

Is justice failing women survivors of violence? -

ACTION-ORIENTED RECOMMENDATIONS FOR
EFFECTIVE PREVENTION, PROTECTION AND
PROSECUTION IN THE WESTERN BALKANS AND TURKEY

November 2019



This programme is funded by the European Union



Project:

“Action oriented advocacy research to inform key stakeholders’ efforts to end gender-based discrimination and violence against women in the Western Balkans and Turkey”, implemented under the European Union-UN Women regional programme on ending violence against women in the Western Balkans and Turkey: “Implementing Norms, Changing Minds” (2017 – 2020). This Programme is funded by the European Union.

We express gratitude to UN Women and EU for entrusting us process of conducting the Research and producing this Study.

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We thank Dr. iur. Edin Hodžić (ANALITIKA - Center for Social Research) who, from July 2018 - February 2019, as a co-author, worked on the creation of research methodology, data collection and data analysis, and creation of the Draft of the Study.

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1 Background and research approach

1.1 INTRODUCTION

This report examines the gaps and failures of the response to violence against women¹ (VAW) in Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro, Serbia, and Turkey, as seen from the perspective of actual cases reported and processed within the legal and institutional system of protection. There is no comprehensive action oriented regional analysis based on concrete case studies which would contribute to assessment of the application of national laws in line with broader domestic legislation and relevant regional and international standards; informing the provision of general and support services to VAW survivors and improving the case management within the system of protection. This report aims to fill this gap. Violence against women is deeply rooted in the patriarchal traditions and customs that shape our world. These patriarchal cultural and sexual norms, as well as discriminatory imbalances of power, are among the reasons

that different forms of VAW not only persist, but also increase in number. An increase in the incidence of VAW is often not followed by an increase in reported cases, due to a lack of trust in the system by survivors. Survivors are generally not encouraged to seek help for various reasons, including a limited access to information about their rights and the services available to them. Each of the countries observed in this report, without exception, faces a number of problems regarding the institutional processing of cases of VAW, which have yet to be analyzed in more detail and placed in a specific cause-and-effect context in this study.

Available analysis of the situation in the observed countries shows that all countries have, to a certain level, improved the status of women and promoted gender equality, adopted specific domestic violence (DV) legislation and acceded to conventions dealing with all or some sorts of gender-based violence (GBV).²

¹ Violence against women “is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” (Council of Europe Convention on preventing and combating violence against women and domestic violence, CETS No. 2010, 11/5/2011, Article 3(a) – hereinafter Istanbul Convention - IC). Violence against women and gender-based violence will be used interchangeably throughout this report. Nonetheless, given the specificities of the legislative approach and terminology used in the countries concerned, domestic violence will also be used where appropriate – a term that is closely related to, but significantly narrower than violence against women.

² See e.g. European Parliament Briefing, *Women in the Western Balkans: Gender Equality in the EU Accession Process*, July 2018, available at [http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625139/EPRS_BRI\(2018\)625139_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625139/EPRS_BRI(2018)625139_EN.pdf); European Women’s Lobby, *Integrated Policies-Integrated Approach: Mapping of Policies and Legislation on Violence against Women and the Istanbul Convention in the Western Balkans and Turkey (Executive Summary)*, November 2018, available at https://www.womenlobby.org/IMG/pdf/ewl_executive_summary_web_spread.pdf.

However, there is a gap between the formally established legal framework and the functioning of the system of protection in the practice. These countries still face many challenges in terms of implementing the adopted laws and strengthening their legislative and institutional frameworks. While the specific challenges and obstacles to ensuring an effective system of protection against VAW in practice may vary from one country to another, all countries in the region have one common characteristic in this field: systems of protection that often fail to effectively protect women from violence. The general conclusion of recent studies and reports³ is that in all countries in this report there are flagrant violations of women's human rights and a general distrust of women in the national protection systems.

Fragmentary and incomplete data paradoxically point to the reduction of VAW cases, however this is likely due to the non-reporting or underreporting of violence. In all countries there are no centralized databases enabling the systematic collection, processing and publication of data on VAW. Countries in the Western Balkans exhibit disparities in the types of data collected, in terms of population groups studied and the types of violence measured. An additional problem is that data collection has been sporadic, ad hoc, non-analytical and has lacked a coordinated response. In some of the countries, collecting data was entrusted only to CSOs, indicating the states' lack of concern for this problem, since CSOs often do not have the capacity to collect such data.

As already noted, it is commonly understood that VAW is deeply rooted in the patriarchal traditions and customs that have shaped and continue to shape the Western Balkans and Turkey.⁴ Officials in different institutions in the system of protection often try to discourage them from the continuation of legal proceed-

ings. Such behavior of professionals is most likely based on strong patriarchal attitudes and may indicate insufficient education/training. When survivors do proceed with the case, it is usually a traumatic experience for women, because they feel unprotected and without proper support and assistance, their feelings engendered by the lack of efficient cooperation and holistic support, the long duration of proceedings and lenient criminal policy in general. It is generally assumed that women usually have limited access to information about their rights and possibilities of protection from violence. When women do choose to report violence, VAW cases are often unjustly and unprofessionally filtered, as it is indicative by a small proportion of reported cases being processed before the criminal courts.

Each of the countries observed, without exception, faces numerous problems regarding the institutional processing of cases of VAW, but those problems have yet to be analyzed in more detail and placed in a specific cause-and-effect context in this study. Although the situation is similar in all countries concerned, the reasons for such a situation are numerous and diverse, but not necessarily identical. Starting from the same obligations regarding the implementation of international standards and practices, there is a common ground and a good starting point for the comparison of the observed countries.

³ See e.g. GREVIO Baseline Evaluation Report Albania (2017): <https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7>; GREVIO Baseline Evaluation Report Turkey (2018): <https://rm.coe.int/eng-grevio-report-turquie/16808e5283>; GREVIO Baseline Evaluation Report Montenegro (2018): <https://rm.coe.int/grevio-report-montenegro/16808e5614UNDP>; Mapping support services for victims of violence against women in Kosovo, Council of Europe project "Reinforcing the fight against violence against women and domestic violence in Kosovo*": <https://rm.coe.int/seminar-pristina-report-eng/16807316df>; Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Bosnia and Herzegovina*: <file:///D:/Documents/Downloads/N1936294.pdf>.

⁴ See footnote no. 2.

1.2 ANALYTICAL FRAMEWORK AND METHODOLOGY

The main purpose of this regional research project is to analyze in detail the functioning of the systems of protection of survivors of VAW in the countries concerned. This is done with a view to identifying key shortcomings of the systems of protection, as seen from the perspective of their practical functioning in specific cases. This report will provide suggestions for practical and action-oriented recommendations aimed at improving the situation in this field. The recommendations will be articulated with a view to offering a concrete platform for action for the national authorities concerned, as well as for other stakeholders in the field, particularly women's organizations.

From the perspective of this research project, it is understood that dysfunctional or inefficient systems of protection of women survivors of violence can be diagnosed at two levels. First, the system can be inadequate at the level of relevant laws, policies, and procedures, in the sense that these are not complete and do not reflect international standards and best practice in the field. Second, problems and dysfunctions may be present in practice; while the system may be well-defined and institutionally complete, its functioning in practice may be beset with gaps and problems and thus fail to serve its main purpose. Therefore, it is important to adopt a two-tiered research approach: analysis of pertinent laws and practice is accompanied with the analysis of actual practice, as seen from the perspective of the selected cases of VAW.

Given the background and the main idea of this research, the focus is placed primarily, but not solely, on the reactive dimension and

support provided to survivors – which includes help, protection, and empowerment. This is an evaluative research⁵, as it aims to evaluate the functioning and effectiveness of systems of protection against gender-based violence in the countries concerned. Furthermore, this research also has elements of situation analysis, as it is directed towards establishing, inter alia, “the attitudes and practices of key institutional actors, such as police, judges, social workers ... and health professionals ... geared toward assessing the adequacy of current institutional responses to victims of violence and the degree of support and/or victim-blaming...”⁶

In terms of the overall research approach, this report is an in-depth case study conducted at two levels: first, analysis of each individual country and the functioning of its system of protection of survivors of VAW serves as a case for individual studies; second, close examination of two indicative cases where the system failed to protect the victim per country⁷, as a means to assess the main gaps and inconsistencies in the system of protection of victims of violence. Having in mind all the above, this undertaking is an action-oriented research on the functioning in practice of the respective systems of protection from GBV in the countries concerned.

A key assumption behind this research project is that a system for the protection of women survivors of violence indeed exists in some form in all states encompassed by this project. It is noted that Kosovo is not party to the IC and that this instrument entered into force at different times in different states encompassed

⁵ Mary Helsing and Lori Heise, *Researching Violence against Women: A Practical Guide for Researchers and Activists* (Washington: WHO and PATH, 2005) p. 50, available at https://path.azureedge.net/media/documents/GBV_rvaw_complete.pdf

⁶ Helsing and Heise, p. 77.

⁷ More details on selection criteria see below, sub-title 1.2.3. „A note on methodology“.

by this research project (most recently in North Macedonia – on July 1 2018⁸), which may also suggest different levels of completeness of legal, institutional and procedural framework for the protection of survivors of VAW. Nonetheless, it is assumed that a system of protection exists in one form or another in all of the Western Balkans and Turkey.⁹ In this analysis international standards and best practice are taken as a framework and benchmark for assessing the situation in the field in all states concerned. Second, the project focuses primarily on the protection of survivors and thus takes an explicit survivor-centered approach. Women survivors of violence are generally neglected within the system of protection, despite the fact that different types of violence predominantly affect women. One of the most blatant example of neglect of women survivors is the fact that women survivors have witness status within criminal procedure, without concrete procedural rights and possibilities. The narrower focus of this research is the system of reaction to and protection of women from violence.

Before undertaking analysis it is important to first identify elements that an effective system of support and protection of survivors of VAW should entail. In this sense, according to the relevant international standards¹⁰, the system of protection for survivors of VAW – as seen from the perspective of our project – should perform the following main functions:

Help survivors get support by running a free national telephone hotline, offering shelters, medical, psychological and legal counselling, help with housing and financial issues and in finding employment.

Empower survivors in judicial proceedings by ensuring they are supported and protected throughout the proceedings, informed on the general progress of the case, their role therein and by enabling survivors to be heard and supply evidence without having to confront the perpetrator.

Protect survivors at risk with the help of emergency barring orders, restraining and protection orders, risk assessment and risk management.

1.2.1 Law enforcement in focus

The IC defines VAW as violence that is “directed against a woman because she is a woman or violence that affects women disproportionately”¹¹. Hence, crimes committed against women because they are women and those crimes that affect women disproportionately are considered gender-based violence against women. Crimes that fall under this definition include rape, sexual assault, sexual harassment, DV, stalking and trafficking in women and girls, among others. Thus, when it comes to law enforcement as the primary focus of this study, the system should serve the dual purpose of protecting and supporting the survivor on one hand, and holding the perpetrator to account, on the other.

To achieve the above-mentioned goals and functions of the system of protection, action is needed in terms of both law and practice, and by all responsible actors. In terms of legislation, a comprehensive legislative approach should be implemented, in the sense that all forms of violence should be criminalized, and that issues of prevention, protection, empowerment and support of the survivors, as well

⁸ The state of ratifications is available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?desktop=true>

⁹ Of the seven countries covered by this research, three countries have already reported to GREVIO – Albania, Montenegro and Turkey – and two are about to report – BiH and Serbia. As for North Macedonia, a timeline has not yet been established, since North Macedonia only ratified the Convention in March 2018, with it entering into force on the 1st of July 2018. WAVE Network, Briefing Paper, Benefits and Challenges the CSSP Platform has faced in the Process of Implementing and Monitoring the IC, p.4. GREVIO announced that in June 2018 BiH will receive the questionnaire for preparing a baseline response on the implementation of the IC. The deadline for the state response is November, 2019.: <https://cssplatform.org/istanbul-convention-bosnia-herzegovina-alternative-reporting-istanbulska-konvencija-u-bosni-hercegovini-alternativno-izvjestavanje> (access: 7.1.2019.)

¹⁰ The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), CETS 2010, Istanbul, May 11 2011: 12 steps to comply, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046e809>

¹¹ IC, Article 3d.

as punishment of perpetrators are equally regulated. Free legal aid should also be made available to survivors, and a gender-sensitive approach (which avoids the re-victimization of survivors) should be applied throughout the proceedings. Survivors should also have several mechanisms of protection at their disposal, including civil lawsuits against perpetrators.

In addition to the legal framework, adequate national action plans or strategies on eliminating VAW should also be introduced. Furthermore, the relevant authorities should develop and implement shared practice standards, guidelines and codes for all agencies involved in responding to VAW.

International standards and best practice also entail specific principles regarding the work of key actors involved in reacting to and protecting the survivors of VAW. In this sense, police officers, as often the first point of contact with the survivors of violence, should respond promptly and adequately to every request for assistance and protection in cases of VAW, ensuring sensitive and professional treatment of the survivor. This, among other things, entails advising the survivors of their rights and ensuring effective cooperation with other actors in the chain of protection, including psychologists, health professionals, and prosecutors. Similar attitude and action are expected from other actors in law enforcement – prosecutors and judges - who should ensure that all cases of VAW are adequately processed, perpetrators adequately punished, and survivors protected through appropriate legal mechanisms, including protection orders, as well as appropriate restitution and compensation mechanisms.

International standards in this field have served as a general analytical framework for this research in terms of assessing both the legal framework and practice of protection of survivors of VAW in individual countries. Nonetheless, given that this analysis uses a flexible, emergent research design¹² specific issues, problems or obstacles will also inevitably be identified in practice in specific country studies.

¹² Helsberg and Heise, p. 50-51.

1.2.2 Research questions

The general research question of this report is as follows: What are the weaknesses of laws, policies and practices when it comes to combating violence against women (VAW) through the justice system in the Western Balkan countries and Turkey (i.e. in each of them separately)? What are the weaknesses of the systems for protecting survivors of VAW from a regional point of view (at least in the context of the Western Balkans and Turkey)?

In addition, there are several specific research question:

1. What are the best practices of (judicial) protection from VAW in terms of international standards and practices of EU Member States and Council of Europe, including the European Court of Human Rights jurisprudence?
2. Are the legal and institutional frameworks in individual countries in line with the best practice in this area?
3. Have appropriate policies been adopted in individual countries in line with the best practice in this area?
4. Which problems in the application of laws or, possibly, gaps in legislation and relevant policies are indicated by the analyzed cases?

1.2.3 A note on methodology

This research uses several research techniques and methods. First, in each individual country study the desk research method was used for painting a broader picture of the system of protection of survivors of VAW. Thus, available reports, academic works, newspaper articles and similar secondary sources on the topic were consulted for this purpose. In addition, primary research was also used, in the sense that laws, policies, guidelines and other official documents in this field were analyzed against the background of international standards. Finally, an important part of the methodological approach was the focus on individual cases where the system failed to provide protection to the victims

of VAW. Analysis of specific cases in individual countries encompassed by this research involves the analysis of available case documents, media reporting on the selected cases, as well as semi-structured interviews with relevant actors - typically the police, the judiciary, the social work centers, the CSOs engaged in the field, and the victims themselves or their relatives.

For the selection of cases, focus was given to those where the overall procedure had a harmful effect on the victim. Of course, it should be noted that this harmful effect can occur even when the system functions well. It is thus important not only that the consequence occurred, but also that it is exacerbated due to the inadequacies and inefficiencies of the system of protection. This is what makes the system ineffective at first glance, and through a deeper and more detailed analysis of the case a clearer picture of the case has been established, primary and secondary patterns of inefficiency and their mutual correlation in a concrete socio-political and legal context.

For this reason, the ways in which the system fails needs to be indicated. Sometimes this failure of the system will be manifested through the treatment of officials (non-professional treatment, lack of sensibility or absence of reaction as a whole), in other cases it will be due to the shortcomings in formal legal or institutional framework. It is also expected that in a detailed analysis of the cases, additional aspects and ways in which the system has failed can be detected, to identify the factors that have contributed to the outcome - i.e. that the protection and support to the survivor were not ensured - which will then serve as a basis for the conclusions and recommendations of this report.

Cases have been selected based on their complexity and content and their potential to shed light on the functioning of the system; It is im-

portant to always keep a broader perspective, although the analysis in concrete cases is focused on specific stories, survivors, professionals, and institutions. Cases were identified based on the analysis of media reporting, secondary/desk research of relevant sources on this topic, as well as based on the recommendations from CSOs engaged in this field. For the selection of cases, the following broad criteria were used:

- The case includes all/any form of violence against women;
- The case was formally prosecuted in the justice system;
- There were severe consequences to life (even death), health and/or any form of welfare of the woman in the concrete case that could have been prevented through adequate and timely action of the system;
- It is evident from the case that the system of protection has failed;
- Procedural finality and actuality of the case (wherever possible, cases that were completed were selected, as such cases can provide the best illustration of functioning of the system as a whole);
- Content and complexity of the case (the vulnerability of more persons, especially minors, the obligation of acting of several institutions or the continuing vulnerability and exposure to danger of the survivor, especially those with different forms of disability).

Due to the sensitive nature of the study and immanent ethical implications, the potentially threatening and traumatic nature of VAW¹³ was in focus. Established standards of confidentiality, privacy, adequate and informed consent procedures and support for women were consistently adhered to throughout the research. As a key reference for researchers and analysts, UNEG Norms and Standards for Evaluation¹⁴ and UNEH Ethical Guidelines¹⁵ were used.

¹³ Ellsberg, M., & Heise, L. (2005). *Researching violence against women: A practical guide for researchers and activists*. Geneva, Switzerland: Program for Appropriate Technology in Health, World Health Organization. See also, <https://dfat.gov.au/aid/how-we-measure-performance/ode/strategic-evaluations/Documents/ode-evawg-ethical-considerations-for-research-and-eval.pdf>

¹⁴ United Nations Evaluation Group (2016). *Norms and Standards for Evaluation*. New York: UNEG. Available: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwi6qD2lfbhAhWLL4sKH-ViRCGQQFjAAegQIABAC&url=http%3A%2F%2Fwww.unevaluation.org%2Fdocument%2Fdownload%2F2787&usq=AOv-Vaw3Degz4hvRC72VE1Fr6ev7Q>

¹⁵ Available: <http://www.unevaluation.org/document/detail/102>

1.3 THE CONTENT OF THE REPORT

This report continues with the presentation of individual country studies, which offer insights into the relevant legal, institutional and policy framework of relevance for the protection against VAW, and an assessment of their compliance with international standards, particularly the IC. Each country study also contains a separate section on the analysis of concrete cases, which shed additional light on the specificities of functioning and malfunctioning of the system of protection in practice. The facts of the cases are presented first, followed by an analysis of the main gaps and shortcomings in the response of the system of protection, and

conclusion summarizing the main problems and challenges identified.

The final section offers concluding observations on identified problems and patterns of malfunctioning of the systems of protection against VAW from a regional perspective.

It is hoped that this report will bring about important new insights and contribute to the better understanding of the challenges in ensuring effective protection of survivors of VAW in the Western Balkans and Turkey and suggest directions and priorities for policy and advocacy work in the field in the future.

2 National reports

2.1 ALBANIA

Abbreviations

ASPA	Albanian School of Public Administration	IC	Istanbul Convention
AWEN	Albanian Women Empowerment Network	INSTAT	National Institute for Statistics for the Republic of Albania
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	IPO	Immediate Protection Order
CoE	Council of Europe	IOs	International Organizations
CoEC	Council of Europe Convention	ITT	Inter-disciplinary Technical Team
CC	Criminal Code, Law No.7895/27.01.1995, as amended	LPD	Law No. 10221/4.2.2010 'On Protection from Discrimination'
CPC	Criminal Procedure Code, Law No.7905/21.03.1995, as amended	LDV	Law on Domestic Violence
CSO	Civil Society Organization	LGE	Law on Gender Equality
CPD	Commissioner for Protection from Discrimination	MoHSP	Ministry of Health and Social Protection
CRD	Civil Rights Defenders	Mol	Ministry of Interior
CLCI	Centre for Legal Civic Initiatives	MoJ	Ministry of Justice
DoCM	Council of Ministers Decision	NPO	Not-for-Profit Organization
DV	Domestic violence	NCGE	National Council for Gender Equality
EU	European Union	NHC	Netherlands Helsinki Committee
EA	Economic Aid	NRM	National Referral Mechanism for cases of domestic violence
FC	Family Code, Law No.9062/8.5.2003, as amended	CRM	Coordinated Referral Mechanism for cases of domestic violence
GE	Gender Equality	RA	Republic of Albania
GBV	Gender-Based Violence	SoM	The School of Magistrate
GRB	Gender Responsive Budget	PO	Protection Order
		UN	United Nations
		UNDP	United Nations Development Program

2.1 Introduction

Albania is a parliamentary republic, a unitary country applying decentralization principles. The local government, composed of 61 municipalities and 12 regions, reformed in 2014-2015, still faces financial and economic difficulties.¹⁶ The total population in Albania, as per the latest 2011 census, was estimated at 2.821,977 million people.¹⁷ Data from INSTAT shows that in 2017, women made 49.9% of the population, in total.¹⁸ Albania, an EU candidate country since 2014, is currently expecting the June 2019 decision of the EU Council to officially start the accession negotiations to the European Union. In June 2018 the EU Council decision emphasized the need for key priority reforms, including human rights, justice reform, and fight against organized crime.¹⁹ The country, undergoing a deep constitutional and systemic judicial reform,²⁰ reflects a weak level of law implementation, recently indexed by the 2018-2019 World Justice Project as 71st out of 126 countries worldwide in this regard.²¹ The 2017-2021 Political Program of the Government states that a better placement of women in the society through increasing their employment as well as enabling access to social services, with special focus on vulnerable groups is the priority policy when it comes to gender issues.²² As the experience of

other countries also shows, women's and girls' rights, as human rights, even when generally stipulated in laws, in reality are often not guaranteed.²³

Albania has made significant efforts to adopt and strengthen gender equality mechanisms, including regulations and practice related to VAW. It has ratified the key international conventions, CEDAW and IC, and adopted a comprehensive legislation in this field. The National Strategy on Gender Equality and Action Plan 2016-2020 includes GB-VAW among strategic priorities, in line with international standards. While acknowledging progress, the EC 2018 Report on Albania still notes the institutional mechanisms to tackle VAW remain weak.²⁴ GREVIO has evaluated the progress of Albania in the implementation of IC in 2017, acknowledging it has developed a solid legislative framework to address DV, in the fields of both civil and criminal law.²⁵ Meanwhile, CSOs emphasize inadequate implementation of the legislation. Although the legislative and institutional framework in this area is quite complete in Albania, VAW remains a pervasive form of violence, therefore indicating the laws and policies regarding VAW have not been fully effective.

¹⁶ The most recent case is that of Skrapar Municipality, in the south of Albania, which was shut down due to lack of funds. See the Mayor's public information at: <https://bashkiaskrapar.gov.al/2019/02/24/kryetari-i-bashkise-skrapar-nesim-spahiu-i-drejtohet-perfaqesive-nderkombetare-per-situaten-e-buxhetit-te-bashkise-skrapar/>

¹⁷ See: <http://www.instat.gov.al/en/themes/censuses/census-of-population-and-housing/publikimet/2011/publications-of-population-and-housing-census-2011/>

¹⁸ <http://www.instat.gov.al/en/themes/demography-and-social-indicators/population/#tab3>

¹⁹ See the European Commission, Albania 2018 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2018 Communication on EU Enlargement Policy, Strasbourg 17.4.2018, p.3. <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf>

²⁰ See https://eeas.europa.eu/delegations/albania/56091/time-change-albanian-judiciary-looking-back-year-vettingprocess_en?fbclid=IwAR0m_LMDvOgrkPpsn9HYhRF6bo07XK7h1RHRqVwMQFXriO_DWhLOF2KREpc.

²¹ See the relevant data at: <http://data.worldjusticeproject.org/#/groups/ALB>

²² Government of Albania, Political Governing Program, 2017-2021, pg. 21.

²³ UN, Mission to Bosnia and Herzegovina, R. Manjoo, Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Bosnia and Herzegovina (28 October - 6 November 2012), 4. Available: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/143/43/PDF/G1314343.pdf?OpenElement> (access 4.1.2019.).

²⁴ See EC Country Report, Albania, 2018. <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf>

²⁵ GREVIO's (Baseline) Evaluation Report Albania on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), p.10. <https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7>

2.1.2 Legal and policy framework

Albania has made notable progress toward developing laws that address VAW. Since 2006 a package of laws addressing gender issues in general and VAW in particular have been adopted²⁶, thus improving the alignment of the legal framework with CEDAW and the IC standards.

2.1.2.1 Legal framework

Albania has ratified both the CEDAW (in 1993)²⁷ and the IC (in 2012)²⁸ and despite obvious progress in this regard, more efforts are required to ensure full compliance with CEDAW and the IC.

DV is regulated by *lex specialis* Law No. 9669 “On Measures Against Domestic Violence” (LDV), as amended. The law defines DV in line with the IC, ensuring protection regardless of whether the perpetrator currently shares or has in the past shared the same house with the survivor.²⁹ DV cases are handled in general jurisdiction courts. The recent 2018 changes to the LDV³⁰ brought about important improvements. The law now envisages a broader circle of subjects entitled to protection, including persons in intimate relationships. Changes regarding the risk assessment³¹ and the order

on preliminary measures of immediate protection³² are introduced aiming at ensuring more safety for survivors. The Order on Preliminary Protection Measures includes, among others, the immediate placing of the survivor in a residential or emergency center for DV by the police until a decision has been taken by the Court. The order on preliminary measures of immediate protection is assessed through a specific procedure by the Court³³ and it is an integral part of a comprehensive system of protection. Important element of this system is the Coordinated Referral Mechanism (CRM). A safety plan for the survivors is established by the social worker near the local governments and the CRM. This plan is implemented by all responsible actors on local level. In addition, the 2018 changes foresee the establishment of Crisis Management Centers for cases of sexual violence³⁴ and address more adequately specific groups such as minors, vulnerable groups and people with disabilities. A pro-active role in the protection of children is also envisaged. Due to these improvements, it is expected that measures against DV will become more effective in the future.³⁵ However, the measures envisaged by the law do not include the option of removing the abuser from the dwelling place, which would increase the survivor’s safety and would be in line with the IC standards.

²⁶ These include Law No. 9669 date 18.12.2006 “On Measures against Violence in Family Relations” (Law on Domestic Violence), further amended with Law No. 9914, dated 12.5.2008 and Law No. 10329, dated 30.9.2010; and Law No. 47/2018; Law No. 9970, dated 24.07.2008, “On Gender Equality in Society” which provides for the meaning of discrimination on grounds of gender.

²⁷ With Law No. 1769, dated 9.11.1993.

²⁸ With Law No. 104/8.11.2012 “On Ratification of the CoE, ‘On Preventing and Combating Violence against Women and Domestic Violence’”. See at: <https://www.coe.int/en/web/istanbul-convention/albania>

²⁹ Article 3, “Definitions” of LDV.

³⁰ Law No. 47/2018, on changes and amendments to Law No. 9669, of 18 December 2006, “On Measures Against Violence in Family Relations”, as amended.

³¹ Risk assessment and management are now a legal responsibility of the Police, which can be assisted by local coordinator or a social worker near LGU.

³² Such an order contains immediate measures to stop the violence and is taken by the bodies responsible for dealing with cases of domestic violence at the State Police up until a Court Decision is issued.

³³ The Court takes a decision on the case and issues the Immediate Protection Order (IPO) within 48 hours from the submission of the request, while the decision on a Protection Order (PO) is issued within 15 days from the date of the registration of the request. The IPO cannot be appealed. The appeal regarding PO is filed within 5 days from the notification of the decision. The Court of Appeal shall take a decision within 15 days from the date of filing of the appeal. No appeal is allowed to the Supreme Court against the decision of the Court of Appeal. Also, court fees do not apply to the victims in such cases.

³⁴ Article 7 of LDV, as amended.

³⁵ A. Anastasi and A. Bozo, “Good practices for implementing the Istanbul Convention in Albania”, Fempower magazine, no.29/2018, magazine published by WAVE Office, p.20.

Despite the improvements in the legal framework, important challenges remain. While the 2018 changes require adoption of by-laws, only three such regulations have been adopted so far.³⁶ Risk assessment, in line with Article 51 of the IC, is to be conducted by the State Police and the local coordinator of a local government unit. Disregarding the 2018 changes, these rules still do not provide for the protection of subjects outside family relationships: the Order on Preliminary Protection Measures, IPO and PO provide protection only for survivors of DV. In addition, awareness of recent changes of the law is often missing on the part of the responsible institutional actors. Local Social Services for survivors of DV in some municipalities are weak³⁷ and unable to fulfil new legal responsibilities related to risk assessment and management of DV cases. Decision of the Council of Ministers No. 334, of 17 February 2011, "On the Establishment of the National Referral Mechanism for cases of violence in family relations, and the manner of its functioning" defines a clear procedure for intervention in assisting survivors of DV. Failure to fulfil legal responsibilities as per this document leads to disciplinary measures or indictment with the offence of "abuse of office" for responsible officials. Recent changes of LDV impose the revision of this document as well.

The Albanian Criminal Code (CC) provides for the criminalization of specific inactions concerning VAW and girls, DV, trafficking in human beings, sexual violence, sexual harassment, etc. The Albanian CC³⁸ has been duly amended in 2012³⁹ and 2013⁴⁰ introducing new provisions on bringing perpetrators to justice, increasing sanctions against perpetrators, envisaging marital rape as a criminal offence, criminalizing sexual harassment, and considering an aggravation if a criminal offense is committed against a survivor who is the subject of a protection order.⁴¹ DV, according to the CC, is a specific criminal act prosecuted *ex officio*. Seriousness of the act, intentional injuries and consequences, especially if committed repeatedly or in the presence of minors, impact the seriousness of punishment, increasing it from two years of imprisonment to three and five years.⁴² Punishment measures for perpetrators of different forms of DV have also been intensified.

Murder in the context of family relations is also foreseen as a criminal offense.⁴³ Violent sexual relations with minors as well as sexual relations without consent with spouses or partner are also criminal acts, and envisaged sanction is increased in such cases (Article 102). Sexual violence is envisaged as a criminal act, as well as Sexual harassment⁴⁴, Trafficking of adults⁴⁵, Coercion or obstruction of cohabitating, concluding or dissolving a marriage⁴⁶, Stalking⁴⁷

³⁶ A Joint Instruction of the Minister of Health and Social Affairs and the Minister of Interior: 1) no. 866, dated 20.12.2018, "On procedures and model of risk assessment for cases of domestic violence", 2) no. 912, dated 27.12.2018, "On procedures and model of the order for preliminary immediate protection measures", and 3) Guide of MoHSP No. 816, dated 27.11.2018 "On approval of Standards of providing services and functioning of the Crisis Management Centres, for sexual violence cases".

³⁷ GADC & AWEN, 2018. Monitoring reports for the year 2017, on the implementation of the NSGE 2016-2020 in Vloera, Shkodra, Tirane, Elbasan, Korce and Durres.

³⁸ See a translation of the Criminal Code at <https://www.eurallius.eu/index.php/en/library/albanian-legislation/send/10-criminal-code/11-criminal-code-en>

³⁹ Law No. 23/2012 "On amendments and changes to Law No. 7895, of 27 January 1995 "The Criminal Code of the Republic of Albania", as amended.

⁴⁰ Law No. 144/2013 "On amendments and changes to Law No. 7895, of 27 January 1995 "The Criminal Code of the Republic of Albania", as amended.

⁴¹ These changes were introduced by the Law No. 23/2012 and Law No. 144/2013.

⁴² CC, Article 130/a.

⁴³ CC, Article 79/c "Murder in family relations" envisages that this is punished by no less than twenty years or life imprisonment. This article was added by Law No. 144/2013, of 2 May 2013.

⁴⁴ Law No. 144/2013, Article 108/a.

⁴⁵ CC, Article 110/a. In addition, Article 128/b considers "Trafficking of minors" as a specific criminal act.

⁴⁶ CC, Article 130. Amended by Law No. 144, dated 02.05.2013, article 32.

⁴⁷ CC, Article 121/a. (Added by Law No. 23/2012, dated 01.03.2012, article 15.).

and Maltreatment of minors.⁴⁸ Article 125 envisages that the denial of necessary support for children, parents or spouse, from the person who is obliged, to provide such support, constitutes a misdemeanour, although the reality shows that a court decision is not an effective solution for women and their children in such cases. The CC foresees that unlawful taking of a child is also a form of violence. Also, article 321 of the CC envisages that any action in violation of court decisions regarding protection orders is a criminal act. The number of cases of violation of protection orders have increased in recent years. According to State Police Directorate 119 such cases were recorded in 2016, 129 in 2017 and 148 cases in 2018.⁴⁹

As the list above indicates, the Albanian CC fails to comply fully with international standards. While several related issues are regulated by law, the Albanian criminal legislation still needs to address different forms of VAW and DV such as psychological violence⁵⁰, forced sterilization⁵¹, female genital mutilation⁵² and “crimes in the name of honour”⁵³. Also, Albania’s provision on rape, as in majority of countries encompassed by this study, is a force-based definition.⁵⁴

In sum, the Criminal Procedure Code, amended in 2017, became more survivor oriented, providing greater protection to survivors, including VAW and DV survivors, which was welcomed by the Committee of the Parties to the IC.⁵⁵ The law guarantees the rights of survivors,⁵⁶ includ-

ing specific regulation for the survivors of sexual violence and the human trafficking, minor victims,⁵⁷ and increasing the number of listed rights as per specific victims. Among specific rights, the right to request compensation for the damage and act as a civil plaintiff in the criminal proceedings were introduced. The Albanian Criminal Procedure Law provides for the possibility of survivors of various forms of violence against women to seek redress for moral and material damage through a civil lawsuit in the criminal proceedings, or directly in the Civil Court.⁵⁸ The CPC provides protection from victimization for survivors of various forms of VAW, including provision of testimonies with different professionals and non-confrontation of the survivor of violence with the perpetrator, and envisages application of special testimonial techniques. This is mainly in accordance with the IC standards. Special procedural rules are also envisaged for cases involving minors.⁵⁹

The Family Code (FC) addresses situations where spouses fail to comply with their obligations towards each other or when they jeopardize the family’s interests, requiring courts to take immediate measures in such cases.⁶⁰ This law also stipulates that spouses whose rights have been violated are entitled to file a court application for an urgent measure of banning the abusing spouse from accessing the marital dwelling.⁶¹ Nevertheless, no procedural provisions accompany such rules, which makes them ineffective. Furthermore, article

⁴⁸ CC, Article 124/b.

⁴⁹ Data received in 2019.

⁵⁰ GREVIO encourages the Albanian authorities to remedy the gap in their criminal legislation regarding psychological violence (paragraph 127), p.74.

⁵¹ GREVIO encourages the authorities to introduce the offence of forced sterilisation in criminal law, p.75.

⁵² GREVIO invites the authorities to consider introducing in their criminal legislation an offence specifically targeting all forms of female genital mutilation, p.75.

⁵³ GREVIO strongly encourages unacceptable justifications for crimes, including crimes committed in the name of so-called “honour”, p.75.

⁵⁴ GREVIO Baseline Evaluation Report Albania, p.137.

⁵⁵ IC-CP/Inf(2018)3.

⁵⁶ CPC, Article 58, “The rights of the victim of the criminal offence”.

⁵⁷ CPC, Article 58/a, “The rights of the minor victim”.

⁵⁸ CPC, Article 61, “Civil lawsuit in criminal proceedings”.

⁵⁹ CPC, Article 41.

⁶⁰ FC, Article 61.

⁶¹ FC, Article 62.

228 of the FC, while foreseeing the removal of parental responsibility, does not make a direct reference to incidents of violence and the obligation of the judge to consider them before deciding on issues related to parental responsibility or custody of children, as required by the IC. While the FC allows, in exceptional cases, for marriage under the age of 18, it does not specify a minimum age under which a court may not allow a marriage. Finally, the supervised parental visits of children after the dissolution of a marriage are not adequately regulated, and it is not ensured that a parent's right to a visit is not used to put the other parent or their children in danger.

2.1.2.2 National policy

a) Relevant strategies

The current National Strategy and Action Plan on Gender Equality, 2016-2020, continues⁶² with a focus on gender based violence and includes under Strategic Goal no. 3 the Reduction of GBV and DV. It adopts a more holistic approach to addressing all forms of VAW, including DV. The Strategy envisages that all the 61 municipalities have the Referral Mechanism by 2020, as well as that 20 specialized support services are established within the same timeframe. The strategy envisages a budget for its implementation, but it is not fully funded. It includes indicators, as well as an annual monitoring and reporting mechanism. Until now, a 2017 monitoring report, including DV, was adopted by the NCGE and published.⁶³

A *Plan of Action on Implementation of GREVIO's Recommendation* for Albania, presented in the 1st 2018 Meeting of the NCGE is currently being implemented. In addition, the Ministry of Justice has prepared a *Draft-Plan on GREVIO's recommendations* under the responsibility of

this ministry. The country also joined a global trend with a *National Action Plan (NAP) on the implementation of UN Security Council Resolution 1325 "On Women, Peace and Security"*. With the Council of Ministers' Decision No. 524, of September 2018, Albania adopted its NAP for 2018-2020, which integrates a gender perspective in the field of security and protection. A new *Action Plan for "Addressing Trafficking in Human Beings, 2018-2020"* is adopted by the DoCM No. 770, of December 2018. It encompasses four pillars - prosecution, protection, prevention and cooperation and is harmonized with the Gender Equality Strategy, 2016-2020.

Several administrative policies have been adopted in Albania, facilitating the operation of state structures dealing with DV and VAW. These include: Standard operating procedures on the treatment of cases of domestic violence;⁶⁴ Standard operating procedures on the adoption of the standard procedure for dealing with cases of harassment and sexual harassment in the State Police;⁶⁵ and Standard operating procedures for the protection of victims and potential victims of trafficking.⁶⁶

b) Data collection and monitoring

The MoHPS collects administrative data on VAW and DV. Such data is received from local coordinators for the referral of cases of DV. It is noted that even though local government institutions and other institutions keep administrative data, these are fragmented and not harmonized at the inter-institutional level. The INSTAT has continuously elaborated statistics on DV and VAW. It published in 2007 and 2013 respectively a National Population based Survey on DV.⁶⁷ The new survey, which included data on DV against women, physical violence, psychological violence, sexual violence, sexual abuse, alcohol and DV, impact of DV on children, demographic effects on DV, help-seeking

⁶² Previous National Strategy on Gender Equality, Reduction of Gender Based Violence and Domestic Violence, 2011-2015 adopted with DoCM No. 573/16.6.2011.

⁶³ See <http://www.shendetesia.gov.al/wp-content/uploads/2019/01/Raporti-i-Monitorimit-te-SKBGJ-per-vitin-2017.pdf>

⁶⁴ Order of the General State Police Director No. 1818, of 13 November 2017.

⁶⁵ Order of the General State Police Director No. 96/10.02.2015.

⁶⁶ Council of Ministers Decision No. 499, of 29 August 2018 "On the Adoption of Standard Operation Procedures for the Protection of Victims and Potential Victims of Trafficking".

