

# MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN ALBANIA

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# MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN ALBANIA

## INTRODUCTION

Albania was the second country to ratify the 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention, IC) in early 2013, which entered into force on August 1<sup>st</sup>, 2014 without any reservations. The country has undergone the first round of GREVIO evaluation and has received recommendations on fulfilling its obligations. The Ministry of Health and Social Protection (MHSP)<sup>1</sup> is the main coordinating body for the implementation of the action plan and the IC, and is supported by the National Council on Gender Equality (NCGE). Several other governmental institutions report to MHSP with their data. In 2017, the Albanian parliament issued a resolution condemning violence against women and girls (VAWG), which foresees the establishment of a permanent subcommittee on gender equality and preventing violence

against women, housed under the current Parliamentary Committee on Labour, Social Issues and Health. The main task of the subcommittee is to design an action plan to address recommendations from both CEDAW and GREVIO.<sup>2</sup>

The National Strategy on Gender Equality (NSGE) (2016-2020) is currently operating as the guiding document on principles of gender equality in society and includes commitments stemming from the IC. It recognizes as its third strategic objective the fight against gender-based violence (GBV) and domestic violence (DV), but does not define either term. In its situational analysis, the strategy recognises the need to combat violence against women (VAW), especially among the most vulnerable groups. However, it fails to properly analyse the patriarchal mentality that still looms large in many parts of

<sup>1</sup> Formerly the Ministry of Social Welfare and Youth.

<sup>2</sup> Albanian Assembly. 2017. Resolution on condemning violence against women and girls and increasing efficiency of legal mechanisms for its prevention. Online: <http://www.qbz.gov.al/Botime/Akteindividuale/Janar%202017/Fletore%20212/REZOLUTE,%20date%204.12.2017.pdf>

**These statistics suggest that DV is the most common crime occurrence in Albania.**

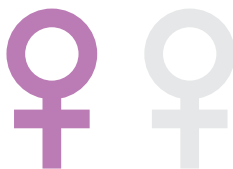
the country, which in turn leads to women being disproportionately affected by violence and multiple discrimination purely due to their status as women. The NCGE oversees policies regarding VAW. Despite conducting several activities, multiple sources point to insufficient funding and human resources to properly carry out its responsibilities.<sup>3</sup>

The allocated budget to implement the strategy for 2017 was 0.14% of total expenditure in the state budget.<sup>4</sup> It should be noted that other central government in-

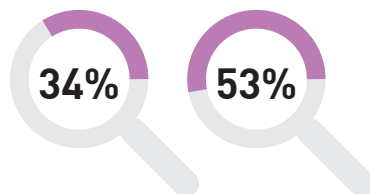
stitutions do not have a dedicated budget line for this purpose. While strengthening referral mechanisms and services for survivors of GBV takes the largest portion of total financing, there is a large funding gap, which the government seeks to fill through foreign donor funding, thus making the financing of these services unsustainable.<sup>5</sup> The current gap stands at 64%, meaning that funding allocated to referral mechanisms for VAW and social services for survivors are not covered from government sources, but would be sought from foreign donors.

## INTIMATE PARTNER VIOLENCE

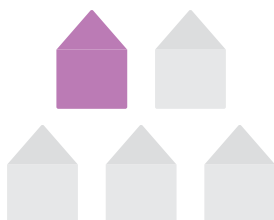
**1 in 2** women had experienced DV in their marriage/intimate partner relationship.



DV constitutes between **34%** and **53%** of all crimes committed each year.



**PREVALENCE** ● Domestic violence (DV) is the bedrock of efforts to address VAW in Albania. A 2013 survey conducted by the Institute of Statistics revealed that more than 1 in 2 women had experienced DV in their marriage/intimate partner relationship, while 1 in 2 women further declared they were currently experiencing DV.<sup>6</sup> The same Institute publishes a yearly report on women and men in Albania, containing gender disaggregated data on a variety of topics, including GBV. Since 2010, DV has consistently ranked first among all types of crime, constituting between 34% and 53% of all crimes committed each year. Women are disproportionately affected by DV. For instance, 71.5% of DV survivors in 2017 were women, slightly decreasing from over 80% up until 2010.<sup>7</sup> Overall, more than 20% of murders are the result of domestic violence (in 2015 about 37% of murders were domestic violence survivors)<sup>8</sup>.



More than **20%** of murders are the result of domestic violence.

- 3 Decision 122 of 2009 on Approving the Rules of Functioning of the National Council on Gender Equality; GREVIO. 2017. Baseline Evaluation Report on legislative and other measures giving effect to the provisions of Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence. Online: <https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7>
- 4 The total budget for implementing the national strategy and its action plan is approximately 20.5 million Euros (period 2016-2020).
- 5 GREVIO. 2017. Baseline Evaluation Report on legislative and other measures giving effect to the provisions of Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence. Online: <https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7>
- 6 INSTAT. 2013. Domestic Violence in Albania; GREVIO. 2017. Baseline Evaluation Report on legislative and other measures giving effect to the provisions of Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.
- 7 Data retrieved from Institute of Statistics publications Men and Women in Albania (2013, 2014, 2015, 2016, 2017).
- 8 INSTAT. 2017. Report: Women and Men in Albania 2016.

