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**WOMEN'S ACCESS IN THE JUSTICE SYSTEM: VIOLENCE IN THE FAMILY,  
THE TREATMENT OF CRIMES RELATED TO HONOR IN THE ALBANIAN  
JUDICIAL SYSTEM AND ITS IMPACT IN THE SOCIETY, THE MANAGEMENT  
OF SPECIFIC CASES BY PROFESSIONALS**

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**ABSTRACT**

The concept of the woman in northern Albania, is reflected in the institutions and society, where patriarchal beliefs often become a source of discrimination in the family. Many of the causes for which women go to the court are related with gender discrimination, the lack of respect and love in the family; meanwhile lawsuits filed by men, are based on characters contradictions among them. Domestic violence is another cause for which women seek dissolution of marriage, and require lawsuits to establish orders of protection associated with the lawsuit for dissolution of marriage. "The honour of women", who are family members, remains a delicate point of pride for the Albanian men, meanwhile "the men's honour" remained intact in the judicial practise and lawsuits. If we refer to the divorce cases, we notice that the demand to a divorce is the most common by one of the spouses, accompanied by a request for setting a protection order. This study aims to explore the issue of women's representation in the juridical system; transparency and effectiveness through the management of professionals, in advocacy and monitoring. Referring to studies and judicial practises; the years experiences from a social and legal point of view, except the causes we can examine the impact of legal consequences in the society. Part of this study, will be concentrated on gender specific services in giving justice.

**Keywords:** Women, Albania, Honor, Justice, Professionals.

**INTRODUCTION**

Economic advantage and male solidarity constantly affect the status of women in society, without even they exclude the access to administration or justice. Referring to the law against the violence, the demand for divorce is the documentation that must be accompanied with the claim request for the establishment of a protective order, but usually is the opposite. This is because women have never intention to destroy the marriage, because they hope that under the pressure of denunciation they will make the spouse to change his mind. But the denunciation reinforces the spouse conviction for dissolution of marriage (which signals has been previously gone up against the wife to the most extreme violence). As a result, this separation is not avoidable.

If we refer more concretely to IPO and PO, we can say without any doubt that the most effective legal remedies remain in the protection and safeguard of the victim against any form of violence, and risk to the victims. However, the fact that the issuing of the decision to issue or IPO and PO, protects the victim, there is always space for improvement. Nowadays the women are not informed about what that the law that is connected with the protection of the children. That is the reason that the children in the most of cases are unprotected. The lack of specific and licensed professionals, who can provide information, remains a very big problem. The 60% of the cases, only the victim is covered with PO, and this is based on the monitored decisions. The most problematic character of the perpetrator is obviously proved

by judicial evidence (forensic experiment, psychological reports), even by the testimony of children themselves.

## LITERATURE REVIEW

Gender discrimination is the most linked with the discrimination, related to the marital status. According to the Albanian constitution, the principle of equality is so central, giving to any person within its jurisdiction the equal protection of the law. The law rot the discrimination, underlines that “Every juridical action or failure...which creates bases for the denial of equality against a person or group of persons, or which expose them to an unfair, unequal treatment when they are in the same or similar circumstances in comparison with other persons or other groups of persons constitutes discrimination”. This means that the elimination of all privileges and of discrimination should be guaranteed for everyone, in every process, or procedure with any authority, especially in the court. The focus of monitoring was upon family, because the family life has huge influence in the quality of life of each individual. The aim of monitoring was to analyze what is sent to the court and becomes subject of judicial conflicts which as a matter of fact cannot be understood from the analysis of single cases. Monitoring was focused in Shkodra district court and the attention was focused on the court decisions and on the practices on the issues having as their object as follows:

- Dissolution of marriage and the consequences in relation to marital property, parental responsibility, etc;
- Gender impact on the issues related to the Protection Orders;

One of the objectives of monitoring was the identification of the situation of referring to and of implementation of the international and national standards related to gender equality and non-discrimination in the matrimonial and family life as follows: the principle of equality between husband and wife as spouses; the principle of equality between husband and wife as mother and father, so as parents for their children; the principle of equality of children despite the marital status of the parents.

## METHODOLOGY

As far as the methodology is concerned, realizing of this publication involves some main steps, such as:

**Identification of the Court:** Based upon the interest of identifying the typical problems, monitoring is focused on Shkodra; The level of knowledge and competences on the issues of gender equality and nondiscrimination; The experience in relation to offering legal services for the issues object of this monitoring;

**Monitoring of the gender aspects in the court decisions of cases having as their object the dissolution of marriage and its consequences:** Monitoring is focused on the accessibility of the spouses in the court referring the cases of violence; on the issues of the institution of maternity and paternity; on the problems related to the payment for the alimony; on the aspects of exercising of the parental responsibilities after the family dissolution; etc;

**Monitoring the gender aspect of some penal decisions:** Monitoring is focused in some criminal offences such as following articles: 130/a of the Criminal Code ‘Domestic Violence’; article 43 (a) of the Criminal Code ‘Loss of parental responsibilities’

## RESULTS

In the period from January 2011 to December 2014 were studied 252 courts case with the subject of which was "Protection Orders" of the district court, in Shkodra which have been reported to police who work on outside including the monitoring of the judicial sessions.