⁶⁷ Such Surveys were prepared with the support of the UNDP in Albania.

behaviours of battered women, etc., is being finalized and published.⁶⁸ In this sense, standards regarding data collection envisaged by Chapter III of the IC are still to be met by Albania.

c) Training of relevant professionals

There are several institutions offering training on DV and VAW. The MOHSP has trained and continues to build the capacities of local coordinators on the referral of DV cases. The Albania School of Public Administration (ASPA), established to provide initial and continuous training for public servants at both central and local level, has a specific curriculum on GBV and DV. The Police Academy also provides trainings for the police using the training curricula on GBV and DV applicable for all levels of management at the police forces. The School of Magistrate (SoM) offers initial and continuous training for judges and prosecutors. In addition, the National Bar Association train lawyers in this field. Like in other states of the region, CSOs have been an active actor in this field, offering training for all professionals within the system. Data on training shows a considerable engagement of various actors in this field.⁶⁹ Nonetheless, the challenges are related to the fact that classical methods of training involving lectures have been mostly used, which brings into question the overall effectiveness of such training. In addition, training sessions and capacity building activities in the area of GBV and VAW, however numerous in the last couple of years, have not been continuous and sustainable. There is no data on measurement of the

effectiveness of these trainings (baseline tests and follow up tests undertaken), due to which it is hard to estimate the outcome.

d) Survivor-oriented approach

While the policies are multifold and upgraded continuously, there are still gaps in legislation and concerns with implementation. Even though the coordination among relevant agencies, institutions and organizations has increased, the effectiveness of implementation of the policies needs to be strengthened, especially in the cases of DV.

The NRM for cases of DV, at the municipality level, are composed of all key actors dealing with DV cases in various capacities. Nonetheless, the functioning of NRM lacks effectiveness in some municipalities. Procedural rules are clear: any responsible institution addressed by the DV survivor is obligated to notify the Local Coordinator and police. DoCM No.334 of 2011⁷⁰ establishes a clear procedure of cooperation of local coordinator for referral of DV cases with the police, to perform a preliminary analysis of an incident. Regardless of this legal clarity, there are cases in which responsibilities are not respected by local authorities and the system fails. Even though disciplinary measures are foreseen in cases when the personnel does not act timely and adequately, cases of disciplinary proceeding in such situations have been rare, leading to apathy about reporting. In addition, the non-provision of services for the survivors of DV at the local level renders management of the cases very difficult in practice.

⁶⁸ <http://www.instat.gov.al/al/rreth-nesh/aktivitetet/të-tjera/dhuna-ndaj-grave-dhe-vajzave-në-shqipëri-2018/>

⁶⁹ During 2017, the OSCE Presence in Albania and the General Department of State Police organized 7 trainings on “Diversity, hatred crimes, combatting domestic violence” for 139 police officers all over the country. The State Police in cooperation with UNDP, organized in the 12 regions of Albania a cycle of regional trainings “On procedures to be attended in cases of sexual harassment at workplace” for 252 police officers during the last two years. During 2017, UNDP in cooperation with the Ministry of Health and Social Protection, trained almost all local coordinators of municipalities in the country on managing and coordination of gender based violence and DV cases and on the registration of cases in the REVALB system. During December 2017 the MoHSP in cooperation with UNDP, with the support of the Swedish government, organized training on CRF with gender specialists and/or local coordinators from 15 municipalities. On February 21 2019 UNDP supported the training of the local coordinators for the referral of DV cases on changes in the LDV. MoHSP, Report “Measures adopted in the fight against VAW and DV, January 1 - December 31, 2017, pg. 16.

⁷⁰ DoCM No. 334, of 17 February 2011 “On the Establishment of the National Referral Mechanism for cases of violence in family relations, and the manner of its functioning”.

2.1.3 Institutional framework and related proceedings

2.1.3.1 Coordinating body

The MoHSP is the responsible ministry for policies on gender-based violence, abuse against children, women and other groups, gender equality, protection of the rights of the child, and non-discrimination.⁷¹ Within the ministry it is the Policy and Strategy Sector on Social Inclusion and Gender Equality⁷² that plays an important role in consultations and coordination of legal and policy initiatives as well as cooperation with CSOs. Regardless of the quality and sustainability of the existing human resources of this unit, more human and financial resources are needed to fulfil their responsibilities.

The NCGE is a comprehensive body that work on gender equality and VAW. It coordinates policies among different state institutions. The role of this Council needs to be strengthened beyond the participation of members in two meetings per year, raising issues in the meeting, and giving suggestions and approval of the monitoring reports of gender equality strategy/action plan. At the local level, the referral mechanism regarding cases of DV is required to be established in each municipality. It consists of: a) steering committees for coordinating the activity of institutions of the responsible authorities at the local government level, and referral of cases of DV; b) interdisciplinary technical teams for coordinating among specialists of different fields; and c) local coordinators for referral of cases of DV who lead and coordinate the work of the interdisciplinary

technical team serving as an intermediary with the NPOs, the Police, the Health Services, the Courts, the Social Services, and other referral institutions/organizations.⁷³

2.1.3.2 Relevant CSOs

Women CSOs prove to be crucial to service delivery for women survivors of violence, offering a wide range of services.⁷⁴ A 'Monitoring Network Against Gender Based Violence' consisting of 48 organizations was established under the framework of a project funded by the European Commission and implemented by the Centre for Legal Civic Initiatives with the support of UN Women.⁷⁵ This network uses international standards as a monitoring framework; offers services in a coordinated way, engages in advocacy, strengthening the accountability of the responsible institutions and undertakes capacity building of CSOs in monitoring the implementation of the international standards and reporting to the CEDAW Committee, GREVIO and the UPR, etc.⁷⁶ Another important network working on combating VAW and DV is the Albanian Women Empowerment Network-AW-EN. This network works in different districts in the country and provides the survivors of VAW with information, counselling, free legal aid, support, psychological support, services and rehabilitation programmes for perpetrators.

The role of CSOs in managing cases of DV has been of a great importance. In the municipalities in which there are active CSOs, the managing of DV cases or VAW cases has been more successful. However, such services are donor-based, with scarce state funding. The number of CSOs financially supported from the municipali-

⁷¹ DoCM No. 508, of 13 September 2017 "On Determining the Field of State Responsibility of The Ministry of Health and Social Protection"

⁷² MoHSP, Report on measures adopted in the fight against VAW and DV, January 1 - December 31, 2017, p. 6.

⁷³ Report submitted by Albania pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combat violence against women and domestic violence (Baseline Report), First National Report Albania, Reporting period January 2014 - December 2015, Received by GREVIO on 16 January 2017 GREVIO/Inf(2017)1, p.19.

⁷⁴ European Women's Lobby, "Integrated Policies-Integrated Approach. Mapping of policies and legislation on violence against women and the Istanbul Convention in the Western Balkans and Turkey", Executive Summary. 2018, p.20.

⁷⁵ <https://rrjetikunderdhunesgjimore-monitorime.al/>

⁷⁶ It submitted a shadow report on the implementation of the UPR recommendations for Albania in October 2018, as well as a follow-up report for the CEDAW Committee raising as the main issue the need to strengthen the effectiveness of the implementation of the Albanian legislation.

ties has been limited⁷⁷ and the state support scheme for CSOs is poor. Such a practice does not guarantee continuity and is certainly not in accordance with the IC standards which emphasize state support for such activities.

2.1.3.3 Allocation of appropriate financial and human resources

The National Strategy on Gender Equality 2016-2020 and its Plan of Action are budgeted. It however is not fully funded by the state, depending thus on donors to fill the financial gaps. Lack of financial resources certainly jeopardizes the effective implementation of the foreseen activities. Gender equality is a core principle in the management of the budgetary system requiring gender-responsive budgeting (GRB) programs.⁷⁸ The Public Finance Management Strategy 2014-2020 reinforces GRB through the annual budgeting process.⁷⁹ Nonetheless, the monetary funds allocated through gender budgeting still make up only 3% of the mid-term budgeting program.⁸⁰

On local level, the financial and human resources in the structures of CRM are insufficient and this is often reflected in the quality of their functioning. The coordination among the members of the ITT within the CRM needs to be strengthened.⁸¹ The level of communication among the ITT and the Steering Committee (within CRM) needs to be strengthened. As already noted, the CRM are not established in all municipalities and this impacts the protection of survivors of DV. Personnel dealing with DV, even though employed in local government units, still lack proper knowledge and skills. Continuous personnel turnover negatively impacts the retention of skills, capacity and knowledge. In addition, general employers at the ministerial level lack proper

skills to mainstream gender into policies and programs and follow the implementation of such policies.

2.1.3.4 Specialist support services

Support services for the survivors of DV have increased in recent years. They include the National centre for the survivors of DV, the counselling line for the survivors of DV, a free of charge telephone number 116 117, emergency centres in several municipalities, legal services provided by the NPOs or by the State commission on free legal aid.

SOS (help)lines: A free and 24-hour operational National counselling hotline for survivors of DV – toll number 116 -117 – has been active in Albania. CoMD no. 430, dated 08.06.2016, has set standards for the National counselling hotline. Numbers also confirm the need for such a service: 1489 calls have been recorded at the National counselling line and 636 face to face counselling sessions have been conducted in the period of January-November 2017. The nature of calls is mainly related to the reporting of abuse against a client, social problems, legal relationships or terminated relationships.⁸² Another Free counselling line for children, ALO 116, is also available: it addresses cases of violence as well, including violence against girls and DV.

Shelters and counselling: According to the 2015 report “Albania-Mapping Support Services on Violence against Women and Girls” by the Council of Europe and UN Women, there were a total of 13 specialist support services in accordance with the requirements of the IC, specifically: nine shelters, five counselling centres (of which two are also counted as shelters) and one program for the perpetrators. According to the Action plan of the National gender equality strategy, by 2020 seven other services will be

⁷⁷ One of the examples is the Durres municipality, which has supported The Community Center “Today for the future” for the year 2017.

⁷⁸ Law No. 9936, 26.06.2008, as amended.

⁷⁹ See at: https://www.finanac.gov.al/wp-content/uploads/2017/09/Albanian_PFM_strategy_2014-2020-1.pdf
<http://www.finac.org.rs/files/library/Strategjia%20per%20Menaxhimin%20e%20Financave%20Publike%202014-2020.pdf>

⁸⁰ See at: <http://www.shendetesia.gov.al/wp-content/uploads/2019/01/Raporti-i-Monitorimit-te-SKBGJ-per-vitin-2017.pdf>

⁸¹ Gender Alliance for Development Centre and Albanian Women Empowerment Network. 2018. Monitoring reports for the year 2017, on the implementation of the NSGE 2016 - 2020 in Vlora, Shkodra, Tirane, Elbasan, Korce and Durres.

⁸² Ibid, p. 9.

offered, namely: two emergency shelters, one free national helpline, three programs for perpetrators, and one program for children witnessing violence. Thus, an increase of 53.8% of specialist support services is foreseen by 2020 compared to 2015.⁸³

Rape-crisis centres: From 2018 Albania established counselling and psychological services integrated into primary health services, in accordance with the Beijing Platform. The Liliu Centre set up in the premises of the University Hospital Centre in Tirana is the first crisis management centre providing multidisciplinary services for survivors of sexual violence. Advisory and psychological services are therein integrated with health and other services. Nevertheless, the challenge is still to break taboos regarding sexual violence and encourage reporting. The model of the "Liliu" Centre is recommended to be extended to other hospitals throughout the country.

The above-mentioned services are not dependent on the survivor's willingness to press charges or testify against the perpetrator, which is in accordance with international standards in this field. Regardless of the diversity of specialist services, however, they do not cover the whole country and are thus not equally accessible to all women survivors of DV.⁸⁴

2.1.3.5 *Protection of the survivors/witnesses and legal aid*

Law No. 111/2017 "On State Guaranteed Legal Aid"⁸⁵ foresees free legal aid to survivors of DV, sexual violence and human trafficking at all stages of criminal proceeding⁸⁶ as well

as exemption from court tariffs and fees and from the obligation to prepay fees for executing an execution order. Improvement of the quality of free legal aid is expected, even though a few concerns are still present. By-laws are not yet fully adopted regardless of the deadline, thus negatively impacting the access of survivors of VAW to the justice system. Cases when judges do not accept the request for tariffs exemptions due to absence of bylaws are still identified. In addition, institutional structures foreseen have not yet been established and are not functional, such as the Free Legal Aid Directorate or the Primary Legal Service Centres. This has negatively affected the access of citizens to justice. In such a situation, the role of civil society⁸⁷ has demonstrated to be of high importance, especially in terms of informing citizens on their right to legal aid.

So far, legal aid centers have been established in Fier, Shkodër, Dibra, Durrës, Tirana, Lezha and Fier. These centers have been set up in the courtrooms of judicial districts and have provided primary and secondary free legal aid. Even though it is a state obligation, so far free legal aid is mainly provided by CSOs. A monitoring of Tirana District court decisions on IPO/PO for the period January 1st, 2016 through December 31st, 2017, shows that only in 43 % of cases are the survivors of DV represented by advocates in the court: in 20% of cases the legal aid is offered by CSOs, in 20% by private advocates, in only 1% by the National Shelter, in 1% by state appointed lawyers (minors) and in only 1 percent of cases by the Commission for legal aid.⁸⁸

⁸³ National Strategy and Action Plan on Gender Equality 2016-2020, footnote 82, p.23-24.

⁸⁴ Ibid, p.2.

⁸⁵ This law has been in force since 1 June 2018.

⁸⁶ Law No. 111/2017 "On State Guaranteed Legal Aid", Article 11 "Special categories of beneficiaries of legal aid".

⁸⁷ Such organization are "Justice for All" Coalition supported by Save the Children and the AWEN Network within the program "Protection and Promotion of Women's Rights in Albania", operating with the financial support of the Swedish Agency for Development and Cooperation (SIDA), a network of CSOs supported by the CRD, etc.

⁸⁸ Human Rights in Democracy Center, Study, "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", Monitoring period 01.01.2016-31.12.2017, p.37, Tirana 2017, supported by the Open Society Institute in cooperation with the Open Society Foundation's Human Rights Initiative. <https://www.hrdc.al/index.php/en/news/56-monitoring-of-tirana-district-court-protection-orders>

2.1.4 Case studies

2.1.4.1 Investigation, prosecution and protective measures

The responsible law enforcement agencies respond to all forms of VAW, including DV. The investigations into or prosecution of a DV criminal offence are not dependent upon a report or complaint filed by a survivor. The proceedings may continue even if the survivor withdraws her statement or complaint. Issuance of protection orders is envisaged under the frame of the civil legislation in Albania. Monitoring in 2017 shows that requests for such protection orders are observed in 94% of the cases.⁸⁹ In the past the responsible authorities have often not fully performed risk assessment through considering the seriousness of the situation and the risk of repeated violence in order to manage the risk and if necessary to provide coordinated safety and support. The recent changes of Law no. 9669, dated 18.12.2006, “On measures against violence in family relations” are expected to improve the response of the system regarding the risk assessment and risk management. The bylaws are now improved and it is expected that the risk assessment will be taken into account at all stages of investigation and application of protective measures.

Nonetheless, the problem remains that the application of restraining or protection orders is not envisaged for survivors of all forms of VAW, as the focus in this context is placed on DV and violence in the context of family relations. This is not in accordance with the requirement of protection of a broad circle of survivors of VAW under Article 53 of the IC.⁹⁰ Nonetheless, there were some improvements, as the recent LDV amendments envisage that the police can take the measure to accommodate survivors

of DV and their children in the shelters. In cases of emergency protection orders, the court can decide to remove the perpetrator from the dwelling place and to prohibit the perpetrator from entering the residence or contacting the survivor or person at risk. These measures give priority to the survivors or persons at serious risk of violence.

In accordance with the key provisions of the Law on Measures against Violence in Family Relations, protection orders and emergency protection orders are issued by district courts. The PO can be issued for no longer than 12 months, with the possibility of extension. For emergency protection orders the deadline for a court to act is 48 hours. Parties are notified of the court’s decision within 24 hours. In addition to these, preliminary emergency protection orders were introduced in 2018, for cases in which there is imminent danger to the survivor and family members, these are issued by the police. This requires police officers to accompany survivors to the residency and/or shelter. Within 48 hours the respective authorities within the police structure present the case to the court for the issuance of an emergency protection order. A recent wave of DV crimes resulting in women’s deaths, spurred several positive legislative changes to the LDV. The most important changes are the inclusion of children in emergency protection orders, the inclusion in protection orders of partners that are not legally bound or cohabitants, as well as the introduction of preliminary emergency protection orders, which take immediate effect upon presentation of a case to law enforcement agencies.⁹¹

⁸⁹ Human Rights in Democracy Center, Study, “Respect of the rights of victims/survivors of DV in the judicial process, Findings and recommendations from the monitoring of judgments of Tirana District Court”, Monitoring period 01.01.2016-31.12.2017, p.21, Tirana 2017, supported by the Open Society Institute in cooperation with the Open Society Foundation’s Human Rights Initiative.

⁷ See e.g. GREVIO Baseline Evaluation Report on Albania, 24 November 2017, par. 189.

⁹¹ See more: M. Llubani, Mapping of Policies and Legislation on Violence against Women and the Istanbul Convention in Albania, EWL, 2018, p. 9.

2.1.4.2 *The first case*⁹²

a) The facts of the case

L.R. and her spouse F.R. got married in 2010 and had two children. They were living in Fier, one of the districts of Albania. Due to their poor economic situation they emigrated as a family to Germany in 2015. However, their request for asylum was not approved and they returned to Albania in 2016. After returning from Germany, the conflicts and threats of violence started happening very frequently. A violent incident happened between L.R. and her spouse on 6 November 2016, while the children were present. On that same day, L.R. notified the State Police of what had happened. After filling out the report, the police patrol accompanied both, the perpetrator and the survivor of violence to the Police station of Fier. In the early morning hours of 7 November 2016, a judicial police officer of Fier decided that because of the risk imposed on her by her spouse, L.R. should leave her house and stay at her brother's house. The police officer decided that the two children would stay at home with their father, the perpetrator, because they were sleeping at that time.

A request for an IPO was filed to the District Court of Fier. The district court issued the IPO on November 11, 2016. F.R. did not respect this decision. A complaint was submitted by the perpetrator to the Vlora Court of Appeal. The IPO issued by the District Court of Fier was confirmed by this court on November 25 2016, and the PO was issued in favour of the DV survivor for a period of 12 months. A copy of the IPO and, subsequently, of the PO (after the confirmation of the IPO) was not sent to the police and Social service office at the Municipality of Fier and, consequently, no measure was taken towards the implementation of the Order and the protection of L.R.

L.R. returned to her house. For the period from November 25 to December 3, 2016, the perpetrator did not sleep at their home. However, on December 3, 2016, F.R. came home, locked the children in one of the other rooms of the apartment, and threw L.R. out of the window, causing her immediate death. According to eye witnesses, L.R. fought to stay alive for several minutes, but to no avail. This event is thus a case of a serious failure of the protection system for survivors of DV.

b) Case analysis

Shortcomings regarding (mainly) implementation of relevant laws

Regarding police agencies

The General Police Department has provided information that the police officer of Fieri's police station had followed a procedure that included: accompanying both the survivor (L.R.) and the perpetrator (F.R.) to the police station, assisting the survivor in filling out the lawsuit for IPO, preparing the decision to proceed with the medical-legal act of expertise, accompanying the survivor to her brother at the end of procedures, informing the survivor L.R. on how to contact the police via number 129, as well as providing the telephone number of the police specialist to call in case of any potential risk. The survivor (L.R.) was contacted by the police specialist in the following days, but she did not report new concerns/incidents of violence exercised by her husband.

First, the police had failed to refer the case of L.R. to the Local coordinator on DV in the Municipality of Fier on November 6, 2016. The case referral would have enabled the offering of support and services to the DV survivor in a coordinated way, by all the relevant institutions responsible for managing the case. The lack of adequate and timely communication

⁹² The case L.R. does not mean that the RM against DV does not function in Fier municipality. It is a case which calls for more effectiveness from all the RM against DV at the local level. Several interviews and e-mail exchanges with several representatives of various institutions were conducted in relation to this case: Mrs. Silvana Alimadhi, Head of DV Sector, General State Police Directorate (interviewed and contacted via email); Mrs. Elisa Velaj, Psychologist at the Police Directorate of Fier. (interviewed and contacted via email); Mrs. Enkelejda Allkanjari, Specialist for Minors and DV at the Police Directorate of Fier. (interviewed and contacted via email); Mrs. Iris Aliaj, Attorney at Law. Mrs. Aliaj provided legal aid for the children of L.R., and assisted and continues to assist L.R.'s brother and her children (interviewed and contacted via email); Mrs. Edlira Bako, Director, Regulatory Directorate of Justice Issues at the Ministry of Justice; Mrs. Natasha Doko, Local Coordinator of DV, Municipality of Fier (contacted via email).

and coordination between various institutions in the protection system is evident in this case. A coordinated response is an obligation deriving from Law No. 9669, of 18 December 2006 “On Measures Against DV”, and Decision of the Council of Ministers (DCoM) No. 334, of 17 February 2011, “On the Establishment of the National Referral Mechanism for cases of violence in family relations, and the manner of its functioning”. In addition, the IC also emphasizes the need “to provide for co-ordinated safety and support.” (Article 51)

Pursuant to the procedure of intervention in assisting survivors of DV, for cases requiring emergency intervention, regardless of which of the institutions the survivor of violence has addressed, each of them has the obligation to notify the Local coordinator against DV. Consequently, in the case in question, the DoCM’s tasks and responsibilities, referred to as below, have not been followed. The role of the Local coordinator is important in this context, as they perform “a preliminary analysis of the incident involving: a face to face interview with the survivor, the abuser, as well as with other family members, an assessment of the level of violence, documenting the facts, completing the standard form, escorting the survivor to primary health institutions (if necessary), and transporting them to a safe place. The two inter-institutional team representatives, as specified above, shall determine the additional members and the resources needed for the first and/or immediate intervention. After providing the first aid to the survivor of violence (...) the Coordinator shall forward the case for consideration at the meeting of the Interdisciplinary Technical Team”.⁹³ In this case, the Local Coordinator against DV was not notified, no risk assessment by the police was performed and as a consequence, no meeting of the ITT and no concrete coordinated actions supporting the survivor by this team, were undertaken.

In addition to L.R.’s case, other non-referrals of identified DV cases by the Police to the Municipality’s Local Coordinator against DV have been identified in different municipalities. From var-

ious meetings organized with representatives of Local Police structures, in the context of drafting of this report, we have been informed that one of the reasons the Police does not refer cases of DV to the Local Coordinator is that, in a high percentage, these cases occur late at night, and Local coordinators against DV are not always available beyond the working hours.

In practice, not every case of DV is referred to a Local coordinator. The cases referred to them are usually those involving abused children, cases considered to be difficult, and those assessed to pose a high risk and to be in urgent need of services. This practice is not in compliance with the laws and regulations, which require coordination of the responsible institutions for the management of every DV case. For the risk assessment in the case of L.R. to be conducted, for example, the information and assistance of the local coordinator as well as the ITT, was needed. They would have provided information on violence in the presence of children, its effects, the proper measures taken in accordance with the level of risk, the opinion of the child protection specialist, information on whether the perpetrator was employed or not, etc.

When this act of violence happened, there was no clear responsibility in DV law for the police to undertake risk assessment, there were no clear procedures or templates for risk assessment reports. This gap is filled with Law No. 47/2018, as well as the Joint Instruction of the Minister of Health and Social Affairs and the Minister of Interior (no. 866, dated 20.12.2018, “On procedures and model of risk assessment for cases of domestic violence”), and the Standard working procedures “On the Treatment of DV Cases”, approved by the order of the General state police director No. 1188, of 13 November 2017. Referring to these standards, the first actions of the police officer serving in the control room include the notification of the Local coordinator against DV, as well as the notification of the Child protection unit at the municipality.

⁹³ DoCM No. 334, of 17 February 2011, “On the Establishment of the National Referral Mechanism for cases of violence in family relations, and the manner of its functioning”.

Second, the Police had not required an IPO, or a PO for the children, or other measures to protect the children. This did not happen despite the fact that in the incident in question, while reporting at the Police, L.R. had explained that there had been incidents of violence committed in the presence of their children.⁹⁴ In this case, the police had not duly assessed the risk posed to the minor children. When cases of violence reportedly have been perpetrated in the presence of minors, a request for an IPO should include the survivor's children as well.

Third, the measures sought by the Police in the context of asking for an IPO from the Court clearly show that risk assessment has not been carried out properly. In the petition prepared for the survivor by the police officer, one of the measures required was that the defendant should not prevent his wife from moving to their common apartment, the defendant should not approach (L.R.) beyond a distance of 50 m and no actions should be taken at the victim's address up until the Court rules on the dissolution of their marriage; rather, it was suggested that F.R. should live in one room and L.R. and her children in the other room, as the Court decides. Also, the lawsuit for the IPO contains data on the defendant, which should have been properly evaluated by the Police. For instance, he was reported as being unemployed, as owning and legally possessing a hunting gun, and as causing other previous incidents of violence. Under these conditions, the measures required by the police officer did not duly assess the risk, and the case was therefore mismanaged.

Physical separation of the victim from the perpetrator is crucial to ensure her safety. How can the victim's safety be guaranteed when they both share the same house and common facilities? In addition, no free legal aid was provided for L.R. Based on the request drafted by the Police, the court, without having an accurate and complete assessment of the risk and with the reasoning that it cannot go beyond the scope of the claim, decided to include in the IPO/PO the measure of having both spouses share the same apartment – that is, just two meters away from each other.

Risk assessment had not included any evaluation of the children's situation. If this assessment were to be carried out, the children, having witnessed the scene of violence, should have also been placed under protection. Therefore, the Court has failed to take all aggravating circumstances into due consideration during the proceedings. In the scenario of a professional risk assessment, the latter should be accompanied by a safety plan for the victim, which, in the case of L.R., was missing. The risk of the first 48 hours up until the review of the lawsuit on the issuance of the IPO, or up until the certification of the IPO and issuance of a PO by the Court had not been duly assessed.

Lack of a professional risk assessment not accompanied by a Safety Plan and without a full case monitoring can expose victims to a real risk for their lives. This was what happened in the case of L.R., when returning home and sharing the same space with her abuser made her and her children face extreme violence and eventually led to the loss of her life.

Fourth, the employees of the Police Commissariat of Fier claim that they did not receive a copy of the decision on the IPO/PO issued by the District court of Fier and were, therefore, not informed on the court measures and did not implement them in cooperation with other responsible institutions. This is also apparent from the Notice Letter of the Ministry of Interior, General Inspection Directorate, Prot. No. 51/2 of 12 May 2017, with the subject matter "Response to request", according to which, "The Court's Decision on the IPO was to be sent to the Police Commissariat of Fier within 24 hours, as stipulated by Law No. 9669, of 18 December 2006, Article 19/5, but was eventually sent on 5 December 2016". However, despite the fact that no copy of the IPO/PO was received by the Police commissariat, the police, in particular when assisting the victim to prepare the IPO/PO request, could not have remained passive pending receipt of a copy of the Court Decision by the District Court. In these cases, local police structures are expected to be active and receive information on measures taken by the Court and should monitor the high-risk cases in order to secure the lives of victims of DV.

⁹⁴ Pursuant to the lawsuit for the issuance of the IPO and Decision of the District Court of Fieri of 7 November 2016.

Regarding judiciary

The Court's Decision on the issuance of the IPO shows that the claim was registered with the Court on 9 November 2016 and the IPO was issued on 11 November. Hence, the Court had observed the legal deadline for deciding on a request for immediate protection within 48 hours after the submission of the application. The judge had referred to the standards of IC in the court's decision to issue the IPO, but only as a reference for reasons explained below.

On 11 November 2016, the District Court of Fier issued an IPO for L.R. Among the measures envisaged by the Court were: "... to allow the applicant L.R. to go and live together with her children; the defendant F.R. should not approach the respondent L.R. beyond a distance of 2 meters ..." The defendant appealed this decision to the Vlora Court of Appeal. The judge has argued that in defining protection measures for the survivor, the court needed to consider the social and living conditions of both the survivor and the perpetrator. Considering their social conditions, the victim L.R. was expected to share the same apartment, thus being put at a high level of risk from repeated violence. The judge had argued that this decision presents an executive title and as such, it had to be enforced from the Bailiff's Office after the decision in order to take power. The perpetrator submitted a complaint to the Court of Appeal, which meant that L.R., the survivor, was without protection during these procedures. On 25 November 2016, the Court upheld the IPO and issued a PO for a period of 12 months in favour of the victim.

Some of the problems identified are as follows: First, the Court's Decision on the issuance of the IPO and of the PO was not sent to the Local police commissariat within 24 hours, as provided for by the Law, but on 5 December.

In addition, the administrative investigation for the verification of the procedures shows that a copy of the IPO and of the PO had been sent neither to the police nor to the Social service office at the Municipality of Fier. The Municipality of Fier representatives stated that

the decision on the PO was received by the Social service department of this municipality only days after the murder. They had been informed about the case only through the media. As a lesson learnt from this case, in order to ensure prompt notification of Court Decisions on the issuance of POs, the Court has concluded an agreement with the police, the execution office and the probation service. According to this Agreement, due to the utmost importance of the promptness of notification for protecting the life and health of the victim and of the minor children, the notification of judicial decisions (with full legal force for implementation and execution) on the issuance of IPO/PO shall also be executed via an email sent from the official email addresses of the Court/judge to the official email addresses of the institutions party to the Agreement.

Second, the minutes of the High Council of Justice (HCJ) meeting show that the judge raised the claim that he has not opted for the measure of removing the husband from their house, but instead ruled for the spouses to stay at a distance of two meters away from each other, and within the same household, because he could not go beyond the measures required in the victim's application, for the drafting of which she had been assisted by the police, and could not go beyond the measures required during a trial.⁹⁵

Monitoring reports of the CLCI and other CSO reports in Albania express a different stance on this matter: "In the case of a lawsuit for the issuance of an IPO/PO, there is a need for a distinction to be drawn between the subject matter of the lawsuit and the required safeguards. We are of the opinion that the subject matter of the lawsuit in these cases involves the request for a PO (Article 16 of the Law), or for an IPO (Article 18 of the Law), or for changing, terminating and extending the PO (Article 22 of the Law). The protective measures required in the lawsuit should be handled by the Court as a mere opinion of the applicant, not as the subject matter of the claim, so that the judge of the case has the necessary freedom to select and alternate the most effective measures

⁹⁵ Minutes of the High Council of Justice (HCJ) meeting (held on 07 May 2018), p. 83.

for the protection of the victims, other measures than those set forth by the applicant"⁹⁶. In other words, in this perspective, the judge in question could have opted for any measure that was appropriate for the situation, regardless of the actual content of the request.

Third, the Referral mechanism on DV at the Municipality of Fier, established by the technical assistance of UNDP during 2012-2013, was not involved in the management of this case. The Municipality of Fier representatives stated that this case was not referred by the responsible institutions at the local level. Representatives of the District court are members of the Steering Committee and the Technical team of this Mechanism. Nonetheless, the participation of the District court representatives at the RM meetings has not been effective in all municipalities. Their continued participation would have helped the communication of the courts with other members of the RM and would have assisted in the recognition, evaluation and inter-disciplinary handling of the case.

Fourth, the judge seems not to have had a clear understanding of the role of the Bailiff's Office pursuant to Law No. 9669 "On Measures against DV". In the enacting clause of the Decisions (IPO&PO), the judge states that the decision will be applied by this Bailiff's Office only when it becomes final. The law is explicit and is aimed at the immediate protection of the victim from violence, so the decision would have to be implemented immediately.

Regarding the criminal prosecution

The defendant was charged with the criminal offense of "murder due to family relations", provided for in Article 79/c of the CC. Despite the high social risk of this criminal offence, the way in which the crime was committed and the consequence of the loss of the victim's life, the consequences of this offence to the minor children as well as to the relatives of the vic-

tim, the Court accepted the request for an abbreviated trial. The abbreviated trial mitigated the defendant. Even the prosecutor requested the application of the abbreviated trial and the final sentence with 35 years of imprisonment.

Regarding the liability of institutions and their employees

On 6 December 2016, the procedural materials were referred to the Prosecution Office concerning E.S. for the criminal offence of "abuse of office", provided for in Article 248 of the CC⁹⁷.

When it comes to the liability of the responsible institutions regarding the "abuse of office" of the responsible employees, the Ministry of Justice, at the conclusion of administrative investigation regarding this case, found that the judge of the District court of Fier, E.S., had breached the procedural rules, which constitutes disciplinary offence. Relevant materials have been transferred to the Inspectorate of the High Council of Justice, as the responsible institution. The report of violations observed during the conduct of the administrative investigation in the case of the judge was forwarded to the Chairman of the High Council of Justice and the General Prosecutor.

The Inspectorate of the High Council of Justice, with its decision of 15 September 2017 and with the Order of the Chief Inspector of 25 September 2017, initiated a disciplinary investigation against the judge E.S., and concluded that the judge in question had committed serious professional violations related to the type of protection measures issued and a failure to issue a reasoning regarding the Court decisions.⁹⁸ The legal analysis of the facts ascertained during the disciplinary investigation conducted by the Inspectorate of the High Council of Justice shows that judge E.S. had committed serious professional violations, consisting in the failure to implement a number of provisions, such as Article 1, 10, 17, 18, 19, 20, 23 of the Law "On Meas-

⁹⁶ CLCI, prof. dr. Aurela Anastasi & Av. Besa Saraçi & Av. Aurela Bozo, Report on the application of the law "On measures against DV" (Law No. 9669, of 18 December 2006), Monitoring of the decisions of the Tirana District Court on Issuance of PO/IPOs and cases of victims of dv supported by legal aid from the CLCI. Monitoring period: 01 June 2009 – 01 June 2010 http://www.qag-al.org/WEB/deklarata/2010_raport%20monitorimi.pdf, p.10.

⁹⁷ See the General Inspection Directorate's Notice at the Ministry of Interior, Prot. No. 51/2, of 12 May 2017, with subject matter "Response to Request".

⁹⁸ Minutes of the High Council of Justice (HCJ) meeting (held on 07 May 2018), p. 74.

ures against DV”⁹⁹. The report of the disciplinary investigation was forwarded to the Minister of Justice to evaluate the possibility of initiating disciplinary proceedings against the judge¹⁰⁰.

Based on the findings from the disciplinary investigation conducted by the Inspectorate of the High Council of Justice, the Minister of Justice had sent a motion for a disciplinary measure “release from office” for the judge E.S. by virtue of a Letter on 02 February 2018 to the High Council of Justice. A High Council of Justice meeting was convened on 7 May 2018 to review the motion of the Minister of Justice for a disciplinary proceeding against the Judge of the District Court of Fieri, E.S. (for the proposed disciplinary measure of “release from office”). The High Council of Justice has rejected the request of the Minister of Justice for the disciplinary measures of “release from office”. Instead, the measure of public rebuke was taken against him.

Regarding the Enforcement office, although it appears that a copy of the IPO decision in this case was submitted to this Office, no measures were applied, in cooperation with the responsible institutions – namely the Police Commissariat and the Municipality of Fieri, which were not notified about the Order. The Decision reads that it is an executive title; therefore, it should be enforced by the Enforcement Office once it becomes final and binding. This sentence written in the court decision is not a correct enforcement of the law. Such a formulation, rather than requiring immediate action, invites reluctance on the part of responsible institutions. The IPO is an executive title, which had to be implemented immediately by the Bailiff’s Office, with the aim to guarantee the safety of the victim.

Regarding the local coordinator against DV at the Municipality of Fier, the victim had not previously reported violence by the same perpetrator. N.D., the Local Coordinator against DV at

the Municipality of Fier, claims that: “The case has not been referred to our Unit from any institution and the victim has neither reported DV being exercised on her in the Municipality of Fier”. Following the event, however, the Municipality has drafted a Child support plan. The support provided in this context consists of psychological support to children, childcare coverage, and financial support in the amount of 100,000 Lek for the children, various aid in food, clothing, school items, support with legal services, etc.

Regarding free legal aid

This case involves a number of legal actions: a declaration of the spouse being unfit for succession, asking redress for moral and material damage, asking the exclusion from judicial tariffs and taxes for experts performing the damage assessment, resolving administrative and procedural issues regarding the provision of free legal aid, request for information and accountability of responsible persons by the responsible institutions, etc. When it comes to the civil lawsuit for redress of damage from the perpetrator, the lawsuit was returned by Fieri District Court, arguing that the bylaws related to the law on free legal aid have not yet been adopted. Several organizations have also offered help in various aspects of this case, including TLAS, ADRF and Social Center “Vatra”. This case clearly shows the procedural problems with ensuring free legal aid in practice and proves that free legal aid for survivors or victims of DV is offered mostly by CSOs.

The media

The media have revealed the name and surname of the victim, the court’s decision on issuing the IPO¹⁰¹, the names and surnames of the children, and other sensitive data. This data continues to be published on various media platforms and their confidentiality and protection continue to be breached.

⁹⁹ Ibid, p. 75.

¹⁰⁰ HCJ, Report “On the status of judicial cases on DV”, 2018, p. 8. See at:

<http://www.kld.al/component/k2/raport-mbi-situaten-e-ceshtjeve-gjyqesore-per-dhunen-ne-familje>

¹⁰¹ <http://www.panorama.com.al/deshmia-kur-kerkoi-mbrojtje-liljana-7-vjet-dru-te-mos-me-afrohet/>

2.1.4.3 *The Second Case*¹⁰²

a) The facts of the case

According to the official version of the State Police, the facts of the second case are as follows: "In the case of family Sh., on 30 December, 2018, the children of the couple Sh., Sh. Sh. and P. Sh., have sought help from the Police, on the grounds that their father Ç. Sh., was in a state of drunkenness and anger, and constantly offended them and their mother. The Police Commissariat of Durrës has immediately sent Police services to the reported address and have escorted the citizen Ç. Sh. to the Police Station. During the interview with the citizen A.SH. and her children, in any case they refused to report respectively her spouse and their father on accounts of DV, and refused to file a request for a PO. Citizen Ç. Sh. was held in the detention/escort rooms of the Police Commissariat of Durrës up until 02.00 a.m. on 31 December 2017. After this event, no notice was received from family members or neighbors of family Sh. on any domestic conflict. After months, in June 2018, the victim of DV, the mother of six children, died as a result of violence exercised by her husband"¹⁰³.

The Monitoring Network Against Gender Based Violence¹⁰⁴ has requested official information from the General State Police Directorate and has called a Discussion Forum with representatives of various responsible institutions to share information about this case and to put pressure to hold the responsible institutions to account for not providing protection to the victim in this case.

b) Case analysis

Shortcomings regarding (mainly) implementation of relevant laws

Regarding police agencies

First, the police officers have failed to pay proper attention to the psychological violence reported by the victim's children. This case also shows that local police structures have not duly performed a risk assessment. The General state police directorate has instructed the local police structures that, "every case relating to domestic conflicts or DV should be assessed by analyzing the risk factors that may lead to escalation of violence, such as repeated violence, commencement of divorce proceedings, use of alcohol/narcotics, exercise of violence in the presence of children, etc.". In this case, there are two obvious factors that directly pose a serious risk for the victim - the use of alcohol/narcotics as well as the use of violence in the presence of children. Nonetheless, however obvious, these factors have not received proper assessment from the local police structures. Regardless of the hesitation of the victim and her children to request an IPO or PO, the police had to explain to them the risk and how important it is to use the remedies and to prepare a proper lawsuit.

Second, the case was not continuously monitored by the local police structures, because it was considered to not have contained any elements of a criminal offence and thus assessed as not subject to Law No. 9669, "On Measures against DV".

