence incident that is happening, the operator should keep the person as long as possible in order to receive the information needed and at the same time, forward it to the police officers that are going to the scene.

If the operator has access to the police records, he/she should see them in order to identify:

- How many calls there are from the same address;
- Is there any protection order;
- Are there warnings;
- And if the suspect is on house arrest or previously convicted.

This information should be immediately forwarded to the police officers going to the scene. The operators should continuously check on the safety of the police officers who went to the scene and the situation.

Attention! All the phone calls received from 129 should be kept and recorded on file as the registrations might be fundamental evidence in criminal cases.

The police officers should be equipped with special tools in order to have access and review the registrations of 129 when a criminal case is still to be solved.

5. Approaching the scene

At least two police officers, if possible of different genders, should go to the scene after a phone call for a violence case that is happening or just happened.

The police officers should take protective precautions when approaching the incident scene: parking far from the residence; wait for support when needed and check around the house/residence for any potential threat.



Some general rules:

- Attention should be paid to each reporting or phone call, regardless of when the violence act has happened;
- Before reaching to the scene, attention should be paid to properly take the information available from the operator of the Direction and Command Room who received the phone call or by any person that has called.
- Measures should be taken to adapt the reaction based on the intensity of the phone call communicated by the direction and command room.

Attention! In no case should the police officers reveal the name of the person that called the direction and command room or any other report.

- The police officers should wear a police uniform or visible signs that prove they are State Police staff.
- The police officers should keep continuous contacts with the Direction and Command Room, informing them when reaching to the scene.
- The police officers should react immediately after receiving the phone call and contact the coordinator of the referral system.

Attention! The coordinator of the referral system, who according to the law should be employed in the municipalities and communes, often does not exist, or even when existing, he/she is not working on later hours of night or days off. Therefore the police officers should react immediately in cases of domestic violence as for any other crime.

- As the police officers are the first to approach the scene, they should assess every circumstance for the safety of themselves, the victim and public. The police officers might face serious unexpected events.
- Care should be taken to not damage the scene.
- The police officers should respect the rules for finding, maintaining and administering material evidence.

In cases when calling the violence coordinator to the scene is possible, then:

- The police officers should coordinate with the coordinator and the other stakeholders of the referral system to provide assistance to the victim and realise the duties arising from the incident.

- The police officers should coordinate with the coordinator on the further steps to solve the situation;
- The police officers should ensure to calm the victim and collaborate with him/her to ensure his/her legal protection etc.

While going and approaching the scene/residence:

- The police officers should assess if it is a risky moment requiring specific care.

Attention! By going to the scene in a team of two or more persons is safer.

Attention! The alarm and the emergency lights of the vehicle should not be used.

- **Exception 1:** they can be used only in cases when it is necessary for the vehicles to go faster, but they should be turned off when approaching the scene.
- **Exception 2:** The emergency lights and the horn of the vehicle can be used only when the abuser is present and the situation is still risky.

Care in parking the vehicle:

- The police cars shall not be parked in front of the house or in a place where they block the fast movement of these vehicles or other vehicles.
- The police officers should take care that their vehicles do not cause traffic confusion or jam, as this will create the premises of distracting from the main problem for which they are there.

Attention! The terrain should be “photographed” with eyes and mind!

- Before the police officers approach the building, a quick observation should be done to check for the possibility of being shot or hit by other hard tools.
- The police officers should be vigilant on the persons that might leave the scene.
- Grouping of people (relatives of the abuser and others) should not be allowed as in specific moments they might be a serious risk for the police officers or they might be at risk themselves.

Attention! Contact should be kept constantly with the police officer in the direction and command room to obtain information and constantly inform on every finding.



6. First contact

When reaching the residence:

- Knock on the door only after checking the surrounding area and ensured that there is not risk for your life;
- Introduce yourself as police officers and explain the reason you are there. The police officers should ask to enter the premises (residence) to clarify the problem.
- The police officers should request to enter the house and ask to meet the person for whom they were informed/is believed to be violated, thus the “victim”, or otherwise all the persons present at home.
- If the person that called is someone else and not the victim, the police officers should not tell the identity of the person or the place from where the phone call was made.

Attention! The denouncer should remain confidential.