### Judicial District Court of Shkodra and issues related to protection orders

In 2011's, Shkodra District Court issued 52 Immediate Protection Orders. In 46 cases or 88.4% it put in the verification session of IPO. In 2012's, this court issued 31 Immediate Protection Orders. 27 cases or 87% , it ruled PO (Protection Oorders) issuing the verification session of IPO (Immediate Protection Orders). Referring to data 2013, the 94 monitored issues, to 67 has been issued as PO to the verification session, or 89.3%. But in 2014, by 94 issues monitored, only 70 issued PO, or 74.5%.

Table 1

Court	Period	Cases	PO / IPO	PO	Plaintiff	
					Women	Men
Shkodër	2011	52	100%	88.4%	52 ose 100%	0
	2012	31	100%	87%	31 ose 100%	0
	2013	75	100%	89.3%	75 ose 100%	
	2014	94	100%	74.5%	84 ose 89.3%	10 ose 10.7%

### Women are the most abused in the family

Almost all monitored decisions, results that the accusers are the wife and husband. This tells that the application is filed by the wife against her husband. However there are cases when this claim application is filed by men. This happens when women report violence, men act in the same form, claiming the contrary, pretending that are abused by women. For the whole period of monitoring, in 209 cases, the denunciations were made by the victims to the police, but only in 43 cases, of the victims are directed to referral system such as organizations which work for the protection of victims of domestic violence (municipalities, law enforcement agencies).

### Cases of IPO/PO where women are accusers in particular

Often, though, the victim receives initial courage to apply charges, in main cases they tend to retreat from the judgment. In such cases, it is the duty of the police to submit himself a request for IPO / PO. Petition for protection orders may be submitted at any time. When the petition is filed by the police / prosecutor, is not liable to dismiss the process initiated, even if the victim retreat the process. The same applies to public institutions. However, often claim lawsuit begins as a result of the action of the victim and therefore ceases when it is not legal.

### Causes of cessation of IPO/PO

Generally, the reasons for the cessation of PO, are related to the process of verification. If we refer to the whole period of monitoring, we see that almost all the demands for the employment of IPO, are admitted. Difficulty arises when it was necessary to prove the PO. Some were difficult to prove because they were based only in the conviction of the judge, some of them because of the difficulty to examine the process of the missing of the forensic expert rapport and the victim was determined to request the termination of PO.

**Children must be the primary subjects of the protection from violence, when the relationship between the perpetrator / victim marks the highest level violence between spouses / former spouses.**

It is important for every one to know very well, which are the entities that have the main protection under the law refer to the domestic violence. In the Article 124 / b of the Criminal Code is mentioned that "physical or psychological maltreatment of minors by parents, sister, brother, grandfather, grandmother, legal guardian or any other person who is responsible, will be punished with imprisonment from three months up to two years ". In the subjects which are protected by the legislation on domestic violence, we see that it is important to determine which are the entities that enjoy the main protection under the laws. If they will stop in more detail below, we will conclude that the role of the professional lawyers has been prominent in the defense of victims of domestic violence.

Those, when the victims themselves requires protection orders, she denies the fact the children were also violented. In this case, when a decision is given, the children remain discovered, without protection and the perpetrator can contact at any time with them. This problem arises especially when he approaches the children school or the kinder garden. From our experience in working with victims of violence, have noticed that the perpetrator always as is violent with both, the victim and with children. Even in cases where the victims are protected by PO, he manage to punish her - using violence to the children, because they share the same habitat with the perpetrator.

## **DISCUSSION**

Another problem that arose from the wrong implementation of the PO has been the fact that the specific institutions do not act on time to denounce when they are aware of the situation. Based on the law, the referred mechanisms have the obligation to sue within 24 hours. When the victim is accompanied to the respective bodies by a specialist from the field of the special workers, lawyers or psychologists from NGOs, the victim is counseled in order to help her surpass the confusing state in which the victim is found and to be cleared in the explanation of the situation and circumstances. This situation facilitates the social workers job to arrange the facts. Moreover, being accompanied by the lawyer, the victim, may ask for the implementation of the measures that are related to PO, in the relevant verdict that will be issued by the court. The intervention of the law professionals and the presence of the lawyer since the moment of the pleading has many times influenced in changing the consequent verdict. In most cases where law professionals were the representatives of the victims and organizations, it has been required a representative on behalf of the children and in this case the role of the lawyer is obvious. A common phenomenon is when victims are represented by NGOs when there are few licensed lawyers in organizations and part of the National Chamber of Attorney. It is true that victims are addressed to organizations because they cannot afford the financial obligations toward a lawyer as the legal procedure costs but it should not be forgotten that the representative due is part of the lawyer's ethics and a necessary instrument in justice.