Third, police officers have the obligation to report DV cases to the Referral mechanism for DV at the Municipality of Durrës. In the case in question this legal obligation was not fulfilled. This low level of inter-institutional communi-

¹⁰² The case A.SH. does not mean that the RM against DV does not function in Durres municipality. It is a case which calls for more effectiveness from all the RMs against DV at the local level. Several interviews and communications were held regarding this case: Silvana Alimadhi, Head of DV Sector, General State Police Directorate; Meme Xhaferaj, Director of the Department of Social Services at the Municipality of Durrës; Fabiola Laco, Executive Director, Community Centre "Today for the Future".

¹⁰³ This is the official version of the State Police for the Monitoring Network against Violence.

¹⁰⁴ The Monitoring Network Gender Based Violence, now composed of 48 member organizations, has been set up and functions under the project "Establishing a network of non-profit organizations for a better implementation of international standards on GE and GBV in Albania", implemented by the CLC. The project is funded by the European Commission and implemented with the support of the UN Women. <https://rrjetikunderdhunesgjimore-monitorime.al/anetare-te-rrjetit-rw-ojf-ve-per-monitorimin-e-zbatimit-te-standarteve-kunder-dhbgj-dhe-dhf/>

cation and coordination in this municipality is also pointed out in a CSO monitoring report, according to which “ ... the level of cooperation between the Municipality and the Police within the context of the RM has been insufficient. There is a lack of communication, coordination and cooperation between these institutions, not allowing for an efficient referral of cases of VAW and DV”¹⁰⁵.

Furthermore, according to the General state police directorate recommendations, all cases involving exposure of children to violence, or when they are themselves victims of violence, should be referred to the responsible child protection units. Nonetheless, in this case the police officer failed to refer the case of children, directly affected by psychological violence, or at least witnessing the violence exercised by their father on their mother, to the Child protection unit in Durrës.

Fourth, a failure to refer the case to the local coordinator against DV consequently led to A.SH. being excluded from coordinated support services.

Fifth, given that the police in this case learned that children were directly affected by violence on the part of their father, this is also a case where the Law “On Measures against DV” is applicable. The Law envisages, in this context, the competence of the police to file a lawsuit, with the police as the plaintiff and the perpetrator as the defendant. The remedy of public lawsuit by the police is particularly important in cases when the survivor withdraws from reporting violence, as a result of the physical threats, psychological or economic pressure, etc., as well as in cases of repeated violence, and cases of children who are directly or indirectly exposed to violence in family relations. In these cases, the police officer fills out a claim for a PO and participates in the judicial proceedings as a party with the aim of obtaining an IPO/PO against

the perpetrator and in favor of the victim. The General state police directorate has consistently drawn the attention of the police structures to the necessity of drafting public lawsuits in defence of survivors of violence. Trainings have also been organized with the aim of strengthening capacities of the police in preparing such lawsuits. Nonetheless, in this case, this important procedural measure was not used by the police either for the victim or for the children, which also demonstrates the lack of due diligence on the part of the police. Based on the case of A.SH. the Monitoring Network Against Gender Based Violence requested a well-coordinated response from the responsible institutions in managing cases of gender-based violence, including DV. The issues raised in this forum¹⁰⁶ were translated into recommendations to the State police with a view to improving the response of the system to cases of DV and VAW.

Sixth, the General state police directorate has brought to the attention of the police officers that if violations of standard procedures are found, disciplinary measures will be taken against the responsible persons, pursuant to the Regulation of the state police. Nonetheless, no disciplinary measures were issued for the responsible persons in this case.

Regarding social service providers

When it comes to the response of the Municipality of Durrës, the Director of Social Services in this Municipality explains that the Social service was informed of this case only after the tragic event had taken place. The children of the DV victim received foster care support by their relatives, as well as financial support, as provided for in the relevant laws, after the murder. Although the family was a beneficiary of a program implemented by several actors and led by the local CSOs, no incident of violence was identified in this family and no violence was reported by family members to

¹⁰⁵ Gender Alliance for Development Centre (GADC) and Women’s Empowerment Network in Albania (AWEN), 2018. Monitoring report of the National Gender Equality Strategy 2016 - 2020 for the Municipality of Durrës, p.13.

¹⁰⁶ Representatives of civil society organizations, the Interior Ministry, the General Directorate of State Police, the Local Directorate of Tirana Police, and the MHSP, the MoJ, the Parliament of Albania, the Security Academy, the Faculty of Security and Investigation, Municipalities, the People’s Advocate, the Tirana Prosecution Office, the Faculty of Law, the Tirana University, citizens, journalists, representatives of the UNDP, the Delegation of the European Union to Albania, UN Women, etc. all participated in the Forum.

Program representatives prior to the tragic incident. Consequently, no support was provided to the mother and children prior to the murder.

Support for specialized services is obviously needed for victims of DV and VAW. The responsible actors at the municipality level are of the opinion that if the case was referred to the Local coordinator against DV at Durres Municipality, support would have been provided in cooperation with all actors at the municipality level and the crime could have been prevented. Several CSOs in Durres have been active in providing support for the survivors of DV, such as World Vision, Community Centre "Today for the Future", and the Centre for Women with Social Problems. Nonetheless, more financial support for them is needed since Durres, according to the police data, is one of the districts in Albania facing a high number of DV cases.

2.1.5 Conclusions and recommendations

2.1.5.1 Conclusions

Albania was the second country to ratify the IC in 2012, without any reservations. This should serve as an indicator of the state commitment to prevention and combating all forms of VAW. Nonetheless, multiple sources point to major challenges in coordination, lack of gender-sensitive approach as well as insufficient human and financial resources.

The cases analysed herein testify to the failure of the system to successfully ensure victims' protection. Although provision of the victims' access to civil remedies against state authorities has increased, in particular by informing victims of their rights and raising awareness, it continues to be low. There are number of cases where police officers are not active in providing support to the survivors of DV in terms of preparing a request for an IPO or PO to be submitted to the district court. In recent years, the establishment of special units in police offices that deal with DV and the continuous training of police officers in handling these cases indicates some progress in this regard. However,

there are concerns that law enforcement agencies and other social service institutions still do not act proactively. Furthermore, risk assessment has long not been an integral part of the Albanian legal and policy framework in this field. With the recent changes to the LDV the risk assessment is an obligation of responsible institutions. Standardized procedures on assessment and management of the risk for DV cases are being developed.

Examples from practice indicate that the police does not regularly respect the legal obligation to provide coordinated support. There are cases in which the lawsuit for the issuance of the IPO/PO is not properly undertaken, which suggests the lack of knowledge and awareness on the part of the police. Despite such reality, the control and accountability mechanisms have remained weak and the number of disciplinary measures issued for judges, police officers, prosecutors and other professionals of the system which fail to fulfill their legal obligations in regards to protection of and reaction to VAW remains rather low.

Furthermore, the cases where the police officers file public lawsuits are rare. The level of awareness of responsible institutional actors on their legal responsibility to ensure a coordinated response in managing cases of DV and the referral of DV cases continues to be low. The standardized procedures regarding assessment and management of the risk for cases of all forms of VAW have not yet been developed. Court decisions on alimony for children are not enforced in a high number of cases. Parties face significant challenges due to the lack of enforcement of court decisions on custody of children, especially in cases when children are in the custody of mothers-victims of DV. Furthermore, there is a need to protect victims of other forms of VAW, rather than just DV victims.

The collection of data is weak in many municipalities. There are cases managed by the RM that are not registered in the REVALB system by the local coordinators. This is also due to the low level of coordination among actors at the local level. Data collection by hospitals and health centres is low, also due to the hesitation of the DV survivors to report the violence

they were subjected to and the hesitation of the medical staff to identify and refer the case. Data from the State police department show an increased number of cases of violation of protection orders. Media have an important role in changing attitudes in the society, but they are often part of the problem, as they, for example, often do not protect personal data of DV victims.

Regardless of the improvement of the legal framework, the system of free legal aid for victims of VAW is not fully effective. The bylaws following the new free legal aid law are not complete. The State Commission on free legal aid still operates based on the repealed law and does not accept new requests, while the Directorate of Legal Aid (as per the new law) has not yet been established and functioned. The level of information available to the victims of VAW on the right to free legal aid in accordance with the new law remains low. Trainings for judges on legal framework on prevention and protection from VAW, including DV are organized by the SoM, but without adequate intensity, especially taking into account the recent changes in the relevant legal framework. Although the performance of the CRMs has improved recently, not all members of these mechanisms have been equally active.

Rape crisis or sexual violence referral centres were completely missing in the past. While there are shelters run both by the state and CSOs, most services, such as counselling and helplines, are managed by CSOs and depend heavily on foreign funding. This brings into question the continuity and sustainability of such services. The existing services for survivors of DV and rehabilitation programs are insufficient and they do not cover the whole territory of Albania. The CRMs have not yet been established in all 61 municipalities and the existing ones face challenges. The human and financial resources of the CRMs are limited. One of the most significant shortcomings in the functioning of the referral mechanism is the lack of coordination and/or information sharing between different institutions that are part of the mechanism. The existing social services for victims of VAW at the municipal-

ity level are also not sufficiently funded. The standards and capacities of the social services consequently need improvement. New social services are necessary, including private social service providers. According to CoM nr. 111, dated 23.2.2018 "On establishment and functioning of Social Fund", private providers and CSOs offer social care services. The gender responsive budgeting of Ministries is another opportunity to provide funds for these purposes.

2.1.5.2 Recommendations

Common recommendations for all institutions in the protection system (judiciary, law enforcement agencies, centres for social work, health institutions)

- Introduce compulsory training focused on sensitization in order to prevent influence of prejudices and stereotypes on decision making and approach of professionals to VAW survivors

Legislator and Government

- Recognize and criminalize specifically psychological violence by amending the Criminal Code and the Law on Measures against Violence in Family Relations
- Harmonize the definition of rape with Istanbul Convention by:
 - removing any conditions of use of force or threat of immediate attack on survivor and by
 - including the condition of lack of explicit consent to sexual act by survivor;
- Extend all protection measures to all VAW survivors, by amending the Criminal Code;
- Exclude mandatory reconciliation in domestic violence cases by amending the Family Code;
- Adopt all necessary bylaws and establish the Directorate of Legal Aid within Ministry of Justice in accordance with the Law on free legal aid;
- Establish the State Alimony fund by amending the Family Code and adopting appropriate bylaws;
- Strengthen the control and accountability mechanisms for all relevant professionals,

service providers and law enforcement agencies within the system of protection;

- Set up emergency teams of field specialists to help evaluate and manage risk in VAW cases;
- Establish referral mechanisms in every state municipality by Ministry of Health and Social Policy;
- Improve coordination and communication among all competent institutions within the protection system in order to enable methodologically compatible data collection;
- Enable continuous monitoring role of CSOs on the accountability mechanisms on institutional practices in VAW cases;
- Provide continuous and sufficient financial support within public budget on municipal and State level for CSOs as specialized service providers

Judiciary (e.g. courts and prosecution)

- Introduce mandatory trainings for the judges and prosecutors by the School of Magistrate regarding the legal framework for prevention and protection from domestic violence and VAW;
- Introduce obligatory, timely and adequate informing of survivor on case status, issued protection orders and perpetrators' release from the jail (custody)

Law enforcement agencies (e.g. police)

- Establish compulsory training for police officers on risk assessment and risk management

Centres for social work

- Establish compulsory training for social workers on risk assessment and risk management;
- Enhance human, technical and infrastructure capacities of centres for social work;
- Ensure employment and engagement of specialised and qualified social workers and psychologists

Other relevant institutional service providers (health institutions)

- Improve systematic data collection by health-care facilities through Public Health Department measures;
- Introduce health institutions' representatives in interdisciplinary technical teams and referral mechanisms for domestic violence cases

Media professionals

- Apply mechanisms for sanctioning media professionals to prevent publishing details on VAW cases that could put survivor at further risk.

2.2 BOSNIA AND HERZEGOVINA

Abbreviations

BD	Brcko District
BiH	Bosnia and Herzegovina
CC	Criminal Code
CEDAW	International Convention on Elimination of Discrimination against Women
CPC	Criminal Procedure Code
DV	Domestic violence
FBiH	Federation of BiH
FL	Family Law
GAP	Gender Action Plan
GBV	Gender-based violence
GC FBiH	Gender Center FBiH
GC RS	Gender Center RS
GEA	Gender Equality Agency BiH
GEL	Gender Equality Law
GREVIO	Group of Experts on Action against Violence against Women and DV
IC	The Council of Europe Convention on preventing and combating violence against women and DV (Istanbul convention)
LPDV	Law on Protection against Domestic Violence
RS	Republic of Srpska
VAW	Violence against Women

2.2.1 Introduction

BiH is a country undergoing critical political and economic transitions, as it strives to achieve the development targets necessary for its accession to the European Union, while still struggling to overcome the legacy of the 1992 - 1995 war and the heavy institutional burden left by the Dayton Peace Agreement. The total population in BiH was estimated at 3.5 million people, according to the latest official census from 2013.¹⁰⁷ The country has a complex political and administrative structure which creates challenges vis-à-vis consensus building and decision-making and which reportedly affects the capacity to deliver positive development outcomes resulting from recent economic stability and growth.¹⁰⁸ In the current social and economic context, women have borne to a greater extent the negative consequences of poverty, patriarchy and transition.¹⁰⁹ BiH is a member of the Council of Europe and a potential candidate country for the EU.

Even though BiH's legal and institutional framework is yet to be evaluated by GREVIO, there are certainly evident areas demanding improvement in the protection of VAW victims. In assessing legal and institutional framework on the protection of VAW victims in BiH, it is important to take into consideration the complex constitutional organization of the state

¹⁰⁷ Agency for Statistics. Data available online: http://www.bhas.ba/?option=com_publikacija&id=1&lang=en (access on 21.2.2019.)

¹⁰⁸ United Nations Country Team in BiH, *United Nations Development Assistance Framework (UNCT-UNDAF) 2010-2014*, p. 12.

¹⁰⁹ UN, Mission to BiH, R. Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to BiH* (28 October - 6 November 2012), 4. Available: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/143/43/PDF/G1314343.pdf?OpenElement> (access 4.1.2019.).

which reflects on the regulation of VAW and impedes uniform protection of all VAW victims. BiH consists of two entities [the Republika Srpska (RS) and the Federation of BiH (FBiH)] and district [the District Brčko (BD)], while entity FBiH consists of ten cantons.¹¹⁰ Hereinafter, when authors refer to both entities, FBiH and RS, the term “entities” will be used. The system of protection for VAW survivors is regulated at all levels of government, which often results in the difference in standards at different levels of government. Due to weak coordination efforts at the state level, lower levels of government often diverge from objectives set by state strategic instruments which rely on international obligations of the state.

High prevalence of VAW in BiH is a major challenge in protection of women's rights and an impediment for achieving gender equality in all segments of the society. More than 47% of women in BiH experienced some form of violence from the age of 15, while the perpetrators in more than 70% of cases were their partners.¹¹¹ Pervasiveness of violence against women in their families indicates a patriarchal perception of women and their role in family and society.¹¹² Acceptance of traditional gender roles is prevalent not only in the society, but also among the representatives of authorities making this a major obstacle in recognizing all forms of VAW and for the effective protection of VAW victims.¹¹³

This report analyzes institutional and legal framework on protecting victims of VAW in BiH, as well as improvements in national practices and standards. Taking into consideration international obligations BiH has assumed, especially the IC, this report evaluates the compliance of national legal framework with international standards and points out the areas for potential improvement. Despite relatively complete legislative and institutional

framework, there is no major progress towards securing unhindered access to systemic, efficient and sensitised support and assistance for women who have survived VAW.

2.2.2 Legal and Policy framework

All relevant laws and policies that frame the system of prevention and combating VAW will be presented below. The stated data are contained in official documents, strategies and laws. However, the authors of this Report cautiously emphasize that the presented situation does not necessarily correspond to the state of play on the ground.

2.2.2.1 Legal framework

Relevant laws in BiH do not provide the definition of VAW and GBV. All existing definitions of violence are gender neutral, including the definition entailed in the Law on Gender Equality which defines “violence based on sex”, without mentioning the notions of sex or gender. The protection of VAW survivors is guaranteed in many laws of BiH¹¹⁴, but due to complex organization of the state, national standards differ among entities as well as cantons. Because of the multidisciplinary nature of protection mechanisms which needs to be guaranteed to VAW survivors, many of the protection mechanisms are regulated and implemented at lower levels of authority – entity level in RS and cantonal level in FBiH. While laws defining protection mechanisms for VAW survivors are present at all levels of government in BiH, there is little or no harmonization of these instruments, which results in differences among the jurisdictions. This is an important aspect of assessment because it indicates lack of uniformity in national standards and practices, and the need

¹¹⁰ See: Constitution of BiH (1995).

¹¹¹ Babović Marija et. al. (2013). “Prevalence and characteristics of violence against women in BiH.” GEA of BiH.

¹¹² Ibid.

¹¹³ Gender equality agency BiH, „Framework Strategy for the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence in BiH 2015.-2018.“

¹¹⁴ Different laws at the state, entity and cantonal level which include legal framework on protection against DV, criminal codes and criminal procedural laws, law on protection of witnesses, social and health protection laws, law on free legal aid and others.

to distinguish between standards and protections at the state level, from the protections and practices at the entity or cantonal level.

The Constitution of BiH, as well as the entity constitutions, guarantee freedom from discrimination based on sex.¹¹⁵ At the state level, the Law on Gender Equality of BiH and the Law on Prohibition of Discrimination prohibit discrimination based on sex.¹¹⁶ The Law on Gender Equality provides certain safeguards for VAW survivors since it defines harassment and GBV, the role and obligations of courts and national authorities in protecting victims of GBV and provides for sanctions against those who breach the provisions of the Law.¹¹⁷ Article 6 of the Law defines GBV as “any conduct that causes, or may cause, physical, mental, sexual or economic damage or suffering, as well as any threat of such conduct which prevents a person or a group from enjoying their human rights and freedoms in public and private life.”¹¹⁸ GBV may include DV or violence in the wider community, committed or tolerated by authorities, and GBV occurring in armed conflict.¹¹⁹ In addition to guaranteeing the right to judicial protection to victims of gender discrimination, the Law does not define other protection or support mechanisms for victims of GBV. These may be found in different laws at the state, entity and cantonal level which include legal framework on protection against DV, criminal codes and criminal procedural laws, law on protection of witnesses, social

and health protection laws, law on free legal aid and others.

Criminal and civil laws apply international standards in the protection of victims by prosecuting and punishing the perpetrators of VAW and providing civil law remedies. However, no explicit definition of VAW or GBV against women is included in legislation, nor is it identified as violation of human rights and a form of discrimination, as defined by the IC. Criminal laws of BiH, FBiH, RS and BD criminalize acts of violence by defining them in a gender-neutral way which represents a legal ground for prosecution of violence against women.¹²⁰ All regulated forms of VAW in FBiH qualify as a criminal offence¹²¹ and, with latest legislative changes, also in RS.¹²² DV and other forms of VAW are punishable in both entities and BD under crimes infringing on the equality of individuals and citizens, crimes against sexual freedoms and morality, crimes against marriage and family, crimes inflicting bodily injuries etc.¹²³ However, persecution, forced marriage and genital mutilation are not uniformly criminalized in BiH, contrary to international law.¹²⁴ In 2017, the Republic of Srpska adopted a new CC¹²⁵ that is in accordance with the scope and purpose of the IC in regards to criminalization of forced marriages, female genital mutilation and stalking, however CCs of FBiH and Brcko District (BD) still do not contain similar provisions. Crimes involving sexual violence are not defined fully in accordance with the IC and the

¹¹⁵ Constitution of BiH (1995), Art II, par. 4. Constitution of FBiH, art. 2(1)(d). Constitution of RS, art. 10.

¹¹⁶ Law on Gender Equality in BiH, (Official Gazette BiH no. 16/03 i 102/09). Law on Prohibition of Discrimination in BiH (Official Gazette BiH no 59/09).

¹¹⁷ Law on Gender Equality in BiH, art. 6(4) and 6(5).

¹¹⁸ *ibid.*

¹¹⁹ *ibid.*

¹²⁰ Criminal Code BiH (Official Gazette BiH no 3/03, 32/03, 37/03, 54/04, 61/04, 32/07, 30/05, 53/06, 55/06, 8/10, 47/14, 22/15, 40/15); Criminal Code RS (Official Gazette RS no. 64/17); Criminal Code FBiH (Official Gazette FBiH no. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14 i 76/14); Criminal Code of Distric Brcko BiH (Official Gazette of District Brcko BiH no. 6/05, 21/10 i 9/13).

¹²¹ As opposed to qualification of VAW as misdemeanor (minor offence) or lack of regulation in total.

¹²² Law on Protection from Domestic Violence RS (Official Gazette RS no. 102/2012, 108/2013, 82/2015 i 84/2019), art. 1.

¹²³ *See:* CC FBiH, CC RS and CC BD.

¹²⁴ GEA, „Report on the Implementation of the Framework Strategy for the Implementation of the Convention on the Prevention and Combating Violence Against Women and Domestic Violence in BiH (2015 - 2018): Reporting Period July 2015 - December 2016”, p. 28.

¹²⁵ CC RS, published in the „Official Gazette of Republika Srpska, 64/17 (10/07/2017). Available in local languages: <https://advokat-prnjavorac.com/zakoni/Krivicni-zakonik-Republike-Srpske-2017.pdf> (access: 7.1.2019.)

standard according to which all attempts of VAW should be criminalized.¹²⁶ The definition of rape in domestic legislation is not aligned with international standards, including those provided by the IC, aiming to penalize any sexual act performed on another person without given explicit consent.

Family laws in FBiH and RS prohibit domestic violence.¹²⁷ The LPDV FBiH prescribed criminal liability for all acts of DV and ensured victims the right to free and unhindered access to courts.¹²⁸ The LPDV of RS¹²⁹ which defines DV as any act of violence by a family or its member which endangers family peace, psychological, physical, sexual or economic integrity of another family member. Until recently, the Law in RS imposed misdemeanor liability for acts of DV, unless they contained elements of a criminal offence. This difference in liability for perpetrators of DV among the two entities was, for a long time, one of the major diverging points in standards of protection for victims of violence in the country. However, during 2019 amendments to LPDV RS were adopted introducing few important changes in line with the IC, prescribing solely criminal liability for DV, introducing the obligation for police agencies to make risk assessment in every case of violence; introduction of person of trust/confidence and prescribing the explicit obligation for local institutions to establish a coordinated system of multisectoral cooperation including the signing of protocols on cooperation (referral mechanisms). The CC of RS in article 190 defines that acts of DV which endanger family peace, life, health or mental health of a fam-

ily member are criminal offences punishable by a fine or imprisonment not exceeding two years.¹³⁰ Article 222 of the Criminal Law of FBiH incorporates the definition of DV from the LPDV of FBiH and imposes criminal liability for all DV acts, while the aggravating circumstances increase the punishment up to fifteen years of imprisonment or long-term imprisonment.¹³¹

Existing regulations and public policies in BiH do not recognize VAW as a specific form of gender-based violence, but instead use the gender-neutral definitions, which significantly contributes to minimizing the degree of social danger of different forms of violence to which women are being exposed in the private and public spheres of life.¹³²

2.2.2.2 National Policy

a) Relevant strategies

In general terms BiH has a high quality international and domestic legal framework. Nevertheless, key strategic documents are not effective, comprehensive or coordinated, as they do not cover all forms of VAW and/or do not include systematic monitoring and reporting on implementation of measures for the prevention and combating VAW.

In July 2015, the BiH Council of Ministers adopted the Framework Strategy for the Implementation of the Istanbul Convention for the Period 2015 - 2018.¹³³ Despite the progressive legal framework of the country, the lack of harmonization of the legislation is very problematic due to the current political structure.¹³⁴ Name-

¹²⁶ GEA, „Report on the Implementation of the Framework Strategy for the Implementation of the Convention on the Prevention and Combating Violence Against Women and Domestic Violence in BiH (2015 - 2018): Reporting Period July 2015 - December 2016", p. 28.

¹²⁷ Family Law of FBiH (Official Gazette FBiH no. 31/14) and Family Law RS (Official Gazette RS no. 54/02 i 41/08).

¹²⁸ LPDV FBiH, (Official Gazette FBiH no. 20/13), art. 6-7.

¹²⁹ LPDV RS (Official Gazette RS no. 102/12, 108/13 and 82/15), art. 6.

¹³⁰ CC RS (Official Gazette RS no. 64/17 and 104/18).

¹³¹ CC FBiH, art. 222. Long-term imprisonment in FBiH can be from 21 up to 45 years.

¹³² Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of BiH, p. 7. Available online: file:///D:/Documents/Downloads/2013%20CEDAW%20report.pdf (access: 7.1.2019.).

¹³³ Framework strategy for implementing the IC in BiH for the period 2015 -2018, available from the web page of the BiH GEA at: <https://arsbih.gov.ba/okvirna-strategija-za-implementaciju-istanbulske-konvencije-u-bih-za-period-2015-2018/> (last access on 9.1.2019.)

¹³⁴ Implementation is hindered in part due to the country's political structure, BiH has a three-member body that

In the FBiH, each canton has formally established a referral mechanisms for responding to DV and protocols on Cooperation in Cases of DV¹⁴³ have also been developed in relation to the institutional response to such cases with relevant actors in the system of protection from DV.¹⁴⁴ The experiences of feminist CSOs from FBiH involved in the coordination bodies for the implementation of the said protocols, show that the protocols and the referral mechanism based on them did not fully achieve their purpose in practice. In the RS, a similar general protocol of response in cases of DV was adopted in 2013, the purpose of which is to provide a coordinated, efficient and comprehensive work of several ministries with the aim of providing immediate assistance, support and protection to victims of DV, combating and preventing the repetition of violence.¹⁴⁵

While welcoming these increased efforts to combat VAW, there are serious concerns about the high prevalence of DV and the lack of monitoring and accountability mechanisms, regarding the implementation of existing strategies, at both the State and entity levels. Inconsistent application of the laws regulating DV by the courts of both entities undermines women's trust in the judicial system despite the comprehensive legislative framework in place, and contributes to the underreporting of DV and other forms of VAW.

b) Data collection and monitoring

There is no systematic and coordinated data collection on all types of VAW in BiH. Available data is not classified according to all relevant parameters, and is thus not comparable. The UN Human Rights Committee in its 2017 Report for BiH¹⁴⁶ expressed concern about reports indicating DV as a persistent and underreported problem, insufficient data collection, inadequate police response to cases of DV and the mechanisms to protect and support victims and insufficient local access to shelters¹⁴⁷.

In 2013, the *Findings of the First National Study on Prevalence and Characteristics of Violence against Women in BiH*¹⁴⁸ were made publicly available. The research findings were presented in this report. Despite the state obligation from the IC to conduct comprehensive researches at regular intervals to assess the prevalence of and trends in all forms of VAW, this is the first and still only nation-wide study in BiH, making its 2013 findings outdated.¹⁴⁹ Without comparable studies it is difficult to understand the extent and trends in occurrence of VAW.

Besides this study, is it important to stress there is no comprehensive and integral database for data collection on cases of VAW, either at the state level or entity levels. The Database of cases of DV was formally created in the FBiH, in accordance with the LPDV and in coordination of the GC FBiH. In 2014 an electronic database on cases of DV was created for the Gender Center of FBiH with the support of the OSCE Mission in BiH, with the aim of protecting

[ewl_executive_summary_web_spread.pdf?la=en&vs=3238](#) (access 4.1.2019.)

¹⁴³ Protocols shall determine the mutual rights and obligations of signatories in the process of reporting cases of DV, providing protection to victims of DV, as well as in dealing with offenders in providing assistance to victims of DV.

¹⁴⁴ USAID BiH, Monitoring and Evaluation Support Activity (Measure BiH), Gender Analysis Report for BiH, p.85.

¹⁴⁵ Report on implementation of Gender Action Plan BiH for 2015 and 2016. Available online: https://arsbih.gov.ba/wp-content/uploads/2017/04/170310_Izvje%C5%A1taj-GAPBiH.pdf (last access on 9.1.2019.)

¹⁴⁶ Human Rights Committee, Concluding observations (2017) CCPR/C/BIH/CO/3. Available online: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/BIH/CO/3&Lang=En (last access on 9.1.2019.)

¹⁴⁷ Arts. 2-3, 7 and 26.

¹⁴⁸ Prevalence and Characteristics of Violence against Women in BiH, 2013. Conducted by the GEA and Statistical Agency and with the support of UNFPA and UN WOMEN. Available at http://www.vladars.net/sr-SP-Cyrl/Vlada/centri/gendercentarrs/media/vijesti/Documents/prevalency_study.pdf

¹⁴⁹ In June 2019, OSCE presented the results of the Survey on the Well-being and Safety of Women for Bosnia and Herzegovina (BiH). The survey was conducted by the OSCE in 2018 with the goal of providing comparable data on different forms of violence women experience throughout the course of their lives. Available: <https://www.osce.org/chairmanship/423557> (last accessed on 3.8.2019)

those who survived violence from the trauma of repeated testimony of violence when they seek help from competent institutions. Unfortunately, the database was not fully used due to the lack of technical equipment needed for electronic data collection. In 2018, the OSCE Mission to BiH (BiH) provided the Gender Center FBiH with software for managing an electronic database on cases of DV. Data is only now being inputted and the database contributions in systematic data collection will only be shown in the forthcoming period.¹⁵⁰ In the RS, the Ministry of Family, Youth and Sports has established databases for cases of DV. They publish the data relatively regularly and transparently on the Ministry's website, thus providing insight into the treatment of the subjects of protection. The police (the Ministry of Internal Affairs RS) also publishes the data in the *Report on the state of security* published on the website and containing information on the number of complaints, both criminal and misdemeanor, for all public security centers, and some brief analysis, thus enabling all relevant actors to follow the trends. As stated by women's CSOs, there is a visible improvement over the period prior to the adoption of the RS Law on Protection against Violence.

The significance of the mentioned databases is exhausted in the recording of cases of DV, while for other VAW cases there is still no integral and uniform database as required by the IC. Available information on the collection and analysis of data on all cases of VAW and DV indicate significant differences in the type of

data being collected, recording and monitoring of these data in the FBiH and RS. This proves to be a challenge for the effective review of the situation in the field of VAW for the state as a whole. There is still a need to establish a single methodology that would allow for the harmonization of the data of both entities, their comparison and detailed analysis, leading to evidence-based policy making.¹⁵¹ In conclusion, an effective data collection mechanism for monitoring VAW cases is still not established in BiH.

c) Training of the relevant professionals

Due to the general fragmentation and incompleteness of publicly available data, it is difficult to collect the data on number, content and quality of the training of professionals, target groups coverage, and the application of acquired knowledge and training effects on activities in practice. In general, relevant education and training on VAW are not obligatory, much of the training of professionals is carried out within the project activities, depends on foreign donor funds and is implemented by international/intergovernmental or local CSOs.

Professional education and training related to the introduction of international standards, laws and relevant by-laws are in place for all professionals in the system of the the protection chain. However, there are no special educational programs developed for improving the gender-sensitivity of police officers¹⁵², social workers, judges¹⁵³, prosecutors and health workers. This not in line with the requirement of

150 <http://www.gcfbih.gov.ba/elektronska-baza-podataka-o-nasilju-u-porodici/> (last accessed on 9.1.2019.)

151 GAP Report 2016, p. 12, 13. https://arsbih.gov.ba/wp-content/uploads/2017/04/170310_Izvje%C5%A1taj-GAPBiH.pdf

152 Police officers participate in introductory education on the laws and bylaws related to VAW, but education aimed at recognizing the victims of gender-based violence are either lacking in total, or they are sporadic. Given the lack of gender-sensitivity and lack of proper detection of VAW cases, there is also a lack of adequate, sensible procedures in practice orientated to the needs of VAW survivors. Training on these topics is mostly carried out at the initiative of CSOs, and for the time being there is no single systemic solution entailing continuous and compulsory education on VAW.

153 Trainings for judges and prosecutors are carried out regularly. Entity Training centers (hereinafter: CEST) prepare annual education programs, however not all modules are mandatory for all prosecutors and judges. This means in practice that the judges, according to the expressed interest, opt for a few education sessions, for a total duration of three training days per year. Mandatory training programmes are prepared for newly appointed judges and prosecutors in the duration of eight days per year. It is hugely problematic that modules dealing with gender equality, non-discrimination and VAW are not compulsory for judges and prosecutors proceeding in VAW cases. Education and training initiated by the Center of Women's Rights shows that patriarchal attitudes and generic animosity towards the non-governmental sector funded primarily through projects of international organizations still persists among judges. The following statement was given by a young judge who works on VAW cases at one of the training sessions organized by the CWR during 2018 is illustrative: "You non-governmental organizations shouldn't impose these Western values on us, we know that you get paid for it by international organisations. These are not our values."

the IC which stipulates the state should provide or strengthen appropriate training for the relevant professionals dealing with the victims or perpetrators of all acts of VAW on issues such as prevention, recognition of violence, gender equality, the needs and rights of victims as well as on how to prevent secondary victimisation. Because of limited human capacities and lack of obligatory educations, it is not a rare occurrence that only a narrow circle of professionals participate in the education and training. In practice there are obvious problems regarding the lack of gender-sensitivity of these professionals for VAW cases. This is reflected in the clear lack of adequate training for social workers, who themselves express the need for such education and training. They lack the experience and understanding of a human-based approach, which should by nature be associated with their profession. This lack of gender sensitivity is often reinforced by patriarchal attitudes and the promotion of stereotypical gender roles as an acceptable social standard.

Asides from the case of prosecutors and judges, there is an evident lack of continuous, professional and intensive training sustained with appropriate follow-up to ensure that newly acquired skills are adequately applied. Further to this, existing training is rarely supported by clear protocols and guidelines that set the standards the professionals are expected to follow in their respective fields, as suggested by the IC.

Great merits go to the CSOs for their contributions to educations and sensitizing training of competent professionals in charge of providing protection against VAW. Informal training programs on gender stereotypes, violence, gender equality and women's human rights are implemented by CSOs, but without the insured continuity and over a defined scope, directly dependent on the support of international organizations and funds.¹⁵⁴

d) Survivor-oriented approach

Although legislators in both entities and DB expressed their formal commitment to adoption of victim-oriented approach¹⁵⁵ and established legal and institutional framework, women subjected to violence still do not enjoy unhindered access to the systematic, efficient and sensible support and assistance. They are faced with various forms of prejudice and discrimination, both in their immediate environment, as well as from professionals working in institutions whose responsibilities and authorities are in this regard directly governed by the laws and by-laws. In addition, relevant laws and strategic documents in BiH do not formally distinguish between general and specialist support services.

According to the Framework Strategy¹⁵⁶, entity, cantonal and local governments assume the obligation of securing financial, human and material resources for these activities through budget allocations. However, support, protection and prosecution of VAW cases are not generally based on a gendered understanding of VAW and DV, there is a lack of recognition of gendered dynamics, impact and consequences of these forms of violence, as required by the IC. Also, many public services make their support dependant on the status or willingness of the survivor to press charges or testify against the perpetrator, as will be discussed below.

In line with general multi-agency and comprehensive approach promoted by the IC, BiH has an obligation to establish appropriate mechanisms providing effective cooperation among all relevant agencies (the judiciary, public prosecutors, law enforcement agencies, local and regional authorities and CSOs). As opposed to that, the direct support to women VAW survivors and monitoring of the criminal proceedings of VAW indicated a lack of holistic approach, as well as a lack of substantive and functional coordination between all relevant agencies in the system of protection.

¹⁵⁴ Alternative CEDAW Report 2017, p. 5. <http://rightsforall.ba/wp-content/uploads/2016/11/CEDAW-Prevod-FINAL.pdf>

¹⁵⁵ Article 2. of the LPDV of RS and Article 3. of the LPDV of FBiH.

¹⁵⁶ "Framework strategy for implementing the IC in BiH for the period 2015 -2018."

Prevention, protection and prosecution measures do not consistently take into account the relationship between victims/survivors, perpetrators, children and their wider environment, thus hindering the probability that professionals will make informed and suitable decisions, as the IC demands. There are no adequate risk assessment protocols for women VAW survivors who have to deal with many procedures at different institutions to solve the problem of violence and increase personal safety. The continuous monitoring of criminal and minor offence proceedings in the area of protection from VAW in BiH indicated the necessity of establishing a multidisciplinary and coordinated system for the protection of VAW survivors. The Center of Women's Rights, based on the recommendations and conclusions emanating from the 2017 Analytical Report¹⁵⁷ containing analysis of the monitoring of criminal and minor offence proceedings in the area of protection from VAW, initiated the formation of a multisectoral working group, consisting of the representative of the judiciary and prosecutor's office, the Federal Ministry of Justice, the Federal Ministry of Labor and Social Policy, the Federal Ministry of the Interior and the CWR. This multisectoral working group recognized the need to introduce concrete modality in form of a support by concrete person (person of trust, confidant), which would accompany the survivor prior to, during and after the criminal proceedings. The conclusion was reached to launch a joint initiative for the introduction of the so-called persons of trust by amending the LPDV FBiH to provide VAW survivors with immediate and continuous support during the entire process of protection from violence (during administrative, criminal and civil proceedings). This person could potentially be a family member, a person from the competent institution, a non-governmental organization and other legal entity.

2.2.3 Institutional Framework and Related Proceedings

2.2.3.1 Coordinating body

BiH has not yet determined which are the authorities responsible for coordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all aspects of VAW covered by the IC. Despite formal commitments, according to the GEA BiH, the denial of the state Framework Strategy effect in the RS by its competent government is the first and most important obstacle for the introduction of a coordinating body for Strategy implementation at the state level.

In general, institutional gender mechanisms for the protection of VAW survivors have been established at all levels of legislative and executive authority which include the institution of Ombudsman for Human Rights, health and social institutions, law enforcement agencies, entity gender centers, cantonal committees for gender equality, commissions for gender equality within legislative bodies at state, entity and cantonal levels and commissions for gender equality.¹⁵⁸ The Ministry of Human Rights and Refugees of BiH and the GEA are the state institutions responsible for coordinating activities on improving gender equality, monitoring and reporting on their implementation at lower levels of government. While the presence of gendered institutions and mechanisms at all levels of authority and branches of government indicates a bottom-up approach in the protection of VAW survivors, a lack of uniformity in standards and absence of political will and implementation mechanisms hampers the realization of state's obligations towards the VAW survivors. Many state's obligations towards VAW survivors are realized through the assistance of civil society, while some mechanisms such as safe houses continue to exist only because of the persistence of civil society.