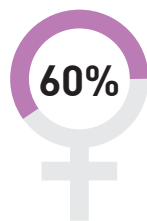
In 2017, the Institute of Statistics disaggregated data on the relationship between survivor and perpetrator, with the majority of survivors belonging to the category wife.<sup>9</sup> Data on alternative punishments and rehabilitation programs are not disaggregated according to types of crime.

These statistics suggest that DV is the most common crime occurrence in Albania. Behind these numbers, there are real stories of women who experience the full range of violence from current and former spouses, co-habitants, and partners. The reality of these stories as told by women themselves and overwhelmingly reported in the media speak to a general tendency of intimate partner relationships being founded on asymmetric power dynamics between women and men. There is also agreement among women's CSOs interviewed that a patriarchal mindset and attitudes towards women's role in society are to blame for GBV, rather than socio-economic status.<sup>10</sup> VAW is often misconstrued as happening to specific categories of vulnerable women, financially dependent on their partners and unable to protect themselves physically. In fact, this type of violence affects women in different walks of life, from all levels of education, highly independent or otherwise, working or unemployed.<sup>11</sup>

The Albanian legislative framework and policies, while extensive in addressing DV, are often misguided and prejudiced. For instance, the legal treatment of psychological violence is not fully in line with article 33 of the IC, as it is not specifically criminalised in the Criminal Code, but recognised as a consequence of DV.

In practice, psychological violence is prosecuted within the broader DV realm. However, the data show that it is mostly prosecuted when accompanied by other forms of violence, most commonly physical violence. According to a recent monitoring of court cases in the capital of Tirana, over 60% of prosecuted cases of VAW were a combination of physical and psychological violence. There is nonetheless an increase in the number of cases brought to the court based on psychological violence alone.<sup>12</sup>

Social acceptance of VAW is reflected in the relatively low levels of IPV reporting, especially psychological and sexual violence. IPV most often happens behind closed doors, without the knowledge of other family members or acquaintances, and within the context of considerable negative power dynamics between women and men. There are several reasons why IPV goes unreported, including: a feeling that there will be repercussions; a lack of knowledge regarding services available to abused women; an inherent fear that their abusers will take revenge and become more abusive; or a feeling that they will be blamed themselves for falling survivors of IPV.<sup>13</sup> Women's CSOs report, however, that the situation has improved over the years, with violence becoming less tolerated and reporting more frequent. Resistance to recognise and accept violence is more prevalent in small towns and rural areas.<sup>14</sup> As noted by



In Tirana, over 60% of prosecuted cases of VAW were a combination of physical and psychological violence.

<sup>9</sup> INSTAT. 2018. Report: Women and Men in Albania 2017.

<sup>10</sup> Interview with Iris Luarasi, Executive Director, Counseling Line for Women and Girls; Interview with Ines Leskaj, Executive Director, Albanian Women Empowerment Network.

<sup>11</sup> UNICEF. Report: Domestic Violence Against Women in Albania. Online: [https://www.unicef.org/albania/domvioL\\_eng.pdf](https://www.unicef.org/albania/domvioL_eng.pdf)

<sup>12</sup> Human Rights in Democracy Center. 2018. Respect of the rights of victims/survivors of domestic violence in the judicial process: Findings and recommendations from the monitoring of judgments of Tirana District Court.

<sup>13</sup> INSTAT. 2013. Domestic Violence in Albania.

<sup>14</sup> Interview with Iris Luarasi, Executive Director, Counseling Line for Women and Girls; Interview with Ines Leskaj, Executive Director, Albanian Women Empowerment Network.

a CSO representative Adena Vangjeli from the Psycho-Social Centre Vatra, “*social attitudes that influence gender based violence, especially in rural areas are the patriarchal and conservative mentality, infusion of gender stereotypes since childhood and not allowing girls to go to school.*”

**LEGAL FRAMEWORK** ● VAW finds an expression both in criminal and civil law with the Criminal Code (CC) and the Law on Measures Against Violence in Family Relations (hereinafter LDV) constituting the legal foundation for addressing the phenomenon.

<b>DEFINITION OF VIOLENCE</b>	Any act or omission of one person against another, resulting in violation of the physical, moral, psychological, sexual, social, economic integrity. In line with Article 4 of IC.
<b>TYPES OF VIOLENCE</b>	Physical, moral, psychological, social, sexual, economic. While it contains most types of violence, it does not provide any further breakdown of definitions for each type, leaving considerable space for interpretation.
<b>MEASURES FOR PROTECTION</b>	<p>Perpetrator: removal from the shared house, requiring the perpetrator to stay at a specified distance from the victim, require participation in rehabilitation programs, interrupting any type of contact and communication with the victim, temporary removal of custody of children, confiscation of any weapons found in possession of the perpetrator.</p> <p>Victim: Offering psycho-social, financial and health services from responsible institutions; providing temporary accommodation for the victim and accompanying minors; allowing the victim to stay in the shared accommodation; placing minors in temporary custody of the victim; inclusion in rehabilitation programs.</p>
<b>PROTECTION ORDERS AND EMERGENCY PROTECTION ORDERS</b>	<p>Issued by a district court. The court has to treat the case within 15 days from the moment the request has been made for a protection order, which can be issued for no longer than 12 months with the possibility of extension. For emergency protection orders the timeframe is 48 hours. Parties are notified of the court’s decision within 24 hours.</p> <p>Failure to comply results in a fine or up to two years of imprisonment (in line with article 53, IC).</p>
<b>PRELIMINARY EMERGENCY PROTECTION ORDERS</b>	Introduced in 2018, for cases when there is imminent danger to the victim and family members and issued by the police. Requires police officers to accompany victims to the residency and/or shelter. Within 48 hours the respective authorities within the police structure present the case to the court for issuance of an emergency protection order.

