



## The Challenges Facing Domestic Violence Victims in Kosovo

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**Abstract:** The number of domestic violence cases that are reported officially in Kosovo does not represent the real situation. The cases that are reported do not get the expected support by the relevant institutions. The concerning situation on the lack of protection for the domestic violence victims keeps being reported by Non-governmental organizations that work on protection of women's rights. The paper is based on the literature review, statistical data, surveys, and interviews. The results show women hesitate to report the violence against them. The relevant institutions, mainly police and the courts do not implement the dispositions of the applicable laws accordingly to ensure protection of the domestic violence victims. In few cases, the protection order petitions were neglected, and this negligence in one of the cases resulted having the perpetrator kill the victim. It shows that there should be a stricter monitoring of implementation of the applicable laws and not permit the cultural approach toward domestic violence be part of the institutions and have impact in their decisions. That would directly enable Kosovo society change the perception and raise the awareness that the perpetrators of the domestic violence shall get the relevant punishment.

**Keywords:** domestic violence; women; victim, the perpetrator; protection order petition

### 1. Introduction

Family represents the basis of every society and it is a key feature of a democratic society. The presence of a domestic violence in a society has a negative impact in a proper functioning of a family in particular and of a society in general. The domestic violence may also result in risking the life and health of the family members. Therefore the creation of a sound family is the aim of every society; it is the aim of Kosovo as well.

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16 years after the war, Kosovo society continues to face the domestic violence which in particular cases have resulted in murder of the victim. The patriarchal families continue to represent the majority of families in Kosovo. The poor economic situation of most of the families in Kosovo also contributes in retaining the patriarchal tradition and the reporting of the domestic violence is still a 'forbidden approach' for many women in Kosovo. These women consider that they will not benefit anything if they report the domestic violence because they will lose the support of both their families and the society. Therefore, the aim of this paper is to identify the best measures that should be applied to fight the domestic violence in Kosovo as well as raising the awareness in the society against these phenomena.

How is domestic violence treated according to the legislation in Kosovo? What is the number of domestic violence cases? In which way is domestic violence present in the Kosovo society? Who are the perpetrators? Which are the protection measures against the domestic violence? Which are the measures that the society itself is taking to fight these phenomena? These will be few of the questions that will be addressed in this paper which covers the period from 2005 -2014.

### **1.1. Definition of Domestic Violence**

According to the Article 16 (3) of the Universal Declaration of Human Rights, the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.. According to this declaration, every country is obliged to offer protection to all members of the family, including the members that are subject of a domestic violence.

The European Convention on Human Rights (ECHR) requires from the countries to take the necessary measures against domestic violence. The OSCE-UNMIK Report on Domestic Violence in Kosovo (2007) specifies that the article 3 of ECHR states that no one shall be subject to torture or to human or degrading treatment. Combined with Article 1 which defines that every country within its jurisdiction shall secure to everyone the rights and freedoms as foreseen by ECHR, obliges countries to prevent the torture and degrading treatment in the familiar context as well. While, The Parliamentary Assembly of the Council of Europe, in its recommendation 1582 (2002), "calls on the member states to recognize that they have an obligation to prevent, investigate and punish all acts of domestic violence and to provide protection to its victims"

Since the domestic violence involves mostly women, the General Assembly of the United Nations also approved Declaration on the elimination of violence against

women in 1993. Through this Declaration, the United Nations affirmed that “violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women”.

In 2004, the United Nations General Assembly approved the Resolution entitled “Elimination of domestic violence against women”. Through this resolution, it “requires states to take serious action to protect victims and prevent domestic violence” (Article 1). The Article 2 specifies that providing protection to women through protection orders that will prevent their husbands enter the victim’s house or communicating with the victim.