If the opportunity to meet the victim is not given, the police officers should insist to see, meet and talk to the victim at all costs.

If the entrance is still refused, they should inform their supervisor on further measures. In this case the police officers should inform the abuser/author that the intervention in the premises will be done even against his/her will if deemed necessary.

In meantime the police officers may decide to do one of the following actions:

1. If there is evidence that a crime has occurred, the police officers should not leave the scene without talking to the victim. Evidence includes the conditions of the scene they are seeing or the way of communication of the person they are talking to.
2. If the police officers have reason to believe that a serious injury has occurred or may occur if they leave, they should not leave the scene.
3. Based on Article 112 of the Law “On State Police” (2007), in some cases the intervention in the premises might be necessary and appropriate to save the life or physical injury of the person(s) at risk. Based on this law, a police officer enters the premises/house in order to prevent a potential crime, prevent a potential immediate threat for the life and health of the person, etc.
4. If the time permits, the police officers should immediately contact the direction and command room and ask assistance of staff or other police means before entering by force.
5. If the police officers deem they should leave without entering by force, they should stay and supervise the situation.

6. If the police officers stay to observe the situation, they should move to public properties and observe the situation from there.

After entering the home/residence, the police officer should immediately:

1. Identify potential weapons.
2. Separate the victim from the abuser.
3. Assess visible or invisible injuries such as various coercions. If necessary, they should inform the first aid.
4. Separate witness from the victim and the abuser keeping them in distance so when they testify, they do not impact each - other.

Attention! The situation should be assessed in every moment and in case of resistance, the police should enter the residence/facility only after other support forces arrive⁵².

- The main entrance door, windows and ways from where the abuser may leave are kept under observation.

Attention! The situation is tensed, thus avoid creating conflicts with the residents, gathered people or the violator.

- The police officers should stay in distance during the communication in order to have a possibility to act/react in an unexpected situation.
- If the author has left the scene, all the persons involved in this situation, who can be important witnesses for the case, should be informed as soon as possible.
- If there are injured person, immediate medical help should be provided.

Attention! The situation should be under control and the strict implementation of the law should be demonstrated in every step.

⁵² Article 111 "Search of Objects" and Article 112 "Access to premises" of the Law on "State Police", among others provide: "an object can be searched if facts assume that inside the object there is a person on whom the police officer has reasonable grounds to believe that the search is necessary to protect his/her life from an immediate risk" and that the intervention and control in the premises can be done without the consent of the owner if it is necessary to prevent an immediate threat to life and health. Thus, in the cases when the circumstances or facts show that protecting the life of a person from an immediate risk or preventing from an immediate threat to the life and health of a person, the police officers shall enter and search the premises or a specific object even when this is contested by the owner of the premises or the object. For more please refer to the Standard Procedures of work for public order and safety, approved by order of the General Director No. 1417/11.12.2009, Tirana 2010, Pgs. 78-89 of the publication 2010.



7. Interviewing

The police officers at the scene should interview the victim and the abuser separately.

Attention! The police officers should protect the victim and ensure privacy by interviewing the victim in a place where the abuser, witnesses or peasants cannot see or hear her.

During the questions, the police officers should:

1. Use supporting techniques.
2. Ask the victim on any previous case of domestic violence, frequency and harshness.
3. Not tell the victim what actions he/she should undertake until the gathered information is assessed.
4. Ask the victim and the suspect if they have pain even if there are no visible injuries.
5. Document the condition of the victim and the suspect, such as their behaviour, size of damage and evidence of the injury.
6. If the victim does not speak Albanian, a translator should be identified as soon as possible, in order to assist during the interrogation. Even if the family members might want to voluntarily translate for the victim, an independent translator is preferred to assist in taking the interview, as the family member might try to hide the actions of the suspect and protect the family.

Attention! Attention should be paid to safeguard the scene according to the methods of “Conservation of the crime scene”

- The police officers shall confiscate and manage in the quality of material evidence, all the weapons, items or object found on the scene, used to exercise violence/criminal offense.
- Care should be taken in collecting material evidence, taking the necessary measures to not alter or destroy them.
- All the identified/collected material evidence should be recorded by associating them with the respective footage or photos.
- All the information provided should be noted as accurately as possible.
- The information given by the emergency doctor, social worker of the Municipality/Commune, NGOs, as well as the potential document owned or issued by them should be taken into consideration, identified and assessed.