**Table 1** – Key provisions of the Law on Measures against Violence in Family Relations

<p><b>DEFINITION OF VIOLENCE</b></p>	<p>Battering and any other act of violence against a person who is a spouse, former spouse, cohabitant or former cohabitant, close relative or close relative in-law to the perpetrator of the criminal offence, resulting in violation of his or her physical, psycho-social and economic integrity. Not fully in line with Article 4 of IC with the use of the word “and” when listing types of violations and not recognizing non-cohabitating current and former partners.</p>	<p>Sanction: Up to two years imprisonment.</p>
<p><b>TYPES OF CRIMINAL OFFENCES IN DOMESTIC RELATIONSHIPS</b></p>	<p>Murder because of family relations (Article 79/c).</p>	<p>Punishment: No less than 20 years to life imprisonment.</p>
	<p>Sexual Assault by use of force (Article 102) including current and former spouses or cohabitants.</p>	<p>Punishment: 3 to 10 years imprisonment. 5 to 15 years when it is done with accomplices, more than once or the victim has serious health consequences. 10 to 20 years when it results in the death of the victim.</p>
	<p>Sexual harassment (Article 108/a) defined as “Commitment of actions of a sexual nature which infringe the dignity of a person, by any means or form, by creating a threatening, hostile, degrading, humiliating or offensive environment.</p>	<p>Punishment: 1 to 5 years imprisonment.</p>
	<p>Stalking (Article 121/a), when committed by an intimate partner, there is a 1/3 increase of the sentence.</p>	<p>Punishment: 6 months to 4 years imprisonment.</p>
	<p>Domestic Violence (Article 130/a).</p>	<p>Punishment: Up to 2 years imprisonment. Up to 3 years for a serious death threat or injury. Up to 5 years for intentional injury resulting in inability to work.</p>

**Table 2** – Key provisions of the Criminal Code

While the use of *any other act of violence* leaves a large space for inclusion of different types of violence, it also leaves space for interpretation as to what constitutes violence.

The use of the word **and** in the definition of violence in the CC could be interpreted as meaning that, for violence to occur, **all listed** violations need to happen.<sup>15</sup> Furthermore, according to the CC, intimate partners are defined as spouses or cohabitating partners or former spouses or former cohabitating partners. This definition excludes current or former partners, which are neither spouses nor cohabitants. The latter is the wording used by the IC and could be added to CC in the same line as recent changes made to the DVL. In 2016, out of a total of 803 individuals convicted of DV charges, 789 received a sentence of up to 2 years of imprisonment, with the rest receiving only a fine. In the same time period, there were 77 convictions for stalking with the majority being imprisoned for up to two years.<sup>16</sup>

While the use of *any other act of violence* leaves a large space for inclusion of different types of violence, it also leaves space for interpretation as to what constitutes violence. Most convictions for 2016 were related to article 130 of the CC, specifically DV, resulting in over 800 convictions with the vast majority receiving sentences of not more than two years. However, the data from 2016 and earlier years show that there is a gap between the provisions in the legislation and the actual measures taken against perpetrators. While the data collected from the Ministry of Justice (MoJ) are divided according to different acts of the CC, a gender-sensitive approach to data collection would allow for a better assessment of whether the convictions on DV are commensurate with the gravity of the offence.



Despite the detailed provisions and protections stipulated in the law, aimed at protecting the life and wellbeing of the survivors, the implementation of protection orders is one of the weakest links. As noted in various reports and studies, there is a pragmatism and lack of willingness to follow the law from public officials, often leading to tragedies for those who seek protection.<sup>17</sup> There is a frequent failure thus to enforce protection orders.<sup>18</sup> In 2016, there were a total of 119 protection orders issued in 3 out of 12 regional courts in the country, a jump from the 90 protection orders issued during 2015.<sup>19</sup>

<sup>15</sup> Article 3, Point 1, Law on Measures Against Violence in Family Relations.

<sup>16</sup> Ministry of Justice. 2017. Statistical Yearbook: 2016.

<sup>17</sup> GREVIO. 2017. Baseline Evaluation Report on legislative and other measures giving effect to the provisions of Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence; Human Rights in Democracy Center. 2017. Respect of the rights of victims/survivors of domestic violence in the judicial process.

<sup>18</sup> CEDAW. 2016. Concluding Observations on the fourth periodic report of Albania.

<sup>19</sup> Ministry of Defense. Annual Statistics for 2015 and 2016.