¹⁵⁷ A. Petrić/Dž. Radončić, Analytical Report: Analysis of the Monitoring of Criminal and Minor Offence Proceedings in the Area of Protection from Gender Based Violence in BiH, Foundation United Women Banja Luka and Center of Women's Rights Zenica, Zenica and Banja Luka 2017. Available: <http://cenppz.org.ba/wp-content/uploads/2017/07/ANALYTICAL-REPORT-2017-CLAW.pdf>

¹⁵⁸ *ibid.*

2.2.3.2 *Relevant CSOs*

The CSOs engaged in the protection of women's human rights, as well as supporting democratic processes, peace building and the inclusion of women in important reform processes for decades, remain marginalized and excluded. Their experience and knowledge gained in direct work with women is neither valued nor built into public policies.¹⁵⁹ Despite the obligation emanating from the IC, according to which states should recognize the work of relevant CSOs, tapping into their expertise and involving them as partners for multi-agency cooperation, the institutions of BiH on all levels are not sufficiently active in the direction of opening possibilities for cooperation and dialogue with CSOs. Inconsistency and lack of long-term and strategic commitment of the international community, which remains largely insensitive to support the actions of CSOs in the field of women's human rights and gender equality, and women's exclusion from participating in all decision making processes important for the functioning of BiH, further complicates positive changes directed towards the realization of women's human rights in practice.¹⁶⁰

It is worrying that services which should be provided by the state are largely left to the civil sector including, among others, the legal assistance, safe houses, collecting and processing data on VAW, modernizing and harmonizing domestic laws with accepted international standards, organizing and running specialized support and assistance services for VAW survivors, ongoing and program activities to raise public awareness and public information on VAW and many others. Although CSOs have a long tradition of providing a broad spectrum of services to VAW survivors, making their contributions to preventing and combating VAW irreplaceable, the state does not encourage and support the work of these dedicated CSOs as required by the IC.

2.2.3.3 *Allocation of appropriate financial and human resources*

The allocation of financial and human resources for activities carried out by public authorities and relevant CSOs is one of obligations set by the IC. Given the different economic circumstances of states, the scope of this obligation was limited to the allocation of appropriate resources, which is a standard to be interpreted on a state-to-state basis. The general conclusion is that BiH did not ensure adequate allocation of appropriate financial and human resources for activities in preventing and combating all forms of VAW. The GEA BiH is not sufficiently visible and its position within one State-level ministry may create obstacles to its effectiveness in working with other ministries.¹⁶¹

State, entity and cantonal budgets (budgets of all levels of government) are not planned in a gender-responsible manner and do not contain precise budget items intended for preventing and combating VAW, except sporadically in the part related to the financing of safe houses run by non-governmental organizations. In general, existing services are in general underfunded, understaffed and overworked. Many specialised services are provided by women's CSOs. These include shelters, counselling centres, psychological support and legal aid. However, even though these organisations provide valuable services, they are not adequately supported by the State. They therefore lack both the human and financial resources to carry out their important work.

As far as human and material resources are concerned in relevant government institutions, social work centers are particularly problematic. In direct communication with the representatives of the centers for Social Work, a lack of specialized staff, such as psychologists and lawyers, and general lack of staff overall was emphasised. It is often the case that the director is the only social worker who possesses the knowledge and experience for working with VAW survivors. In addition, most social

¹⁵⁹ Alternative CEDAW Report 2016,

¹⁶⁰ Ibid.

¹⁶¹ Concluding observations on the combined fourth and fifth periodic reports of BiH, p. 17.

work centers do not have adequate premises for confidential communication with VAW survivors.

Human resource scarcity should be seen not only as a lack of resources, but also as a lack of specialisation and gender-sensitivity. Typical examples are social workers who are in their first contact with VAW survivors. They are not specialized and are not trained enough to recognize the gender dimension of VAW, thus compromising the adequacy of protection for VAW survivors. In the past 10 years, many financial and human resources have been invested in improving the work of criminal courts, prosecutors, and the police. Monitoring has been conducted and the available analysis indicates some progress in their work. However, social work centers, as the first instance for VAW survivors, are left out of processes aimed at improving beneficiaries' position and adopting client-based approaches. The lack of various types of education, as well as the monitoring of the modalities and methods of work and the assessment of efficiency and beneficiary's satisfaction by the work of officials, points to problems that will remain a significant obstacle if no concrete measures are taken in the forthcoming period.

2.2.3.4 Specialist support services

SOS (help)lines: The IC contains the obligation to set up state-wide telephone helplines which are available around the clock and free of charge. In BiH there are two national SOS lines for VAW survivors in BiH, one covering the FBiH (tel: 1265) and one covering the RS (tel: 1264). The SOS lines are run by different women's CSOs alternatively on annual basis and upon prior agreement in cooperation with Gender center FBiH. In FBiH an SOS helpline was not active for 10 months during 2018, due to problems with the server. Now, it is active but re-

mains the sole responsibility of CSOs. They operate 24/7 and they are free of charge.¹⁶²

Shelters and counselling: There are eight safe houses (women's shelters) for women survivors of violence in BiH. Five of the safe houses are located in the FBiH and three in the RS. The total number of beds in the safe houses is approximately 204 (135 places in the FBiH and 69 in the RS).¹⁶³ The safe houses are run by women's CSOs with a gender-specific and feminist approach, funded through international and domestic sources of funding. Safe houses are available in most regions of BiH. Formally, all existing safe houses have 24/7 access, as shelters they are staffed by professionals on a round-the-clock basis. All safe houses include counselling centers, offering information and advice, psycho-social and legal counselling, advocacy, risk assessment and safety planning.

Rape crisis center: Regarding the support for victims of sexual violence¹⁶⁴, in BiH there are no crisis centers for victims of rape and victims of sexual violence, prescribed by the IC standard in a manner which would provide victims with the services of doctors and forensic examination, and support in case of trauma and counselling. This kind of specialist service has also not been developed within the public health sector.

Legal Assistance: Access to free legal aid is provided by CSOs and the state (entity, cantonal) institutions for providing free legal aid, but it is hampered by the disproportionate territorial presence of providers of this aid.¹⁶⁵ At the State level there is a *Network of free legal aid providers*, consisting of all state institutions for free legal aid and four relevant CSOs. Among them, the Center for Women's Rights, with 22 years of experience providing specialized legal assistance to women, which, in addition to counseling, includes preparation of submissions and legal representation and mediation

¹⁶² P.45. Available: https://wave-network.org/wp-content/uploads/2018/09/WAVE_CR_2017_180702_web.pdf (access 4.1.2019.).

¹⁶³ N. Petrić/N. Galić, op.cit., 59 fn 270.

¹⁶⁴ Article 25 of the IC .

¹⁶⁵ Alternative Answers Of Civil Society Organizations To The European Commission Questionnaire, Sarajevo 2017, 66. Available: http://eu-monitoring.ba/site/wp-content/uploads/2017/08/alternativni-odgovori_ENG-1.pdf (access 4.1.2019.).

before competent institutions. Of the 3,000 services, which is the annual average, 70% refers to issues related to women victims of DV.¹⁶⁶ Providing free legal assistance by state/local institutions is generally dependant on the financial situation of the woman requesting assistance. CSOs usually provide legal assistance regardless of the financial conditions of women seeking legal aid.

2.2.3.5 *Protection of VAW survivors/ witnesses and legal aid*

In general, the protection of women VAW survivors during criminal proceedings can be analysed from two aspects. One aspect is providing the victim with free legal aid, not just a legal adviser, but a legal representative, who will be able to represent her interests in the procedure, especially with filling out a compensation claim¹⁶⁷. In the FBiH, seven out of ten cantons adopted laws on free legal assistance and seven cantons established the institution responsible for providing free legal aid (cantonal institutions). Only six cantons recognise DV victim as a free legal aid beneficiary. The Law on free legal aid in the RS¹⁶⁸ also defines victims of DV as beneficiaries of free legal aid.

The other aspect of the protection of VAW survivors is providing direct psychological counseling and support during her testimony before the police, prosecution and courts. Psychological support is necessary in order to ensure the protection of the survivors during the criminal proceedings, so that the hearing would not have a detrimental effect to her psycho-

logical state; the hearing should be conducted with the help of a psychologist, pedagogue or other professional depending on survivors' needs. That obligation is explicitly stipulated in relation to minor survivors.¹⁶⁹ Laws on protection of witnesses in criminal proceedings are adopted at state¹⁷⁰ and entity levels¹⁷¹, but in criminal proceedings dealing with VAW, the status of witnesses under threat and vulnerable witnesses are granted relatively rarely to survivors of violence, with the exception of minor victims and cases of sexual violence as a war crime¹⁷². Unfortunately, it is generally perceived that adult women VAW survivors do not need additional help and support.¹⁷³

This conclusion is in line with 2017 criminal proceeding monitoring findings pointing out that adult women VAW survivors are not recognized as victims that have the right to special types of protection and support while testifying, which indicates that the court practice remains unchanged compared to the previous monitoring initiatives of the criminal proceedings in this area conducted in 2011 and 2013/2014. The monitors identified that the courts pay attention that perpetrators of violence as defendants enjoy legally guaranteed rights on legal assistance and representation in the court proceeding, whether they have attorneys of their choice or *ex officio*, in cases when this type of assistance is legally guaranteed. In general, adult women witnesses in the criminal proceedings that were monitored did not have the support of expert professionals, and no status of vulnerable witnesses.¹⁷⁴

¹⁶⁶ Information provided by Center of Women's Rights internal report.

¹⁶⁷ Despite legal possibility, prosecutors and judges do not use this provision, claiming it would delay the process. R. Manjoo, op.cit., p. 17.

¹⁶⁸ Official Gazette RS, no 120/2008, 89/2013 i 63/2014.

¹⁶⁹ Article 100 of Code on Criminal proceedings FBiH.

¹⁷⁰ Law on Protection of Witnesses under Threat and Vulnerable Witnesses. Official Gazette of BiH 29/04.

¹⁷¹ Law on Protection of Witnesses in Criminal Proceedings, Official Gazette RS, 48/03. Law on Protection of Witnesses under Threat and Vulnerable Witnesses FBiH, Official Gazette FBiH, 36/2003.

¹⁷² UNDP, "Assessment of the Condition and Needs of the Cantonal / District Prosecutor's Offices and Courts in the Field of Support and Protection of Witnesses / Victims in War Crimes Cases in BiH", p. 52 and 53. Available: <https://www.mreza-mira.net/wp-content/uploads/Procjena-potrebe-na-polju-podrske-svjedoka-zrtava.pdf>

¹⁷³ Center of Women's Rights Zenica and Foundation United Women Banja Luka: A. Petrić/Dž. Radončić, Analysis of trial monitoring of criminal and minor offence proceedings in the field of protection from sexual and gender based violence in BiH, Banja Luka and Zenica 2017, op.cit.

¹⁷⁴ Analytical Report, op.cit., 27 and 73.

Coupled with a complex and reforming judicial system victims and witnesses are often left questioning just what exactly their rights are, as well as the potential support to which they are entitled.¹⁷⁵ In 2010, UNDP in BiH began a process of introducing a victim and witness support mechanism. UNDP worked to support lower level courts and prosecutors' offices in developing custom made premises and hiring staff to provide psycho-social, administrative and practical support to victims and witnesses. These initiatives were launched primarily in order to protect thousands of victims of war crimes, ranging from sexual violence to deportation of civilians, still appearing before various courts in the country. To date UNDP has established 16 witness support offices covering 70 percent of the territory.¹⁷⁶ Therefore, in most courts, witness support departments (with psychologists) have been established. The departments have been established within cantonal courts, but their capacities are used by municipal courts and prosecutors' offices, if necessary. Also, in some cantons, there are designated persons who are responsible for taking statements from minor survivors / witnesses, including girls who are victims of any form of VAW.

With the aim of ensuring uniform access to legal aid, in 2016, *the Law on Providing Free Legal Assistance BiH*¹⁷⁷ was adopted. This law prescribes the forms of free legal aid, the entities for providing legal assistance and the users of such assistance, the conditions and the way for its realization, financing and control, as well as supervision over the implementation of this law. However, the Law is limited to the state level, which means that the changes affect the Prosecutor's Office of BiH and the Court of BiH, as well as other state-level institutions, and

still does not ensure the harmonization of the provision of legal aid for victims throughout BiH before different institutions. It has introduced the possibility of access to legal aid in criminal proceedings as well. Only the victims who meet certain conditions (the victims who are poor, or the victims of gender-based violence) will be entitled to free legal aid. The Ministry of Justice of BiH now must implement new legal aid laws by adopting the necessary by-laws and ensure that victims can access legal aid and legal remedies in practice.

At the entity level, the *Law on Free Legal Assistance of the RS*¹⁷⁸ was adopted, while the legal framework in the FBiH consists of nine cantonal laws on free legal aid. Only the Central Bosnia Canton has not yet regulated this area. Also, besides the cantonal institutions providing legal assistance, several CSOs also offer free legal aid.¹⁷⁹ The Law on the Legal Aid Office applies to the Appellate Court of the BD BiH.¹⁸⁰ In FBiH, six out of seven cantonal laws on free legal aid (the Zenica-Doboj, Sarajevo, Posavina, Unsko-sanski, Bosansko-Podrinjski and Tuzla Canton) recognize victims of DV as beneficiaries. The Cantonal Law on free legal aid of Una-Sana Canton, in addition to the victims of violence, also recognizes victims based on gender as beneficiaries of free legal assistance. The West Herzegovina Canton does not recognize victims of violence as service users and there are no relevant laws on free legal aid in three cantons (Central Bosnia, Herzegovina-Neretva Canton and Canton 10) with no established institutes.

To conclude, in BiH there are no systematically organized centers for legal aid. In this respect, the European Commission has already emphasized that the lack of a harmonized free legal aid system increases the risk of discrimination.

¹⁷⁵ See: <http://www.eurasia.undp.org/content/rbec/en/home/ourwork/democratic-governance-and-peacebuilding/successstories/witnesses-get-the-support-they-need-in-bosnia-and-herzegovina.html>

¹⁷⁶ As part of the project "Support to War Crimes Processing in BiH", the UNDP has so far equipped and established sixteen departments to support witnesses in canton / district courts and prosecutor's offices in Sarajevo, Banja Luka, East Sarajevo, Bihać, Novi Travnik and Travnik, Brčko District and Mostar, in order to provide victims and witnesses in criminal cases support during their testimony during the investigation and court proceedings.

¹⁷⁷ "Official gazette BiH", No. 83/16

¹⁷⁸ The Law on provision of free legal aid RS („Official gazette RS", No. 120/08, 89/13 i 63/14

¹⁷⁹ GAP BIH 2018-2022, p. 12.

¹⁸⁰ „Official gazette BD", No. 19/07.

This particularly affects vulnerable groups, including the relatives of missing persons, former prisoners of war camps, victims of wartime sexual violence, etc. who are exposed to further marginalization, it hampers their access to justice and diminishes their trust in institutions.¹⁸¹

2.2.4 Case studies

2.2.4.1 Investigation, prosecution and protective measures

The challenges faced by women victims are frequently reflected in the inadequate responses by the domestic criminal justice system, especially in cases of DV.

Reports of DV are not always processed in accordance with the law, but police officers treat them as „marital disputes“, and identical misdemeanor complaints are filed against the victim and the perpetrator. This is in line with the widespread practice of registering DV cases as a threat to security or breach of the peace, and not as a criminal offense. If the reported offence is treated in accordance with the law, only a protective measure is imposed by which the perpetrator is held in custody for 24 hours, after which he is released, exposing the victim to violence again. Other protective measures are rarely used or are not filed within the legal deadline. Also concerning are the reports that police officers do not investigate attacks against lesbian, gay, bisexual and transgender persons, especially during public assemblies.¹⁸² This practice is not in accordance with the IC standards aiming to prevent incidences of VAW and DV being assigned low priority in investigations and judicial proceedings, as this

contributes to a sense of impunity among perpetrators and perpetuates high levels of acceptance of such violence.

Protective measures are rarely issued and no formal monitoring of their application is actually undertaken when they are issued. The IC suggest to ensure that in certain cases protection orders may be issued, where necessary, on an *ex parte* basis (based on the request of only one party) with immediate effect. Unlike this solution, in the FBiH only the police and, sometimes, prosecutor, can file a request for protective order, without the possibility for the victim/survivor to file the same request.¹⁸³ The situation is different in the RS, where the “injured party” can file a request for a protection order.¹⁸⁴

Even when legislation provides for protection measures such as the removal of perpetrators from the family home, this is rarely implemented. Victims are sometimes given a short period of time, ranging from 4 to 10 days, during which perpetrators are excluded from the family home and women are given time to collect their personal belongings and to leave their home.¹⁸⁵ This is contrary to the IC according to which, rather than placing the burden of hurriedly seeking safety in a shelter or elsewhere on the victim, it is important to ensure the removal of the perpetrators to allow the victim to remain in the home. This lack of focus on the victim's safety by state authorities is a recurrent complaint made by CSOs. On the other hand, when confronted with these statistics, CSWs are frequently justifying it by lack of adequate resources available in case of removal of the perpetrator from the family house. Also, CSWs sometimes use their own premises to house victims of violence to avoid referring victims to shelters. These alternative shelters, however, only lodge victims for a few days, which is not enough time to provide the

¹⁸¹ Alternative Answers Of Civil Society Organizations To The European Commission Questionnaire, Sarajevo 2017, 68, 69. Available: http://eu-monitoring.ba/site/wp-content/uploads/2017/08/alternativni-odgovori_ENG-1.pdf (access 4.1.2019.).

¹⁸² Human Rights Committee, Concluding observations (2017) CCPR/C/BIH/CO/3. Available online: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/BIH/CO/3&Lang=En (last access on 9.1.2019.)

¹⁸³ Article 17. LPDV FBiH.

¹⁸⁴ Article 13 (3) LPDV RS.

¹⁸⁵ Ibid.

comprehensive services that would be offered by a CSO-run shelter. This results in more bureaucracy and less funding for crucial services, which are largely provided by CSOs.¹⁸⁶

The application of legal provisions aimed at preventing and punishing VAW is unsatisfactory. Monitoring of court proceedings conducted at 22 courts showed that DV is still perceived as a less serious offence, for which the courts generally impose suspended sentences and low fines, even in cases of recidivist perpetrators who have committed the same criminal offence multiple times.¹⁸⁷ Local CSOs that monitor criminal proceedings in the area of gender-based violence¹⁸⁸ report that despite the fact that entity laws on protection from DV prescribe mandatory urgent action, proceedings for criminal offences of DV take four months on average, which does not secure protection from repetition of violence and does not remove further damaging consequences for women survivors of violence. It is worrying that there have been cases of sexual violence against women and girls where more than a year elapsed between the actual commission of the criminal offence and a confirmed indictment, although there were no objective reasons for such delays. Monitoring also showed absence of legal and psychological support during testimonies by adult women who have survived violence and, as a rule, the practice of instructing the injured party to seek damages through a private claim in civil proceedings.

Legal qualification of the criminal offences of VAW: The monitoring findings outline the cases in which prosecutors, when preparing and sub-

mitting indictments, inadequately assessed elements of the criminal offences in the process of preparing indictments, and failed to recognize them as the criminal offences for which more severe sanctions are prescribed, or failed to recognize qualified forms of the criminal offences punishable by stricter sanctions. This practice has been identified in relation to the criminal offence cases of DV, both in the case of adult women and minor victims, but also in relation to the other criminal offences of gender based violence. Psychological violence is not taken into consideration in judicial practice, despite explicit obligation from the IC, according to which any intentional conduct that seriously impairs another person's integrity through coercion or threats should be criminally sanctioned. There are no official statistics on the number of gender-based killings of females (femicide) in BiH. Further to this, the modalities for monitoring femicide, in line with the recommendations of the UN Special Rapporteur on violence against women in 2015, have not been established.¹⁸⁹ There is no specialization among the courts vis-à-vis the treatment of DV cases, which are often not decided with the best interest of women survivors of violence in mind. It is reported that only the most serious cases are identified as criminal offences by virtue of the argument that "easier" cases will be processed more quickly. Activists claim that protection measures still take up to six months to be processed, with no consideration of the urgent nature of these measures.

Aggravating and mitigating circumstances: Objectives of the special and general prevention of VAW are undermined with inadequate and

¹⁸⁶ R. Manjoo, op-cit., p. 13-15.

¹⁸⁷ Analysis of monitoring criminal and misdemeanour proceedings in the field of gender-based violence in BiH, United Women and Centre for Legal Aid to Women, 2017, (<https://goo.gl/DDztDB>).

¹⁸⁸ Dž. Radončić/A. Petrić, *Monitoring report and analyses of criminal proceedings in the area of gender-based violence* [„Izvještaj i analiza praćenja krivičnih postupaka u oblasti rodno zasnovanog nasilja“], Legal aid centre for women Zenica and Udružene žene Foundation Banja Luka, 2014. Available at: <http://unitedwomenbl.org/v2/wp-content/uploads/2015/12/analiza-monitoringa-kp-seksualno-i-rzn-u-bih.pdf> (last accessed on 9.1.2019.). Also, Center of Women's Rights Zenica and Foundation United Women Banja Luka: A. Petrić/Dž. Radončić, *Analysis of trial monitoring of criminal and minor offence proceedings in the field of protection from sexual and gender based violence in BiH, Banja Luka and Zenica 2017*. Available online: <http://cenppz.org.ba/analysis-of-trial-monitoring-of-criminal-and-minor-offence-proceedings-in-the-field-of-protection-from-sexual-and-gender-based-violence-in-bih/?lang=en> (last access on 9.1.2019.)

¹⁸⁹ The Initiative for Monitoring the European Integration of BiH, 2018 Alternative Analytical Report on the Application of BiH for EU Membership: Political Criteria, Sarajevo 2018, p. 29. Available online: <file:///D:/Documents/Downloads/2018-Alternative-Analytical-Report-on-the-Application-of-BiH-for-EU-Membership.pdf> (last access on 9.1.2019.)

lenient penal policy against the perpetrators of VAW, as shown by the analytical report based on the monitoring of criminal proceedings. Trial monitoring of criminal proceedings indicated problematic prosecutorial and judicial practices, which often starts with inadequate and usually milder legal qualification and frequently ends with lighter criminal sanctions for the perpetrator. In relatively rare cases concurrence with light and heavy bodily injuries as well as prolonged criminal offence are identified, especially in relation to the criminal offence of DV. Lighter penalties against the perpetrators are conditioned with more frequent consideration of mitigating circumstances (in relation to aggravating circumstances which are also present), even when it is absurd to consider the "family status of a perpetrator" as the mitigating circumstance when members of that same family were victims of violence. In most cases, if the child was not a direct victim of violence, but witnessed it one parent (usually father) being violent toward the other parent (usually mother), prosecutors and courts do not consistently take into account these circumstances, as prescribed by the IC. It seems that the age of a perpetrator is almost always considered as the mitigating circumstance, in combination with the financial situation (old, young, retired or unemployed). One of the largest issues related to the mitigating/aggravating circumstances is the situation when the court only lists circumstances considered when imposing sanctions, without explanation why and to what extent a certain circumstance was considered relevant for the specific type and scope of the sanction. Just listing the circumstances without accompanying justification, or with vague and unclear justification, questions the usage of these circumstances by the courts when imposing sanctions. Courts often refer to a victim's statement that she withdraws from prosecution and does not make a

claim for compensation as a mitigating circumstance, contrary to the principles of prosecution and legality. Passivity or even withdrawing victims from participation in the criminal proceedings should be observed in the wider context of fear, lack of alternative, and lack of concrete support (professional, financial, legal). Due to lack of information, women victims of violence often slowly acquire their rights on protection and assistance guaranteed by the laws, which leads to the lack of trust in the work of judicial institutions, and the causal lack of reporting of the criminal offences of violence.

Protection of VAW survivors: Relevant legislation that enables courts to award compensation to injured parties/victims in criminal proceedings, or to refer them to civil proceedings, has been put in place. However, there is a consistent practice of referring victims to civil proceedings. This practice hinders access to compensation for most victims, given that most victims need professional legal representation in civil proceedings. Since free legal aid is still not effectively guaranteed by the state, in the majority of cases the victims cannot afford to initiate such proceedings. Judicial practice to decide on compensation in criminal proceedings is still rare¹⁹⁰ as is not taking roots in judicial institutions at other administrative levels (one of these precedent cases including a successful compensation claim was before the court in Dobož in September 2016).¹⁹¹ Another common complaint made by activists was that prosecutors rely heavily on testimonies by victims, perpetrators and witnesses, rather than collecting the necessary evidence during the investigatory phase. This is not in accordance with the IC which set an obligation to ensure that investigations are not "wholly dependant" upon the report or complaint filed by a victim and that any proceedings underway should continue even after the victim has withdrawn

¹⁹⁰ The milestone ruling was rendered in June 2015, after TRIAL International had filed the first compensation claim for non-pecuniary damages suffered by a victim of wartime rape in criminal proceedings before the Court of BiH. The court ruled that the two defendants pay the amount of BAM 26 500 (approximately EUR 13 500) to the victim as compensation for non-pecuniary damages, together with a prison sentence. After this precedent, compensation was granted to victims in 4 other cases. More info: <https://trialinternational.org/countries-post/bosnia-herzegovina/> (last access on 10.1.2019.)

¹⁹¹ Alternative Answers Of Civil Society Organizations To The European Commission Questionnaire, Sarajevo 2017, 69. Available: http://eu-monitoring.ba/site/wp-content/uploads/2017/08/alternativni-odgovori_ENG-1.pdf (access 4.1.2019.)

her statement. This practice has a particular effect on women victims, who often participate in criminal proceedings without adequate social, psychological and legal assistance. In the specific case of the Republika Srpska, even though current legislation envisages specific measures to support victims during criminal proceedings and provide free legal aid, these provisions are reportedly rarely applied. Another recurrent practice is the suspension of sentences, or courts allowing fines for offences that would normally require imprisonment, with little follow-up as regards the compliance by offenders with any conditions associated with these suspensions. This results in no real sanctions being imposed on perpetrators.

Duration of procedures: The monitoring identified an unusual tendency that majority of the cases ended, conditionally saying, within the reasonable deadline of one year. Criminal proceedings for aggravated criminal offences (such as murder, rape, etc.) end much faster than the criminal proceedings for DV. Such practice underlines the conclusion that DV is still perceived as the offence of lower social danger, borderline with the minor offences, although DV usually precedes “heavy” criminal offences, such as murder. There is an unjustifiably high number of postponements of the court sessions at some courts, and the courts fail to impose disciplinary measures against all persons that participate in judicial proceedings when it comes to irrational and repeated postponements of the court sessions.

2.2.4.2 *First case*

a) **The facts of the case**¹⁹²

During 2014 Indira concluded a marriage with Enes.¹⁹³ Shortly after the wedding, Enes began to act violently toward Indira. In the beginning, violence started as psychological and verbal violence, developing eventually into physical violence as well. Psychological and verbal violence was inflicted through insults, blackmails, attempts to control and limit Indira in every

social aspect, including her behaviour, dressing, socialising etc., but also in terms of material and financial control and exploitation.

After almost a year, Indira left Enes for the first time with the intention of initiating divorce proceedings. Enes begged Indira to come back and promised he would change. Indira believed him and they continued to live together. Shortly thereafter, she became pregnant, but harassment and violence persisted leading to pregnancy complications. After medical interventions, the doctors prescribed rest and a stress-free environment, but Enes, on the same day as she was released from the hospital, continued with violence. Because of this, and also because of the fear that Enes would be violent towards the child, Indira reported domestic violence and left the marriage union. The competent CSW case was informed about the report of a DV case, as was the cantonal prosecutor’s office. Despite the report and description of the case, the Cantonal Prosecutor’s Office qualified the violence as a criminal offence of light bodily injury, not as domestic violence. After Indira reported the violence, Enes also reported the violence and bodily injury allegedly inflicted on him by Indira. Although medical experts have given their expert opinion indicating that Indira, who was then six-months pregnant could not have inflicted Enes with such injuries for which the documentation was obtained, the Cantonal Prosecution on 6th March 2019 formally charged Enes, but also Indira for the criminal offence of light bodily injuries. The worrying tendency to charge both spouses for domestic violence or other act is noteworthy, diminishes the gender nature of the crime, affects the type of sanction issued and reduces the social conviction of domestic violence as the most widespread form of VAW.

Upon leaving the shared household and before giving birth to their child, neither Enes nor members of his family showed any interest in Indira, her wellbeing or the wellbeing of the unborn child. On the contrary, they told Indira she should perform an abortion, since Enes

¹⁹² For the purpose of case analysis, two interviews had been conducted: Social workers – 26.3.2019 and Indira’s lawyer – 29.3.2019.

¹⁹³ The names are altered for security reasons.

did not want to have her child, questioning his paternity. After couple of months, Indira gave birth to baby girl. Following the child birth, Indira initiated the procedure for the division of matrimonial property, followed by Enes' request for issuing a temporary measure to visit the child. In doing so, Enes presented Indira as a mother who intended to prevent father-daughter contact, although Indira was never opposed to Enes visiting and seeing his daughter. Indira suggested that due to daughter's health and early age, the first contacts should take place in Indira's apartment. Later on, after the child's vaccination, Indira agreed to contact taking place in the CSW's premises. Enes refused such suggestions and wanted to take their daughter to his apartment immediately. On several occasions Enes refused to see the child under the conditions and in the way Indira suggested, preferring not to see their daughter.

The civil court proceeding for rendering the decision on the interim measure lasted more than seven months, despite the urgency of the situation. During these proceedings, Enes pleaded that Indira had not allowed him to see or contact their daughter, although Indira never did anything to prevent the father from seeing their daughter. Finally, in 2015, the court issued the requested measure by which the terms of the access visits, such as when, how long and frequency of the access visits, was set out granting Enes the right to maintain contacts with their daughter every other day for two hours in a public place, in the presence of Indira or her mother. Despite the risk and immanent conflict in these situations, a social worker rarely attended those meetings. Indira filed a complaint to this decision. The complaint was finally accepted, but the second instance decision was issued only in the end of January 2016. From October 2015 until the end of January 2016, Enes abused his right to see his daughter, using every opportunity to insult, provoke and even physically attack Indira and her mother, which was documented on several occasions in videos that were taken. However, no criminal proceeding was initiated in this regard to this day.

b) Case analysis

Identified shortcoming regarding the legislative and procedural framework

According to the IC¹⁹⁴, the state should take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of the IC are taken into account, in addition to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children. Particularly in cases of DV, issues regarding common children are often the only ties that remain between the victim and perpetrator. As this case showed, complying with contact orders and respecting the visitation rights of the father created a safety risk and opportunity for the violence to take place repeatedly. Fathers often take advantage of their visitation rights to further abuse their former partners and mothers of children, this can often also lead to violence towards the children as well. The system recognizes the father's visitation rights as a higher priority in comparison to the child's and mother's right to a safe and supportive environment. It is difficult to expect a child to have a meaningful and supportive relationship with a parent who is violent toward the other parent (mother) in front of them child. A public display of violence shows the perpetrator had no fear of the criminal (or other) processing or reaction of the system, indicating an additional level of maliciousness.

The inadequate qualification of DV cases emanates from the problems with the implementation of the law, but also from the inadequacies and incompleteness of the relevant laws. The high conflict custody cases, such as this one, often includes mutual domestic violence accusations and the system shows a complete lack of understanding of the gendered nature of DV.

This, as many other cases, illustrates the inadequate definition of DV which does not explicitly include children as victims when they witness DV. As accentuated by the IC, DV includes mainly two types of violence, intimate-partner violence between the current or former spous-

¹⁹⁴ Article 31.

es or partners and inter-generational violence which typically occurs between parents and children.

In addition, due attention was not given to aggravating circumstances that violence was committed repeatedly and against a person made vulnerable by particular circumstances (as defined by the IC, among others, mothers with children and children separately). In the circumstance that the violence was committed against a child or in the presence of a child (which constitutes a form of victimisation of the child in itself), was completely ignored in this case.

As shown, the legislative framework in general provides a solid basis for the prevention of and protection from VAW. One of the shortcomings, albeit not illustrated particularly by the case at hand, is the lack of harmonisation between relevant laws (e.g. laws on the protection from domestic violence and laws on free legal aid and laws on social protection etc) and the lack of substantial cooperation between relevant institutions. It should be emphasized that an Instruction on Conduct and Cooperation of Prosecutors and Police officers Carrying Out Evidence-based Activities during the Investigation was adopted. This Instruction regulates the procedure and cooperation between police officers and prosecutors in detecting the criminal offence and perpetrator, the process of collecting evidence during the investigation (regardless of whether the investigation was ordered) and the procedure of special investigative actions aiming to improve mechanisms of cooperation and coordination between police agencies and prosecutors offices. However, this bylaw was not fully implemented in this case.

Laws on protection from DV prescribe the roles and responsibilities of all subjects and professionals tasked with providing protection from DV. The introductory provisions stipulate the interconnection of all competent subjects with an obligation to provide protection from DV and to solve other issues of importance for protection from DV. As competent actors for the implementation and enforcement of these

laws, the laws enlist in the first instance courts, the police, the center of social work and other competent social and health institutions. In addition to referring a case to institutions responsible for protecting victims from DV, their obligation to work **jointly** and **in coordination** is explicitly prescribed, but also their obligation that only those employees who are specially educated can work with the victims of violence (and violent persons). The competent institutions are obliged to provide the urgent resolution of DV cases without delay, taking into account that the interest and well-being of the victims are a priority in these procedures.

Although there have been legislative improvements, implementation is still not satisfactory, as indicated by the case at hand.

Identified shortcomings regarding the implementation of the relevant law

The qualification of DV as a criminal offence of inflicting light bodily injuries is one of the problems with different legal interpretation of DV cases. Although the definition of DV has its shortcomings (not explicitly covering children as indirect victims and not covering violence committed via the internet and mobile phones, etc), all relevant subjects have room for a wider, more extensive interpretation, allowing them to take into consideration the circumstance that the child was present during DV. This conclusion, reiterated by long-term monitoring of criminal proceedings¹⁹⁵ shows prosecutors and courts do not consider children as victims even if they are present during concrete act of domestic violence. Even when children are direct victims of physical assault and recognized as victims, such offence is not qualified appropriately. A wrong qualification within the same article (criminalizing DV) leads to significantly milder sanctions against a perpetrator.

Access and visitation rights as an opportunity for violence: Encouraged by a court decision constituting his right to parental visits, Enes knew no one would dispute this right no

¹⁹⁵ Center of Women's Rights Zenica and Foundation United Women Banja Luka: A. Petrić/Dž. Radončić, Analysis of trial monitoring of criminal and minor offence proceedings in the field of protection from sexual and gender based violence in BiH, Banja Luka and Zenica 2017, op.cit.

matter how inappropriately he behaved and regardless of the fact that he used offensive descriptions for his ten-month-old daughter, questioning his paternity, calling Indira “a whore”, and explicitly claiming he is not the father. In addition, Enes attempted to provoke Indira with vulgar acts, grabbing his intimate parts, pointing these parts of the body to Indira’s mother and calling both vulgar names (there are video clips that were shown to the prosecution, but without any effect).

Indira informed the Centre for Social Work of her situation, asking them to help her in accordance with her competences, to enforce a court decision. Indira sought the presence of a social worker to attend the contact time between the father and child because she felt unprotected and in fear for her child’s wellbeing and safety. She did not receive any answer on this request for months. Insults and vulgar provocation of India and her mother were continuously a part of the visitations. Indira, according to the instructions from the prosecutor’s office, often recorded the events but without any effect. On one footage, it is visible that a waiter is present throughout the visit, washing dishes while Enes hits Indira at the other side of the bar. The same waiter later told the police that he had not seen anything.

Finally, due to repeated violence, Indira was unable to carry out the visitations required, and she immediately notified the acting judge, the prosecution and the Center of social work. Meanwhile, the child began to show signs of irritability and anxiety. This was especially noticeable after Enes’ aggression and violent episodes. Now, the child feels no closeness or connection to her father. Since January 2018, the daughter has been diagnosed with “a reaction to severe stress caused by unpleasant contacts with her father and forcible separation from her mother”.

Bias and prejudices of the CSW: Regardless of the fact that the expert witness stated that the contact between the child and father were to be held in the presence of the mother, the CSW made a new decision where, without any preparation and re-evaluation, it determined the father, who had never been alone with the

child, had a right to take the child and spend time alone, without the presence of her mother. Indira filed an appeal, and Enes requested the enforcement of the Centre’s decision. The enforcement was approved by the relevant city authorities, however on the same day it was supposed to be enforced, the Federal Ministry of Labour and Social Policy abolished the Decision of the Centre and thus annulled the agreement. All this created an uncertain and stressful situation for Indira, her daughter and her family.

In this case, primarily the CSW failed to act in accordance with its competences and in the best interest of the child. The expert team of this Centre evaluated Enes as a person who has reduced rational control of impulses with aggressive personality traits, while Indira was described as cautious and vulnerable. This document was submitted to the court. Later, without re-evaluation the CSW erased several findings, including the one that Enes had aggressive personality traits. When asked by Indira about the reasons for such interventions in the submitted expert opinion, the psychologist said she did that “at the request of a father’s lawyer, in order not to be misunderstood” (there is an audio recording). Social workers did not want to comment on this when asked by the Indira’s lawyer.

The mother was perceived by social workers as a manipulative and non-cooperative person using legal gaps and constantly reporting the father for abuse of his rights to visitation. The fact that Indira initiated the procedure for the division of matrimonial property, was used later as an argument of a CSW worker that Indira is manipulative mother, only interested in personal gain.

Social workers took measures for the easier transfer of the child on several occasions, however the measures did not produce any results because the mother was not, as social workers claim, cooperative. As a way of “teaching the mother a lesson”, they announced the intention to initiate *ex officio* procedure to remove the child from her parental care. The fact that mother initiated different proceedings pertaining to this case (e.g. divorce proceedings, child custody proceedings, proceeding for

the increase of alimony, division of matrimonial property, criminal proceedings for DV etc) was used against mother by social workers. As stated by a social worker: "This only indicates what kind of mother and person she really is", meaning that the mother should have focused on the best interest of her child and not "some petty legal procedures". The social workers involved formed strong opinions on the case, burdened with multiple prejudices. Due to the fact that the victim/mother is an educated, employed and independent woman, aware of and informed on her rights and legal possibilities, social workers do not perceive her as a helpless and vulnerable victim, therefore they do not perceive her as a victim at all, frequently expressing contempt and disrespect for her due to her active and protective behaviour towards her child.

Ultimately, the CSW has not developed the capacity to deal with a case as complex as this one. For most things they blame the mother; they feel comfortable to plainly say it, while the father is excused, because he allegedly cooperates with the CSW. In interviews with the victim's lawyer, social workers did not check the lawyers' identity, and provided her with extensive personal information and insight into the whole subject. Their views were exaggerated, and they were personal, with much frustration and the desire to "teach the mother a valuable lesson". The above underlines the general lack of professionalism and gender sensitivity, emphasizing the need for specific, focused and intensive education tailor-made for social workers on a sustainable basis.

Centre officials noted that the child refused to maintain contact with her father, but at the same time they did not give any instructions to Enes on the treatment of and communication with the child. The official records were prepared without notes on actual events and circumstances of the contact with the child. The social workers performed unannounced visits several times to Indira, and not once to Enes, and did not continuously attend his contact times with the child.

Finally, at the end of 2017, a court decision on the divorce and contact became final. Immedi-

ately, Enes submitted a new lawsuit to change this decision without taking into account the child's refusal to almost every contact with him. In January 2018, Enes pulled the child who was crying and screaming in a public place, striking Indira while holding the child in his arms. Passersby called the police, and police officers give a warning to both of them. Since that moment, the daughter intensely refuses to leave with her father, when returning from a visit she says that her mother and her mother's family are not good, that their house is dirty, their friends are not good, etc., because "dad says so".

Media Reporting: Since Indira is a publicly known person, Enes used the influence of his lawyer and his acquaintances and political affiliation with the chief editor of two online news portals, and started a media persecution against Indira, publishing articles full of half-truths, lies and hate speech. In one of these articles, Indira's identity was discovered, her photos, parents' names and address, date of birth, child's name and surname was shared with the public. All other articles (a total of eight or nine) were published continuously during 2018, inflicting enormous damage on Indira's profession and reputation, particularly because the latest publications insinuate that Indira is committing violence against her daughter.