Furthermore, in such cases when the law suit has been made from the victim himself, the incidents are not counted even if violence was exercised on children. In article 19/f, law 9669, the court is obligated to listen to the witnesses (in this case social services, children who should be interrogated about the circumstances) and this brings once again the role of the police in the process of giving testimonies and arranging facts without which violence is

difficult to be proved. In addition to this, in verdicts represented from professionals the foreseen measures towards the victims have been more effective by evicting the violator out of the house, bringing as a result the security and protection of the victims. It results that in the cases followed from the NGOs of Shkoder, since the moment of the pleading from the law enforcement and when children were victims of exercised violation, these children were subjected as individuals that require protection. But the protection of the children is guaranteed in the moment when the legal representative was paid his dues and when his collaboration with the law enforcement has been effective. In this way, it has been targeted the best interest of the children, insuring their protection and psychological well-being. Verdicts have been based on evidence and facts where the police role in this process has been significantly active. There are 10 verdicts where children result as plaintiffs along with their mothers in this court, whereas the relationship between the violators and the victims marks the highest level of the violence between spouses and former spouses.

Illustrating as below:

In one of the most obvious cases the victim and the children were systematically violated with life threatening incidents from the father and the alcoholic husband referred to and supported in the process of trial from the police. The client was represented from the lawyer since the pleading to the court hearings on establishing the IPO and PO. Based on the court verdict, it was established that the former husband must stay 200m away from the residence of the victim and from the school of the children. Moreover, he was ordered not to contact the plaintiffs. The client was represented in the court hearing from passing the IPO to PO, to whom it was decided a one year PO. This case includes the first protective law based on which the victim under the representation of the lawyer required that the moment the order was implemented, the children must be protected. Specifically in the verdict no. 514 (4908-51-2011), date 22.11.2011 is stated: “the court, after scrutinizing the acts entirely, based on articles 306, 309, 310 Code of Civil Protection; law 9669 date 18.12.2006 “for measures against violence in family relationships as well as in the Constitution of the Republic of Albania, decided: the issue of PO for the plaintiff towards the accused A.T...” and the verdict also states that the violator must not threaten or commit violent acts on the victim and the children. Furthermore, it was ordered that the plaintiff M.T and the two infants must be submitted to rehabilitation programs and the accused A.M must pay a contribution for the nutrition of the children. It goes on: the accused A.M is ordered to submit to the rehabilitation techniques at the Emanuel Community, Shkodra branch and to bring a report related to the duties given from this court”

The protective law includes one of the verdicts that protect the victim and the children as it sets sanctions not only on the victim’s residence but as well as on the children’s school. Such a practice was introduced in 2011 when among several important practices such as the rehabilitation of the victim based on the law of protection, it was also attached the rehabilitation of the violator in AAC (Anonymous Alcoholics Center). At this point, it is worth mentioning the acceptance of the request for the rehabilitation of the victims near one of the relevant centers, another practice which began to be widely used in the applications for PO. One of the recommendations that came out from this case was how the role of the police and court professionals were significant in the protection of the victims and in relation to the rehabilitation of the violators. The testimony of the police to support the victim and the evidence found from the police contradicted the claims of the accused that the accused, during the period that the violence was exercised, was abroad. Moreover, this case brought into attention the involvement of the social services and the professional psychologists in training cases involving violence. This practice was of great importance for the following

cases and in finding recommendations for the changes that are being made to the Albanian law against violence. This case is considered to be a success because of the significant coordination between the judge of the case and the lawyer of the victim, but always in accordance to the equality of power. The presence of a female judge and lawyer and being aware of the violence cases, concluded in a court verdict which became a referred practice for the similar following cases.

### **Discussion about the Court of Shkodra related to the honor cases.**

Referring the monitoring, it has been noticed that the dissolve of marriage on the request of one of the spouse's remains the most applied. The causes are different, most of them are socio-economical, but those that attract the attention are causes related to embed gender stereotypes. Gender belonging is perceived differently in various countries. Societies tend to prejudice on the gender belonging. In most cases patriarchal convictions are a source of discrimination in families. The concept of the wife as a "slave", being at disposal of her husband's needs and expectations brings as a result the lack of respect towards her and in several cases leads to verbal and physical violence. The honor of the female family members is a delicate point in the pride of the Albanian males. 70% of the law suits from men are based on character incompatibility.