A recent wave of DV crimes, resulting in the women's death, spurred positive legislative changes on June 19<sup>th</sup>, 2018.<sup>20</sup> The Parliament passed, with a majority of votes in the Committee on Labour, Social Issues and Health, several changes to the LDV. The most important change is the inclusion of children in emergency protection orders, inclusion in protection orders for partners that are not legally bound or cohabitants, as well as introduction of preliminary emergency protection orders, which take immediate effect upon presentation of a case to law enforcement agencies.<sup>21</sup> To address these shortcomings, Mirela Arqimandriti from CSO Gender Alliance for Development Centre (GADC) suggested to *"establish a national multi-year task-force to ensure that all procedures in addressing VAW are followed."*

In recent years the establishment of special units in police offices that deal with domestic violence and continuous training of police officers in handling these cases indicates progress.<sup>23</sup> However, there are concerns that law enforcement agencies and other social service institutions do not act proactively. Furthermore, risk assessments are not an integral part of the Albanian legal and policy framework. As noted by interviewees, the legal framework in its entirety could be improved to include risk assessment at the policy level, but also on the ground, for police officers dealing with cases of VAW. Adena Vangjeli from CSO Psycho-Social Centre Vatra pointed out that *"there is a need to conduct more training for police officers who treat cases of violence. Training should focus on detailed knowledge in this area, technical preparation for completing requests for protection orders and barring orders."* There have been efforts from women's CSOs to close this gap, but more



sustainable efforts are needed from the state institutions to integrate these efforts into practice.<sup>24</sup> Another major concern comes from women's CSOs that frequently train public officials to handle GBV. There is high staff turnover in public institutions for political reasons, which often undoes the work of CSOs to train and prepare these individuals to be gender sensitive in their work. There is thus no real institutional memory or capacity building and many efforts, as well as human and financial resources go to waste.<sup>25</sup>

## CASE STUDY 1

In December 2016, in one of Albania's biggest towns, a man threw his wife from the bathroom balcony, which resulted in her death. When details of the investigation became public, it was discovered that the woman had requested and was granted an emergency barring order one month prior to the murder. The court order required the perpetrator to stay a distance of only 2 metres from the victim. Both the woman and the perpetrator lived in the same residence after the issuance of the order. A few days after being arrested, the husband declared to have committed the crime because the woman had requested a protection order from him.<sup>22</sup> This is but one of the many cases that show the gap and often incompatibility between legislation and implementation and the duty to protect survivors of domestic violence.

<sup>20</sup> Ora News. 2018. Burri vret gruan ne Durres: E shtyva ne gjaknxehtesi, ra me koke ne dysheme. Online: <http://www.oranews.tv/article/krimine-familje-burri-vret-gruan-ne-durres>

<sup>21</sup> Draft Law on Changes to the Law on Measures Against Violence in Family Relations.

<sup>22</sup> Gazeta Standard. 2016. Vrasja e gruas ne Fier, zbardhet urdhri i mbrojtjes. Online: <http://www.standard.al/2016/12/05/vrasja-e-gruas-ne-fier-zbardhet-urdhri-i-mbrojtjes-foto/>

<sup>23</sup> GREVIO. 2017. Baseline Evaluation Report on legislative and other measures giving effect to the provisions of Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.

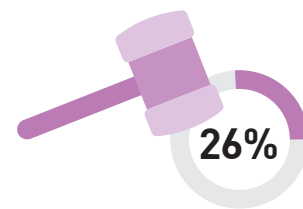
<sup>24</sup> GADC Manual; GREVIO. 2017. Baseline Evaluation Report on legislative and other measures giving effect to the provisions of Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.

<sup>25</sup> Interview with Iris Luarasi, Executive Director, Counseling Line for Women and Girls; Interview with Mirela Arqimandriti, Executive Director, Gender Alliance for Development Center.

**DIVORCE CASES** ● While legislation recognises the request of one of the spouses to dissolve a marriage based on “continuous quarrels, maltreatment, severe insults...etc”<sup>26</sup>, the law provides for mandatory reconciliation sessions with a judge, who can dismiss the case if the plaintiff does not show up in said hearing. There is thus no provision that prohibits mediation in cases of domestic violence, which is not aligned with article 48 of the IC. In addition, the Family law is largely silent on addressing IPV or protecting children during divorce cases, even though they are considered for the period of a Barring Order or Protection Order. The GREVIO report notes, however, that the judges would often keep in mind the safety of the child when issuing visitation rights during a divorce case that involves domestic violence, by taking into consideration, for example, protection orders issued to an abusive father. However, visitation rights and custody remains unclear when a divorce ruling is appealed as the court’s decision on the matter is suspended.<sup>27</sup> As such, it is often left at the discretion of a judge whether to consider dispute resolution when a protection order is in place, which stems from a lack of clear legal provisions on the matter. The monitoring of courts shows that there are times when the court cases are dismissed due to efforts at reconciliation of parties, or cases when survivors of violence withdraw from a trial due to reconciliation, only to find themselves in the same cycle of violence from the perpetrator.<sup>28</sup> During 2015, 26% of the dismissed cases in court involved PO/EBOs, which indicates that other factors lead the survivors of domestic violence to discontinue a trial. ***More analysis is needed to understand the prevalence of dismissed court cases that involve domestic violence.***<sup>29</sup>

The legislative framework has seen considerable improvements to ensure survivors’ access to information by also establishing a public relations coordinator in charge of informing survivors. There are no provisions for informing the survivor of the perpetrator’s escape as stipulated by article 56/b of IC. Furthermore, the Albanian Criminal Procedure Code (ACPC) does not contain any provisions regarding contacts between victims and perpetrators.<sup>30</sup>

During 2015, 26% of the dismissed cases in court involved PO/EBOs, which indicates that other factors lead the survivors of domestic violence to discontinue a trial.



<sup>26</sup> Family Code, Article 133-135

<sup>27</sup> GREVIO. 2017. Baseline Evaluation Report on legislative and other measures giving effect to the provisions of Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.