As explicitly prescribed by the IC, the media should indeed be encouraged to participate not only in the development of local, regional or national policies and efforts to prevent VAW—but also to take part in their implementation. Although the state needs to respect the freedom of expression and media's independence, the latter should be seen in particular from the perspective of editorial independence. Nevertheless, certain guidelines and self-regulatory standards should be set and upheld in order to enhance the respect for the dignity of women and thus contribute to preventing violence against them. There is a need and obligation for the media to refrain from harmful gender stereotyping and spreading degrading images of women or imagery which associates violence and sex. However, in this case, on multiple occasions online news portals published

biased and factually incorrect reports, publicly naming and shaming Indira, because of her persistence in protecting her child and herself from the violence and harassment.

Uncertain epilogue: There are currently several proceedings before the court between Indira and Enes; the criminal proceeding for causing light bodily injuries was finished, and both were found guilty, however, the Cantonal Court annulled that judgment and returned the case to re-adjudication; before the municipal court, the procedure in which Enes sought the custody of the child is being conducted, and another indictment against Indira is underway for failing to comply with the decisions of the Centre for Social Work (decisions annulled by the Federal Ministry and for which Indira and Enes had agreed before the court that they will not act on them).

To conclude, the case includes multiple forms of domestic violence (physical, psychological, verbal, economic etc) and was formally prosecuted in the justice system. The case at hand shows strong indications of the interconnectedness of the perpetrator with the system (the perpetrator is, through his lawyer, a prominent person, deep-rooted in the community). Prevention of violence has failed given the continuance of violence demonstrated by the ex-husband and the failure of the competent institutions to respond swiftly, resolutely and in coordination to such a situation. The relevant civil and criminal procedures took an unreasonably long time. The lack of adequate and timely communication between different institutions in the system of protection (the centres of social work, police and judiciary) is evident in the case, through multiple parallel proceedings and their lengthiness. The content and complexity of the case emphasized by the duration and frequency of the violence, the vulnerability of more persons (the mother and the minor daughter) and the omission to duly act by several institutions or the continuing vulnerability and exposure to danger of the victims. This case is also an excellent example of

widespread practice of not taking into proper considerations all aggravating circumstances during the proceedings (such as repetition of violence, violence committed in public space, presence of children during the violent act). On the other hand, there is predominant consideration of mitigating circumstances in the case. It is evident, from the conduct of officials and professionals in the case, that the services of protection and assistance to the survivor did not perform a risk assessment taking into account important factors such as the urgency of the situation, the type of violence, the context in which the violence occurred, the relationship of the survivor and the minor child with the perpetrator and the repetitiveness of violence. All of the above contributed to the lack of proper and adequate response by the formal system of protection from VAW.

2.2.4.3 *Second case*

a) **The facts of the case**¹⁹⁶

The case is from Republika Srpska (Laktasi), in line with our decision to have one case from each of the two political entities of Bosnia and Herzegovina. The case concerns violence (an attempted murder) against a former partner.

In July 2016, Suzana Prerad received a message with firewood for the fireplace in her apartment and chips for her daughter, outside the door of her apartment. The message stated: "from your friend, regards". She knew this message was from her former partner. This was not unusual since she had previously been in contact with him, and when they were in a relationship, very often he came into her house to set the fire so that the house was warm when she comes back home from work. Although they were no longer in a relationship, she read the message as friendly and brought the wood into the house.

Due to the rain and cold weather she set a fire in the fireplace to warm up the apartment, after which an M-52 hand grenade exploded, which her former partner had placed in the firewood.

¹⁹⁶ For the purpose of case analysis, three interviews had been conducted: Lana Jajčević – United Women Banja Luka (CSO), January 2019; Suzana Prerad – the victim, January 2019; Olga Lola Ninković (the Department for Witness Support at the District Court in Banja Luka) – January 2019.

Due to the explosion, she suffered serious bodily injuries, as was stated in the verdict on the case. The physical consequences suffered were: injury to her face and left hand due to which she was left without teeth, a knee injury that still results in pain, and shrapnel damage, a piece of which remains in her neck because doctors could not risk removing it. In addition, there were serious psychological consequences. Her treatment lasted four months and after which she decided to go back to work. As per an interview with the survivor, she said that she just wanted to get back to normal life after the incident. During this interview she also explained how much shock she was in when her mother stated that her former partner wanted to kill her; he was the one who inserted the bomb into the firewood because he knew that one day, she will set the fire.

The costs of the surgery needed were very high, one part was covered by her insurance from work, and all other aspects, including transport, she had to pay for herself. She raised a loan to be able to fix her teeth. Family members advised her to seek monetary compensation so she went to the Free Legal Aid Center of the RS government but did not find any concrete support as free legal aid services are available only to persons without a job. She works in a supermarket, and her salary is lower than the average salary in Republika Srpska. With a loan she had to pay back and having to take care of her 14-year-old daughter, she was barely able to cover the basic costs.

During the interview the survivor also stated that she was advised by the first lawyer not to go to the main trial and to make a settlement with the perpetrator to immediately pay her compensation. She was advised from the District Court to hire a new lawyer, which she did in spring 2018, with whom the proceedings for compensation were initiated. They submitted all the necessary documents and now she is waiting for feedback from the court to see how the proceedings will play out.

The first instance verdict for the perpetrator was 11 years in prison and then it was reduced to 8 years in December 2017. Today the same perpetrator is freely wandering around the city

every day. He was in detention for only four months and then he was released before he started serving his sentence. According to the law, the serving of sentence can be postponed based on the state of health, the birth of a child, and so on. The father of the perpetrator died, and, on that basis, he postponed the execution of the prison sentence. The survivor goes to work every day and every morning waits for a bus at the station. Almost every day, she sees the perpetrator passing by the station in his car and looking at her. The survivor believes she should receive protection and compensation. She does not feel safe and asks who will be responsible if the perpetrator attempts to kill her again.

b) Case analysis

Identified shortcoming regarding the implementation of the relevant law

The case points to several serious problems with the system of protection in BiH: ensuring protection of VAW survivors in practice, monetary compensation for VAW survivors, ensuring the prosecution of and adequate sentencing of perpetrators of VAW.

The survivor goes to work every day and often sees the perpetrator, and she is thus not effectively protected as a VAW victim. This is indeed worrying, considering that, as already mentioned in the previous section on legal and institutional framework, protective measures are rarely used in BiH, save for the measure of holding the perpetrator in custody for 24 hours. Moreover, monitoring the implementation of such measures is rarely implemented. This is also confirmed by the lawyer from an CSO providing legal aid to the survivor in this case. This interlocutor is also of the opinion that the survivor should have the status of a protected witness to prevent re-traumatization.

Problems in this sense were evident even during the trial. During the trial the survivor was exposed to encounters with the perpetrator, and to questions from perpetrator's defense that were inadequate and unethical. Questions were very unpleasant, as they asked

the survivor about her sexual history etc. The survivor also confirmed in the interview that for her it was very stressful to be in the courtroom with the perpetrator. The survivor and the CSO professional providing legal aid in the case clearly stated that it was traumatic to be in the same courtroom and give statements. Nonetheless, the representative of the Department for Witness Support at the court stated in the interview that her conclusion as a psychologist, after consultations with the survivor, was that the best option for her was to confront the perpetrator and be in the courtroom with him. This is clearly not in accordance with the IC standards. This case shows that even the persons who should support the victims do not know and understand, and certainly do not apply, the standards pertaining to the protection of victims of GBV.

The second problem brought to light by this case is the malfunctioning of the compensation mechanisms for survivors. Indeed, as also elaborated on in the previous section, the lack of appropriate compensation mechanisms for victims is evident within the system. The survivor did not receive any kind of compensation. The key problem in this context is that the *compensation claim was not initiated* during the criminal proceedings. The court and the prosecutor are mainly responsible for this, because in most cases the victim is not familiar with this option, so it is on the prosecutor/court to introduce the victim/survivor with this possibility. Thus, this case also confirms the pattern indicated in the previous section: although they have such possibility according to the law, courts almost never decide on compensation in criminal proceedings. This practice makes compensation for survivors a rather distant possibility, having in mind that most survivors need professional legal representation in civil proceedings. Furthermore, both the survivor and the CSO professional said during the interview that very often even the compensation cannot be executed because perpetrators are unemployed or are not registered as workers or work in the grey market. This case also confirms that victims indeed often do not have access to free legal aid. In this case, the victim could not receive free legal aid because

she is employed, although her salary is lower than the average salary in the RS. She is therefore expected to pay a lawyer in addition to many costs related to her injury. For example, every month the survivor must pay for magnetic resonance to make sure that shrapnel which remained in her neck is in place and does not move.

Another important problem in this case is the fact that the act of extreme violence in this case should have been prosecuted more seriously and more effectively. The perpetrator was sentenced to only eight years for attempting to kill the survivor and for causing her serious bodily injuries. Furthermore, the perpetrator was in detention for only four months and then he was released and the actual serving of his sentence is continuously postponed. Almost every day the survivor sees the perpetrator while waiting for a bus at the station and she rightly does not feel secure and protected.

In addition to the above systemic issues, this case exhibits additional problems:

- There is a legal obligation for the relevant institutions to act urgently in these matters, but it is not implemented in practice. In addition, court proceedings last very long, as also demonstrated by this case.
- The relevant institutions are not well connected, communication between them is often inadequate and superficial.
- Judges and prosecutors are educated through CEST RS, but that is obviously not enough. There is also a problem of the lack of systematic education of the support staff – including psychologists, as evidenced also in this case. As the interviewed CSO representative also confirms, her organization often offers trainings for judges and prosecutors, but the response is often not adequate and there is no continuity in the organization of such trainings.

To conclude, this extreme case of violence reveals and confirms several gaps in the system of protection, which were evident both during the trial, sentencing, and in the aftermath of the case. In addition to the inadequate processing

of the case and failure to avoid re-traumatization of the survivor of violence in accordance with international standards, this case also brings to light the many economic difficulties that the survivors often face after suffering violence. The system obviously still needs to find a way to offer integrated services that would enable the survivors to continue with their lives after the violence, without being exposed to a specific form of prolonged economic violence (related to all the support services they often need to pay for) which the state mechanisms still do not manage to alleviate.

2.2.5 Conclusions and recommendations

2.2.5.1 Conclusions

The assessment of the national legal and institutional framework indicates the following key challenges in BiH's full compliance with its international obligations: (1) the lack of uniform national standards and the need for the harmonization of certain laws with international standards and; (2) inconsistent implementation of the state's existing obligations towards victims; and (3) the lack of comprehensive legal and institutional protection for all victims of VAW, and not only victims of DV. BiH ratified the IC in 2013, but the legislation has not been fully harmonised with it yet. In Republika Srpska, the new CC entered into force in 2017 that is partially harmonised with the IC by introducing new criminal offences (female genital mutilation, forced sterilisation, stalking, extortion, sexual harassment, and forced marriage). There were no legislative changes in this regard in the FBiH and the DB.

In relation to the legal qualification of the criminal offences of gender based violence, the criminal proceedings monitoring findings point to cases in which prosecutors, when preparing and submitting indictments, inadequately assess elements of the criminal offences in the process of preparing indictments, and fail to recognize them as the criminal offences for which more severe sanctions are prescribed, or fail to recognize qualified forms of the crim-

inal offences punishable by stricter sanctions. This practice has been identified in relation to the criminal offence cases of DV, both in the case of adult women and minor victims, but also in relation to other criminal offences of gender based violence. The practice also indicates insufficient usage of the safety measures regulated by the entity criminal codes in the context of protecting security of a VAW survivor from the danger of repeated violence, having in mind that a perpetrator of violence has the possibility of undisturbed communication with her during the criminal offence procedure and after the verdict, as he is not taken into custody and can pressure her not to testify, and conduct continuous violence. In relation to the protection measures, there is a lack of adequate monitoring mechanisms for issued protection orders. Also, there is a disturbing inconsistency in the application of the principle of urgent proceedings for imposing the protection measures as well as a relatively low number of imposed protection measures in relation to the treatment and rehabilitation of the perpetrators, despite the increased need for imposing such measures/orders.

Moreover, as for the obligation to inform VAW survivors about the available forms of support and assistance, this is neither regulated by any law, nor are there any institutions designated to provide such information. Support for victims of sexual violence is not secured, since there are no crisis centres for victims of rape or other forms of sexual violence anywhere in BiH. Victims of violence are inadequately informed about available protective measures, such as accommodation in a safe house. The awareness of VAW survivors of their rights after reporting an act of violence is equally poor. DV reports are often not treated seriously, if the violence is not repeated and not reported multiple times.

Media are reporting on VAW cases daily in a sensational manner, often disclosing details which could put survivor in a vulnerable position thus exposing her to additional risks. Reporting is done without addressing root causes of the problem and often without consulting VAW experts familiar with the local context.

Court processing of DV is also unsatisfactory. Although the urgency of such proceedings is prescribed, it is not observed in practice and the proceedings last several years, which further puts victims at risk. The penalties prescribed are mild and the victims are not adequately protected during the proceedings. In addition, adequate legal aid for victims in poor financial situation is not provided, who are particularly vulnerable in such cases. The general treatment of VAW survivors in the system is poor and reaffirms the social stigma directed towards victims of DV, which only further demotivates the victims of violence to report perpetrators.

An effective data collection mechanism is not established in BiH. There are no uniform criteria and forms for keeping statistics on the number of victims of violence, and adequate records on monitoring the protective measures prescribed in cases of DV are not kept by all institutions (centers for social work). Some progress has been made by the establishment of centralised data bases for cases of DV, but it is yet to be seen how this mechanism will work in practice in regards to completeness of data, as well as regular and uniform entry of data by all competent authorities.

Women belonging to a marginalized or socially excluded group face even more difficulties when they are victims of domestic and other forms of violence. These women do not have enough information about their rights and do not know how or where to seek help and supporting services. State does not provide all the necessary support and protection services to VAW victims, and deficiencies in the protection system are complemented by CSOs.

The report shows that BiH is investing efforts to combat DV solely through acceding to relevant international treaties, but that effort ends there. However, the source of serious concern is still a high prevalence of DV and the lack of monitoring and accountability mechanisms regarding the implementation of existing strategies, at both the State and entity levels, insufficient data collection to assess the phenomenon of DV and insufficient support services dependent on CSOs and foreign

funding. Inconsistent application of the laws regulating DV by the courts of both entities, the limited number of protective measures issued and the lenient sentencing policy, including a large percentage of suspended sentences is worrisome and undermines women's trust in the judicial system despite the comprehensive legislative framework in place. This all leads to the underreporting of DV, creating *circulus vitiosus*.

Violence against Women is still invisible, because it is actually much more represented than shown in numbers currently available to the public. The lack of recognition of the acts of violence by the victims, fear, insecurity due to economic dependence and general mistrust in the work of the judicial institutions contribute to this, and emphasize the necessity of developing integrated policies of preventing and combating VAW. The issue of VAW should not be narrowed to the committed criminal offence, but also perceived as disturbing and widespread social phenomena that should be addressed through systemic and parallel actions. Criminal prosecution is only one aspect of the social response to VAW, which is insufficient and still not satisfactory. As the first step, it is necessary to establish the common data base, and based on collected data to develop adequate policies for preventing and combating VAW. In this process, civil society organizations with long term experience in the area of protecting women from violence are irreplaceable partners to the state institutions. Until we put to use the precise data on general prevalence of VAW, it is of special importance to analyze available data on criminal offence cases in which violence against women is processed. Criminal proceedings represent a useful basis for identifying the general prevalence of specific criminal offences of violence against women, the structure of the perpetrators, and the institutional reaction to acts of violence against women, and the adequacy of support to women survivors.

2.2.5.2 Recommendations

Common recommendations for all institutions in the protection system (judiciary, law enforcement agencies, centres for social work, health institutions)

- Introduce compulsory training focused on sensitization in order to prevent influence of prejudices and stereotypes on decision making and approach of professionals to VAW survivors

Legislator and Government

- Harmonize the definition of rape with the Istanbul Convention, by:
 - removing any conditions of use of force or threat of immediate attack on survivors and by
 - including the condition of lack of explicit consent to sexual act by survivor (entity levels);
- Adopt existing initiative for amending the Criminal code of FBiH aiming to criminalize VAW cases committed via information and communication technologies;
- Introduce new parameters in existing database on domestic violence cases to include data disaggregated by sex, age, relationship between survivor and perpetrator, and femicide;
- Adopt bylaws for enabling entry of the data regarding domestic violence cases by women's CSOs;
- Support the Initiative to Amend the Law on Protection from Domestic Violence FBiH to include the institute of Person of trust/Confidant;
- Secure adequate and continuous financing for safe houses providing accommodation to victims of domestic violence from the Entity and Canton budgets;
- Amend legal regulations to ensure availability and accessibility to specialized support services and free legal aid for VAW survivors on the whole territory of BiH;

- Exclude mandatory reconciliation in domestic violence cases;
- Criminalize explicitly sexual violence offences such as genital mutilation, forced sterilization, and forced marriage by Amendments to the Criminal Codes in FBiH and Brcko District;
- Strengthen existing referral mechanisms established on the local level;
- Establish rape crisis centres and ensure their availability throughout the country;
- Ensure that each municipality/city establish Mental Health Centres;
- Amend the relevant law/s so that the child witnessing domestic violence is recognized as a victim;
- Establish mobile teams on municipal level comprised of all institutions in the system of protection.

The Judiciary

- Stimulate judges to decide on compensation claim within the criminal proceeding;
- Enhance the reasoning of mitigating and aggravating circumstances in sentences;
- Include misdemeanour records as evidence when deciding on criminal sanction;
- Introduce and implement compulsory trainings related to sexual harassment;
- Develop individual plans for protection and support for every VAW survivor for every case and inform them about the plan and the measures that will be implemented;
- Establish Departments for support to survivors and witnesses before Municipal/Basic courts;
- Implement into practice protective measure Removal from the home or household of perpetrators of domestic violence, in accordance with the Law on Protection from Domestic Violence

Law enforcement agencies (e.g. police)

- Introduce specialised departments within police infrastructures solely for VAW cases;
- Establish compulsory training for police officer on risk assessment and risk management

Centres for social work

- Enhance human, technical and infrastructure capacities of centres for social work;

- Ensure employment and engagement of specialised and qualified social workers and psychologists

Media professionals

- Apply mechanisms for sanctioning media professionals to prevent publishing details on VAW cases that could put survivor at further risk.

2.3 KOSOVO

Abbreviations

CEDAW	Convention for the Elimination of all Forms of Discrimination against Women
CSW	Centre for Social Welfare
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
GBV	Gender Based Violence
IC	Istanbul Convention
LPDV	Law on Protection from Domestic Violence
LGE	Law on Gender Equality
LPD	Law on Protection from Discrimination
SOP	Standard Operating Procedures
AGE	Agency for Gender Equality
PO	Protection Order
EPO	Emergency Protection Order
TEPO	Temporary Emergency Protection Order
VAW	Violence against Women

2.3.1 Introduction

Located in the heart of the Balkans, covering 10,908 km² and with a population of almost 1.8 million people¹⁹⁷, Kosovo is still undergoing a process of post-conflict rehabilitation and reconciliation after the armed conflict in 1998. Its severe humanitarian, economic, political and social consequences are still palpable today.

VAW remains worryingly widespread in Kosovo. For example, data shows that from 2000 to 2017, 18,444 domestic violence cases were reported to the Police in Kosovo.¹⁹⁸ This makes domestic violence the highest reported violent crime in post-war Kosovo. While this number is very high, the survey data shows that the actual incidence is much higher. Recent research shows that 68% of all Kosovar women have experienced some form of domestic violence in their lives, including physical and psychological violence.¹⁹⁹ Further, 61.1% of women have reported that they have been sexually harassed in their lifetimes.²⁰⁰ Human-trafficking also continues to exist despite institutional efforts to combat it. In 2017, there were a total of 22 cases of human trafficking reported to the police in Kosovo.²⁰¹

¹⁹⁷ Kosovo Agency of Statistics (2016). Statistical yearbook of the Republic of Kosovo 2016. Prishtinë/Priština; Kosovo Agency of Statistics (2016). Women and Men in Kosovo. Prishtinë/Priština.

¹⁹⁸ Berisha, Farnsworth and Hoti, From Words to Action? Monitoring the Institutional Response to Gender-Based Violence in Kosovo, 2018, at: www.womensnetwork.org/documents/20180312142859762.pdf

¹⁹⁹ Farnsworth, Qosaj-Mustafa, Banjska, Berisha, Morina, "No more Excuses: An analysis of Attitudes, Incidence, and Institutional Response to Domestic Violence in Kosovo, 2015, at: <https://www.womensnetwork.org/documents/20151124105025622.pdf>

²⁰⁰ Qosaj-Mustafa, Berisha, Farnsworth, and Banjska, Sexual Harassment in Kosovo, 2016, at: <https://www.womensnetwork.org/documents/20160223185243349.pdf>

²⁰¹ Qosaj-Mustafa and Morina, Compensation to Victims of Crime: Response to Domestic Violence and Human Traffick-

Kosovo is recognized by more than 100 UN member states but is not a member of the UN or the Council of Europe (CoE). Therefore, Kosovo did not ratify the IC. Although it could not ratify CEDAW, it ensured its direct application through article 22 of the Kosovo Constitution. This is, however, not the case with the IC. An overall action plan encompassing all relevant measures to prevent and combat all forms of VAW covered by the scope of IC does not exist.²⁰²

In Kosovo, patriarchal customs, traditional attitudes and historical gender roles have limited the women's right to contribute politically, economically and otherwise to the broader society. This does not mean that Kosovo lacks a comprehensive set of laws and institutional mechanisms for tackling gender discrimination. Quite the contrary, since the end of the conflict in 1999, several regulations promoting women's rights were developed and mechanisms were put in place under the auspices of the UN interim administration mission in Kosovo (UNMIK) and as a result of lobbying efforts from women's civil society groups.²⁰³ In the past 15 years, Kosovo authorities have taken significant steps to establish a legal and policy framework addressing VAW in a bid to improve survivor protection and support. Nonetheless, for example, "international human rights case law pertaining to gender-based violence, albeit obligatory for Kosovo, is rarely used by the Kosovo judiciary. Thus, a continuous challenge remains the almost inexistent usage of international human rights case law by Kosovo's judiciary."²⁰⁴ However, despite the progress achieved, developments in this field have focused primarily on responding to DV, with other forms of violence against women be-

ing dealt with marginally or absent altogether from policy-makers' agenda. Providing effective and timely access to justice for survivors of gender-based violence is an important step towards the EU integration of Kosovo.

2.3.2 Legal and policy framework

2.3.2.1 Legal framework

There is no comprehensive law or strategy addressing all forms VAW or GBV in Kosovo. Nonetheless, the protection of VAW survivors and the prevention of VAW is firmly enshrined in several existing legislative acts and policies within the Republic of Kosovo. First and foremost, the Constitution of the Republic of Kosovo, in addition to referring to CEDAW and ECHR, also recognizes gender equality as a fundamental value for all citizens of Kosovo.²⁰⁵ As Kosovo is still not a member state of the United Nations, it has still not been able to directly ratify various international human rights conventions; however it has enlisted a number of these conventions as directly applicable in its legislation, through Constitution as its highest normative act.

The Kosovo LGE both defines and recognizes the GBV as a form of discrimination.²⁰⁶ However, Kosovo still lacks a definition of gender-based violence within its criminal and civil legislation. Despite the legal framework, which covers several acts of gender-based violence, the lack of a comprehensive and holistic definition of gender-based violence in line with the IC requirements, affects the effective prosecution of GBV in Kosovo.²⁰⁷

ing Cases in Kosovo, 2018, at: www.kipred.org/repository/docs/Final_English_Version_141863.pdf

²⁰² European Women's Lobby, Mapping of Policies and Legislation on Violence Against Women and the Istanbul Convention in the Western Balkans and Turkey, Executive Summary, 2018, 24.

²⁰³ P. Krol, "Mapping Support Services for Victims of Violence Against Women in Kosovo", Council of Europe project "Reinforcing the fight against women and domestic violence in Kosovo", 2017, 2.

²⁰⁴ A. Qosaj-Mustafa/D. Morina, "Accessing Justice for Victims of Gender Based Violence in Kosovo: Ending Impunity for Perpetrators", Kosovar Institute for Policy Research and Development, 2018, 5.

²⁰⁵ Assembly of the Republic of Kosovo, Constitution of the Republic of Kosovo, 2008

²⁰⁶ Assembly of the Republic of Kosovo, Law No. 05/L-020 on Gender Equality, 2015, at: www.assembly-kosova.org/common/docs/ligjet/05-L-020%20a.pdf. The Law defines "Violence on the grounds of gender", as any act of violence that is likely to or directly results in psychological, social, physical, sexual or economic harm or suffering on the grounds of gender.

²⁰⁷ A. Qosaj-Mustafa/D. Morina, "Accessing Justice for Victims of Gender Based Violence in Kosovo: Ending Impunity for

Since 2010, LPDV and, prior to that, the UNMIK Regulation 2003/12 on Protection against Domestic Violence, was the applicable law related to the protection of domestic violence survivors.²⁰⁸ The Kosovo LPDV of 2010 aims to prevent all forms of domestic violence through legal measures, albeit limited to civil proceedings.²⁰⁹ Among others, the LPDV provides a definition of DV as omissions or intentional acts when committed against a person with whom the perpetrator shares a domestic relationship.²¹⁰ These acts include the use of psychological pressure of physical force; the infliction of psychological suffering or physical pain; the threat to inflict violence; the causation of fear; insult, offense; physical assault; behaviour aimed at denigrating a person with whom a relationship is shared; rape within a domestic partnership; limitation of freedom etc.²¹¹

In relation to criminal proceedings, Kosovo has the Criminal Code that until very recently did not provide for a specific definition of DV.²¹² The CC in 2018 has been amended to define acts of DV and acts of physical, psychological, economic and sexual abuse that have been defined under Article 248 of the recently amended CC of Kosovo.²¹³ Acts thus foreseen are punishable from three months up to three years imprisonment and with a fine.²¹⁴ It is important to note that domestic relationship is hereby

defined as a union of persons or persons who are in an extra marital union or are co-habiting in a common household or were co-habiting in a common household; persons who use a common house and are related by blood, marriage, adoption, in-law or are in a guardian relationship, including parents, grandparents, children, grandchildren, siblings, aunts, uncles, nieces, nephews, cousins; or who are the parents of a common child. All of these persons are considered as valid to be parties in DV cases.²¹⁵ The effects of these important new provisions of the CC are still to be seen.

However, even in the absence of DV as a specific crime, a number of criminal offences committed in a family relationship may be considered for prosecution in this context, such as the crimes of light bodily injury, severe bodily injury, harassment, assault, kidnapping, etc.²¹⁶ The CC provides for *ex officio* prosecution in crimes of light bodily injury, severe bodily injury, slavery-like conditions, forced labour, rape and sexual assault when perpetrated in a domestic relationship.²¹⁷ The violation of protection orders also is considered a basis for *ex officio* prosecution, covered by the Kosovo LPDV.²¹⁸ The CC is currently being amended and there have been several efforts by civil society members to advocate for including a DV definition within its scope.

Perpetrators”, Kosovar Institute for Policy Research and Development, 2018, 5.

²⁰⁸ Assembly of the Republic of Kosovo, Law No. 03/-182 on Protection Against Domestic Violence, 2010, at: www.assembly-kosova.org/common/docs/ligjet/2010-182-eng.pdf

²⁰⁹ Ibid. Article 1.

²¹⁰ Ibid. Article 2.1.2

²¹¹ Ibid.

²¹² Assembly of the Republic of Kosovo, Criminal Code No. 04/L-082 of the Republic of Kosovo, 2012, at: www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf.

²¹³ The amended Kosovo Criminal Code, published 14 January 2019, will enter into force three months after publication in the Kosovo Official Gazette. Available at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>.

²¹⁴ Ibid.

²¹⁵ Article 113, paragraph 25 of the amended Kosovo Criminal Code published 14/01/2019.

²¹⁶ See Article 186, paragraph 2; Article 188; Article 189; Article 187, paragraph 3; Article 194, paragraph 2.4 (the perpetrator committed the offense against a vulnerable victim); Article 195, paragraph 2.4 (the perpetrator committed the offense against a vulnerable victim); Article 196, paragraph 2.1; Article 230, paragraph 4.9 (domestic relationship with persons between the age 16-18); Article 232 (domestic relationship with persons between the age 16-18); Article 233, paragraph 3.9 (domestic relationship with persons between the age 16-18); Article 234, paragraph 4.9 (domestic relationship with persons between the age 16-18); Article 250; Article 251 and Article 252.

²¹⁷ See Chapter XVI Criminal Offences against Life and Body, CCK.

²¹⁸ Article 26, paragraph 1 of the Kosovo Law on Protection against Domestic Violence.

The concrete results of these advocacy efforts remain to be seen.²¹⁹

Beyond DV, the existing legal framework of Kosovo has several deficiencies when it comes to other forms of VAW. For instance, sexual harassment is included as an offence within the Kosovo CC. There are also other specific laws such as the LGE and the LPD²²⁰ that offer definitions of sexual harassment. Nonetheless, most of the proceedings foreseen for the survivors of sexual harassment refer to civil proceedings only.

There are several international instruments applicable to the case of Kosovo. CEDAW is part of the national legislation of Kosovo and supersedes national legislation. The European Convention on Human Rights (ECHR) is also directly applicable through article 22 of the Constitution of Kosovo. Moreover, under Article 53 of the Constitution, all fundamental freedoms and human rights are to be interpreted according to decisions of the European Court of Human Rights (ECtHR).²²¹ However, Kosovo courts generally do not refer to ECtHR case law when adjudicating cases related to VAW. Exceptionally, the Kosovo Constitutional Court has been known to use CEDAW or ECtHR case law when issuing decisions related to protection of DV survivors or in other cases. The often quoted Diana Kastrati case²²² involving a murder of a domestic violence victim by her ex-husband, is known as amongst the first cases where the Kosovo Constitutional Court identified the failure of the Kosovo State to protect the victim's life, in line with Article 2 of the ECHR.²²³ Another important international instrument

applicable to cases of VAW is the IC which is not directly enlisted under other international human rights conventions in the Kosovo Constitution. However it does serve as a recent international human rights instrument offering higher standards of protection for victims of gender-based violence. Recently, there have been calls by institutions and CSOs to include the IC within the scope of the Constitution of the Republic of Kosovo.²²⁴

Despite the legal framework that covers some acts of gender-based violence, the lack of a comprehensive and holistic definition of gender-based violence as offered in the IC also affects the effective prosecution and sentencing of gender-based violence in Kosovo. Even though acts of rape, murder, domestic violence and other gender-based violence exist in the legislation, the investigation and prosecution of gender-related crimes continues to be characterized by low sentencing rates.²²⁵

2.3.2.2 *National policy*

The Council of Europe Report published in 2017 offered a detailed review and analysis of the current services offered to survivors of violence in Kosovo, in line with the IC requirements. They have found that even though several institutional and legal frameworks exist in Kosovo in relation to several forms of GBV, the policies as such are devoid of gender considerations. Even though the Kosovo LGE under Article 4 paragraph 2 defines GBV as a form of discrimination, it does so by focusing both on men and women. This definition as such dis-

²¹⁹ Qosaj-Mustafa and Morina, Access to Justice for Victims of Gender-Based Violence: Ending Impunity for Perpetrators, Forthcoming, December 2018

²²⁰ Law on Protection from Discrimination No. 05/L-021, at <https://www.kuvendikosoves.org/common/docs/lig-jet/05-L-021%20a.pdf> and Law on Gender Equality Nr.05/L-021, at <http://www.assembly-kosova.org/common/docs/lig-jet/05-L-020%20a.pdf>

²²¹ Ibid. Article 53

²²² Constitutional Court of the Republic of Kosovo, Judgement in Case No. KI 41/12, "Gezim and MakfireKastrati against Municipal Court in Prishtina and Kosovo Judicial Council 2013, at: gjk-ks.org/wp-content/uploads/vendimet/gjkk_ki_41_12_ang.pdf

²²³ Article 2 of the ECHR defines the right to life as a basic human right and states that everyone's life should be protected by law.

²²⁴ See Qosaj-Mustafa and Morina, "Access to Justice for Victims of Gender-Based Violence: Ending Impunity for Perpetrators, Forthcoming, December 2018. And Ombudsperson Institution, Annual Report 2016, page 54, at: www.ombudspersonkosovo.org/repository/docs/Raporti_Vjetor_2016__ANG__no16_me_kopertine_per_web_338158.pdf

²²⁵ A. Qosaj-Mustafa/ D. Morina, 13.

regards societal gender-based power relations that often expose women to a higher risk than men from violence and sexual violence in particular.²²⁶ Accordingly the Kosovo LPDV (2010) and the SOP's for assisting DV survivors that regulate procedures for dealing with DV, are devoid of such gender consideration and do not include a gender perspective.²²⁷ As such, the existing inter-institutional policies are not based on needs and specific tools setting standards that staff are expected to follow, based on the gendered dimensions of violence as required by the IC.

a) Relevant strategies²²⁸

Overall, and excepting DV, no targeted laws or strategic documents exist regarding other forms of VAW as covered by the IC. In consequence, such forms of violence have not been addressed comprehensively, in accordance with the prevention, protection and prosecution pillars that the IC enshrines. In order to fulfil the obligations established under the LPDV and give further meaning to its provisions, the Standard Operation Procedures for Protection from Domestic Violence in Kosovo were adopted in 2013.

In addition, two strategies setting detailed actions for institutions working in the field of DV have been developed: the Kosovo Programme and Action Plan against Domestic Violence 2011-2014, adopted in 2011, and the National Strategy on Protection from Domestic Violence and Action Plan 2016-2020 (NSPDVAP), approved on 30 December 2016. Drafted by an inter-ministerial working group with input from civil society and international organisations such as UN Women, the NSPDVAP is based on the results and recommendations of an evaluation of the previous programme.²²⁹

The NSPDVAP lays down four pillars of action

in this field: 1) prevention and awareness-raising; 2) protection and co-ordination; 3) legislation, investigation and prosecution; and 4) rehabilitation and reintegration of victims. The NSPDVAP is accompanied by an action plan with concrete, measurable and applicable objectives, including costs and financing sources provided for each measure. According to this document, DV will be criminalised in accordance with the LPDV and a working group including specialised CSOs will be appointed with a view to harmonising legislation with international standards such as the IC. It is also important to note that the NSPDVAP contains several references to specific articles of the IC, and several of its key definitions are included as an Annex to the strategy, signalling in this way the commitment of Kosovo authorities to align national standards with the treaty.

b) Data collection and monitoring

Police, prosecutors, judges, social workers and women's shelters continue to engage in separate data collection and case management. Contrary to Art. 11 of the IC, not all stakeholders can provide gender-segregated data, as in the case of the Judicial Council that administers the data from the courts. No data on perpetrators is available. Even though it was planned for 2017, a common database for all stakeholders has not yet been established.²³⁰

Existing institutional data is insufficient to monitor the prevalence of gender-based violence in Kosovo because there is no existing institutional mechanism to track cases investigated, prosecuted and adjudicated by courts (including the tracking of sentencing practices within courts). There is also no disaggregated data on GBV crimes that can be used to identify how many murders in Kosovo have been committed within a domestic relationship.

²²⁶ See Krol et al for Council of Europe, Mapping support services for victims of violence against women in Kosovo, pg. 57, 2017.

²²⁷ Ibid.

²²⁸ Most of information provided in this section were already available at <https://rm.coe.int/seminar-pristina-report-eng/16807316df>

²²⁹ Ministry of Justice (2015). Evaluation report of the Kosovo Program against Domestic Violence and Action Plan 2011-2014. Prishtinë/Priština.

²³⁰ S. Gavrić, Mapping of Policies and Legislation on Violence against Women and the Istanbul Convention in Kosovo, EWL, 2018, p.4. Available online: https://www.womenlobby.org/IMG/pdf/ewl-kosovo_report_web.pdf

Other reports demonstrate that GBV remains widespread and insufficiently addressed by justice institutions.²³¹

c) Training of professionals

According to a survey conducted within the COE Study on Mapping support services for the VAW survivors/victims, "among the 20 specialist services participating in the survey, 75% (15) work with staff that have all or most been trained. This includes the helpline, all five victim advocates (VAs), three police Domestic Violence Investigation Units (DVIUs), five women's shelters and one women's CSO. Among the 27 general services participating in the survey, 70% (19) declared that all or most of their staff have been specially trained to deal with survivors of violence against women directly."²³² Information provided in the same Study shows that training on VAW is conducted by a wide variety of actors, with differences observed across the same type of service. "International organisations and foreign institutions were mostly cited in this context, such as the OSCE, the ICITAP, the United States Embassy and the UNDP, among others. While involving international and foreign actors in the delivery of trainings is key for the sharing of best practice and thus should be encouraged, such trainings are usually organised on an *ad hoc* basis depending on the availability of donor funding."²³³ CSOs were also commonly referred to as training providers. Public institutions were mentioned to a lesser extent.

d) Survivor-oriented approach

The SOPs detail the legal and institutional roles and responsibilities of individual governmental and non-governmental institutions, courts and prosecution offices, rights and services survivors are entitled to, and include instruments and checklists for improv-

ing coordination, risk assessment and risk management in domestic violence cases. Minimum standards, as well as by-laws and internal regulations have also been adopted in order to further regulate service provision by health services, shelters, social workers, and VAs, among others. However, challenges were found with prosecutors, courts, education institutions, CSW, employment offices, municipal institutions, and health institutions. Additional and a special challenge is the parallel existence of Kosovo and Serbia run institutions in the field of education, health and social welfare.²³⁴

In 2017 Kosovo launched the National Strategy that tackled DV only, covering the five-year period (2016-2020). It includes well-developed measures and activities, a list of government bodies/institutions responsible for the implementation, as well as a clear coordinating mechanism. As clarified in the national research study²³⁵, the reports on the implementation of the ongoing Strategy are not available yet, but the evaluation of the previous strategy indicated that it was only partially implemented. The evaluation revealed the following problems: a weak implementation of existing legislation and standards, including a limited use and follow-up of protection measures foreseen by the Law; the lack of efficient coordination and information sharing mechanisms among relevant agencies and institutions; the lack of specialised services for survivors and passivity on the part of social services when dealing with such cases; financial unsustainability and understaffing of services, including shelters; the lack of empowerment programs for women survivors; the lack of perpetrator programmes; the lack of systematic data collection by the police, judiciary, health and social services; reconciliatory and survivor-blaming attitudes of pro-

²³¹ A. Qosaj-Mustafa/D. Morina, op.cit., 8.

²³² P. Krol, op.cit., 61.

²³³ P. Krol, op.cit., 61-62.

²³⁴ S. Gavrić, op.cit., p. 9.