## **1.2. Domestic Violence according to the Legislation of the Republic of Kosovo**

In the previous legislation of Kosovo, the domestic violence was not considered to be a criminal act but the Criminal Code of the Republic of Kosovo offers protection to the life of the individual and the family by defining as criminal acts all acts that risk the life of the individual or family. The criminal Code also foresees the execution of more years of imprisonment for those criminal acts that the perpetrator conducts against persons with which the perpetrator has family relations. In addition to the Criminal Code, the domestic violence victims are supported through the provisions of the Code of the Criminal Procedure, Code of Justice for Minors, Law on Execution of the Criminal Sanctions and through the Law on Protection against domestic violence that will be subject of this paper.

According to the Law on Protection against domestic violence No. 03/L-182 dated 1 July 2010, domestic violence is considered to exist amongst the persons if they “are engaged or were engaged”, “are married or are married”; “are in extra marital union or were in extra marital union”; “are cohabiting in a common household or were cohabiting in such a household”, “use a common house or are in connection by blood, marriage, or adoption, in-law or are in a guardian relationship, including parents, grandparents, children, grandchildren, nephews, siblings, aunts, uncles or cousins”, “are parents of a common child”, “are procedural parties in a dispute of a family relationship” (Article 1 – 7).

While as domestic violence acts are considered one or more intentional acts or omissions when committed by a person against another person with whom he or she is or has been in a domestic relation but is not limited to “use of physical force

or psychological pressure exercised towards another member of family”, “any other action of a family member, which may inflict or threaten it inflict physical pain or psychological suffering”; “causing the feeling of fear, personal dangerousness or threat of dignity”, “physical assault regardless of consequences”, “insult, offence, calling by offensive names and other forms of violent intimidation”, “repetitive behavior with the aim of derogating the other person”, “non-consensual sexual acts and sexual ill-treatment”; “unlawfully limiting the freedom of movement of the other person”; “property damage or destruction or threatening to do this”, “causing the other person to fear for his or her physical, emotional or economic wellbeing”, “forcibly entering or removing from a common residence or others person’s residence” and “kidnapping” (Article 2 (1) (2.1 – 2.12)

### **1.3. Types of Domestic Violence**

In the criminal literature, the acts of domestic violence are considered to take place in different ways between the persons that have familiar relationships between themselves. The most common classification of the acts of domestic violence consists of physical assault and psychological violence.

The physical assault is conducted when a perpetrator uses a physical force against a victim. As defined in the Law on Protection against Domestic Violence, the physical assault is qualified as such regardless the consequences. We have to note that physical assault can also result in the death of domestic violence. The perpetrator conducts the physical assault by using dangerous items which may damage the health of the victim. Haxholli (2013) claims that according to the research on forms of the physical assault as a part of domestic violence in Kosovo, the perpetrators used various items against victims (most of the women) were different. The usage of these tools to conduct a physical assault against the victims, in addition to the physical consequences, it will definitely have psychological consequences as well.

Psychological violence consists mainly of pressure, psychological maltreatment, psychological suffering and causing feel of fear and uncertainty. According to a research conducted in Kosovo, the psychological violence takes place mainly in the relationship between a husband and a wife, where in most of the cases the wife is a victim. The Albanian state police report on preventing domestic violence (2008) defines that the psychological violence includes ignoring the feelings of the partner, continuous behavior in derogating the partner, continuous critics, the attempts to convince the partner that with the her behavior, she deserves the

psychological violence that the perpetrators uses, continuous jealousy, threat to take away the children from the victim, calling by offensive names etc.

Sherifi (2013) claims that the cases of the psychological violence are reported more rarely because this type of violence is more hidden. The activists that deal with protection of the domestic violence victims that the number of people that know what is psychological violence is very limited and they do not even realize the consequences of this violence. Haxholli (2013) also confirmed that when domestic violence victims were interviewed, it was found that about 90% of them faced the psychological violence, but only few of them realized that they were also a subject to psychological violence.