<sup>28</sup> Human Rights in Democracy Center. 2017. Respect of the Rights of Victims/Survivors of Domestic Violence in the Judicial Process. Tirana, 2017.

<sup>29</sup> Ibid.

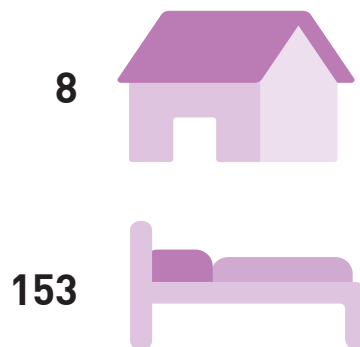
<sup>30</sup> Article 58 of ACPC which lists the rights of a victim does not contain all the provisions foreseen in the Istanbul Convention.

**LDV stipulates that survivors of DV have the right to an attorney free of charge and should not incur any court fees, unless the protection order is denied.**

**SERVICES** ● There are currently eight shelters spread across the country, equipped with 153 beds, which is below the capacity required by the IC.<sup>31</sup> Few shelters operate outside the capital, which leaves many women without access and in need of transferring where shelters are available. Furthermore, most municipalities lack emergency sheltering<sup>32</sup>, thus they often use facilities that are not equipped to deal with cases of DV, such as hospitals, geriatric centres, dormitories etc. Lastly, more efforts are needed to adapt these resources to women with disabilities, Roma and Egyptian women, as well as those living in rural and remote areas of the country.<sup>33</sup> The latter are especially prone to permanent health problems, due to lack of emergency services, as well as a general lack of health practitioners to report cases of DV, when women end up in their care. In fact, some doctors say that it is not their duty to report these cases, and that only the police and psychologists are required to be equipped with the expertise to deal with cases of domestic violence.<sup>34</sup> This points to a lack of knowledge and accountability on the side of health professionals, as they are legally part of the referral mechanism required in every municipality and have a legal obligation to refer cases of VAW. New amendments to the LDV recognise this problem and add additional responsibilities for the ministry in charge of health to organise training and professional development programs for health professionals

in order to improve the implementation of the law and their obligations stemming from it.<sup>35</sup> LDV stipulates that survivors of DV have the right to an attorney free of charge and should not incur any court fees, unless the protection order is denied.<sup>36</sup> However, these services are rarely used by women often due to lack of information that these services are even offered to women survivors of violence.

There are currently eight shelters spread across the country, equipped with 153 beds, which is below the capacity required by the IC.



31 Guxholli, A. 2016. Report on the implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence. AWEN; CEDAW. 2016. Concluding Observations on the fourth periodic report Albania.  
 32 The Mayor of Durres recently promised to establish an emergency shelter after the murder of a woman in this city spurred wide reactions from women NGOs and the central government.  
 33 CEDAW Fourth Periodic Report for Albania Concluding Remarks. Online.  
 34 Albanian Center for Population and Development. 2016. CEDAW Shadow Report. Health Care Field: The Case of Albania. Online: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ALB/INT\\_CEDAW\\_NGO\\_ALB\\_23255\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ALB/INT_CEDAW_NGO_ALB_23255_E.pdf)  
 35 Law no. 47/2018 On additions and changes to the law on measures against violence in family relations.  
 36 Law On Domestic Violence, Chapter III, Article 14.

## CASE STUDY 2

In the summer of 2015 the ex-husband of a judge approached his former wife in a crowded beach in the city of Durres, carrying a gun. The woman, F.H., accompanied by her son, wrestled to escape the man's attempt to harm her. Subsequent to the attack, the court only sentenced the man for illegal possession of a firearm, not an attempted murder, giving thus a sentence of three years, which was reduced to just over one year as he was granted a year-end pardon from the Parliament. Fast forward to 2017, despite a protection order from the court, the judge was unable to escape the planned and executed murder at the hands of her ex-husband. Even though she herself had pleaded with law enforcement of the intentions of her former husband and the real threats made to her life, the system failed her, as it fails numerous women year after year.

Albanian authorities recently supported a CSO led initiative from the Counselling Line for Women and Girls to set up a national help line for women experiencing violence, which is free of charge and offers services 24/7. The help line was established in 1996, but was not operating nationwide due to financial constraints. The helpline is only available in Albanian. Legal aid is one of the weakest areas in addressing domestic violence. Studies show that in the majority of cases legal representation is either covered by a CSO or private lawyers, with only 1% of cases covered by the free state legal aid (all involving minors).<sup>37</sup> Furthermore, according to the Government's own report submitted to GREVIO, in 2014 only two women received free legal aid. This happens despite amendments in legislation to include free legal aid for survivors of DV.<sup>38</sup> Changes to the Law on Social Services in the Republic of Albania (2011 and 2016) recognise survivors of DV as recipients of social services, but only for sheltering purposes and the 24/7 help line. They are excluded from other services such as pre-social services, specialised services,

and services in cases of emergency.<sup>39</sup> Absence of clear information and support for women survivors of violence and lack of knowledge of public officials, leads to crippled access to justice, which adds to the economic and social burdens already hampering the ability of women to seek justice and support.<sup>40</sup> As noted by Mirela Arqimandriti from the GADC, "while the number of VAW cases has increased, the journey to reaching access to support is long and tiring. Despite a legal basis for support, there are no genuine services and psychological support for victims."