²³⁵ V. Krasniqi, authorized unpublished report on Social and Economic factors relevant to women's rights, 2018. Cited according to Womens' Rights in Western Balkans 2019, p. 51. Available online: [http://www.europarl.europa.eu/RegData/etudes/STUD/2019/608852/IPOL_STU\(2019\)608852_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/608852/IPOL_STU(2019)608852_EN.pdf)

professionals working with survivors.²³⁶ Protocols or other similar documents that regulate collaboration of institutions have not yet been introduced in Kosovo.²³⁷

2.3.3 Institutional framework and procedures

2.3.3.1 Coordinating body

The responsibility for coordinating measures and policies in the field of domestic violence in the whole territory of Kosovo presently falls on the Office of the National Co-ordinator against Domestic Violence (NCDV) with AGE acting as Deputy National Coordinator. Selected by default as the person serving as the Deputy Minister of Justice, the NCDV is charged with co-ordinating, monitoring and reporting on the implementation of policies, activities and actions foreseen in the NSPDVAP and the Programme and Action Plan against Domestic Violence 2011-2014. The NCDV also co-ordinates the work of the Inter-Ministerial Working Group on Domestic Violence, which consists of representatives of relevant ministries and other institutions involved in the intervention system, including CSOs and observers from international organisations.

“At municipal and/or regional level, the responsibility for addressing violence against women, as well as providing victim support services, is shared among the following main institutions and actors: the Kosovo police, the Office of the State Prosecutor, the Victim Advocacy and Assistance Office, Shelters, Centres for Social Work, Legal Aid Offices, the Ombudsperson, Public Health Institutions and Centres for Mental Health, Educational Institutions, Vo-

luntary Training Centres and Employment Offices, Multi-agency cooperation mechanisms and Basic Courts.”²³⁸

In relation to inter-institutional coordination and response to cases of sexual harassment, Kosovo does not have the Standard Operating Procedures that would improve the coordination of institutions related to cases of rape and sexual assault or other forms of VAW.²³⁹ This directly leads to insufficiently coordinated efforts by several institutions including the police and prosecution. Moreover, specialized centres for survivors of sexual violence such as Sexual Referral Centres (SVRC) and Rape Crisis Centres (RCC) are not foreseen by existing legislation or existing institutional mechanisms in Kosovo.²⁴⁰

2.3.3.2 Relevant CSOs

In general terms, CSOs are considered as an integral part of policy making and its implementation. Women’s CSOs perform various roles in the implementation of programmes for the prevention of and combating VAW. Some provide services for women with disabilities or women who survived rape or other crimes, including psychosocial counselling, training, employment empowerment and legal services. Other CSO services include daily centres for survivors, including for survivors of CRSV.²⁴¹ Women’s CSOs have a general role in supporting the implementation of the DV Strategy. This role has been recognised in the Law on Social and Family Services and there are no legal and institutional limitations to their work. Nevertheless, the Kosovo Government does not create an enabling environment for women’s CSOs. A limited financial support is provided through funding for the shelters and women’s CSOs work is generally unregulated and unfunded.²⁴²

²³⁶ Evaluation report of the Kosovo Program against Domestic Violence, and Action Plan 2011-2014.

²³⁷ Womens’ Rights in Western Balkans, p. 55

²³⁸ P. Krol, op.cit., 9-10.

²³⁹ A. Qosaj-Mustafa/D. Morina, Access to Justice for Victims of Gender-Based Violence: Ending Impunity for Perpetrators, Forthcoming December 2018.

²⁴⁰ Ibid.

²⁴¹ S. Gavrić, op.cit., p. 17.

²⁴² EWL, Mapping of Policies and Legislation on Violence against Women and Istanbul Convention in the Western Bal-

2.3.3.3 Allocation of financial and human resources

There is no law in Kosovo specifically mandating funding for VAW support services. Funding for specific measures and activities linked to preventing and combatting DV is allocated on the basis of the expired 2011-2014 Programme and the 2016-2020 NSPDVAP. Government institutions offering general services, as well as specialist services such as the helpline, VAs and police DVIUs, are absorbed by institutions' existing budgets. There is no specific law securing funding for survivor services provided by CSOs or shelters.²⁴³

The DV Strategy for 2016-2020 contains a detailed budget with the overall implementation of all activities from the Strategies' Action Plan budgeted with 10,536,000 EUR. Comparing the current Kosovo budget for 2018 (2,082,000,000 EUR²⁴⁴) to DV Strategy budget shows that DV activities make up 0,5% of the overall annual Kosovo budget. Unfortunately, the public funding in 2017 and 2018 is not allocated as foreseen in the DV Strategy.²⁴⁵ The current legal framework for shelter funding is unclear and insufficient. "While shelters often have struggled financially, receiving up to 50% of needed funds from the government, in 2017 the situation became extremely unstable. Following delays in the Government transferring funds, on 25 December 2017 all shelters for women survivors of DV have been closed or reduced the number of sheltered survivors. Women and children survivors of violence were essentially thrown out onto the streets, and some were forced to return to live with the perpetrators, thus placing them at great risk of recidivism. Only after they received the emergency government funding allocated in late February 2018, still covering only parts of the overall

monthly costs, all shelters were able to reopen their doors. Funding from the municipal level cannot be underestimated but is as well not regulated by laws. Since then, no systematic solution to this issue has been found."²⁴⁶

2.3.3.4 Specialist support services

SOS (help)line: According to survey findings²⁴⁷, 12 services operate helplines, of which nine are specialist services. However, not all helplines fulfil the elements of the definition provided in the IC. Only one such helpline in Kosovo fits this definition, albeit not in its entirety. Established in 2005, and functional since 2011 with support from the OSCE, a helpline (0800 11112) is operated by the Victim Advocacy and Assistance Office (VAAO) under the State Prosecutor and provides free of charge, 24/7 assistance to survivors of DV and trafficking in human beings. Although no survey data was provided regarding the type of services offered by the helpline, information provided by the VAAO mentions the provision of a confidential mechanism enabling survivors and the public to report abuse, the provision of information on survivor's rights and on existing support services, as well as referral to relevant services.²⁴⁸

Shelters: A total of nine DV shelters provide a safe place of temporary residence for survivors of domestic violence in Kosovo. When compared to the standards set by the IC, the number of shelters continues to be low throughout Kosovo, as according to the explanatory report to the IC, one DV shelter should be made available per 10,000 citizens.²⁴⁹ Shelters in Kosovo are licensed and provide their services based on partial financial support of the Ministry of Labour and Social Welfare. Shelters provide temporary accommodation and protection for survivors as well as assistance in reintegra-

akns and Turkey, Executive summary, 2018, 26.

²⁴³ P- 58. <https://rm.coe.int/seminar-pristina-report-eng/16807316df>

²⁴⁴ Estimation based on Law No. 06/L-020 on the Budget of the Republic of Kosovo for Year 2018, available at <https://mf.rks-gov.net/desk/inc/media/ED82668F-DF99-42A3-A3ED-DE85125C56BC.pdf>

²⁴⁵ S. Gavrić, op.cit., p. 4

²⁴⁶ Ibid, p. 10.

²⁴⁷ P. Krol, op.cit., 30.

²⁴⁸ P. Krol, op.cit., 30.

²⁴⁹ P. Krol, 28.

tion and rehabilitation processes. The existing shelters face numerous challenges as well, most notably the lack of sustainable financing. In the past, funding was equal to 50% of the overall costs of the shelters in order to assist and protect survivors of DV. Today, this funding stands at approximately 30%. Most of the shelters continue to be donor dependent or are occasionally supported by municipalities. Further, some of the shelters continue to pay high prices for electricity and water bills, as they are considered businesses by electricity and water companies.²⁵⁰ Kosovo's legislation does not establish a minimum or maximum accommodation period, which consequently depends on internal regulations. According to surveyed shelter operators the accommodation periods range from 3 to 6 months and from 7 to 12 months.²⁵¹

Rape crisis centers: Despite the fact that *strictu sensu* no rape crisis centres or sexual violence referral centres exist in Kosovo, 70% of service providers define themselves as providing services for survivors of sexual violence as well.²⁵²

Counselling/crisis centers: In total, 13 organisations (25%) indicate that their service includes a counselling/crisis centre. Among these service providers, four are specialist, seven are general, and two belong to the category of "other". Among specialist services, only one organisation, a women's CSO, fits the description of a stand-alone counselling/crisis centre. Two women's shelters also provide such services to women who do not stay at their shelters. Seven CSWs were included among general services stating that their service includes a counselling centre. Despite their usefulness to survivors of VAW, they do not fulfil the specialisation criteria since they offer general services available to the general public.²⁵³

2.3.3.5 *Protection of survivors/witnesses and legal aid*

A victim's advocate is a person authorized to advocate for DV survivors' interests and to provide support and assistance to the survivors. Victims' Advocacy and Assistance Office is an independent Office functioning within the Office of the Chief State Prosecutor. This Unit was designed to function as a central governmental focal point of authority for survivor response, in particular for the coordination of victim advocates, survivor-based resources, policy, legislation and support for survivor services. The role of this Unit and the network of victim advocates is to safeguard survivors' rights by providing them with information about the criminal justice process, and by support, representation and assistance in accessing the services they require.²⁵⁴

Civil society organisations (CSOs), municipal working groups (MWGs) and task forces play an important role in supporting DV survivors. MWGs and task forces are usually composed of stakeholders at the municipal level representing both public institutions and the civil society. In addition, CSOs that are familiar with a survivor's case can request a protection order, an emergency protection order and a temporary emergency protection order.

CSWs play a key role in supporting domestic violence survivors to deal with courts and police, especially when survivors are minors or otherwise lack the capacity to act on their own. In addition, CSWs evaluate the situation of DV survivors and help to find the best solution for the survivor. CSWs may also carry out home visits and liaise with hospitals and safe houses. CSWs may provide psycho-social and legal counselling to survivors. CSWs may also include a survivor in the social assistance scheme (if the survivor qualifies for it).

²⁵⁰ Ibid., p. 33.

²⁵¹ P. Krol, 28.

²⁵² P. Krol, op.cit., 33.

²⁵³ P. Krol, op.cit., 37.

²⁵⁴ OSCE, Victim advocacy introductory manual – working with victims of crime, <https://www.osce.org/kosovo/32001?download=true>

District Legal Aid Bureaus provide free legal aid to qualifying survivors. They facilitate survivors' access to justice, for example, by providing information and advice to survivors concerning their legal rights, by representing survivors before courts or administrative bodies and by assisting with legal drafting and procedures. CSWs may provide psycho-social and legal counselling to survivors. Among three women's shelters and one women's CSOs that provide support through the legal process for VAW survivor, only one women's shelter mentioned that in the absence of a lawyer, a psycho-social counsellor accompanies the survivor to court. Nevertheless, it is confirmed that CSOs do provide psychological support and survivor accompaniment to court and provide legal support in the absence of lawyers and victim advocates.²⁵⁵

2.3.4 Case studies

2.3.4.1 Investigation, prosecution and protective measures

A prompt and adequate police response is one of the prerequisites of timely response related to protecting survivors of domestic violence. According to the SOPs and the responsibilities foreseen under the Law on Protection against Domestic Violence, the Kosovo Police should protect survivors and investigate cases reported.²⁵⁶ Furthermore, according to the law, they also have to guide the survivor throughout the process and respond to threats and acts of DV (including the execution and addressing any violation of the protection orders).²⁵⁷

When an incident of DV is brought to the attention of the police, the police have specific obligations under the LPDV to protect the survivor and prevent further violence from taking place.

According to the LPDV, the Kosovo Police shall respond to any report relating to acts of DV or threats to commit such acts.²⁵⁸ According to the Standard Operation Procedures for Protection from Domestic Violence in Kosovo, the police as the usual first responder are obliged to provide information to survivors, guide survivors through the process and inform other actors.

As the first responder, the police are required not only to investigate potential criminal conduct, but also to use reasonable means to protect the survivor, such as informing the survivor about his or her rights, including the right to request an emergency protection order²⁵⁹, which requires the court to rule on the request within 24-hours; informing the survivor about legal, psychological, and other assistance services available; and informing other relevant actors immediately, including the Victim Advocates Unit and the CSW especially if a child is involved.²⁶⁰ The police shall also complete an incident report whether or not a crime was committed and provide a copy of the report to the survivor.

In addition to ensuring the protection of the survivor, the police are required under the Criminal Procedure Code (CPC) to undertake a number of actions to bring perpetrators of DV to justice. After receiving information of a suspected criminal offence, the police are required to conduct an investigation to determine whether a criminal proceeding is warranted and to take all steps necessary to collect relevant information that may be of use in criminal proceedings. On the basis of information and evidence gathered, if there is a reasonable suspicion that a criminal offence was committed, the police shall draw up a police criminal report and submit it to the prosecution. If the police have deemed that no criminal offence was committed, they have

²⁵⁵ P. Krol, op.cit., 42.

²⁵⁶ Agency for Gender Equality, "Standard Operation Procedures for Protection from Domestic Violence in Kosovo, 2013, at: <https://abgj.rks-gov.net/Portals/0/Procedurat%20Standarte%20të%20Veprimit%20për%20Mbrojtje%20nga%20Dhuna%20në%20Familje.pdf>

²⁵⁷ Ibid.

²⁵⁸ Article 24(1), Law on Protection against Domestic Violence, Supra note 3.

²⁵⁹ Pursuant to Article 13 of the LPDV

²⁶⁰ Article 24(3) and (4), LPDV.

an obligation to send a separate report to the prosecutor, explaining that there is no basis for a criminal report.

According to the SOPs, the police should make use of proportionate measures to protect the survivors of DV, detaining the suspected perpetrator with the purpose of preventing further violence. Police are also responsible for conducting the initial identification interview of the survivor that is also recorded in the Basic Data Form that are part of the SOPs. These interviews need to be conducted in rooms that provide comfort and security for the survivor, in order for the police to build a trusting relationship with the survivor and be able to promptly and effectively provide assistance.²⁶¹

During these initial investigation steps, the police and the prosecutor work together, but the police have now more autonomy under the CPC. Upon receiving the criminal report, the prosecutor has several options available: dismiss the criminal report; request that the police gather supplemental information if the information contained in the report is insufficient; initiate an investigation based on the criminal report; or file an indictment directly.²⁶² If the prosecutor becomes aware of any evidence related to the commission of another criminal offence during the investigation, they can initiate a separate investigation of the new criminal offence or expand the existing investigation.

Cases of DV are generally prosecuted as “Light Bodily Injury” committed against a “vulnerable victim” under Article 188(3) of the CC. It is of note that prosecutors have the duty to investigate and prosecute this offence *ex officio*.²⁶³

It is important to note that the LPDV outlines

three types of Protection Orders that can be requested in order to protect DV survivors against the perpetrator. These include Protection Orders (PO), Emergency Protection Orders (EPO) and Temporary Emergency Protection Orders (TEPO). PO's and EPO's are released by courts, whereas TEPO's may be released by the Police outside of regular court working hours. The regular Protection Order can be issued for the initial 12 months and renewed. The Emergency Protection Order may be issued for 15 days until a court session resumes for issuing a regular Protection Order and the TEPO issued by the police is issued outside of regular working hours until the court resumes its official working hours and can last for the maximum of 48 hours. The violation of protection orders and recidivist cases are considered criminal offences according to the 2010 Kosovo Law on Protection from Domestic Violence (LPDV), fined or sentenced with up to 6 months imprisonment.²⁶⁴

While the LPDV does provide some form of protection for DV survivors in accordance with the IC standards, it has often been criticised for reducing the prosecution of DV acts to a minimum. Indeed, state prosecution offices and courts have often used the law to issue protection orders rather than prosecute acts of domestic violence under criminal proceedings. Therefore, it has been noted that the LPDV as limited to civil proceedings continues to be perceived as a substitute for criminal proceeding and prosecution.²⁶⁵

Despite the relatively advanced legislative framework, institutional response to VAW cases is often inadequate, inappropriate and not in accordance with international conventions and best practices. Most importantly, institu-

²⁶¹ KIPRED interview with senior prosecutor in Gjilan/Gnjilane and the Kosovo Ombudsperson Institution.

²⁶² See Article 83 and 101(2) CPC.

²⁶³ On the procedure and failures of the system, see: OSCE, React Report: Responses to Cases of Domestic Violence in Light of the Death of Ms. Zejnepe Bytyçi-Berisha, p.2-3. Available online: <https://www.osce.org/kosovo/203051?download=true>

²⁶⁴ See Article 25 of the Kosovo Law on Protection from Domestic Violence, available at <http://www.assembly-kosova.org/common/docs/ligjet/2010-182-eng.pdf>

²⁶⁵ See Evaluation Report of the Kosovo Program against Domestic Violence and Action Plan, for Ministry of Justice, funded by UNWOMEN, 2015 at https://abgj.rks-gov.net/Portals/0/Ambasada_Raporti%20anglisht.pdf. See also Qosaj-Mustafa and Morina, Access to Justice for Victims of Gender Based Violence: Ending Impunity for Perpetrators, Forthcoming, December 2018.

tional representatives including the police, prosecution and courts have shown tendencies towards blaming the survivor. These attitudes were observed both regarding DV²⁶⁶ and sexual harassment. For instance, 46% of institutional representatives surveyed in 2016 said that "women bring harassment problems on themselves by dressing or acting provocatively."²⁶⁷ Research has further shown that institutional representatives, both men and women, show resistance in tackling patriarchal and traditional gender norms during their work. A widespread problem for Kosovo institutions, particularly the Kosovo Police and the prosecutorial services, have been their attempts to "reconcile" DV survivors with their perpetrators, contrary to the IC standards (Article 48).²⁶⁸ Furthermore, survivor-blaming and reconciling the survivor with the perpetrator remained common among all institutions monitored, often justified with the aim of saving the traditional family.²⁶⁹

Confidentiality also remains a widespread problem. Combined with institutional and citizen survivor-blaming attitudes, the confidentiality issues directly push VAW survivors towards not reporting the cases out of fear that their case will become public. This is certainly an important factor contributing to the fact that, in comparison to the actual number of incidents, domestic violence in Kosovo remains underreported. Various factors continue to lead to inadequate response towards domestic violence cases. The issuance of protection orders for survivors seeking protection

has improved in the past years; however, police officers fail to conduct regular and valid risk assessments during and after the issuance of protection orders.

According to a recently published civil society report on VAW in Kosovo, the judicial response towards acts of DV remains poor.²⁷⁰ The rate of dismissed cases of DV remains high. In 2017 over half of all criminal charges related to DV cases (51.5%) were dismissed by Kosovo courts. Further, during the first six months of 2018, a total of 15.1% cases were dismissed. For the monitored period for 2015-2018, only 40.4% of cases received guilty verdicts.²⁷¹ This inadequate response by the criminal justice system to DV cases has led to the overall impunity for perpetrators of domestic violence.

2.3.4.2 *First case - the Diana Kastrati Case*²⁷²

a) Facts of the case²⁷³

Diana Kastrati (D.K) was shot by her former partner in the Pristina city center on 18 May 2011. D.K with her former partner entered the extra-marital (cohabitation) union in February 2000, out of which a girl was born in 2003. In January 2011, Diana Kastrati filed a claim for the dissolution of the extra-marital union due to the deterioration of their relationship. After filing the claim Diana took her child and went to live with her parents. In April 2001, Ms. Kastrati submitted another request to the Municipal Court of Pristina, claiming child support including care and education support.

²⁶⁶ Farnsworth, Qosaj-Mustafa et al. "No more Excuses", 2015

²⁶⁷ Ibid

²⁶⁸ Berisha, Farnsworth and Hoti, From Words to Action? Monitoring the Institutional Response to Gender-Based Violence in Kosovo, 2018, at: www.womensnetwork.org/documents/20180312142859762.pdf

²⁶⁹ A. Qosaj-Mustafa/D. Morina, op.cit., 6.

²⁷⁰ A. Qosaj-Mustafa/D. Morina, op.cit., 15.

²⁷¹ Ibid

²⁷² Facts of the case are quoted directly from the decision of the Kosovo Constitutional Court, Judgement in Case No. KI 41/12, "Gezim and MakfireKastrati against Municipal Court in Prishtina and Kosovo Judicial Council 2013, at: http://gjk-ks.org/wp-content/uploads/vendimet/gjkk_ki_41_12_ang.pdf. Case is available online. Also facts have been updated by the interview of Diana Kastrati father with the drafter of the report, Mr. Gezim Kastrati. Interview conducted in December 2018.

²⁷³ For the purpose of case analysis, several interviews had been conducted: Gezim Kastrati, father of Diana Kastrati and her legal representative to Kosovo Constitutional Courts, Centre for Social Work Pristina and Kosovo Basic Court. December 2018; Sevdije Morina, Deputy Chief Prosecutor of Kosovo, December 2018; Adelina Berisha, Gender-based Violence Coordinator, Kosovo Women's Network. December 2018.

Three weeks before Diana Kastrati was murdered, she had requested an Emergency Protection Order (EPO) from the (then) Municipal Court in Prishtina for her and her child's protection due to continuous threats by her former partner. The request for the issuance of the Emergency Protection Order was made based on Article 15 of the Kosovo Law on Protection from Domestic Violence.

On 18 of May 2011 Diana Kastrati passed away as a result of gunshot wounds in her neck by the former partner. Her child was taken to the parents of the alleged perpetrator.

b) Case Analysis

Identified shortcomings regarding the legislative framework and implementation of the relevant legislation

The first and foremost problem brought to light by this tragic case is the lack of a timely reaction by the Kosovo courts as foreseen by the Kosovo Law on Protection from Domestic Violence. In the case of Diana Kastrati there was no timely reaction by the then Pristina Municipal Court, nowadays the Basic Court of Pristina. Under the 2010 Kosovo Law on Protection from Domestic Violence, the Emergency protection Order is to be issued by the judge within 24 hours from its petition. In the case of Diana Kastrati the court did not react timely. At her time of death almost two weeks after the petition no protection order was issued by the court. Indeed, the Kosovo Constitutional Court found the Kosovo Judicial Council and the Municipal Court of Prishtina responsible for violating Diana's right to life.²⁷⁴ Specifically, the Constitutional Court held that the Municipal Court of Prishtina and the Kosovo Judicial Council have violated Diana's right to life, ac-

ording to both Article 25 of the Constitution of Kosovo as well as Article 2 of the European Convention on Human Rights (ECHR).²⁷⁵ The decision further contended that there has been a violation of the right to legal remedy, according to Articles 54 and 32 of the Constitution of Kosovo as well as Article 13 of the ECHR.²⁷⁶

Identified problem regarding bylaws: Kosovo Judicial Council decision has been issued following the decision of the Kosovo Constitutional Court requiring the appointment of specialised judges in civil proceedings to deal with cases of DV only and the issuance of protection orders. Kosovo currently has no specialised judges dealing with DV in criminal proceedings.

Inadequacy of existing human and material resources: More specialised judges to deal with cases of DV in criminal proceedings should be appointed in Kosovo, according to the decision of the Kosovo Judicial Council. Current prosecutorial structures have also appointed specialised prosecutors for DV even though throughout Kosovo most of the prosecutors still deal with other criminal proceedings/cases, in addition to handling cases of DV.²⁷⁷ An example of good practice that could be followed in this regard are the Gjilan/Gnjilane and Prizren Regions that have appointed specialised prosecutors to deal exclusively with cases of DV.

Further problems and shortcomings: The tragic case of Ms. Kastrati did not end with her death. Following her death, Kosovo institutions did take some positive measures. As mentioned above, the Constitutional Court of Kosovo found the Kosovo Judicial Council and the Municipal Court of Prishtina responsible for violating Diana's right to life²⁷⁸ as well as the right

²⁷⁴ Constitutional Court of the Republic of Kosovo, Judgement in Case No. KI 41/12, "Gezim and MakfireKastrati against Municipal Court in Prishtina and Kosovo Judicial Council 2013, at: http://gjk-ks.org/wp-content/uploads/vendimet/gjkk_ki_41_12_ang.pdf

²⁷⁵ Ibid. Decision. Paragraph II.

²⁷⁶ Ibid. Decision. Paragraph III.

²⁷⁷ See Kosovo Prosecutorial Council, Standard Operating Procedures for Increasing Efficacy in treating cases of Domestic Violence, May 2017.

²⁷⁸ Constitutional Court of the Republic of Kosovo, Judgement in Case No. KI 41/12, "Gezim and MakfireKastrati against Municipal Court in Prishtina and Kosovo Judicial Council 2013, at: http://gjk-ks.org/wp-content/uploads/vendimet/gjkk_ki_41_12_ang.pdf

to legal remedy.²⁷⁹ Moreover, following this, the Judicial Council released a decision requiring judges throughout Kosovo to release Protection Orders in the specific timeframe outlined by the Kosovo Law on Protection against Domestic Violence.²⁸⁰

Nevertheless, several problems continue to mark Ms. Kastrati case to this day. These problems highlight several further deficiencies within the judicial system of Kosovo in the context of domestic violence and its aftermath.

Initially, the Judge who failed to issue the EPO in this case was suspended. However, it was proposed later by the Kosovo Judicial Council that he be re-appointed to the then Kosovo President, Atifete Jahjaga. Even though the president refused such appointment in the beginning, the Kosovo Judicial Council again proposed him for a judge, and he was ultimately re-degreded in 2014.²⁸¹ This decision of judicial and political authorities reinforces a culture where institutional failure related to victims of GBV is not adequately punished and is furthermore ignored by state authorities.

In addition, according to Ms. Kastrati's father, Gezim Kastrati, as per the recommendation of the Centre for Social Work in Prishtina, Diana's child custody remained with the family of the suspected perpetrator.²⁸² Diana's former partner/suspected perpetrator is still at large and has never been brought to justice. Diana's father has stated that the main reason remains that he has been out of Kosovo ever since the incident occurred and he is suspected to reside in Spain. Due to Kosovo's limited international recognition and the fact that Kosovo is not recognized as a state by Spain, Kosovo does not have bilateral relations with this state. Thus, the request by Kosovo authorities for the extradition of the suspected perpetrator has not been followed through by the Spanish authorities.²⁸³

Until today, the only child of Diana has been brought up by her larger family i.e. the uncle and grandfather of the perpetrators family. She is allowed only visiting rights by her mother's family and the Centre for Social Work did not implement this visiting right for five years. Only when the daughter grew up she insisted and started visiting her mother's family. For this the father of Diana had also filed an appeal to the Centre for Social Work. No visiting rights however were realized. They did provide for three visits only under their supervision in the offices of the Centre for Social Work in Pristina. However, as the custodian family did not bring the child for visitation after the third visit, the CSW did not continue to implement the visitation rights for the parents of the victim. Apparently, the custodian family is seen as problematic as such but no assistance by the police to implement the visitation rights for five years has been requested by the social worker or the Pristina Centre for Social work.²⁸⁴ The case continues to exemplify the ongoing challenges faced by DV victims, the sense of overall impunity for perpetrators of DV and lack of implementation of laws as per the case of the victim's child visitation rights.

Additionally, Diana's father has stated to have filed a complaint in the Kosovo Basic Court to seek compensation for the non-material damage, in 2014. Up to date no decision has been reached by the Kosovo Court as to the appeal of the victim's father. This case shows that the right to compensation for the victims of violence, as provided for by the IC (Article 30) is not effectively ensured in Kosovo.

In conclusion, the failure to issue a protection order for Diana Kastrati and her daughter has been found to have been one of the factors that have contributed to the severe act of DV by the perpetrator. The failure to act by the Pristina Municipal Court has been found as a

²⁷⁹ Ibid. Decision. Paragraph III.

²⁸⁰ Qosaj-Mustafa and Morina, "Accessing Justice for Victims of Gender Based Violence in Kosovo: Ending Impunity for Perpetrators, 2018, at: http://www.kipred.org/repository/docs/Accessing_Justice_for_Victims_of_Gender_Based_Violence_in_Kosovo_Ending_Impunity_for_Perpetrators_820425.pdf

²⁸¹ Ibid.

²⁸² Interview with Gezim Kastrati, father of the murdered domestic violence victim Diana Kastrati. December 2018.

²⁸³ Interview with Sevdije Morina, Deputy Chief Prosecutor of State, December 2018.

²⁸⁴ Interview with Gezim Kastrati, father of the murdered domestic violence victim Diana Kastrati. December 2018.

violation of the Article 2 of the ECHR and Article 25 of the Kosovo Constitution. Furthermore, CSW's did not play an active role in accordance to the Law on Family and Social Services in monitoring and evaluating the custody of the child of victim Diana Kastrati once placed in the family (grandparent) of the alleged perpetrator, which shows that the treatment of children after family tragedies caused by DV still does not receive adequate attention by the responsible authorities. Finally, ensuring the realization of the right to compensation for the victims of domestic violence, as envisaged by the IC, seems to be a significant challenge for Kosovo authorities, including courts.

2.3.4.3 *Second case*

a) **Facts of the case**²⁸⁵

Antigona Morina died in 2011, three days following her wedding day. The cause of her death was heavy bleeding, induced by continuous violent intercourse by her husband. Antigona had begun to bleed on her wedding night, yet the violent intercourse had continued without medical attention. The Medical Forensic report was shared through media as well as with several CSO's. According to this report the direct cause of death was violent anal sex that resulted in continuous bleeding.²⁸⁶ Subsequently, instead of accompanying her for a medical checkup, her husband sent her to the Sheik, a religious leader, who gave Antigona traditional therapies and performed Islamic rituals.²⁸⁷ This lack of medical attention led to the worsening of Antigona's condition, ultimately resulting in her death due to continuous bleeding. Antigona Morina died due to bleeding after three days. After her death several institutional failures occurred on the part of various judicial institutions involved in the process.

b) **Case analysis**

Identified shortcoming regarding the implementation of relevant legislation

The previous case exhibited problems both in the existing legislative framework as well as its interpretation and implementation. The case of Antigona Morina, however, does not exhibit problems with existing legislation, omissions, or deficiencies in the legislative framework. The complete systematic failure in this case is more related to the implementation of the relevant law, the lack of professionalism, due diligence and gender-sensitivity. Initially, the Prosecution of Gjakova (Rahovec branch) filed charges against Antigona's husband and the case went to the Basic Court of Gjakova (Rahovec branch). Again, the case details clearly illustrate that this was a case of domestic and sexual violence committed against Ms. Morina. Nevertheless, the prosecution wrongfully qualified the criminal offence and charged Antigona's husband with violation of family obligations, in accordance with article 251 of the CC of Kosovo. According to this provision, violation of family obligations is defined as an act of leaving a family member incapable of taking care of themselves and shall be punished up to three years of imprisonment. Additionally, the Law stipulates that if as a result of violating family obligations the family member dies, the perpetrator might receive up to eight years of imprisonment.²⁸⁸

The case has been also wrongfully qualified by the state prosecution, as this is a clear-cut case of domestic and sexual violence. The prosecution ignored this fact and qualified the case incorrectly. The case should have been qualified differently, highlighting the gendered nature of the crime itself, as per the standards set within the IC and the Kosovo applicable law. Le-

²⁸⁵ For the purpose of case analysis, several interviews had been conducted: Sevdije Morina, Deputy Chief Prosecutor of Kosovo, December 2018; Adelina Berisha, Gender-based Violence Coordinator, Kosovo Women's Network. December 2018.

²⁸⁶ Qosaj-Mustafa and Morina, "Accessing Justice for Victims of Gender Based Violence in Kosovo: Ending Impunity for Perpetrators, 2018, at: http://www.kipred.org/repository/docs/Accessing_Justice_for_Victims_of_Gender_Based_Violence_in_Kosovo_Ending_Impunity_for_Perpetrators_820425.pdf

²⁸⁷ *ibid.*

²⁸⁸ Kosovo Criminal Code, Article 251, paragraphs 1 and 3. Available at <http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf>

gal professionals, including Antigona's Lawyer, also confirm this.²⁸⁹ Indeed, instead as a violation of family obligations, the case should have been qualified as negligent murder and grievous bodily injury.²⁹⁰ The Kosovo CC specifies in detail that the deprivation of another person's life by negligence shall be punished by imprisonment of six months to five years.²⁹¹ Moreover, the CC specifies that inflicting "bodily harm or impairing the health of another person" that may lead to endangering their life or permanently impairing their health is to be punished by imprisonment of 1 to 10 years.²⁹² The prosecutor could also have included a classification of rape, according to Article 230 of the CC of Kosovo. According to this Article "whoever subjects another person to a sexual act without such person's consent shall be punished by imprisonment of two to 10 years."²⁹³ Consensually continuing sexual relations despite heavy and painful bleeding sounds highly unlikely, thus providing enough basis for the prosecutor to include charges of rape in their indictment. This has also been confirmed by the forensic medical report, stating that the death was a consequence of the heavy and violent anal sex that resulted in continuous bleeding. Nevertheless, none of these factors pertaining to GBV were taken into account and the prosecutor's indictment included the charges of violating family obligations only, due to not accompanying Antigona to a medical professional once her heavy bleeding began.

Furthermore, Antigona's husband was acquitted of "Violating Family Obligations", and he was set free. After this decision, the prosecutor

responsible for this case did appeal this decision. However, the appeal submitted to the Basic Court of Gjakova (Rahovec Branch) allegedly got "lost" in the process. The chances that an appeal may simply "disappear" are very low, and there is sufficient evidence to believe that someone within the court hid the appeal on purpose.²⁹⁴

This case exhibits multiple examples of institutional failures in tackling important issues of GBV in Kosovo.

Antigona's death resulted directly from sexual violence and rape. However, the case was never qualified as such, completely omitting the sexual nature of the crime. This failure resulted both from the failure of the prosecutor to qualify the case as a case of GBV, but also from the (then) existing legal shortcomings. Back then, the CC in force did not include a concrete definition of marital rape. The CC did acknowledge rape in domestic partnerships and considered it as an aggravating circumstance. However, this law only criminalized rape when the victim was between the ages of 16 and 18 years old, not specifically addressing marital rape in cases where the victim is over the age of 18, as was the case with Antigona Morina.²⁹⁵ It should be mentioned that as of January 2019 the CC has been amended and now criminalizes all forms of rape within a domestic partnership, without specifying the age of the victim. Specifically, Article 227, paragraph 4.9 of the new CC specifies that if rape is committed by "a parent, adoptive parent, foster parent, step parent, uncle, aunt, or sibling of the person, or the person shares a domestic relationship with

²⁸⁹ See for example: Qosaj-Mustafa and Morina, "Accessing Justice for Victims of Gender Based Violence in Kosovo: Ending Impunity for Perpetrators, 2018, at: http://www.kipred.org/repository/docs/Accessing_Justice_for_Victims_of_Gender_Based_Violence_in_Kosovo_Ending_Impunity_for_Perpetrators_820425.pdf

²⁹⁰ Assembly of the Republic of Kosovo, Criminal Code of the Republic of Kosovo, Article 181: Negligent Murder, and 189: Grievous Bodily Injury, 2012, at: www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf and Article. For a more in-depth legal analysis of how the case should have been classified please see: Qosaj-Mustafa and Morina, "Accessing Justice for Victims of Gender Based Violence in Kosovo: Ending Impunity for Perpetrators, 2018, at: http://www.kipred.org/repository/docs/Accessing_Justice_for_Victims_of_Gender_Based_Violence_in_Kosovo_Ending_Impunity_for_Perpetrators_820425.pdf

²⁹¹ Assembly of the Republic of Kosovo, Criminal Code of the Republic of Kosovo, Article 181: Negligent Murder, 2012, at: www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf

²⁹² Ibid. Article 189

²⁹³ Ibid. Article 230

²⁹⁴ Interview with Deputy Chief Prosecutor of State, December 2018.

²⁹⁵ Assembly of the Republic of Kosovo, Criminal Code of the Republic of Kosovo, Article 230, Paragraph 4.9, 2012.

the victim” it will be considered an aggravating circumstance, punishable by imprisonment of five to fifteen years.

The case of Antigona Morina exhibits the positive impact that media reporting can have on cases of GBV. One of Kosovo’s most popular TV stations, Kohavision (the Kosovar free-to-air television channel), investigated and published a story on the institutional failures regarding this case. Following this reporting, the case of Antigona Morina received significant public attention leading to a public outcry. The media attention and public outcry through social media increased the public pressure and led to the Prosecution re-sending the appeal, and this time, recorded and accepted by the court and leading to a retrial. However, the re-qualification of the crime to include rape, DV and sexual violence was not possible at this stage as the re-trial was ordered in accordance with the prosecutor’s appeal and the surpassing of the statute of limitations from the date when the criminal offence occurred. Thus, the case ended up being ultimately (wrongly) qualified as a Violation of Family Obligations. The retrial ended with the conviction of the perpetrator to two years of imprisonment only.

2.3.5 Conclusions and recommendations

2.3.5.1 Conclusions

One of the main shortcomings of the Kosovo legal system in this field includes the absence of the IC from the list of the directly applicable international instruments according to the Constitution of the Republic of Kosovo. Furthermore, even though the European Convention on Human Rights and Fundamental Freedoms is among the directly applicable international standards, the insufficient use of the ECtHR case law within Kosovo’s jurisprudence makes its practical effects almost negligible. The only

decision referring to the usage of the ECtHR case law related to VAW been the above-noted decision of the Kosovo Constitutional Court in the Diana Kastrati case.

The existing law and policy in addressing the protection of DV survivors such as the Kosovo Law on Protection from Domestic Violence in Kosovo adopted in 2010 and the SOPs for assisting DV survivors regulate procedures for dealing with domestic violence. However, they are devoid of gender consideration and do not include a gender perspective in line with the requirements of the IC. Furthermore, the Law on Gender Equality defines gender-based violence as a form of discrimination but it focuses on both men and women, thereby disregarding gendered power relations within the society that often expose women to a higher risk than men when it comes to violence and sexual violence in particular.

Kosovo adopted the second National Strategy on Protection from Domestic Violence and Action Plan (2016-2020) and the National strategy against Trafficking in Human Beings in Kosovo for 2015-2019. However, a comprehensive strategy to prevent and combat all forms of VAW, addressing the links between these forms in a coherent and consistent manner, as a human right rights violation and a form of discrimination, is still missing.

A definition of DV has recently been included in the Kosovo CC. Nonetheless, Kosovo still lacks a comprehensive definition of DV per se, in line with the requirements of the IC.

Kosovo, under its criminal procedure, currently does not define appropriately sexual harassment or marital rape. Accordingly, there are no inter-institutional policies such as Standard Operating Procedures to address sexual violence and rape cases. The Law on Gender Equality and Kosovo Law on Protection from Discrimination²⁹⁶ include definitions of sexual harassment; however, most of the proceedings foreseen for the survivors of sexual harassment refer to civil proceedings only. The

²⁹⁶ Law on Protection from Discrimination nr.05/L-021, at <https://www.kuvendikosoves.org/common/docs/ligjet/05-L-021%20a.pdf> and Law on Gender Equality Nr.05/L-021, at <http://www.assembly-kosova.org/common/docs/ligjet/05-L-020%20a.pdf>

foreseen sanctions are insufficient, especially the setting up of prior upper limits to monetary compensation to a maximum of up to 1350 Euro for a specific discrimination case. The offence provisions foreseen under the Kosovo Law on Protection from Discrimination are accordingly not in line with the best international standards and practices, which leads to rare use of the law in practice.

General and specialist services for survivors of violence are also not provided in accordance with the standards envisaged by the IC. For example, Kosovo does not provide for specialized centres for survivors of sexual violence such as Sexual Referral Centres (SVRC) and Rape Crisis Centres (RCC).

Implementation of the relevant laws in practice also faces significant challenges. The cases of Diana Kastrati and Antigona Morina analyzed above illustrate several of the many continuing and systematic failures of the system of protection for the survivors of GBV in Kosovo. Difficulties and challenges illuminated by the case studies can be disaggregated into three main areas pertaining to: 1) the protection of GBV survivors; 2) the prosecution of perpetrators of GBV; 3) the sentencing of GBV perpetrators.