Below you may find some important techniques and questions during the interview as part of the case evaluation (with the victim, abuser, witnesses, children, as well as other family members).

Attention! Usually, for the victims of domestic violence this is the first time they are contacting the police officers. Therefore, the police officers play a fundamental role in creating the reciprocal trust and collaboration.

Conclusions that should be kept in mind during the interviewing:

- It happens that the police officers are more sensitive to the violence exercised in public environments than to the violence in private environments;
- It is obvious that the domestic violence is not yet treated with the due seriousness. Studies and interview conducted by NGOs find improvements, but they notice some cases (although isolated ones) when the police officers claim that the violated woman tells a fake story and even think that "she deserved the violence suffered".
- The registration, identification of preliminary signs of domestic violence to prevent heavier consequences, is not always responsibly done by the relative authorities.

Attention! There are cases, although sporadic, when for example a woman is systematically violated and the police does not record the case each time.

- It results that in general, the husbands feel even more offended and have exercised escalated violence against the wives that have reported them. Therefore, in the risk factors of the victim, should be also provided the probability of this violence being repeated and irritation of the abuser, in order to determine the right reaction to the abuser, either when this is under the discretion of police according to the Law "On State Police" or the PPC provisions, or when this is a competency of other authorities such as the prosecutor office or the court. This is the case of call to appear in the police, police escort etc., as well as austerity measures of personal safety [detention/arrest etc., under Article 232 of the PPC].

Therefore, the police officer shall consider the suitability of each of them with the level of safety that needs to be taken in this case to protect the victim, the family and the marriage as institution entitled to a special protection by the constitution and the law.



○ Interview with the victim: some important advises and techniques

- If the violence has been reported to the police, care should be taken to inform the coordinator of the referral system.
- Before the interview, the risk of the interview and its impact on the victim is carefully assessed: violated women state that sometimes conducting the interview in inappropriate conditions and circumstances has made the situation worse.
- If possible, the police officer interviewing the victim should be of the same gender.
- **The victim is ensured:** the victim is guaranteed that there will be no consequences after the declaration and after leaving the police. The victim is convinced that her safety is a priority for the police and that she is not guilty.
- **Win the trust of the victim:** with its actions, the police should gain the trust of the victim in order to gather all the information needed to continue the investigation to the end.

Attention! What happened might have caused a trauma to the victim. The police officers should not forget that the crime might be a routine event to them, but not to the victim.

- Attention is paid to the tone of voice, look and words used: all this should show that the police officers are there to “understand what happened and help, not to judge”.
- Attention and patience are shown when receiving the answers: keep in mind that the abuser might have told to the victim that if she seeks help, no one will listen to her.
- Courtesy, maturity and rationality is shown: the victims show of cases when the police has hesitated to stop the abuser, showing the police lack of compassion in addressing cases of domestic violence.
- Support is shown: actions and behaviours demonstrate that the safety of the victim is very important to the police officers. The victim is assisted to not be afraid and willing to collaborate with the law enforcers. The victim should feel that his/her declaration is important.

Careful on the advice given to the victim! Practice has identified cases that show the police officers prefer to not get in conflict with the abuser and advise the victim to turn back to the marital family or the family exercising violence.

○ Interview with the witness

- A witness is a “person who tells/testifies on circumstances and facts (constituting an evidence in a penal/civil proceeding) on the incident/criminal offense happened, as well as the individualisation of the abuser/author of the criminal offense, who might be or might be not injured by the act of violence”. In cases of domestic violence, the other family members and/or neighbours are the ones that mostly have heard or seen something.
- **Attention!**
 - Observe the procedural rules in questioning a witness. The exclusion from witnessing under Article 158 of the PPC⁵³ does not apply in a comprehensive way for the cases of domestic violence. It is worth highlighting that this exception does not apply to the victim or the person that has denounced, even if this person is a relative, in - law, current spouse, former spouse, cohabitant, former cohabitant to the person exercising the violence. Article 158 of the PPC applies to the other family members.
 - if there is more than one witness:
 - all are interrogated;
 - the witnesses are interrogated separately;
 - The relations of victim and suspect are identified as abuser and witness/es.
- **Attention! “Question that have a bad impact on the impartiality of the witness or that aim in suggesting answers are forbidden” [Article 361/3 PPC].**
 - There should be no questions in harsh tone; there should be no provocative vocabulary or questions that might push him/her to withdraw the statement made.
 - Notes should be taken on the behaviour of the witnesses;
 - From the witnesses should be taken the necessary information to understand if they are aware of previous violence episodes or acts.