Illustrating as below:

The client E.P asked for legal and psychological help on February 2012. The client stated that she and her children had a history of insults, heavy threats leading to putting their life in danger, physical and psychological violence leading to serious incidents. More specifically since the establishment of the IPO, Mr. A.P became more violent towards the children as well as using an insulting jargon and threats towards the victim. As she could not bear the violence anymore the client addressed the Law Enforcement Bodies and to justice by obtaining the Immediate Protection Order but in the court hearing for the verification of the Protection Order, the accused party rejected the claim that the violator A.P was under depression and had exercised violence on the victim due to the fact that she had been unfaithful to him. He also claimed that he had filmed her as she was undressing and declared that he required the annulment of the marriage.

The footage was not considered as evidence as it violated the freedom and the private life of the individual, but watching it would negatively influence the judgment of the judge. The accused held off his claims the moment he was informed that we could prosecute the person that took the footage (unauthorized). On the other hand, the victim is the only person in the footage. In the court hearing the lawyer of the victim declared: "The honor of the woman remains a delicate point in the masculine pride, because this can be related to the causes that lead to the dissolve of marriage, but it is not related to the violence exercised on my client" something that related to the verified evidence of violence brought down the claims of the husband to justify the acts of violence and eventually issuing the protection order.

In the court verdict no.253 (51-2012-8419) is stated "the court after considering the law suit, administered the presented evidence, listened to the plaintiff that required acceptance of her pleading, listened to the accused that requested the refusal of the pleading and after considering the case on the whole decided: the issue of the protection order in favor to the plaintiff E.P and her three children..."

## CONCLUSIONS

The findings of monitoring, on the main conclusions and on recommendations are related to the legal framework; related to encouraging of the awareness raising; recommendations related to the improvement of the service offered to the public aiming at having access in the institutions and implementation of their rights. Some articles of the Family Code still need to be cleaned from ambiguity in order to avoid inequality that may be hidden behind their neutrality. There are still problems of lack of knowledge of the jurisprudence of Human Rights Court and of lack of implementation of the standards in relation to the right process, etc. In family issues a special role is played by the psychologist.

**Regulations in the Family Code of Albania** should be accompanied with an adequate role in the evaluation of the highest interest of the child through sublegal acts in relation to the criteria, conditions, financial effects, etc. It has come the need to define better the tasks of the psychologists and of the social workers working at the municipalities, aiming at offering expertise in judicial issues. Meanwhile, when the results show inequality, this should be taken as encouragement for legal reforms and ongoing policies. It often seems that in neutral laws are hidden discriminating consequences from the gender point of view.

**The changes in the Criminal Code of Albania** is considered as positive steps ahead. The referring mechanism against domestic violence is in need of a better consolidation and coordination. In different round tables it is suggested to change the legislation on domestic violence by authorizing police to issue the Protection Order and the Immediate Protection Order, while the verification to be made by the court. To be also foreseen from the procedural point of view, the possibility of notification of the victims of the violence in cases of temporary release of the violator from the institution where he suffers the deprivation of liberty even by foreseeing such a thing in the provision of the decision. It is suggested a better organization of the lists of the stand by judges and of drawing the special lots at the courts in relation to the judges who will judge the Protection Orders aiming at avoiding delays.

**If the rights are reflected in the laws, but when these laws are not known as they should**, or when important group of laws remain inactive, then it is the same situation with the lack of laws. The work to inform and introduce the women to their rights should be a continuous work and not to be done just through the activities organized by NGO-s. Information and advice for women should be realized by institutions as well, such as by notaries, by lawyers, by officials of the Immobile Property Registration Office and why not even by the judges within the framework of the legal discretion, etc. An effective form of dissemination of information is the use of mass-media and of other forms of information, for example through the preparation and realizing of specific TV transmissions.

**Regarding the access in information and services including legal help and counseling**, this issue should be addressed very carefully, because the missing legal help, or lack of financial means to cover the legal help, make the women withdraw from the process. Guaranteeing the legal financial help for the victims should be based upon a strong legal basis by considering this issue a priority, to raise the possibilities for an effective implementation of the law "On the Legal Aid".

**It is recommended to raise the number and to improve the quality of studies undertaken in this field**, in order to judge better on the standards of gender equality and non-discrimination in family issues and even wider. In order to see how the trial processes for



dissolution of the marriage end we have analyzed the accepted and the dismissed cases which have as their object the dissolution of marriage. Considering the cases from the point of view of gender, will help us to see the consequences of the spouses, according to the gender, firstly for continuing, or for dismissing a process and then by analyzing the reasons and the motives that sends a case towards the legal reasons for dismissing the case.

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