First, there are several problems when it comes to the protection of VAW survivors, some of which are illustrated by the case of Diana Kastrati. The timely issuance of protection orders seems to have been improved in the meantime.²⁹⁷ Nevertheless, several problems accompany this process too. One of the main issues includes the very low number of Temporary Emergency Orders (TEPO) issued by the Kosovo Police, as TEPO's may be issued by the Kosovo Police outside of the regular court working hours. Recent research shows that during the past three years (since 2015) a total of 6 TEPO's have been issued throughout all regions and municipalities of Kosovo.²⁹⁸ Considering

the high incidence of DV in Kosovo, this is an alarmingly low number of TEPO's issued in a three-year period. One of the main reasons for these alarming statistics is the fact that many police officers still lack the awareness that they have the responsibility and competence to issue TEPO's in specific cases.²⁹⁹

Other institutional problems faced by VAW survivors include the prosecution of VAW cases and the sentencing of VAW perpetrators. As illustrated by the case of Antigona Morina, the prosecutors in Kosovo seem to lack adequate knowledge and awareness when it comes to prosecuting crimes related to VAW, including domestic and sexual violence. The Kosovo Prosecutorial Council has recently appointed special prosecutors to work on DV cases in each basic prosecution of all regions of Kosovo.³⁰⁰ These appointments have led to several prosecutors being trained and specialized in tackling DV, understanding its dynamics, and correctly prosecuting cases.³⁰¹ While these changes have somewhat improved the prosecution of DV cases, several problems remain. These problems include overburdened specialized prosecutors who often deal with DV cases as well as other cases; DV cases being prosecuted by other untrained prosecutors instead of those specialized for such crimes; and due to lack of knowledge by prosecutors, acts of VAW are often qualified as less severe and milder than they should be, as the example of Antigona Morina case analyzed above aptly illustrates. One major problem remains, namely that while specialized prosecutors have been appointed and somewhat trained to tackle DV no such specialization has occurred regarding sexual violence or VAW in general.

Lastly, several challenges remain with regard to the sentencing of perpetrators of VAW. While specialized prosecutors have recently been appointed and trained to tackle DV, the current appointments of judges to deal with DV cases

²⁹⁷ Ibid.

²⁹⁸ Supra Note 2, pg. 19

²⁹⁹ Interview with Deputy Chief Prosecutor, December 2018.

³⁰⁰ Kosovo Prosecutorial Council, Standard Operating Procedures for Increasing Efficacy in treating cases of Domestic Violence, May 2017.

³⁰¹ Interview with Deputy Chief State Prosecutor, December 2018.

are related only to the civil courts handling issuance of protection orders and not to criminal proceedings. Kosovo still needs to appoint specialized judges on DV cases within the criminal justice system.³⁰² This leads to several problems most notably that even when indictments may be prepared by prosecutors that have specialized to handle DV cases, they will be handled by untrained judges who are not familiar with DV dynamics. Failure to properly sentence VAW cases is evident in the current court data and figures. In the last three years, from 2015 to 2018, only 40.4% of all domestic violence cases ended with guilty verdicts by courts in Kosovo.³⁰³ This inadequate sentencing of perpetrators is evident in other forms of VAW as well, including rape and sexual assault. Only 18% of sexual assault perpetrators were imprisoned in 2017 and only 30% of all rape perpetrators were imprisoned in 2017.³⁰⁴ The lack of specialized judges leads to serious problems and gender-insensitivities in the sentencing of different VAW cases, which is frequently illustrated by a survivor-blaming attitude by judges both during court proceedings and in their decisions.³⁰⁵

2.3.5.2 Recommendations

Common recommendations for all institutions in the protection system (judiciary, law enforcement agencies, centres for social work, health institutions)

- Introduce compulsory training focused on sensitization in order to prevent influence of prejudices and stereotypes on decision making and approach of professionals to VAW survivors

Legislator and Government

- Establish inspectorates for supervision and disciplinary sanctioning of professionals accountable for omissions in managing VAW cases;

- Amend the Constitution to include the Istanbul Convention among the directly applicable international instruments;
- Adopt amendments to the Criminal Code to include the definition of VAW in accordance with Istanbul Convention;
- Integrate gender dimensions of violence in the Law on Protection from Domestic Violence;
- Adapt gender-sensitive and gender-focused policies and tools to include comprehensive strategies to prevent and combat all forms of violence against women;
- Amend Standard Operating Procedures for assistance of domestic violence survivors to include up-to-date and continuous risk assessment

Judiciary (e.g. courts and prosecution)

- Prosecutors need to use their authority and continue to conduct criminal investigation and proceedings *ex officio*, independently of the survivor's testimony;
- Ensure compulsory trainings for judges and prosecutors on the use of the ECtHR Case law in DV and GBV cases by Judicial Council and Prosecutorial Council in cooperation with the Kosovo Academy of Justice

Law enforcement agencies (e.g. police)

- Establish compulsory training for police officer on risk assessment and risk management

Centres for social work

- Enhance human, technical and infrastructure capacities of centres for social work;
- Ensure employment and engagement of specialised and qualified social workers and psychologists

³⁰² Interview with Deputy Chief State Prosecutor, December 2018.

³⁰³ Supra Note 2. Page 28.

³⁰⁴ Ibid. Page 43. Table 6.

³⁰⁵ Interview with -Chief State Prosecutor, December 2018.

2.4 MONTENEGRO

Abbreviations

GBV	Gender based Violence
DV	Domestic Violence
VAW	Violence against Women
IC	Istanbul Convention
GREVIO	Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence
LDVP	Law on Domestic Violence Protection
CC	Criminal Code
CPC	Criminal Procedure Code
NAP	National Action Plan
CSO	Civil Society Organisation
WCSOs	Women Civil Society Organisations
CSW	Centres for Social Welfare

2.4.1 Introduction

Montenegro is a country with an estimated population of 629,219.³⁰⁶ It has been an EU candidate country since 2010, with accession negotiations opened in June 2012. With 31 chapters opened, Montenegro has been identified by the European Commission as the country with the highest level of preparation for membership among the negotiating states.³⁰⁷ However, there are still many challenges the country needs to overcome in order to become an EU member state, particularly in the areas of the fight against corruption, strengthening of the rule of law, judiciary reform, public administration reform etc. In the area of fundamental rights, Montenegro needs to ensure that adequate institutional mechanisms are in place to protect vulnerable groups from discrimination. Implementation of the legislation remains weak and institutional capacity on human rights needs to be increased.³⁰⁸

Gender based violence (GBV) and violence against children remains a serious concern in the country, despite the fact that Montenegro was among the first ten countries that signed and ratified the IC.³⁰⁹ It was also among the first signatory states in which the Convention entered into force³¹⁰ (1 August 2014.)

³⁰⁶ Source: <http://worldpopulationreview.com/countries/montenegro-population/>

³⁰⁷ European Commission in its 2016 assessment of the accession progress of Montenegro, at: Montenegro Report 2016

³⁰⁸ European Commission in its 2018 assessment of the accession progress of Montenegro, at: https://eeas.europa.eu/delegations/montenegro_en/43059/Key%20findings%20of%20the%202018%20Report%20on%20Montenegro

³⁰⁹ Chart of signatures and ratifications, status as of 04/07/2018 at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?desktop=true>

³¹⁰ Country information at: <https://www.coe.int/en/web/istanbul-convention/montenegro>

In accordance with Article 68 of the Istanbul Convention (IC), the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) has started the first evaluation of Montenegro in January 2017. The first GREVIO Evaluation Report on Montenegro was published on October 15, 2018.³¹¹ In its report, GREVIO supports the improvement of legal and policy framework in the area of DV and VAW, but also notes that “despite frequent references to “violence against women and domestic violence” and some references to “gender-based violence”, most policy documents seem to focus predominantly on domestic violence and address it as a form of family violence”.³¹² Moreover, GREVIO points to a whole spectrum of “structural problems which result in insufficient levels of prevention and protection of victims of domestic violence such as the attitudes displayed toward women victims of domestic violence...”. Following the publishing of the Report, Montenegrin CSOs published a press release,³¹³ urging the government of Montenegro to initiate intensive promotion and affirmation of GREVIO recommendations among all institutions in charge of implementing IC, to be committed to its realization and to ensure sufficient human and material resources.

2.4.2 Legal and policy framework

2.3.2.1 Legal framework

The first notion of VAW by the Montenegrin legal system dates from 2002, when family violence became a criminal act in the amended Montenegrin Criminal Code (CC).³¹⁴ In 2007, the Law on Gender Equality introduced the first (gender neutral) definition of gender-based violence.³¹⁵ From 2010 onwards, Montenegro has been continuously improving its legal and policy framework in order to harmonize it with international standards on VAW, primarily EU acquis³¹⁶ and the IC. The milestone in this area was the adoption of the Law on Domestic Violence Protection in 2010 (LPDV)³¹⁷ - the first *lex specialis* on DV that introduced the multisectoral approach and survivor's protection measures.

Following the ratification of the Convention of the Council of Europe on Compensation of Victims of Violent Crimes, which entered into force in 2010, Montenegro adopted the Law on Compensation of Victims of violent crimes (2015),³¹⁸ but it shall be applied on the day of Montenegro's accession to the European Union.

The Law on Free Legal Aid³¹⁹ (2011), enabled free

³¹¹ The Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) evaluation report on Montenegro, at: <https://rm.coe.int/grevio-report-montenegro/16808e5614>

³¹² Ibid, page 12, para.8

³¹³ The Press release published by CSOs: Women's Rights Centre, Centre for Roma Initiatives Women's Safe House, SOS Hotline for women and children victims of violence, Podgorica, SOS Hotline for women and children victims of violence, Niksic, Young Roma, Spectra, Montenegrin Women's Lobby, available at: <http://womensrightscenter.org/en/saop%C5%A1tenja/grevio-izvje%C5%A0taj-o-primjeni-istanbulske-konvencije-u-crnoj-gori/>

³¹⁴ Criminal Code, Official Gazette of Republic of Montenegro, No. 70/2003, 13/2004, 47/2006 and “Official Gazette of Montenegro”, No. 40/2008, 25/2010, 32/2011, 40/2013 i 56/2013, 014/15, 042/15, 058/15 and 44/2017, at: <http://www.mpa.gov.me/ResourceManager/FileDownload.aspx?rid=258037&rType=2&file=Criminal%20Code%20of%20Montenegro.doc>

³¹⁵ The Law on Gender Equality, Official Gazette of the Republic of Montenegro No. 46/2007; No. 073/10, 040/11; 035/15; Article 7, paragraph 7 defines gender based violence as: “any act that causes or could cause physical, mental, sexual or economic harm or suffering, as well as a threat of such act that seriously impedes a person's ability to enjoy his or her rights and freedoms in both public or private life, including domestic violence (DV), incest, rape and trafficking in human beings.”

³¹⁶ According to provisions of the Article 72 of the signed Stabilization and Association Agreement (15 October 2007) with the EU, Montenegro is obliged to ensure the gradual harmonization of all current laws and future legislation with the EU legislation - Acquis as well as to ensure the corresponding application and enforcement of the current and future legislation.

³¹⁷ The Law on Protection from Domestic Violence, Official Gazette of Montenegro, no. 46/10, 40 / 2011-1 at: <http://www.mpa.gov.me/ResourceManager/FileDownload.aspx?rid=258041&rType=2&file=Law%20on%20domestic%20violence%20protection.pdf>

³¹⁸ The Law on Compensation of Victims of violent crimes (“Official Gazette of Montenegro 35/2015)

³¹⁹ Law on Free Legal Aid, Article 13, para. 4 (Official Gazette of Montenegro, no. 20 / 2011-21, Law on Amendments to the Law on Free Legal Aid;)

legal aid to “a victim of the crime of family or domestic violence and of human trafficking” . The process was followed by the signing (2011), ratification (2013) and entering into force of the IC (2014) and subsequent harmonization of the national legal framework. In 2013, the amended CC added two provisions that allow judges to issue restraining and eviction orders against perpetrators upon their conviction³²⁰. Changes in the Family Law (2015)³²¹, introduced the prohibition of mandatory mediation in DV cases, in line with the Convention Article 48. By the adoption of the new Law on Foreigners³²² (2018) Montenegrin legislation was partially harmonized with the IC Article 59 that requires from the Member States to provide victims with an autonomous residence permit regardless of the length of the marriage or relationship. The Law confers the acquisition of temporary residence on grounds of family reunification or for humanitarian reasons³²³ that include, inter alia, presumed victims of the criminal offence of trafficking in persons or a victim of the criminal offence of family violence. Permits on grounds of family reunification may be granted up to a period of one year and extended only if the marriage lasted for three years. However, permits on grounds of family reunification may be granted up to a period of one year and extended only if the marriage lasted for three years, so the law needs further compliance with the IC Article 48.

Regarding legal definitions, the key legislation - LGE, LDVP and the CC, contain only gender neutral definitions of DV and GBV and none of them refer specifically to VAW, therefore they are not in compliance with the Article 3, paragraph a. of the IC. The LDVP defines DV as a

misdemeanor offence, and recognizes physical, psychological, sexual or economic violence against spouses and partners from a cohabiting union and other members of family household, regardless of the place where it was performed. This is in line with Article 3b IC.

The Montenegrin CC criminalises VAW through various provisions that define offences against marriage and family (Article 220 - Domestic violence) and offences against sexual freedom, Articles 204 - Rape and 205 - Sex Act over a Helpless Person. However, prosecution for criminal offences under Articles 204 and 205 committed against a spouse, can be instituted only by a private charge, in spite of the CSO³²⁴ efforts to amend it in a way that provide prosecution ex officio, according to the Article 55 (1) of the Convention. Article 220 (1)'s broad language includes “anyone who by use of violence endangers physical or mental integrity of members of his family or family unit...”, but this definition does not specify “severe” violence. Hence, in practice, only the most serious cases under Article 220(3) comprising “heavy bodily injury” or ongoing violence go to the criminal court³²⁵ - in the period from 2013 to 2017, only 10% -14% of DV cases were charged as criminal offences³²⁶.

Unlike the misdemeanor procedure under the LPDV, the criminal procedure does not provide protection measures for DV survivors, which requires amending of the Criminal Procedure Code. The partial overlapping of the LPDV provisions with the provisions of the CC in practice creates the problem of appropriate qualification of the act of DV, i.e. the adoption of the correct decision on whether the acts of DV should be prosecuted as misdemeanours in ac-

³²⁰ Criminal Code Articles 77a and 77b

³²¹ Family Law (“Official Gazette of the Republic of Montenegro”, No. 001/07 of January 9, 2007, “Official Gazette of Montenegro”, No. 053/16 of August 11, 2016)

³²²The Law on International and Temporary Protection of Foreigners, “Official Gazette of Montenegro”, no. 012/18 of 23 February 2018

³²³ Articles 44 and 52, paragraph 1, of the Law on Foreigners

³²⁴ In February 2017, Women’s Rights Centre and the Women’s Safe House have submitted a Proposal for amendments to the Criminal Code of Montenegro , which proposes the harmonisation of a number of law articles with the Istanbul Convention and the UN CEDAW

³²⁵ Source: Data on cases of violence against women and domestic violence different sources, Ministry of Human and Minority rights, Podgorica; <http://www.minmanj.gov.me/biblioteka/izvjestaji>;

³²⁶ Ibid

cordance with the LPDV, or as criminal offences in accordance with the CC. Such imprecision creates legal insecurity, because it is impossible to predict with certainty the consequences of the offence based on existing provisions of the law. Both the LDVP and the CC provide a narrow definition of protected persons (family members) and need to be amended.

Most recent changes of the CC (2017) introduced new definitions of different forms of VAW recognised by the IC Articles 38, 39 and 34: Female genital mutilation (CC Article 151a), Forced sterilisation (CC Article 151b) and Stalking (CC Article 168a). Forced abortion is defined as Unlawful Termination of Pregnancy (CC Article 150).

Sexual harassment was not criminalised, but it is defined in several legislative acts that refer to different contexts and provide different types of sexual harassment sanctions: the Labour Law and the Law on the Prevention of Harassment in the Workplace³²⁷ provide for a fine for sexual harassment in the area of employment; the Law on Prohibition of Discrimination³²⁸ prohibits sexual harassment as a form of discrimination by a legal or natural person. The Law on Gender Equality³²⁹ also defines sexual harassment as a form of discrimination, but does not state any sanctions. These definitions are largely compatible with Article 40 of the IC. However, there is no data on prevalence of sexual harassment, nor on appeals to the Ombudsman³³⁰ or to courts, which calls into question the effectiveness of such legal provisions.

CSOs efforts³³¹ to change the definition of rape in order to align it with the Article 36 of the IC requiring that provisions on rape and sexual violence must be based on the lack of con-

sent, instead of on the use of force, resulted in the amended CC Article 204, that added to the crime of rape other forms of “non-consensual” sexual acts. However, the definition still contain “the use of force” as a more severe form of criminal offence.

Forced marriage can be prosecuted under CC Articles 214 - 2016, but it requires further compliance with the IC Article 37, as Article 214 - Concluding a Void Marriage, intends to punish a person who “when concluding a marriage, conceals from the other party a fact which makes the marriage void or who misleads or keeps the other party misled regarding that fact”, while Article 215 - Allowing Conclusion of Unlawful Marriage, is intended to punish a public official authorised to conclude marriages, who knowingly allows the conclusion of a marriage which by law is prohibited or void. However, both provisions can be applied only to legally recognized marriages and are not adapted to non-registered life communities. Article 216 - Customary Marriage with Juvenile provides for the punishment of the parents, adopters and guardians who, by force, threat or benefit from the juvenile, allow them to co-habitate in a customary marriage with another or instigates her/him into such marriage. However, criminal prosecution of such acts is not applicable if the extramarital community transforms into a legally-concluded marriage (Article 216, paragraph 4). Moreover, the CC Article 444, Trafficking in human beings can be also relevant, as it was amended by “concluding an unlawful marriage” for the purpose of exploitation.³³²

³²⁷ The Law on the Prohibition of Harassment at Work, Official Gazette of Montenegro, no. 30/2012;

³²⁸ The Law on Prohibition of Discrimination, Official Gazette CG, no. 46/2010; 18/2014; 042/17

³²⁹ The Law on Gender Equality, Article 4, Paragraph 4

³³⁰ In his 2017 Report, the Ombudsman registered 14 appeals for discrimination based on sex and motherhood, but sexual harassment is not mentioned as a specific form of discrimination, p.186, at: http://www.ombudsman.co.me/docs/1522665383_final-izvjestaj-za-2017.pdf

³³¹ The proposal of amendment to the Criminal Code Article 204, was prepared and submitted to the Ministry of Justice by Women's Rights Center and Women's Safe House in January 2017.

³³² Since 2015, 57 cases of forced marriages in Roma community have been reported to the public prosecutor, but none of them were prosecuted, due to alleged lack of evidence. Source: CSO Centre for Roma Initiatives.

2.4.2.2 National policy

a) Relevant strategies

The state has taken measures to adopt comprehensive and coordinated policies to prevent and combat VAW, however implementation remained poor, lacking holistic response and not covering all forms of VAW, particularly sexual violence.

Following the adoption of the Law on Protection from Domestic Violence in 2010, Montenegro created a Strategy on Protection from Domestic Violence for the period 2011-2015, which defined a multisectoral approach and funding of specialised services for protection from domestic violence, such as safe house, free national SOS line etc. However, according to available official reports³³³ and CSO evaluation³³⁴, most of the measures remained unredeemed and were simply transferred to the next Strategy that was adopted for period 2016-2020. The Strategy on Protection from Domestic Violence for the period 2016-2020³³⁵ is the first official document whose definitions are in compliance with the Article 3 of the Convention (apart from its title). However, the state again failed to allocate a specific budget for the implementation of this important policy, apart from very limited resources that are available within the budget of the Ministry of Labour and Social Welfare which is in charge of the Strategy implementation. Most of the strategy activities, including the training of professionals,

survivor's support and service provision (food, accommodation, psycho-social support, transport, free legal aid etc.), advocacy and informative campaigns were implemented by WCSOs with the support of foreign donors. This fact was also recognised by GREVIO, which called for Montenegrin authorities to establish sufficient referral centres for survivors of rape and/or sexual violence, to ensure adequate training of professionals and to develop enough possibilities for financing women CSOs who run specialised services to support survivors.

There are other important gender sensitive policies - the Action Plan on Gender Equality 2017-2021³³⁶; UNSCR1325 National Action Plan (NAP) for the period 2017-2018³³⁷, Action Plans for Chapter 23, LGBT persons³³⁸ - but again supported with very limited resources of the ministries in charge for their implementation. Relevant Strategies on Roma³³⁹ and Persons with Disability³⁴⁰ are gender neutral and do not acknowledge a particularly vulnerable position of women.

In 2011, the first Protocol on institutional conduct in DV cases³⁴¹ set forth procedures and institutional cooperation regarding family violence and VAW, by the establishment of multisectoral cooperation with clearly defined procedures to be followed by each system. However, the Protocol was poorly implemented due to the lack of multisectoral cooperation, holistic approach and sensitivity of responsi-

³³³ Reports of MRSS for 2012 and 2014 are available at the following links:

www.gov.me/ResourceManager/FileDownload.aspx?rid=128213&rType=2 ;

http://www.minradiss.gov.me/ResourceManager/FileDownload.aspx?rid=207975&rType=2&file=14_115_11_06_2015.pdf

³³⁴ Report by SOS Podgorica "Monitoring of Strategy of Protection from Domestic Violence 2011-2015" at the following link: http://sospodgorica.me/wp-content/uploads/2016/10/Monitoring_strategije_zastite_od_nasilja_u_porodici__final.pdf

³³⁵ Strategy for Protection from Domestic Violence for period 2016-2020; <http://www.mrs.gov.me/ResourceManager/FileDownload.aspx?rid=223388&rType=2>

³³⁶ Available at the web page of the Ministry of Human and Minority rights: <http://www.minmanj.gov.me/ResourceManager/FileDownload.aspx?rid=270269&rType=2&file=PAPRR%202017%20-%202021.pdf>

³³⁷ Available at: [http://peacewomen.org/sites/default/files/Action%20plan%20\(1\).pdf](http://peacewomen.org/sites/default/files/Action%20plan%20(1).pdf)

³³⁸ Available at: <http://www.minmanj.gov.me/ResourceManager/FileDownload.aspx?rid=306488&rType=2&file=LGBTI%20Akcion%20plan%20za%202018.pdf>

³³⁹ Available at: <http://www.minmanj.gov.me/ResourceManager/FileDownload.aspx?rid=308591&rType=2&file=AP%202018.%20Strategija%20za%20socijalnu%20inkluziju%20Roma%20i%20Egip%20C4%87ana2016-2020.PDF>

³⁴⁰ Available at: <http://www.minmanj.gov.me/ResourceManager/FileDownload.aspx?rid=261494&rType=2&file=STRATEGIJA%20%20ZA%20ZA%20C5%A0TITU%20LICA%20SA%20INVALIDITETOM%20sa%20AP.pdf>

³⁴¹ Protocol on Actions, Prevention of and Protection against Family Violence, Nov. 25, 2011, Introduction [hereinafter, Protocol].

ble state officials for its implementation. This has made it necessary to create a new updated Protocol, which will enter into force in 2019. The Protocol is not legally binding, it is in the form of a Guideline, although it has been signed by all relevant ministers, as well as relevant CSO representatives. It relies on definitions and standards of the IC and promotes a survivor-centered approach, urgency in acting of all institutions and a multisectoral approach; it forbids mediation in cases of violence and refers to specific protection of children-survivors and witnesses of VAW and DV and a proactive role of institutions in guaranteeing the children's safety over visitation and custody rights of a parent, in accordance with IC Articles 26 and 31.

However, it doesn't provide specialised measures related to specific forms of VAW such as female genital mutilation, forced marriage, sexual violence etc.

b) Data collection and monitoring

GREVIO noted that the law enforcement agencies in Montenegro record the number of registered offences by type of offence, as well as the data on the number and type of protective measures issued by law enforcement. In cases of DV, they also record the sex of the victim as well as that of the perpetrator, but not the nature of the relationship between the two.

Data is collected by the police, the State Prosecutor's Office and all courts (High Courts, Basic Courts and Misdemeanour Courts). The Police and the State Prosecutor's Office data do not provide any information regarding the outcome of investigations, while the data collected by the judiciary provide information on the outcome of cases per offence, including the type of conviction (fine, prison sentence, etc.) and the number and type of issued protection measures. The Centres for Social Work collect data on the number of cases of DV reported to the Centres and the type of action taken in

response. They are disaggregated by sex and age group of victims and whether the violence is physical, emotional, sexual or economic. The official report on DV data is published annually by the Ministry of Human and Minority Rights and contains collective data obtained from relevant institutions³⁴², according to their own methodology; they are therefore not comparable, nor do they provide information about prevalence. They include general information on number and types of convictions, however it is not possible to follow the entire course of the case and determine how individual cases were prosecuted and how the courts ruled on them.

c) Training of professionals

There is little information on the service training of relevant state institutions. Training was mostly provided by women CSOs and funded by international donors, a fact also noted by GREVIO. There is a lack of a strategically designed training plans for professionals, and trainings tend to happen only occasionally, within the projects. Some training provided by CSOs included gendered approach to DV and VAW, however most training is focused on formal aspects of dealing with DV and lack the necessary sensitivity training in relation to the trauma and difficult psycho-social circumstances often experienced by WAV survivors.

The CSO Women's Rights Centre in cooperation with the Centre for Judicial Training and Public Prosecution carries out annual trainings on VAW. In 2018, three WCSOs accredited their training on VAW with the Institute for Social Protection³⁴³.

d) Survivor-oriented approach

The case analysis (see below) and WCSOs monitoring reports³⁴⁴ demonstrate a lack of coordinated institutional response to VAW, resulting in poor physical protection for survivors, even

³⁴² Police, judiciary, prosecution, Center of social works and health services submit their data to the Ministry of Human and Minority Rights, according to the obligations set out in the Action Plan for Gender Equality.

³⁴³ Information about accredited trainings is available at the web page of the Institute for Social Protection: <http://www.zsdzcg.me/30-akreditovani-programi-obuke/182-akreditovani-programi-obuke>

³⁴⁴ CSO Shadow Report for GREVIO, 2017, at: <https://rm.coe.int/report-ngo-montenegro-2/168073c980>

after repeated reports of violence to the police and other competent institutions. WCSOs noted a failure of institutions to conduct a survivor's rights centered approach, in line with Article 49 of the Convention, as well as to comply with Articles 50 and 51 when it comes to the principle of urgency and obligatory risk assessment. A lenient penal policy means that there is "a deep institutional misunderstanding of the nature of violence, as well as of its consequences for the survivor, family members, and society as a whole."³⁴⁵ Other shortcomings noted by WCSOs include the lack of accountability in cases of non-conduct of public officials in charge for survivor protection. Even though in 2016 several CSOs filled 12 criminal charges against civil servants who did not use their legal powers to protect the life of DV survivor and her children, none of them resulted in prosecution of public officials³⁴⁶.

CSW's play a critical role as first responders to DV and are the coordinating institutions that ensure the cooperation of all agencies. However, they often fail in their coordinating role, while their lack of gendered approach and embedded special norms affecting their attitudes and response. CSOs reported³⁴⁷ that some CSW workers prioritized concern for the offender's rights over the survivor's safety or exhibited scepticism about survivors' claims. This happens even in cases where children are witnesses of partner violence - their responses indicate a lack of understanding of the dynamics of DV and its effect on children. CSWs infrequently recommend supervised visitation or protection measures for children; when they do, they fail to enforce supervision, enabling offenders to interact with their victims during visitation. CSW reports to courts in penal as well as civil proceedings carry great weight, however

the reports do not always include information about DV, which affects the court decision and victim's safety. Such actions on the part of the CSWs was also recognised by WCSOs³⁴⁸ and the Ombudsperson's Office³⁴⁹, but rarely resulted in disciplinary or similar proceeding against CSW officials.

A lack of survivor-centered approach was also acknowledged by GREVIO, that notes with concern that women victims of DV frequently experience obstacles in reporting abuse and that "attitudes and beliefs around gender roles and patriarchy persistently stand in the way of interventions that would support and empower women to lead a life free from violence - with their children."³⁵⁰

2.4.3 Institutional framework and related procedures

2.4.3.1 Coordinating body

In May 2017, in compliance with Article 10 of the IC, the Government established the Co-ordinating Board for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Board)³⁵¹. The Board is chaired by the Minister of Labour and Social Welfare and composed of high-level representatives of the Ministry of Justice, the Ministry of Interior, the Ministry for Human and Minority Rights, the Ministry of Health, the Supreme Court of

³⁴⁵ Ibid

³⁴⁶ Ibid

³⁴⁷ Ibid

³⁴⁸The Advocates for Human Rights, Women's Rights Centre and SOS Nikšić: Implementation of Montenegro's Domestic Violence Legislation, 2017, https://www.theadvocatesforhumanrights.org/publications_by_country_3

³⁴⁹ Opinion of the Ombudsman's office 115/17 from 26/06/2017, available at: http://www.ombudsman.co.me/docs/1498647315_26062017-preporuka-csr.pdf

³⁵⁰ GREVIO Report on Montenegro, p.31, para.105

³⁵¹ Source: website of the Government of Montenegro at: <http://www.gov.me/ResourceManager/FileDownload.aspx?rId=273935&rType=2>

Montenegro, the State Prosecutor's Office and the Union of Municipalities of Montenegro and one CSO representative. Although the Committee should have a powerful role in furthering the implementation of the IC, it lacks visibility and funding.

In 2018, following the requests from women CSOs and protests provoked by failure of the police to prevent femicide and protect women survivors of violence, the Ministry of Internal Affairs established an Operational Team for combating VAW and DV. This body has a mandate to discuss high risk cases and to provide recommendations to all institutions involved in the survivor protection process. The Team has a similar constituency as the Committee, but also includes representatives of 5 women CSOs³⁵² with the same mandate to present cases and provide opinions and recommendations as the state representatives.

In addition, the LPDV³⁵³ introduced multi-disciplinary teams to "organise, monitor and promote co-ordinated and efficient protection" from DV. They are organised at the local level and composed of experts in social and child care, health care professionals, members of the judiciary and law enforcement agencies, as well as representatives of CSOs that offer protection. However, these teams are in the process of transformation due to many shortcomings in their functioning and scarce results in survivor protection. GREVIO also noted that the objectives of the multisectoral coordination are not always clearly stated and understood and that the existing structures amalgamate a range of purposes and do not produce the desired effect³⁵⁴.

2.4.3.2 *Relevant CSOs*

Women CSOs in Montenegro undertook specialized services provision and the coordinating role in order to fill the many gaps in the state response to VAW to ensure the protection of survivors. There are less than 10 WCSOs whose specialized services have been sustainable so far³⁵⁵. They provide shelter, counselling, legal representation, act as confidants, following the survivors throughout procedures related to protection from violence. Most of them participate in working groups responsible for policy drafting and acting in VAW cases. However, there is an insufficient number of active women CSOs in order to cover all geographical areas and all forms of violence.

The current process of licensing of social services that tends to include CSO services into a formal social service system, threatens to jeopardise the independent role of women's CSOs and the feminist principles their services are based on, due to the fact that the ones that are not licensed will not be able to operate or receive funding by the state. The conditions for obtaining a license, besides professional and licensed staff, require significant funds for ensuring both spatial and other capacities, and are the financial burden of CSOs. There are serious concerns that weakening the impact and sustainability of women's CSOs will negatively affect availability of their services and protection of survivors. These concerns were also raised in the first GREVIO Evaluation Report of Montenegro.³⁵⁶

2.4.3.3 *Allocation of adequate financial and human resources*

The state has failed to ensure funding for the adequate implementation of integrated policies, measures and programmes to prevent

³⁵² CSO members are the representatives of: Women's Rights Centre, SOS Hotline Niksic, Women's Safe House, Centre for Roma Initiatives and SOS Hotline Podgorica.

³⁵³ Article 17 of the LPDV

³⁵⁴ GREVIO Report on Montenegro, page 16, para. 28

³⁵⁵ Women's Rights Centre, SOS Hotline Niksic, Women's Safe House, Centre for Roma Initiatives, SOS Hotline Podgorica, Women Lobby, Bona Fide Pljevlja.

³⁵⁶ GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) in Montenegro (GREVIO/Inf(2018)5), page 19, par.44, published on 15 October 2018, at: <https://rm.coe.int/grevio-report-montenegro/16808e5614>

and combat all forms of VAW, including those carried out by non-governmental organisations and civil society. Most of the planned activities³⁵⁷, including specialised support services, have been implemented by women CSOs and funded by international donors. In 2017, the budget of the Ministry of Labour and Social Welfare the allocated amount for financing all state run services on social and child protection was 114,285,000 EUR.³⁵⁸ This amount included the costs for refunding parental leave, disability, daily costs for beneficiaries of closed institutions, preschool facilities³⁵⁹, but not the costs of state shelters. It remained unclear how much funding was allocated for social protection of survivors of DV and VAW, since there is no specific budget line in place for this. The specialist services provided by women CSOs are funded mainly through foreign donations, since there is still no national funding scheme for them³⁶⁰. The only exception is the National SOS line, which is funded by the state.

2.4.3.4 Specialist support services

Apart from the National SOS helpline for survivors of DV, that is funded by the state, specialized services are established and run by women CSOs, most of which operate on feminist principles and a gendered understanding of VAW. They include safe houses, psycho-social support, free legal aid and SOS Helplines. The majority of them cover DV cases, in particular intimate partner violence.

SOS (help)lines: The National SOS helpline for survivors of DV is a specialized service, free of charge, anonymous and available 24/7 throughout the territory of Montenegro. The

number, structure, and geographical distribution of the calls supports this. In its work, the helpline applies a gender-based approach and provides assistance to women and their children who have experienced any form of violence.

Shelters and counselling: Specialist support services are regularly implemented by only 6 women's CSOs³⁶¹ dealing mainly with the protection of survivors of DV and one dealing with forced marriages in the Roma community. They also support survivors of all forms of VAW covered by the IC, according to their capacities. Three DV shelters exist (in the towns of Podgorica, Niksić and Pljevlja) with a total capacity of 38 beds (women and children). Three of them are run by women CSOs, but only two are women and children only, while the third one in Pljevlja since recently received refugees, both men and women.³⁶² The safe houses are located in urban areas and not easily accessible to women outside the main towns of Podgorica and Niksic, nor to women from the coastal region, where specialized services do not exist. The shelter in Podgorica is not accessible to women and children with disability.

Rape crisis centres: There are no rape crisis centres. In addition to the insufficient number of services, and very centralized geographical position, there is also a lack of services adapted to the specific needs of survivors of VAW with disabilities, psychiatric problems, LBT women, victims of rape and sexual violence, as well as child victims of forced marriages that are usually situated in the state shelter for victims of human trafficking. Women with disability are often unable to use shelter services due to a lack of accessibility and lack of support staff.

³⁵⁷ As planned by Strategy on Protection from Domestic Violence for the period 2016-2020.

³⁵⁸ This amount is planned only for state run services of social and child protection, which do not include shelters or rape crisis centres (there are none). All specialist services are run by CSOs and funded by foreign donors with the exception of the National SOS Hotline.

³⁵⁹ Budget of MRSS (Ministry of Labour and Social Care) is available at the following link: <http://www.mrs.gov.me/ResourceManager/FileDownload.aspx?rId=272707&rType=2>.

³⁶⁰ GREVIO/Inf(2018)5, p. 17, par. 36.

³⁶¹ These are: Women's Rights Centre, SOS Helpline Niksic, SOS Helpline Podgorica, Women's Safe House, Montenegrin Women Lobby and Centre for Roma Initiatives.

³⁶² This is originally a women's shelter, run by a women CSO, but was temporarily used for refugees. It was the decision of the CSO staff, not affiliated with the state.

2.4.3.5 *Protection of survivors/witnesses and legal aid*

The state institutions often fail to inform victims about their rights, including the possibility to use free legal aid³⁶³, and on the follow-up of the case, or on the release of the perpetrator from prison or detention. Even if they do so, it is usually on the victim's own or WCSO's demand. Existence of the institute of "confidant"³⁶⁴ represents a great contribution to empowerment of victims - witnesses but is still insufficiently available to majority of victims, particularly in areas where there are no active WCSOs. Women are often exposed to secondary victimisation and confrontation with perpetrators. The court premises do not ensure separate waiting rooms and entrances for victims, so there were many cases recorded by WCSOs when victims were intimidated by meeting the abuser in front of the courtroom. The right of the victims to testify through the use of appropriate communication technologies is still a very rare occurrence and happens mostly if victims are children, where available. The privacy of the victims is often jeopardized by the media, since the criminal proceedings are public and it is often necessary that victim, or her legal representative, submit a request for the exclusion of the public³⁶⁵. Survivors who do not have a lawyer usually do not know about this possibility.

According to the Law on Free Legal Aid³⁶⁶, the victims of the criminal and misdemeanour offences of DV and trafficking, are entitled to

free legal aid, without assessing their financial status or other conditions. However, the number of VAW survivors who benefited from free legal aid is still low, only 9.7% of the total number of beneficiaries in 2017³⁶⁷. The Law does not recognize CSOs as providers of pro bono legal assistance, although a total number of women looking for pro bono legal assistance in CSOs significantly exceed those who solicit basic courts³⁶⁸. That means that women's CSOs have to finance legal aid from their own budgets, because it is crucial for victim's access to justice. On the other hand, pro bono legal assistance which is available in the framework of basic courts, frequently does not meet women's needs and negatively reflects on the protection of survivors and the possibility to exercise their rights.

2.4.4 Case studies

2.4.4.1 *Investigation, prosecution and protective measures*

All institutions are obliged to provide survivors of DV with "full and coordinated protection"³⁶⁹. There is a Protocol in place that aims "to establish and encourage establishment of multidisciplinary cooperation with clearly defined procedures to be followed by each system."³⁷⁰ It provides clear referral mechanisms and division of competences of relevant institutions and cooperation between institutions. An im-

³⁶³ According to the Law on Free Legal Aid ("Official Gazette of Montenegro", No. 020/11 of April 15, 2011, 020/15 of April 24, 2015), the victims of the criminal and misdemeanour offences of domestic violence and trafficking, are entitled to free legal aid, without assessing their financial status.

³⁶⁴ Article 16 of the LPDV allows a victim to select a person to attend all protection procedures and actions ('confidant'). Eligible to be confidant is a family member, a person from a body, institution, non-governmental organization or other legal person or other person that victim confides in.

³⁶⁵ Article 314 Exclusion of Public, Criminal Code of Montenegro.

³⁶⁶ The Law on Free Legal Aid ("Official Gazette of Montenegro", No. 020/11 of April 15, 2011, 020/15 of April 24, 2015).

³⁶⁷ Analysis of approved cases of free legal assistance and needed financial assets at annual level for period 1 January - 1 October 2017, Ministry of Justice, October 2017, at: <http://www.pravda.gov.me/ResourceManager/FileDownload.aspx?rid=294355&rType=2&file=Analiza%20odobrenih%20slu%C4%8Dajeva%20besplatne%20pravne%20pomo%C4%87i%20za%20period%201.01.-1.10.2017.%20godine.pdf>

³⁶⁸ Women's Rights Centre had 133 beneficiaries of free legal aid in 2016, source: Women's Rights Centre 5 year report 2016, page 2, at: http://womensrightscenter.org/files/documents/1515165393-Petogodisnji_izvjestaj_CZP.pdf.