53 Article 158 of the PPC defines the persons excluded from the obligation to testify:a) close relatives or in - laws of the defendant, under the definitions of Article 16, except the cases when the denouncement or the report was done by them, or when they or their relatives have been damaged by the criminal offense.
b) spouse on the facts the defendant has learnt during the marriage;
c) spouse separated from the defendant;
ç) a person that although not a spouse of the defendant, lives or lived with him/her;
d) the person having an adoption relation to the defendant;
2.The court informs the above mentioned persons on their right to not testify and asks if they want to benefit from this right. Failing to observe this rule makes the testimony invalid.



○ Interviewing children as witnesses/victims of domestic violence

Often the violence happens in front of children. The children are simultaneously witnesses and victims of domestic violence [Article 124/b of the PC and LDV on the special protection of children]. Even in the cases when it seems that none of the direct forms of violation is exercised on them, there is what is called assisted violence. The children that are victims of domestic violence have psychological, medical and general development problems. They lose confidence, are afraid, get angry or blame themselves (see signs of different forms of violence and their manifestation in children).

The children do not necessarily have to be on the same room and see the attack. Even if the victim or the suspect states that the children were upstairs sleeping, it is very likely that they woke up on the incident and may provide very useful information on the actual abuse or previous abuses.

Children should be interviewed in a manner appropriate to their age, if possible alone.

Even when the children were not witnesses of the case but were present in the room, the police officers should:

- Document their names and age;
- Document signs of trauma or any wound of abuse or trauma;
- Document the statements if possible.

Attention! The interview with children must be done only in presence of the psychologist or by the social worker.

This might be the coordinator of the violence referral system or the CPU social worker.

- The interview should be done in a safe and confidential location for the child, if possible, away from the place where the violence happened. If these cannot be provided, than the interview is postponed for a second moment.
- What is said during the interview should not be heard by parents or other family members;
- If the child does not want to speak, he/she should not be forced. Sometimes this causes isolation.

Attention! Do not promise the child things that cannot be realized!

○ Techniques on the communication and questions

During the interview, the situation of domestic violence **should be communicated in a simple and understandable way**. The questions should be simple, with few words and with only one question inside. Phrases like: "could you tell me if"; "do you remember..." should be eliminated;

The interview should start with general questions in order to create the appropriate environment and the psychical relaxation of the child, as well as to understand the level of the child's intellect.

Some of the general questions are as following:

- How old are you?
- What grade and school do you attend?
- Are the lessons difficult, do you have good friends, etc.

In this way can be gradually passed to the proper specific question related to the case.

The specific questions on the case may include:

- What happened?
- Where were you when it happened?
- When did it happen, in the morning, afternoon or evening?
- Who exercised violence?
- Where were you at that time?
- Were you alone?
- Who was with you?
- Did you see what happened or just heard it?
- What did you hear?
- Has this happened before? How did you feel?
- Did you tell to anyone? What did you do in this case?
- What do you do when this kind of things happens in the family?

The child should be allowed to make questions. Is better to finish the interview with a positive comment and explain to the child what happens next.

○ Witnesses

The witnesses should be interviewed as much and as fast as possible. If the witnesses give information on previous incidents, these are recorded to create a more detailed basis.

8. Taking information on the PO/IPO and their status in cases of police

If the operator did not advise the police officer on the existence of any PO or IPO, the police officers should ask the victim if such order exists, and if yes, request a copy.