In 2011 the Government introduced the national mechanism for referring DV cases, set up at the municipal level to facilitate the coordination between different institutions that have a stake in managing cases of VAW, including CSOs. Despite being in place since 2011, not all municipalities have established a referral mechanism and even those that have complied with this requirement face a number of challenges. One of the most basic shortcomings in the functioning of the referral mechanism is a lack of coordination and/or information sharing between different institutions that are part of the mechanism.<sup>41</sup>



Studies show that in the majority of cases legal representation is either covered by a CSO or private lawyers, with only 1% of cases covered by the free state legal aid (all involving minors).

<sup>37</sup> Human Rights in Democracy Center. 2018. Respect of the rights of victims/survivors of domestic violence in the judicial process: Findings and recommendations from the monitoring of judgments of Tirana District Court.

<sup>38</sup> Law on Legal Aid, CEDAW Fourth Periodic Report for Albania Concluding Remarks.

<sup>39</sup> Law on Social Services in the Republic of Albania, CEDAW Fourth Periodic Report for Albania Concluding Remarks.

<sup>40</sup> Milatovic, S. 2017. Survey on Access to Justice in Albania. United Nations Development Programme.

<sup>41</sup> Observations of the author based on monitoring of the work of 6 municipalities during 2017-2018, that have already established the referral mechanism.

# SEXUAL VIOLENCE

## PREVALENCE AND OFFICIAL STATISTICS ●

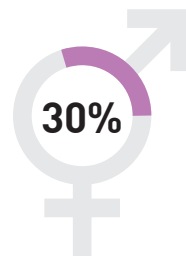
Of all types of VAW, sexual violence is the most underreported and the least studied. Sexual violence, especially in intimate partner relationships is often not recognised and not considered a crime. According to a recent survey, over 30% of respondents believe that engaging in non-consensual sexual relations among partners is not a crime.<sup>42</sup> In the same survey, over 30% reported to have experienced sexual violence in an intimate partner relationship with most survivors (99.5%) being women.<sup>43</sup> There were 114 victims of reported sexual crimes in 2017, a decrease from 2015 and 2016. Of these, 102 (89.5%) victims were women.<sup>44</sup>

ognised under the Albanian legislation include: the use of an official position, sexual assault by use of weapon, and sexual harassment. The fact that the burden of proof falls on the survivor has serious damaging effects on reporting and access to justice. As noted by Mirela Arqimandriti from CSO GADC, “out of fear of prejudice and gossip, women are reluctant to report sexual violence.” In addition, this approach emphasizes even further the power imbalance between women and men that can lead to the former not reporting sexual violence and losing trust in the justice system. VAW in general is still stigmatized, with sexual violence regarded most of all as a taboo not to be spoken of.

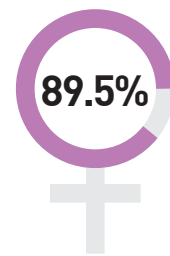
## LEGAL FRAMEWORK ●

Section VI of the CC is dedicated to sexual crimes, with Article 102 specifically noting sexual violence against women. While the IC sets the standard of the lack of consent from the victim in article 36, the Albanian legislation only recognises sexual assault by use of force for adult women, thus placing the burden of proof on the survivor. Lack of consent, without resorting to the use of force, is recognised for minors and individuals considered physically or psychologically incapable of protecting themselves. No article in section VI specifically refers to the type of penetration of a sexual nature (vaginal, anal or oral), and while it does have provisions on the use of objects on another person, it does not have such provisions on the use of any bodily part of another person.<sup>45</sup> The CC also lacks any provision in line with Article 36/c of the IC, causing another person to engage in non-consensual acts of a sexual nature with a third person. It only vaguely refers to accomplices in Article 102. Other types of sexual assault and abuse rec-

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<sup>42</sup> Counseling Line for Women and Girls. 2013. Study about victims of domestic violence and sexual assault in Albania. Online: [http://www.cp-project.al/archive/wp-content/uploads/2014/01/DOMESTIC\\_VIOLENCE.pdf](http://www.cp-project.al/archive/wp-content/uploads/2014/01/DOMESTIC_VIOLENCE.pdf)

<sup>43</sup> Ibid.

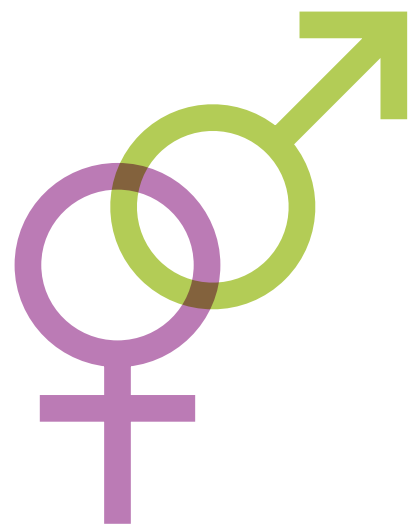
<sup>44</sup> INSTAT. 2018. Men and Women in Albania 2017.

<sup>45</sup> Section VI of the Albanian Criminal Code and Article 36/a of the Istanbul Convention.

In a country like Albania, where especially marital rape and reporting other types of sexual crimes are currently considered taboos, setting a limit of 20 years means many survivors lose the opportunity to seek justice later.