## **2. Domestic Violence Cases in Kosovo During the Period 2005 to 2012**

### **2.1. The Number of Domestic Violence Cases**

According to the statistics of the Kosovo Police, in the territory of Kosovo during the period 2005-2014, there have been recorded 11,209 of the domestic violence cases. In the table below, these cases will be presented according to the main regions in Kosovo:

**Table 1. Number of domestic violent cases recorded in the regions in the period 2005-2014**

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Prishtina Region	428	392	344	295	297	231	268	301	251	268
Prizreni Region	241	251	197	212	206	194	172	139	194	210
Peja Region	218	234	160	221	217	204	207	190	211	232
Mitrovica Region	210	178	143	106	142	124	182	180	170	129
Gjilani Region	156	184	134	101	91	99	109	91	122	166
Ferizaj Region	117	132	99	99	127	92	108	120	139	128
Total	<b>1370</b>	<b>1371</b>	<b>1077</b>	<b>1034</b>	<b>1080</b>	<b>944</b>	<b>1046</b>	<b>1021</b>	<b>1087</b>	<b>1179</b>

Referring to the above data, the largest number of domestic violence cases is recorded in Prishtina followed by other main cities in Kosovo: Peja, Mitrovica, Gjilani and Ferizaj. Against the perpetrators, the criminal accusations have been initiated and preceded in the courts of the relevant municipalities. It is also noticed

that the number of the reported cases from year to year did not change significantly in most of the municipalities.

## 2.2. Domestic Violence According to the Gender

In the majority of reported domestic violence cases, the women are the victims. Wife is a subject to the physical assault, psychological violence and sexual maltreatment by her husband. Although husbands may be the victim of domestic violence, in Kosovo women (wife) remain the victims almost in every reported domestic violence case. According to the CoE Domestic violence Convention (2011) the phenomena of domestic violence affect women because: “historically unequal power relations between women and men, who have led to domination over, and discrimination against women by men and to the prevention of the full advancement women”.

In the table below, there is the number of the domestic violence women victims compared to men victims that was drafted by the Department of criminal acts in the Policy of the Republic of Kosovo for the period 2005-2012.

**Table 2. The number of domestic violence cases according to the gender**

Year	Female	Male	Total no.
<b>2005</b>	1107	265	1372
<b>2006</b>	1104	338	1442
<b>2007</b>	874	231	1105
<b>2008</b>	836	220	1056
<b>2009</b>	915	215	1130
<b>2010</b>	764	190	954
<b>2011</b>	804	242	1046
<b>2012</b>	826	220	1046
<b>2013</b>	869	220	1089
<b>2014</b>	980	281	1211
Total no.	9079	2422	11451

The data of the Department of Criminal Acts in the Kosovo Police for the period 2005-2014 show that out of 11,451 domestic violence reported cases, 9079 are women while men are 2422. We should note that even in the case when men were reported as domestic violence victim, men were not victims of their spouses but of their other family members or cousins. Therefore, the number of women who are subject of domestic violence is very concerning. The OSCE Report (2012)

concludes that this number does not constitute only a domestic violence crime but a form of gender-based discrimination and violation of human rights.

### **2.3. Family Relationship between the Domestic Violence Perpetrators and the Victims**

According to Halili (2008), the most common forms of domestic violence is the violence between spouses, violence against children and violence against parents. While, in bigger families, the domestic violence takes place between mother in law – daughter in law, brother – brother, nephews, aunt – nephew etc. According to the Kosovo police data, the majority of domestic violence takes place between the husband and wife followed the domestic violence cases between son and father but in general, the reported domestic violence cases includes domestic violence between brothers, nephews, aunts, uncles or cousins.

## **3. Protection of the Domestic Violence Victims**

### **3.1. Provisions on Protection of the Domestic Violence Victims**

According to the Law on Protection against domestic violence (2010), there are the following protection measures that can be applied to protect the domestic violence victims: “protection measures of psycho-social treatment”; “prohibition of approaching the domestic violence victim”, “prohibition of harassment to persons exposed to violence”; “removal from apartment, house or other living premises”, “accompanying victim of violence to take personal things”, “medical treatment from alcohol dependency and dependency from psychotropic substances”, “confiscation of the item by means of which the act of violence was committed” and “property protection measures.” (Article 5 – 11)