If the victim cannot provide a copy of a valid PO/IPO, but states that such order exists, the police officer should verify the existence of such order and the period of its validity (besides others, even by checking the court electronic register by using the name of the suspect)⁵⁴

The police officers at the scene should verify the existence of any PO/IPO by:

1. Contacting the police officer of that area, the local coordinator office (if this exists), or the court or any other office managing the protection orders issued for cases of domestic violence.
2. If the PO/IPO has been received by the Court of another city/district, different from the actual location/residence of the victim, the police should contact and collaborate with the respective institutions of that city/district to verify/avail.

If concluded that a PO/IPO exists, the police should immediately act legally (see Part III of the manual).

The police officers should check:

1. Date of issuance of the order. Deadline for the expiration.
2. What are the measures of the order? Does the PO/IPO have qualified exclusions on children or others?

The violation of POs and IPOs happens when the measure provided by the decision has been observed by the violator, for example when the suspect has entered the residence although this is prohibited in the order, has attacked, threatened, abused or persecuted the other party by visiting at home or workplace, etc.

The police officer should observe the content of the PO/IPO, regardless of the actual relations or circumstances among the victim and the abuser, even in cases when the victim has agreed or invited him/her to carry out an action that violates the provisions of the PO/IPO, as in this case there is violation of the court decision.

Attention! The effects of an order may terminate or change only if it expires or by another decision issued by the court.

In this context, it is important to explain to the victim and the abuser that changing/improving the relations among parties (victim and abuser), does not change the measures provided by the Protection Orders, but the victim and the abuser have the right to address the court and request to change the measures provided by the PO/IPO.

⁵⁴ The electronic register is found at: http://gjykata.gov.al/portal_main/Courts.aspx

9. Once again on the documentation

Depending on the case and/or incident happened, as well as the administrative and investigative actions carried out, the necessary documentation needs to be compiled. After addressing an incident of domestic violence, the police officer compiles the "Written Report", which is a readymade document - form to be completed carefully.

The following is a non - exhaustive list of documentations/minutes to be filled/compiled in case of domestic violence.

- Request - Appeal for issuing an Immediate Protection Order or Protection Order
- Report on the incident;
- Records of denouncement of the criminal offence;
- Records on receiving information by the person aware of the criminal offense;
- Records of receiving information by the person under investigation;
- Records of escorting the person under investigation for identification;
- Records of examining the scene;
- Records on the arrest in the act;
- Records on searching the locations;
- Records on searching on the person;
- Records on confiscating items;
- Decision on selecting the expert and performing the expertise;
- Information on referring the criminal offense to the prosecutor office.

Additional information

Police reports are documents in the form of records kept by the police officers addressing cases of domestic violence, which can be submitted as evidence to the court [Article 15 of, paragraph 1 and 2 of the LDV].

- When from the request is clear that the police stations have written evidence on the exercise of domestic violence, they issue immediately a certified copy (sealed copy) on the request submitted by the applicant or the court itself. In case of failure to issue the above mentioned document, the responsible persons will be legally liable under the provisions of the Administrative Procedure Code.
- The police officers have the obligation to write reports on any report of the victim or other persons on cases or violence or threat to violence, as well as cases of PO/IPO violation and a copy shall be delivered to the victim or the person accompanying him/her [Article 8/2, LDV].
- When reviewing a request for PO/IPO, submitted by the police, or when there is a report prepared by the



police, the court may request police officers to appear in a court hearing to explain the incident and its circumstances [Article 13, 16/ ç, 18/2/ç of the LDV].

- The police informs the victim on the respective number of the reported case [Article 8, paragraph 6 of the LDV]⁵⁵.
- For cases of domestic violence, in a space of the model forms on "Victim" and "Witness" is noted that the incident is a case of domestic violence.

10. Measures to protect the victim

- In every case of domestic violence, the victim should be enabled to receive immediately medical assistance if necessary.
- The victim should be informed on his/her legal rights, measures to be taken and the procedure that will be followed.
- The victim should be informed on and referred to the institutions and/or non - profit organizations providing services for the victims of domestic violence⁵⁶.

Attention! Assessment of the situation is very important as in cases of danger for the victim's life, a police offices should be put in disposition.