The statute of limitations for criminal prosecution and execution of a sentence depends on the length of a crime. For criminal prosecution the statute of limitations is 20 years for crimes that receive a punishment of no less than 10 years. For execution of a sentence, it is 20 years for sentences containing between 15 and 25 years' imprisonment. There are no specific provisions on statute of limitations for survivors of sexual violence.<sup>46</sup> There are no specific statutes of limitations for minors, therefore the general ones stipulated in Article 66 of CC apply for minors as well. Setting a cap of 20 years on statutes of limitations regardless of the gravity of the crime penalizes survivors and their quest for justice. In a country like Albania, where especially marital rape and reporting other types of sexual crimes are currently considered taboos, setting a limit of 20 years means many survivors lose the opportunity to seek justice later.

**SERVICES** ● Rape crisis or sexual violence referral centres are completely lacking. Current approaches to helping women survivors of sexual violence are ad-hoc, often falling on general health services, in separate rooms of women's shelters and other settings that are merely equipped to deal with survivors of sexual violence.<sup>47</sup> While there are shelters run both by the state and CSOs, most services, such as counselling and helplines, are managed by CSOs, which means they depend heavily on foreign funding. Even state funded shelters need to be matched by foreign donors' contributions.<sup>48</sup>



<sup>46</sup> Article 66, Criminal Code.

<sup>47</sup> Guxholli, A. 2016. Report on the implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence. AWEN.

<sup>48</sup> Concern expressed by all interviewees.

# VIOLENCE AGAINST MIGRANT AND REFUGEE WOMEN



Migrant and refugee women are often discriminated due to an absence of a legislative framework that ensures their access to education, health services, employment etc.

Albania has traditionally been a country of origin for migrants and asylum seekers. However, it has attempted to align its legislation with the EU *acquis* in its bid for European integration and in recent years has become a transition point for asylum seekers from the Middle East; 2018 has especially seen a great leap in the number of migrants seeking to reach the EU through the Balkan route, affecting Albania among others. For instance, in the first five months of 2018, Albanian authorities came into contact with 2311 migrants compared to just 162 during the same period in 2017.<sup>49</sup> This increase poses significant challenges, not only to the country's ability to deal with the new increase, but also to what such an increase signifies for

abuses of human rights, trafficking and VAW. The legal and practical status of migrants and asylum seekers is largely gender-neutral. The Law on Foreigners stipulates that in case of a marriage dissolution, the spouse who doesn't have a residence permit loses the right to stay in Albania, which directly contravenes article 59 of the IC.<sup>50</sup> Migrant and refugee women are often discriminated due to an absence of a legislative framework that ensures their access to education, health services, employment etc.<sup>51</sup> Current legislation recognises race, religious belief, nationality, membership in a specific societal group and political leanings as the basis for requesting asylum status for fear of persecution, which leaves out gender identification as well as sexual orientation. The category 'belonging to a specific societal group' can be used to describe the latter, however the wording is vague and there is no further clarification as to which groups fall under this category.<sup>52</sup> Women's shelters are in theory open to all women regardless of sexual orientation, ethnicity, their legal status in the country, or age. However, practice shows that very few migrant and refugee women use these services.<sup>53</sup>

<sup>49</sup> Koleka, B. 2018. Migrant numbers leap on new Balkan route across Albania. Reuters. Online: <https://www.reuters.com/article/us-eu-rome-migrants-albania/migrant-numbers-leap-on-new-balkan-route-across-albania-idUSKCN1J41KP>

<sup>50</sup> Law on Aliens, Article 57. A recommendation to change this stipulation in the law has been floating around since 2010.

<sup>51</sup> CEDAW Fourth Periodic Report for Albania Concluding Remarks. Online.

<sup>52</sup> Law On Asylum in the Republic of Albania, Article 4.

<sup>53</sup> Guxholli, A. 2016. Report on the implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence. AWEN.



## WOMEN'S CSOS

Albanian women's CSOs have a long and rich history of participation in the country's social and political life. The first organisations that were established following the end of the communist regime were general human rights' and women's organisations. Within the context of the brutal regime that infringed upon all kinds of human rights and an extremely patriarchal society, the advent of these types of CSOs was not only natural, but a necessity.<sup>54</sup> Today women's CSOs continue to play an essential role in offering services and protection to women survivors of DV.<sup>55</sup> According to the government's report submitted to GREVIO, CSOs play a primary role in service delivery for survivors of GBV, prevention mechanisms, and improving legislation.<sup>56</sup> Newly proposed legislative changes recognise services and trainings organized by women CSOs as a necessity and legally regulated, which is a positive step towards ensuring governmental support for the work of women CSOs, especially in service delivery. As noted by Iris Luarasi from CSO Counselling Line for

Women and Girls, "*foreign donors are becoming more reluctant to support service delivery without any government commitment and support.*"<sup>57</sup>

CSO representatives interviewed agree that there is considerable freedom of assembly and public space for CSOs to operate free of coercion. However, Manjola Veizi from the Roma Women's Rights Centre points out that "*there is significant pushback from men in the Roma communities where her organisation operates, due to an even more pronounced power imbalance between men and women, which often brings suspicion and resistance to the work of CSOs.*" A point shared by all CSO representatives is that sometimes attempts have been made to create legal obstacles in organising protests and gatherings.<sup>58</sup>

There is unanimous agreement on the absence of proper and sustainable government funding. The funding provided is primarily for ad-hoc and one-time projects supported through the Agency for the Support of Civil Society. However, the funding of initiatives related to VAW depends on the priorities set by the Agency for a specific year, and these priorities change over time.<sup>59</sup> A recurring theme and concern raised by women's CSOs is that most services are supported through foreign funding, but in recent years a tendency is observed of retreating donors, which leaves many women's CSOs in a vulnerable and unsustainable position and often in a survival mode. In general, women's CSOs are heavily dependent on foreign donors, but there are no impediments for them either legally or in practice to seek such support and funding, in fact the latter is highly encouraged.