It is also defined that regardless of any other order issued by the court or any competent body, the protection order, emergency protection order or temporary emergency protection order may be issued in compliance with the present law. A petition for protection order may be submitted by the protected party, an authorized representative of the protected party, a victim advocate upon consent of the protected party representative, social welfare centre in the municipality where the protected party permanently or temporarily resides in cases where the victim is minor. (Law on Protection against domestic violence (2010), Article 10 – 13)

The legal framework deadlines within which the court is obliged to precede with the petition is defined. “The competent court shall decide on a petition for a

protection order within fifteen (15) days of the receipt of the petition, while for a petition on emergency protection order, the court shall decide within twenty four (24) hours after the petition is submitted. It should be noted that the emergency protection order is executed immediately while the duration of the protection order shall not exceed twelve (12) months, but with possibility of extension of not more than twenty four (24) months. (Law on Protection against domestic violence (2010), Article 15, 16 and 18)

The Law on Protection against domestic violence (2010) also specifies that whoever violates protection order, emergency protection order or an interim emergency protection order, in whole or in part commits a criminal offence and shall be sentenced to a fine of two hundred (200) euro to two thousand (2,000) euro or imprisonment up to six months. If a violation takes place, it shall be immediately prosecuted *ex officio*. (Article 25 (1))

### **3.2. The Implementation of Legal Framework Deadlines of Protection Order Petitions**

According to the OSCE Report (2006), one of the most important elements of a fair justice system is the existence of an effective procedure for the execution of final judgments. The right to file a petition in the court in order to protect human rights would be illusory if the court decision is not fully executed.

Although the law has foreseen the legal framework deadlines on treatment of protection orders, the courts in Kosovo not always managed to respect these deadlines. Shortcomings in the implementation of the law on protection against domestic violence were noted in the international reports as well. According to the case studies described in the OSCE Report (2012), the shortcomings mainly consist of failure to adjudicate petitions within the legally-mandated timeframes, failure to distinguish between types of protection orders, deficiencies in the form and content of orders issued pursuant to the law on Protection against the domestic violence and the role of the courts vis-à-vis reconciliation between parties.

Below there are two cases included in the OSCE Report (2012) that show the failure of the courts to offer the protection to the domestic violence victims according to the legal framework deadlines of the applicable law.

“On 11 January 2011, the victim filed a petition seeking an emergency protection order against the perpetrator, her husband. The petition detailed episodes of physical and psychological violence perpetrated on the victim over the course of the couple’s 22 years of marriage, culminating in an assault the previous month



which has left the victim unable to get out of the bad for two days. Following this assault, which the victim has reported to the police, she left the perpetrator, taking three of their minor children with her. The first hearing session was convened on 29 March 2011; this session, however, was immediately adjourned when it became apparent that neither the victim nor the perpetrator had been duly summoned to appear, and neither the Victims' Advocate nor the CSW representative, although both duly summoned, were present. Subsequent hearing sessions were convened on 8 April, 27 April, 13 May and 31 May 2011; however, on each of these dates the session was immediately adjourned due to the failures of the parties and the ancillary officials to appear. At each of these hearing sessions, the same fact scenario was repeated: there was lack of evidence in the court file that either the victim or the perpetrator had been duly summoned, and both the Victims' Advocate and the CSW representative failed to appear at hearing after hearing, despite having been duly summoned. On 1 June 2011, the victim appeared before the court – without having received due summons – to request that her petition be withdrawn because she had, since filing it, reconciled with the perpetrator. The court then ruled that the petition was to be “considered withdrawn”.

This example not only shows that the court failed to respect the legal framework deadlines, but also shows a negligence of the relevant institution to offer protection to domestic violence victims that in this case are women. Although, according to the applicable law on protection against domestic violence, the court shall execute the emergency protection order within 24 hours, it took 77 days to this court to convene the first hearing session.

Another similar failure to execute properly an emergency protection order and apply the relevant protection measures took place in the Municipal Court in Prishtina. The petition was filed by the victim on 22 April 2011, only two days after the victim reported the case to the police. After submission of the petition, the court should have convened a hearing session within 48 hours in order to define the protection measures that should have been applied against the perpetrator, such as prohibition of approaching and communicating with the domestic violence victim etc. The daily newspaper *Kosova Sot* (2011) reported that although a protection order petition was filed in the court on 22 April, a court did not convene a hearing session. While, on 18 May, the perpetrator, her husband killed the victim (*Kosova Sot*, 18 May 2011).