- All legal tools and possible ways should be used to protect the victim and prevent further violence and maltreatments that may happen.
- The victim should be assisted to take her necessary personal items in case he/she decides to leave the common residence. It is a duty of the authorities responsible under the LDV to use logical tools to protect the victim and prevent further violence [Article 8, LDV]. This is a duty of the police also, regardless if the victim has or does not have a PO/IPO, including the cases when this is under process.
- The technical team, where police is part, has the obligation to prosecute the case and fulfil the needs of the victim [I/9/a of DoCM No. 334/2011], as well as ensure that all the necessary interventions are performed in compliance with the law [DoCM No. 334/2011, Article 1/10/g].
- Among the personal items of the victim there are items that are necessary for the life and health, and if the victim asks to take the personal items, but his/her life is in danger, the LDV [Article 8/ ç provides to put a

⁵⁵ Article 8, paragraph 6 of the LDV underlines:"Police authorities shall record their respective findings in a written report and start investigations ex officio.The police gives the victim the incident number of the reported case.

⁵⁶ See attached Annex with the existing social services in each district.

police officer at his/her disposition in case of life at risk. According to the standard work procedures of the public order and safety, the part related to "addressing and managing conflicts" [pg. 129 - 137] provides the techniques for mitigating the situation of conflict, disagreement, intermediation etc., situations that may arise while escorting and assisting the victim in her residence to take the necessary items.

- Measures should be taken to ensure that the victim is safe in the residence even if the abuser will return to take personal items.
- Measures should be taken in collaboration with the competent authorities and the child care and safety must be provided.
- The victim and children or other members of the family are accompanied in an appropriate and safe place, observing also the victim's will⁵⁷. The domestic violence is an extreme situation which tends to become worse, and if children are involved in these cases, they need special attention [LDV, Article 1 and 2]. The safety of children should be a priority.

Every decision taking, from all authorities, including the administrative ones such as police, should consider as primary the best interest of the Child [CRC, Article 2].

Can we leave the child with the abuser and shelter only the mother or the parent victim of violence? **If the child is at risk, either from one or both parents, then article 19 of the CRC provides for his/her protection.** it is a duty of the Main Responsible Authority taking measures to establish centres of the upbringing of children subject to violence, or who's parent violate each other [LDV, article 6/g]. Such measures are temporary, until the issuance of a PO/IPO or a penal decision decided by the court authority. In such case, the police should request an IPO for the child. The social services and the CPU collaborate in this evaluation process.

11. Measures against the abuser

- Measures should be taken and action should be carried out to identify the abuser and/or offender.
- Measures should be taken to localise the location and arrest the offender, in case he left the residence or the scene;
- In presence of circumstances and legal conditions, the author should be arrested or detained. The abuser should be stopped without an order in cases of domestic violence, when besides the cases mentioned above, the abuser has conducted the following actions:

⁵⁷ In these cases are used memorandum of collaboration with Centres and NGOs providing accommodation service for victims of domestic violence.



- A criminal offence in presence or absence of the police officer;
- A violation/criminal offence committed in the presence of the police officer;
- A criminal offence of domestic violence, committed in absence of the police officer, included in the following:
 1. A simple attack
 2. Attack a female
 3. Attack with a deadly weapon;
 4. Attack causing injuries.

The abuser/author is informed on his legal rights, measures to be taken against him, as well as other consequences he might face in case the violence is repeated.

REFERENCES AND BIBLIOGRAPHY

Cunningham, S.& Drury S., 2002. Access all areas, a guide for community safety partnerships on working effectively with disabled people.

Data Centrum Study Institute, 2012. Domestic Violence and the Albanian State Police.

Hotline for Women and Girls (HWG), 2013. Study on the victims of the criminal offense of domestic violence and sexual assault.

Ministry of Education and Science and Terre des Hommes, 2007. Protection of Children, a Manual for Schools.

OSCE Presence in Albania, 2007. "How to ask protection from the domestic violence" - a manual for victims and non-profit organizations.

OSCE Presence in Albania, 2013. How to ask protection from the domestic violence.

Gender Alliance for Development Centre, 2006. Domestic violence: View on the current situation", study.

Center for Legal and Civic Initiatives (CLCI), 2010. Implementation of the Law "On measures against domestic violence" No. 9669, dated 18.12.2006" a monitoring report of the decisions taken by the District Court of Tirana on issuing POs/IPOs and cases of victims of domestic violence supported with free legal assistance. Monitoring period: 01.06.2009-01.06.2010.