A recurring theme and concern raised by women's CSOs is that most services are supported through foreign funding, but in recent years a tendency is observed of retreating donors, which leaves many women's CSOs in a vulnerable and unsustainable position and often in a survival mode.

<sup>54</sup> Institute for Democracy and Mediation. 2010. Civil Society Index for Albania. Online: <http://www.icnl.org/research/library/files/Albania/albaniacsoi.pdf>

<sup>55</sup> Guxholli, A. 2016. Report on the implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence. AWEN.

<sup>56</sup> Albanian Government Report to GREVIO.

<sup>57</sup> Interview with Iris Luarasi, Executive Director, Counseling Line for Women and Girls.

<sup>58</sup> Interview with Iris Luarasi, Executive Director, Counseling Line for Women and Girls.

<sup>59</sup> Interviews with women's CSO representatives.



## RECOMMENDATIONS



- Amend the Criminal Code in line with the IC regarding sexual violence by recognising lack of consent as the basis for adjudicating cases.
- Remove the current 20-year cap on the statute of limitations for cases of sexual violence to allow for prosecution of such crimes indefinitely.
- Include in the Law on Foreigners gender and sexual orientation as basis for seeking asylum in the territory of Albania and amend the Law in line with the IC by removing a stipulation that a spouse would lose the right to stay in the territory of Albania when a marriage is dissolved.
- Include obligatory risk assessments in the legal and policy framework governing measures against VAW.
- Amend legislation to exclude mandatory reconciliation sessions with a judge in cases where DV is present.

### TO THE ALBANIAN PARLIAMENT

- Amend the definition of violence in domestic legislation to include the word or instead of and when listing the types of violations resulting from violence so as not to reduce the grounds for prosecution to the existence of all types of violence at once.
- Amend domestic legislation, especially the Criminal Code and the Law on Measures against Violence in Family Relations, to specifically recognise and criminalise psychological violence in line with the Article 33 of IC.

### TO THE ALBANIAN GOVERNMENT

- Increase the level of financial and human resources to enable policies to be carried out in a sustainable manner, without heavily relying on outside donors.
- Match the important functions of the National Council on Gender Equality with appropriate staff and funding.
- Increase efforts at prevention in order to de-normalise and eradicate social acceptance of VAW in society at large, especially in rural and remote areas through awareness raising activities, public and media campaigns, and social dialogue.

- Increase cooperation with women's CSOs, especially those in service delivery.
- Increase efforts to include employment and entrepreneurship programs as integral part of addressing VAW to encourage economic independence, which is often a factor preventing women from reporting violence.
- Set up emergency shelters easily accessible to survivors in all municipalities.
- Conduct an analysis of suspended trials for survivors that had earlier obtained a protection order to understand why there is a high prevalence of this phenomenon.
- Conduct training with governmental officials, especially police officers, health officials, media representatives, and municipal focal points of DV in dealing with sensitive cases, such as sexual violence.
- Establish rape crisis centres for survivors of sexual violence and increase the role of government institutions in managing these shelters and other services for survivors.
- Improve coordination and collaboration with women's CSOs in ensuring sustainability of services offered to survivors, to reduce dependability upon foreign funding.
- Improve the practice of using free legal aid by survivors of DV, especially the entitlement to an attorney free of charge.

## TO LOCAL GOVERNMENT UNITS

- Establish the referral mechanism in all remaining municipalities, in compliance with the Law on Measures against Violence in Family Relations.
- Improve coordination and collaboration between all institutions and women's CSOs participating in the referral mechanism, especially judicial and health officials.
- Establish data sharing mechanisms between participants of the referral mechanism, managed by the Local Coordinator against Domestic Violence to facilitate the referral of cases. Make sure this mechanism is in line with EU standards on data protection (GDPR).

## TO THE MINISTRY OF JUSTICE

- Improve data collection and publishing to contain gender-disaggregated statistics and a uniform data collection system across all relevant institutions.
- Based on collected data, identify areas in need of further research, which could be performed either by government institutions or in collaboration with CSOs and independent experts.

## TO THE MINISTRY OF HEALTH

- Increase active participation of health officials in the national referral mechanism to improve their role in addressing DV and VAW.
- Conduct training and professional development programs for health officials to properly manage DV cases and comply with legislation regarding their role in referring these cases.

## TO THE ALBANIAN STATE POLICE

- Organise regular training and professional development of police officers, especially those dealing mainly with DV cases, to create a critical mass of police officers that are trained and not changing frequently due to political processes.
- Increase collaboration of police representatives with local government units and civil society organizations in referring cases of DV to the local coordinator against DV at the municipality level.

## TO THE COURTS

- Conduct regular and frequent training of judges in handling cases of DV and VAW, especially in issuing protection order and emergency protection orders to make sure that the needs of the survivor take priority over the situation of the perpetrator when issuing protection orders, to ensure proper protection of the former.



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