Frustrated by the negligence of the Municipal Court of Prishtina, the parents of the victim, through their legal representative filed a request to the Constitutional Court on 17 April 2012 to declare if the failure of the Municipal Court in Prishtina to

answer their daughter's petition for protection order represents a violation of human rights.

In its judgment published on 26 February 2013, the Constitutional Court of Kosovo declared the referral made by the parents of the victim (their deceased daughter) as admissible. The Constitutional Court held that "there has been violation of the right to life, as provided by the Article 25 of the Constitution and Article 2 of the ECHR". The Constitutional Court also held that "there have been violations of the right to legal remedies as provided by Articles 32 and 54 of the Constitution and Article 13 of ECHR".

### **3.3. The Protection of Victims by Non-Governmental Organizations**

A great support in protection of domestic violence victims is granted by the non-governmental organizations. Halili (2007) claims that these organizations draft special programs to support and protect the domestic violence victims, create relevant conditions for further education and ensure financial support for these victims.

In order to protect the domestic violence victims, which in most of the cases are married women, there have been established several social welfare centers in Kosovo. The social welfare centre for provisional residence is located in Prishtina while the social welfare for permanent residence is located in Gjakova. Both these centers are using all their resources to provide the domestic violence victims the shelter and protection.

The Director of the Social Welfare Centre in Prishtina presented the programs of this centre which in addition to the provisional residence offer them the educational opportunities. According to Sherifi (2013), this centre arranges various courses for the domestic violence victims such as computer courses as well as other activities that keep them engaged. This centre has enough space to offer shelter not only to the victims of the domestic violence but also their children.

## **4. Conclusion**

It can be concluded that the number of the reported domestic violence cases in Kosovo had more or less the same trend during the period of 2005-2014. The declaration of Kosovo Independence in 2008 was followed by approving the Law on Protection against domestic violence in 2010. The domestic violence was reported even before the independence, mainly by the international organizations

and the enactment of this law in 2010 was expected to contribute in providing significant legal support for the domestic violence victims. However, few of the basic provisions of the law, the provisions that set legal framework deadlines for protection order petitions are not respected by the Kosovo courts. The failure to respect these provisions ended with a death of a domestic violence victim.

According to relevant institutions, for these reported cases that failed to respect legal framework deadlines, the necessary measures have been taken against the responsible persons in the courts. However, if we refer to their cases that were reported, the judges in Kosovo still continue to encourage a victim who has been subject of a physical violence to find a way and reconcile with its husband. The media also reported cases when the police insulted women that reported the domestic violence. Unfortunately, it shows that patriarchal culture, not in all cases can be kept away of the Kosovo institutions. Therefore, there is a need to increase the awareness of both judges and other officials that they are there to apply the Law on Protection against domestic violence as other applicable laws, without involving their personal judgment that results in neglecting or discouraging the persons who want report the domestic violence.

The large number of women as domestic violence victims is another issue that we have to address seriously. With all the work of the non-governmental organizations in offering protection to these women, there is a need for coordinated program by the government that would also serve as a prevention of the domestic violence against women. This should include more emphasis on the gender balance topics on the primary and secondary school programs. The media shall be more active in this regard as well and not only report the cases when the domestic violence takes place. The media could address and explain the provisions of the Law on Protection of the domestic violence in order to inform the public how is domestic violence defined and how can everyone contribute to prevent it in their families.

This public awareness will also contribute to encourage the domestic violence victims report their cases. According to the non-governmental associations, there is a large number of persons, mostly women who hesitate to report the domestic violence against them or there are many women who also are not able to recognize that they have been subject of physiological violence. Having the realistic number of domestic violence cases and the reasons why it takes place, the relevant institutions will have the possibility to take the relevant measures to manage these cases and hopefully prevent them to happen in the future.

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