Royal Borough of Windsor and Maidenhead, Slough, 2011. Practitioners' guide to domestic abuse.

National Association of Social Workers in Albania, 2008. Gender based violence, a Manual for health practitioners.

UNODC and UNICEF, UN 2009. Court Trial where the children are involved as victims and witnesses of the criminal offense. Fundamental law and the respective explanation.



- USAID and the OSCE Presence in Albania, 2008. Manual of the judge on issuing protection orders.
- Terre des Hommes in collaboration with the Ministry of Education and Science, 2009. Practical guide on child protection. Manual for the professionals working in the field of child protection.
- Jones, I. & A. Stafa, 2009. Manual of the employee on child protection.
- Terre des Hommes, World Vision & Save the Children, 2012. Guideline on establishing and operating the Child Protection Units in local level.
- Centre "Human Rights in Democracy", 2012. Domestic violence under the civil - administrative and penal context, report and analysis of the training questionnaires of the police station for the period April - September.
- Centre "Human Rights in Democracy", 2013. Report of Monitoring the DC of Tirana for the period January - December 2012 and January - June 2013.
- UNDP Albania, Office of the UN Development Program in Albania, 2008. Manual on the domestic violence: Responsibilities of the State Police for its prevention and reduction.

LEGAL BASIS

Civil Code of Albania [Law no. 7850, dated 29.7.1994]

Family Code of the Republic of Albania [Law No. 9062, dated 8.5.2003/ as amended].

Penal Code of the Republic of Albania [Law No. 7895, dated 27.11.1995/ as amended]

Penal Procedure Code of the Republic of Albania [Law no. 7905, dated 21.3.1995/as amended]

Civil Procedure code [Law no. 8116, dated 29.3.1996/ as amended]

Convention of the Council of Europe "On preventing and fighting violence against women and domestic violence"
[Law no. 104/2012]

UN Convention on the Rights of the Child, adopted by the General Assembly of the UN on 20.11.1989

Constitution of the Republic of Albania (updated)

Law No. 9669, dated 18.12.2006, as amended "On measures against domestic violence"

Law No. 10347, dated 4.11.2010 "On the protection of the rights of the child"

Law No. 10221, dated 04.02.2010 "On the protection from discrimination"

Law No. 9749, dated 04.06.2007 "On the State Police"

Law No. 10399, dated 17.3.2011 "On the Social Assistance and Services"

Law No. 8677, dated 02.11.2000 "On the organization and operation of the judicial police", (Amended by Law No.9241/10.6.2004; and by Law No. 10301/15.04.2010)



Law No. 10 107, dated 30.03.2009 "On Health Care"

Action Plan for Children 2012 - 2015. Tirana: Ministry of Labour, Social Affairs and Equal Opportunities. Standard work procedures for the public order and safety, Adopted by order of the General Director. No.1417/11.12.2009. Tirana 2010.

National Strategy for Gender Equality, Reduction of Gender Based Violence and Domestic Violence 2011-2015, VKM.No.573, dated 16.06.2011.Tirana, 2012

Decision of the Council of Ministers No.334, dated 17.2.2011 "On the mechanism of work coordination for referring cases of domestic violence and the way of its proceeding"

Decision of the Council of Ministers No. 265, dated 12.04.2012 "On the establishment and operation of the mechanism of work coordination between state authorities responsible of referring cases of children at risk and the way of its proceeding"

Decision No.42, dated 23.02.2011 of the Penal College of Supreme Court

Decision No.1169/16.09.2010 of the District Court of Tirana

Order No.15 of the Minister of Health dated 24.01.2008 "On the medical treatment of victims of domestic violence in the public health institutions"

Order No. No.14 of the MoH dated 23.01.2008 on "Identifying cases of domestic violence, in the register and personal file of the victims of domestic violence"

Order No. 13 of the MoH, dated 23.01.2008 "On providing the respective medical reports to the persons victims of domestic violence"

Order No. 410 of the MoH, dated 12.07.2010 "On the Reorganization of Health and Psycho - social Service for Persons Victims of Domestic Violence Presented to the Health Institutions"