³⁶⁹ The Law on Domestic Violence Protection, Official Gazette of Montenegro, No. 46/10, August 6, 2010 [hereinafter, LDVP].

³⁷⁰ Protocol on Actions, Prevention of and Protection against Family Violence, Nov. 25, 2011, updated in October 2018.

proved version of the Protocol³⁷¹ includes even more detailed guidelines and accompanying written forms that simplify the process of risk assessment, protection planning, documenting, reporting and processing of VAW cases. Also, Montenegrin legal framework recognises the duty to report violence as mandatory for all relevant institutions - the police, misdemeanour courts, prosecutors, CSW's health care institutions, and other institutions that act as care providers. The failure of employees in the institutions to report, or to act according to their legal obligations while handling the case, may impose an internal disciplinary procedure, a misdemeanour or criminal sanctions, but it is a very rare occurrence.

The LPDV³⁷² requires the urgency of action by all institutions, duty of all public legal entities to report violence and penalties for noncompliance, emergency intervention of the police and other public legal bodies dealing with the protection of survivors, designing survivor assistance plans, social protection of the survivor, legal aid provided for the survivor, survivor's security, confidentiality of procedure, confidant persons³⁷³ and procedures of issuing orders of protection (Articles 26 – 34). The law provided a protection for survivors in the form of a three-day police emergency orders (eviction orders – Removal of the perpetrator from common household and prohibition of return to the common household) and set a key role of misdemeanour courts in DV protection, by introducing their mandate to issue emergency and regular protection orders: the eviction order, restraining order, order prohibiting harassment and stalking, order for mandatory addiction treatment and order for mandatory psycho-social therapy.

According to the LDVP a police officer may issue an immediate eviction order, valid for a

maximum of three days. The survivor, the survivor's representative, CSWs, the police officer, or the prosecutor may petition a misdemeanour court for any of five protection orders, and the misdemeanour judge may issue any of these ex officio. If the misdemeanour judge finds that a protection order is "necessary to immediately protect the victim" of DV, they may issue such an order before or during the proceedings, and must do so within 48 hours of receiving a petition. However, the police rarely initiate urgent protection orders and misdemeanour courts rarely issue them ex officio. Currently, the LDVP does not provide a remedy of financial support to the survivor. In cases involving minor victims, however, the misdemeanour court has a duty to notify the CSW, which could provide financial assistance³⁷⁴.

However, protection orders are available only to DV survivors and do not protect all VAW survivors. A narrow definition of family³⁷⁵ leaves out partners or ex partners that have never shared the same household, so they are not entitled to protection orders under the LDVP. There are also many shortcomings in the actions of relevant institutions. The police and prosecutors, often being the first respondents to VAW, rarely provide immediate response and assess the lethality risk or the risk of repeated violence. Although granted the power to order the eviction of the perpetrator from the shared residence and to prohibit the perpetrator from entering the residence or contacting the survivor or person at risk, they rarely do so. As a consequence, despite a certain increase in 2017, the percentage of police eviction orders and protective orders imposed by misdemeanour courts remained worryingly low in relation to the total number of prosecuted cases of DV. Between 2010 - 2017, such protective orders

³⁷¹ The update of the Protocol from October 2018, available at: <http://www.minradiss.gov.me/ResourceManager/FileDownload.aspx?rid=341182&rType=2&file=Protokol%20o%20postupanju,%20prevenciji%20i%20za%C5%A1titi%20od%20nasilja.docx>

³⁷² Articles 7-16 of the Law on Protection from Domestic Violence, Official Gazette of Montenegro, no. 46/10, 40 / 2011-1.

³⁷³ Article 16 of the LDVP formally recognized the role of a supportive advocate for victims. Victims may select a "confidant" to attend all procedures governed by the domestic violence law. Confidants typically appear with the victim in court, but may also accompany her to all institutions, including police. Confidants may be a relative of the victim, an CSO employee, or a social worker.

³⁷⁴ LDVP Art.9 (3)

³⁷⁵ Art. 3 of the Law on protection from family violence, Official Gazette of Montenegro, No. 46/2010.

issued by misdemeanour courts occur in only 6% of all prosecuted cases.

Moreover, the security measures of Removal from Common Residence and Restraining Order are not available during criminal procedures, and come into effect only upon conviction³⁷⁶. They have been issued by the Montenegrin courts only 6 times between 2010-2017³⁷⁷. In the period between 2014-2017, four cases ended with the murders of 3 women and the attempted murders of 2 women, although the perpetrators were repeatedly reported to the police and other competent institutions, which failed to assess risk and to provide survivor protection.³⁷⁸

Montenegro has set most of the legal prerequisites for meeting the standards of the IC Art. 55, para.1. In addition to the obligation to prosecute ex officio all forms of DV and VAW cases (apart from marital rape³⁷⁹), a provision of the CPC permits the use of a victim's original statement into evidence without her cooperation, provided that she receives a notice that her statement may be used in court.³⁸⁰ However, there is little practice to indicate that prosecutors use this provision.

Many cases followed by women CSOs³⁸¹ showed that they still largely rely on the survivor, and when survivors invoke their right not to testify the case is often close or insufficiently support the cases when. Judges often do not take sufficient account of the history of DV when adjudicating guilt and imposing penalties³⁸². In divorce and family lawsuits, they also "do not

actively screen for DV, but instead rely wholly on the parties to inform them. They tend to overlook the harms partner violence causes to children and often prioritize reconciliation and make custody and visitation decisions without taking domestic violence into account"³⁸³, contrary to the Article 31 of the IC.

These findings were also underlined by the GREVIO Evaluation Report on Montenegro that pointed to a whole spectrum of structural problems that resulted in "insufficient levels of prevention and protection of victims of domestic violence"³⁸⁴. Reflecting on the actions of institutions, GREVIO noted "the attitudes displayed toward women victims of domestic violence, the frequent attempts at downplaying the violence, the use of dispute resolution processes, delays in handling domestic violence cases and the reluctance to issue protection orders".

The two cases which will be analysed were not covered by the media. However, there are some common irregularities in media reporting on DV and VAW in Montenegro that require clear guidelines on how to avoid the promotion of deeply rooted myths on partner violence, assigning blame to the victim, minimising the consequences of violence, and public exposure of victims and their families.

Although some progress has been made in printed media with regard to the protection of victims' privacy, the media articles on VAW still include the sensationalisation and romanticising of violence. There are also examples of "in-

³⁷⁶ Articles 77a and 77b of the CC.

³⁷⁷ Data on cases of violence against women and domestic violence different sources, Ministry of Human and Minority rights, Podgorica; <http://www.minmanj.gov.me/biblioteka/izvjestaji>.

³⁷⁸ CSO Shadow Report for GREVIO, July 2017.

³⁷⁹ Marital rape is not criminalised as a specific offence, but CC Articles 204 (Rape) and 205 (Sex acts against helpless person) can be used to prosecute it. However, the prosecution can be instituted by a private charge only, according to CC Article 212.

³⁸⁰ Criminal Procedure Code, Article 109 Persons Exempted from the Duty to Testify, para. 3 (Official Gazette of Montenegro, n0 57/2009, 49/2010, 47/,2/2015, 35/2015).

³⁸¹ The Advocates for Human Rights, Women's Rights Centre and SOS Nikšić Report Implementation of Montenegro's Domestic Violence Legislation, 2017, pages 78-79, at: https://www.theadvocatesforhumanrights.org/publications_by_country_3

³⁸² The Advocates for Human Rights, Women's Rights Centre and SOS Nikšić: Implementation of Montenegro's Domestic Violence Legislation, 2017, at: https://www.theadvocatesforhumanrights.org/publications_by_country_3.

³⁸³ Ibid.

³⁸⁴ GREVIO Report on Montenegro, Executive Summary, page 8

vestigative” journalism that, instead of dealing with the history of violence and the conduct of the competent institutions in reported cases, base their content on the observations of neighbours and acquaintances, that support the myths of perpetrators as quiet and benevolent men, “good neighbours” that were provoked by the victims behaviour. In this way the media encourage empathy towards VAW perpetrators and distract attention from their responsibility, presenting them as helpless victims of their own love and emotions. Obsessive jealousy appears in media as an expression of romantic love, although known as manipulative and very common tactics of perpetrators who are trying to control their victims. The consequences of such media coverage are best seen in uncensored comments by readers of the mainstream web portals, who describe the perpetrator as someone who “guarded the family” or was subjected to the victim’s immoral behaviour. The comments of particular media professionals, criminologists and lawyers in cases of femicide contribute to the false perception of the causes of violence. They sometimes use terms such as “a crime of passion” or the conclusion that “a killer couldn’t hold back his emotions”, although examples of women’s murders have shown that the perpetrators have been purposely abusing and carefully planning their actions before the killings.

However, ethical standards for journalists that exist in the form of self-regulatory standards do cover guidance on how to report on violent acts and to refrain from any prejudice against victims and prohibit any media content that “engenders or is likely to engender hostility towards a person on the ground of gender, among others”³⁸⁵. However, they do not address issues around the stereotypical portrayal of women and need to be improved in that regard.

2.4.4.2 *First case*

a) **Facts of the case**³⁸⁶

The case describes intensive and long term partner violence that continued despite countless police reports, after separation and divorce, and included emotional abuse and abductions of a child.

Marija and Andrej³⁸⁷ were married for 4 years and had a very young child. During their marriage Andrej was violent against Marija. The first physical attack occurred when she was pregnant. He forced her to leave the apartment twice and each time she came back. She did not report this violence to the institutions. On September 2016, he threw both her and their child out of the home. On that occasion, Andrej verbally abused Marija, along with his parents who insulted her. She stayed with her child in her mother’s house. The following day, Andrej threatened that he will take the child from the kindergarten. Marija called the police after the kindergarten staff advised her not to come without the accompaniment of police. Marija made the statement about this event at the police where she also reported that she was thrown out of the apartment with the child. The statement was recorded in writing, but the charge was not pressed.

*“They asked me then: “Do you want us to give him a warning or do you want to process the case?” It was the first time I reported him and I did not even know what processing the case means, so I replied: “I want you to give him a warning”. I did not know it meant nothing for him and not for anything.” (Marija, intimate partner violence victim)*³⁸⁸

Andrej continuously threatened that he would abduct the child from Marija, once in the presence of a Centre for Social Welfare staff member. On a couple of occasions, he kept the child

³⁸⁵ Principle 5 of the Codex for Journalists

³⁸⁶ For the purpose of case analysis, three interviews had been conducted: Jovana Pavlović, the victim’s lawyer, engaged by Women’s Rights Centre (December 6, 2018); DV survivor, a beneficiary of the WRC (December 11, 2018) and Tatjana Bajčeta, Police Officer, Security Centre Podgorica, Inspector for Domestic Violence -Security Centre Podgorica (December 12 2018).

³⁸⁷ The names were changed for the protection of VAW victims’ anonymity.

³⁸⁸ Interview with the victim, conducted on the 11th of December 2018.

without the agreement of her. He also tried to jeopardise her job as a teaching assistant, she therefore filed several reports against him in a short period of time.

On the 3rd of October 2016, she was called by the Police, as an accused party, to give a statement on the circumstances of the event that took place last December (the day when she was thrown out of home with her child) because Andrej reported her to the Police for insulting and slapping him on the face. He stated his parents as witnesses of the event. On the basis of this application, a misdemeanour procedure was initiated against Marija, but she was acquitted because he appeared at the hearing without witnesses and stated that he "withdraws the application".

On the 10th of October 2016, Marija reported Andrej to the Police because he had kept the child without any agreement with her and sent her a phone message saying that he would not return the child until the court decision. The application states that there is no court verdict on the child's custody, but notes that Andrej was violent towards her, that he is an aggressive person and that she fears for the child's safety.

Marija started a divorce procedure, however they were referred to mediation although the judge had been informed about the violence and applications that were in place. *"It was one of the most uncomfortable experiences I had, because I had an impression they insisted that I reconcile with him"* (Marija)³⁸⁹

The stalking and threats continued, Andrej constantly called and sent messages of threatening content. Marija filed several new applications against Andrej, seeking protection for herself and her family. One morning, after she woke up she found 250 missed calls and new messages from Andrej. He even posted hers and her mother's phone numbers in a com-

ment below her picture on Facebook, saying that they provide sexual services. He was calling even during the time she spent in the police station to file the report against him, in the presence of police inspector. The inspector then took the phone and warned him not to call Marija anymore. During the interview with Marija and the *confidant*³⁹⁰ from the Women's Rights Centre³⁹¹ (hereafter WRC), the inspector focused only on a couple of messages that could be used as evidence and did not give any importance to the threats Andrej delivered by phone and his continuous phone calls. The confidant from the Women's Rights Centre remarked on this, however police officer said that prosecutors and judges insist on stating specific messages that can be proven. The police officer said that Andrej would probably stop calling because of his warning (although Andrej did not seem frightened at all about this warning).

The next time she tried to file a report, she was told that the inspector was out of office and that she will call her for an interview. The inspector did not call her, so she filed an application on her own, accompanied by a confidant from the WRC. Andrej was taken to the Police and brought to trial in an urgent procedure, scheduled for the same day in the afternoon. Despite the inspector's assessment that the case was serious and urgent, the judge adjourned the trial for one week, in order to get insight into the criminal record. The WRC lawyer filed a claim for issuing of the protection orders- *Restraining order* and *Prohibition of harassment and stalking* against Andrej, citing all previous applications. Five days later, the Misdemeanour Court issued a decision for enforcing the required protective orders against Andrej for a period of 60 days.

A court hearing was held in Andrej's absence regarding the event reported one week earli-

³⁸⁹ Interview with the VAW victim, conducted on the 11th of December 2018.

³⁹⁰ Article 16 of the LDVP formally recognizes the role of a supportive advocate for victims. Victims may select a "confidant" to attend all procedures governed by the domestic violence law. Confidants typically appear with the victim in court, but may also accompany her to all institutions, including the police. Confidants may be a relative of the victim, an CSO employee, or a CSW social worker.

³⁹¹ Women's Rights Centre is an CSO from Montenegro, which provides specialist support services to women VAW victims, including psychosocial support and free legal aid. More information at the ERC web page: <http://www.womensrightscenter.org/>.

er. The judge at the trial stated that he will be fined, but neither Marija nor her legal attorney received the written decision. Although he was not at the hearing, Andrej waited for Marija and her legal attorney in the hallway. They quickly moved away from him, and he followed, insulting Marija. They stayed on the stairs to be in the camera's angle of view in order to call the court security if necessary. He quickly moved away.

During child visitation Andrej continued to expose their child to emotional abuse, on some occasions even in the presence of the Centre of social work (CSW) case manager. Once, following his agreement with the social worker, he took the child on his birthday and refused to return the child in time to attend the scheduled birthday party. After Marija turned to the CSW case manager for help, she referred her to address the Police and the WRC. The child was returned to the mother only two days after, when the acting judge, following the request of the WRC and, subsequently, of CSW, issued a decision to entrust the child to the mother until the end of the court procedure. This decision also provided for the contact between the father and the child to take place under controlled conditions, which Andrej refused.

The violence stopped only during Andrej's absence from Montenegro for a year after the divorce. During that time he was not interested in the contact with the child, nor did he participate in his support.

Upon his return to Montenegro, in July 2018, he continued to stalk and threaten Marija and to emotionally abuse the child. Because of that, the child was disturbed and anxious, so Marija requested CSW assistance. They responded that they could not help her "because Andrej does not respect their institution".³⁹² She filed reports to police because of the emotional abuse of the child and threatening messages to her, but there was no information on the outcome. On one occasion, Andrej did not return

the child at the time that was determined by the divorce judgment, but sent a video to Maria's mother's telephone that shows him emotionally abusing the child by asking him questions about Maria's partner, while the child is crying and asking to go home. However, the social workers referred her to the bailiff and to the Police, refusing to even look at the video. The Police informed the prosecutor on duty, but had to wait for his statement on the qualification of the act. Marija then addressed the CSW asking them to send the letter of urgency to the Executive Judge in order to complete the court proceedings as soon as possible. They answered that they cannot react until they receive official information from the Police. The child was returned to his mother two days later, through the executive court procedure.

On the same day, Maria's legal attorney requested information from the Misdemeanour Court in Podgorica on the proceedings initiated 2 weeks prior, in order to be able to file a request for the issuance of protection orders³⁹³. However, it was answered that the court did not receive the police application to initiate a misdemeanour procedure for the case by that date. Her legal attorney filed a petition for the issuing of urgent protective orders for Prohibition of harassment and stalking and the Restraining Order for both Marija and the child. The court issued them the following day. Because of the urgency of the procedure, the judge pronounced the orders, even though the CSW not submit the opinion within the prescribed deadline, although it was requested by the court and urged by the WRC.

The violence continued until November 2018, when Andrej was finally detained, because in the meantime, he approached Marija twice at her work place and violated the court decision on Protective Orders³⁹⁴. A knife was found in the pocket of his jacket. The hearing was held a month later, when he was released from de-

³⁹² Communication of the WRC staff with Marija, August 22, 2018.

³⁹³ LPDV Article 29, para. 3 requires that the petition to initiate the proceeding must be submitted within five days from protection orders request. Otherwise, if the petitioner does not file it, the misdemeanour body shall suspend the order of protection granted.

³⁹⁴ According to CC Article 220, para.5 violation of protection orders is a criminal act, punishable by a fine or a prison sentence for a term not exceeding one year.

tention. The court's ruling on the punishment was not made until the day this report was written³⁹⁵. Out of all the aforementioned applications filed by Maria against Andrej, only two had a court epilogue. All other proceedings are prolonged because Andrej avoids receiving court invitations.

During the interviews related to this case, we found out that during the period after the protective orders were imposed on him, Andrej came to all the institutions involved in the case and threatened the employees, of which only two persons filed an application against him.³⁹⁶ The selected case was supported by the *Women's Rights Centre*. The exceptional cases of severe brutality and tragic consequences are intentionally avoided, in order to represent the common practice of the competent institutions when it comes to protection from VAW and DV, to indicate the usual omissions in the work of the institutions and to emphasize the need for a change of the practice.

b) Case analysis

Identified shortcomings regarding the legislative and procedural framework

Existing legislation still does not provide the definition of VAW but a gender-neutral definition of 'gender-based violence' within the Law on Gender Equality. Domestic violence is defined by the LPDV and by the article 220 of the CC. However, as shown in case analysis, due to the complex nature of DV and the fact that there are many misconceptions and obstacles in recognising and addressing forms other than physical violence, it would be important to incorporate a concept of coercive control (in addition to incidents and threats of physical or sexual vio-

lence) into the definition of DV. Coercive control should be defined as "an act or a pattern of acts of assault, sexual coercion, threats, humiliation, and intimidation or other abuse that is used to harm, punish, or frighten a survivor. This control includes a range of acts designed to make survivors subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour³⁹⁷". The Law on Domestic Violence Protection predates the entry into force of the IC in Montenegro and a number of issues prevail regarding its effective implementation. While it introduces important concepts such as that of multisectoral cooperation and emergency barring and protection orders, it sets out extremely low sanctions for DV, mainly resulting in suspended sentences and fines³⁹⁸. The use of fines, however does not comply with the IC standards requiring sanctions to be "effective, proportionate and dissuasive"³⁹⁹. Their use should be limited by the law, as for offenders who are financially secure, fines are too small to influence their behaviour, and for a families that are not well off, fines punish the survivor and children, but less so the offender, who is more likely to be the breadwinner and to control the family finances.

Identified shortcomings regarding the implementation of relevant law

In the described case the existing legislative and policy frameworks have not been used to provide the survivor's safety and a perpetrator's accountability. The system failure started from the police as first responders, which failed to use its power to protect survivors by bringing in the perpetrator, issuing temporary eviction order, and seeking protective orders from the

³⁹⁵ January 2019

³⁹⁶ Interview with the police officers, conducted on the 12th of December 2018; Interview with the victim, conducted on the 11th of December 2018.

³⁹⁷ The recommendation and the definition of coercive control taken from The Advocates for Human Rights, Women's Rights Centre and SOS Nikšić Report "Implementation of Montenegro's Domestic Violence Legislation, 2017"

³⁹⁸ Conduct ranging from the use of physical force to threats, verbal insults, sexual abuse, stalking, and damaging property is subject to "[a] fine amounting to minimum three-fold [minimum wage] or a prison term of minimum ten days." (LDVP Art.36 (1))

³⁹⁹ IC Art. 45(1) – Sanctions and measures

misdemeanour court. Instead of acting urgently upon receiving the first survivor's report, the Police did nothing more than issue a verbal warning to the offender and fail to document and prosecute the case⁴⁰⁰ and provide risk assessment, even though the mother's and child's well-being and safety were jeopardised.

The CSW should have played a central role in the coordinated response to DV. Along with the police, social workers are charged with being first responders to survivors of DV. The CSW should have informed the survivor of her rights and ways of exercising her rights, including the right to free legal aid.

The lack of a survivor-oriented approach and the omission on the part of the police to document the history of violence and to determine the *primary aggressor*, resulted in a misdemeanour procedure against the survivor. That is the perpetrators' common (but rarely recognised by institutions) tactics to trick the system, to avoid sanctions and discourage the survivor from seeking and getting the support. The police continuously minimised violence - stalking, threats and even sexual harassment over social networks - repeatedly reported by the survivor. Threats of violence are themselves an offence, but the police had failed to take a precise record of all of them. That and the lack of previous reports and information on history of violence affected the prosecutor's qualification of the offence, so the case was further taken to misdemeanour judge that continued to treat the case with no urgency and failed to grant protection measures *ex officio*⁴⁰¹.

The next mistake happened during the divorce procedure, when the survivor was referred to mediation, despite the Family Law's ban on mediation⁴⁰² and the IC's clear prohibition on use of mediation and conciliation, in relation to all forms of violence covered by the IC⁴⁰³.

The survivor's safety was jeopardised even in

court. Protocol requires courts to provide security measures for the survivor of violence when entering the court and to secure a special room while waiting to give a statement. However, the misdemeanour courts do not meet these requirements, and lack appropriate mechanisms to physically separate the survivor from the offender before or during court proceedings. Courtrooms are typically small offices that force the survivor and offender into close proximity that can place the survivor and anyone accompanying her in physical danger.

Although the misdemeanour proceeding should have been expedient, the misdemeanour judge took seven days to set the trial, due to the lack of access to data on criminal records of the offender. The data base on criminal judgments was not available to misdemeanour judge and vice versa, the misdemeanour verdicts are often unavailable to criminal judges and even among judges of the same misdemeanour court. The lack of information on recidivism often affects the sanction, as the offender who repeats violence is treated as a first time offender.

Another barrier to survivor safety during proceedings is the failure to enforce protection orders when an offender avoids receiving the court invitation. When a misdemeanour court issues a protection order, it must immediately serve the decision "to the body or institution in charge of enforcement, within a maximum of three days of the delivery of the decision." The police are the body responsible for monitoring the compliance with eviction, restraining, and harassment and stalking protection orders. However, the police waited for the survivor to make a report, and even then failed to treat it as an urgent matter.

"He has tricked the system a lot by avoiding to receive the decisions on enforcing protective orders as well as invitations to lawsuits. Due to procedural deficiencies in the sense of improp-

⁴⁰⁰ In LDVP misdemeanour proceedings, the police act as the prosecutor and initiates the procedure with a misdemeanour court

⁴⁰¹ According to LDVP Art. 27 misdemeanour judges may issue protection orders at different stages, including before, during, and at the conclusion of LDVP proceedings

⁴⁰² Family Law Art. 326

⁴⁰³ IC Art.48

er delivery, the trial could not be held. In that sense, the institutions could make more efforts to deliver the decisions and invitations. Lots of time has been lost with this. He could not have been found to receive court decisions, and at the same time he comes in front of my house, pierces the tires of my mother's car, breaks the car, appears at her workplace, comes to give statements to the Police..."(Marija, domestic violence survivor)⁴⁰⁴

"A lack of coordination between institutions...if he shows up in the police at the time the procedure is already in force against him, the police is supposed to immediately notify the authority requesting him. The judge did not schedule hearings at all because the invitations were not properly delivered to him. He supposedly came to court and it was then that the documents were delivered to him".(Maria's legal attorney and WRC lawyer)⁴⁰⁵

The omissions of the police and CSW to assess the risk of partner violence toward the child led to a lack of protection measures and allowed for unsupervised child visitation of the perpetrator. This resulted in child abuse and abduction by the father and the continuation of coercive control toward the survivor. Such a situation continued even when child custody was granted to the mother. The CSW failed to take into account incidents of violence against the non-abusive parent when providing the opinion on parental competences to the court. In cases of DV, after separation or divorce, common children are often the only ties that remain for the perpetrator to further control the survivor and to manipulate the system. For the survivor and the child, complying with the court decision on unsupervised contacts presented a safety risk and continuation of emotional abuse. Even when the court granted supervised visitation, the CSW failed to enact the court decision. After the child was abducted by the father, the CSW continued to act passively by failing to apply the jurisdiction predicted by the Family Law that allows them to initiate a procedure for limiting or even depriving paren-

tal rights of the perpetrator, when it is necessary to protect the child and the survivor from further violence. This malpractice is a common problem in Montenegro and one of the main post-separation risks for women and children, that is not properly addressed by the relevant institutions. Institutions, due to patriarchal attitudes and not having enough understanding on the effects of partner violence on children, often prioritise the offender's parental rights over the best interest of the child and child safety. In this, like in many other cases observed by women CSOs, there was no communication between the police, the centre for social welfare, the misdemeanour court and the judge hearing the family law case in the basic court. The family judge did not receive the official police and CSW reports on violent behaviour of the father, which affected the court decision on the visitation model. The failure of the police and misdemeanour court to initiate protection orders for survivor and the child, or at least to inform the survivor about the possibility to apply for them, also affected the family judge's decision.

To conclude, in the described case all institutions were obliged to act with urgency and due diligence, particularly because a young child was witnessing violence against his mother and was evicted from home with her. While working on protection and safety of children, the CSW should have taken care of the best interest of the child while taking into account the safety and the autonomy of the non-violent parent⁴⁰⁶. Moreover, they were obliged to perform risk assessment and prepare an individual protection plan for the survivor and the child, in cooperation with the survivor, and to establish, maintain and coordinate contacts with relevant institutions involved in the case. However, they failed to do so, leaving the survivor to handle the situation on her own, without any support. The lack of information on the case and the lack of legal aid were the reasons for her to seek support of the CSO, so it was only then that she got legal representation and

⁴⁰⁴ Interview with the Maria, survivor of DV, conducted on the 06th of December 2018.

⁴⁰⁵ Interview with the Maria's legal attorney (WRC lawyer), conducted on the 16th of December 2018.

⁴⁰⁶ Protocol, page 12

was granted protection measures together with her child and that the decision on supervised visitation was made by the court. However, the trial for breaking the protection orders was not urgently scheduled and the perpetrator was not detained during the course of the criminal procedure which leaves a lot of concerns regarding the survivor's safety.

2.4.4.3 *Second case*

a) Facts of the case⁴⁰⁷

Zorica was married to Petar for 22 years. They had four children – two adults and two minors. She reported violence twice in 2015, and he was penalised for a misdemeanour act.

Zorica contacted the WRC for help for the first time in August 2016. On the same day, accompanied by the confidant, she reported several violent incidents that occurred within the past two days to the Police, including the last incident that took place that same morning. In the course of those three days, she suffered many insults, threats by knife directed to her and her eldest son, she spent one night locked in the room to protect herself while her two elder children took turns in guarding the door of the room to prevent their father from breaking in. The third day began with violence and, after her husband hit her in the head, she came to the WRC with the youngest child. Following her Police report, Petar was imprisoned and, in the evening hours of the same day, he underwent a misdemeanour trial in a shortened procedure. According to the statement of the police officer who filed the claim for initiating a misdemeanour procedure, the claim included a request for pronouncing the Protection order of removal of the perpetrator from the family residence and the Restraining order against the perpetrator.

The court procedure was unpleasant for Zorica because the offender interrupted her statement all the time and the judge did not make use of the legal right to remove him from the court hearing. The WRC representative, who

was present at the hearing as Zorica's confidant, reacted to such a treatment of the victim and the judge threatened to remove her from the courtroom. On the insistence of Zorica and her son, who testified in the court that he would not feel safe to return home if Petar was released, the judge ordered a continuous 50-day prison sentence to Petar. The prison sentence against Petar was enforced immediately. The judge did not make a statement whether any of the protection measures are ordered along with the prison sentence and told Zorica that she will be informed through the court decision that will be delivered to her address.

After the procedure, Zorica went to the Misdemeanour Court on several occasions to check if the court decision in which Petar is found guilty was available, because she was worried for her safety after the end of Petar's prison sentence. The staff of the Court registry office instructed her to go and talk to the judge directly because he had not sent them the above-mentioned decision. On one occasion, the court stenographic threatened her that she will end up in the same place where her husband was (alluding to the prison) if she refused to let him come back.

Five months later, in February 2017, when Zorica came again to the WRC to report violence, the court decision was not yet delivered to her. The WRC contacted the President of the Misdemeanour Court, who demanded from the judge, the stenographer and the Court registry office staff to report on this case. They all denied that they failed to deliver the judgment. The decision was delivered to the WRC with the reply of the President of the Misdemeanour Court only after the new criminal procedure was initiated against Petar. At the moment of pressing criminal charges, neither Zorica nor the Police had information if the protection measures were ordered by the Court, which could have affected the qualification of the criminal act.

During that last violent incident Petar was again physically violent to Zorica – he hit her in the

⁴⁰⁷ For the purpose of case analysis, three interviews had been conducted: Momčilo Rašović, Police Officer, Inspector for Domestic Violence- Security Centre Podgorica, December 12 2018; DV survivor, a beneficiary of the WRC, December 15th 2018; Tijana Živković, the victim's lawyer, engaged by the Women's Rights Centre (WRC), December 16th 2018.

face with his fist and insulted her. She did not report the incident to the Police right away, hoping that he would calm down. The following day, after he insulted her in front of the children and scratched her arm when he forcefully took her phone away from her, Zorica went to a doctor to get a medical report of her injuries and then to the Police to report violence. This charge was processed through a criminal procedure. The accused was detained right after the charges were pressed against him and remained under detention until the end of the procedure. During the first hearing, the judge stated that he requested the criminal record of Petar from the Ministry of Justice and that the Ministry replied that he had no criminal record. The Judge remembered the accused from another criminal procedure in which he was also present as a judge and found the old criminal record from that case that confirmed that Petar was convicted on several occasions for different criminal acts (forging, treachery, attack with knife...) The fact that he illegally owned firearms was not considered. The first hearing was extremely uncomfortable for Zorica. Petar was aggressive, he constantly interrupted her statement with remarks, insulted her and made fun of her. The legal attorney of Zorica was present on the second hearing and she submitted the request for pronouncing (upon conviction) the Eviction and the Restraining order to the offender, along with the sentence. The Judge determined the two-month long prison sentence, which was only two days longer than the period he had spent in prison and below the legal minimum for this criminal offence.

As soon as Petar had finished the serving of the prison sentence, he came to the family apartment and started making death threats both to Zorica and their children. When their eldest child came home, she took the opportunity to leave the room and call the Police. A police patrol arrived quickly and one of the police officers turned out to be their acquaintance. Petar promised that he will immediately leave the apartment and come back the next day when he is sober. The police officer, believing the perpetrator, suggested to the victim to resolve the situation in this way and not to press charges. She refused, insisting that the

patrol removes him from the apartment and take him to the Police Security Centre, after which she will come herself to file an application. The family violence police inspectors ordered detention and on the same day, in a shortened procedure, filed a motion for initiating a misdemeanour procedure. The abuser was sentenced to 60 days of imprisonment and the protective measure of removal from the apartment was issued against him. Until the moment this report was finished, according to the victim statement, the abuser no longer disturbed her.

The selected case was supported by the *Women's Rights Centre*. This case describes long term partner violence that included severe physical violence and was committed in the presence of minor children - the fact that should be taken into account as aggravating circumstance.

b) Case analysis

Identified shortcomings regarding the legislative and procedural framework

As explained in the previously analysed case and as is relevant in the case at hand, the legislative framework, by-laws and internal procedures for every institution in the chain of protection are in place, however, the VAW definitions need further consolidation towards a more holistic implementation of the IC and recognition of VAW and DV as GBV. Legal framework can be further strengthened to ensure that the VAW offences are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness, as required by Article 45 of the IC. Moreover, in cases where national legislation is insufficient, direct application of IC standards can always be applied, as international legal instruments have primacy over national legislation.

When it comes to human and material resources in institutions, there are no specialised DV prosecutors or judges, and they handle a wide range of offences. The same applies to other relevant institutions, including misdemeanour judges that have more than 100 legal provisions under their jurisdiction. Judiciary, law-

yers, police officials need to receive further specialisation in gender-based violence and international standards in this field.

Regarding the responsibility and accountability of professionals, they are prescribed by the LPDV and other relevant laws and exist in every system, but they are rarely held accountable for omission due to an existing culture of impunity of the state officials.

Identified shortcomings regarding the implementation of relevant law

The omission in acting of relevant institutions started as soon as the violence was reported to the police. There was a history of violence documented by the past misdemeanour judgement and the victim had reported continuous physical violence that lasted for years and that had intensified during the course of the last three days, prior to her report. It included serious life threats by knife, directed to the victim and her eldest son. Moreover, the offence included circumstances recognised as aggravated by the IC⁴⁰⁸ - it was committed against a current spouse or partner, it was committed repeatedly, in the presence of children, with the use of threat of a weapon and the perpetrator had previously been convicted of an offence of a similar nature. Nevertheless, the case was qualified as a misdemeanour offence. That meant the absence of the prosecutor's involvement into further procedures, as, according to established practice, in misdemeanour cases the police acts as prosecution. The police lack skills to handle and legally represent the case the same way as prosecutor, so the case completely relied on evidence collected by the police and on victim's and witness's statements, without prosecutor's directions and supervision. Hence, the system failed to assess the situation in light of the history of the abuse, including serious threats against the life of the victim and her children, which are not considered to constitute criminal behaviour. All of that affected the mild sanction that failed to prevent the offender from further committing violence.

The failure of the misdemeanour judge to provide information to the victim on whether the protection orders were issued and the omission of the court to deliver a written court decision to the victim and her legal representative, was particularly disempowering for her and required an official inquiry by the supervisory body, that failed to pursue it further. It caused the lack of victim protection, but also affected a charging decision for criminal act of DV that the perpetrator repeated as soon as he served his first prison sentence.

"I requested the protection orders because he was aggressive even during the trial and it was obvious, he would attack her. However, the judge found, in the light of all circumstances, that the issuing of the protection orders is not adequate. I requested from the public prosecutor to file a complaint for this matter, because I am not authorized to do that. I do not have the right to file an appeal after the conviction. As a legal attorney of the injured party, I am not in the position to affect neither the type nor the amount of the criminal sanction. The prosecutor did not respond to my request"(the legal attorney of the DV survivor).

The Protocol on Actions, Prevention and Protection against Domestic Violence (the Protocol) instructs the Centres for Social Work to carry out a risk assessment and devise individual safety plans for victims of DV. The same Protocol requires law enforcement agencies to establish whether a known perpetrator of DV possesses firearms or other weapons, but that fact was not properly acknowledged by the prosecution, although reported by the victim. Moreover, the prosecutor failed to submit the request for pronouncing (upon conviction) the Eviction and the Restraining order to the offender, along with the sentence. That was done by the legal attorney of the DV survivor, but the judge refused the request and determined the two-month long prison sentence, which was only two days longer than the period offender had spent in detention. It was also below the legal minimum for such a criminal offence. Such decision again left the victim unprotected and failed to refrain the perpetrator from re-

408 IC Art.46

peating violence. Due to the long history of violence and the fact that it was continuous and intensive, the offender was once again brought to a misdemeanour court, that allowed for a maximum prison sentence of 60 days, issued together with eviction and restraining orders. However, the sanction for the criminal act of domestic violence allows a prison sentence for a term not exceeding two years⁴⁰⁹.

Beside the failure of the system to prevent repeated violence and to protect the victim, the case showcased a re-victimising court practice that enabled the confrontation of the victim and perpetrator, allowing the perpetrator to insult the victim in front of the judge, and causing the victim to feel humiliated and unsafe. Such practice continued during the second, criminal proceeding, from which the public was not excluded. That could have been prevented if the prosecutor had requested the exclusion of the public or a special way of hearing of the victim in order to protect her from meeting the perpetrator face to face - a possibility predicted by the Protocol and the IC standards.

My ex-husband insulted me in various ways and it was allowed. No one reacted to or tried to stop the unbelievable insults I have suffered there. I was afraid that if I reacted, I could be sent away from the courtroom. I endured that but after that hearing I ended up in a medical emergency centre. I felt like I was at the pillar of shame, it jeopardised me as a person. He threw an avalanche of accusations at me and I could not react. I think that the judge is the one who is the most responsible for that situation, since I felt that he was taking the side of my ex-husband, stating that he is 'too temperamental, too quick and with a sharp tongue'. I think that he should have told him that it was enough because I went there as a victim of domestic violence and that he just cannot do that anymore. The courtroom was crowded, I felt very bad. He was the one who should react in a professional and a human way... but that did not happen. Humiliations and insults were part of my life, but I did not expect them to happen in such a place, with

no one reacting (Zorica, a domestic violence survivor).

„I think that the reactions of other institutions are not always urgent to the extent that they should be, due to the slowness of formal communication“. (a police officer in charge for DV cases)

To conclude, the total lack of due diligence and victim's rights oriented approach of all actors in the system left the victim unsafe and exposed to repeated violence. Effective victim protection, among other measures, should include the systematic provision of information to victims regarding progress of the investigation or proceedings. However, the court failed to notify victim of convictions and protection orders, thus leaving her unaware of the outcome of her case and therefore, feeling unsafe and abandoned by the institutions.

Similarly like in the first case, the CSW failed to pursue its coordinating role and prepare a victim protection plan for the victim and her children.

In criminal proceedings, the victim could have been granted the right not to state personal information or to have her testimony taken from behind a screen or via video-link.⁴¹⁰ However, such measures are rarely proposed by the prosecutors and most judges require victims to testify in the presence of the perpetrator without a screen or the help of technical devices. There is a need to ensure a more widespread use of existing protective measures and to change current practices such as the use of "confrontations" between the victim and the perpetrator in the courtroom that seriously undermine the efforts to ensure the safety of victims and prevent their re-victimisation.

⁴⁰⁹ CC Article 220 (1)

⁴¹⁰ Article 121 of the Criminal Procedural Code

2.4.5 Conclusions and recommendations

2.4.5.1 Conclusions

Existing legislation still does not define the term “violence against women” but offers, in the Law on Gender Equality, a definition of “gender-based violence”. The Law on Domestic Violence Prevention is adopted, however, “it predates the entry into force of the IC in Montenegro and a number of issues prevail regarding its effective implementation. While it introduces important concepts such as that of multi-agency cooperation and emergency barring and protection orders, it sets out extremely low sanctions for domestic violence.”⁴¹¹ Although Law on Domestic Violence was introduced “with a view to ensuring higher rates of reporting of domestic violence, most domestic violence cases are now prosecuted as misdemeanor offences under the LDVP instead of criminal offences. Criminal convictions are thus rare, and cases prosecuted under the LDVP usually lead to fines or suspended sentences.”⁴¹² Survivors frequently feel discouraged to report cases of domestic violence and there is a “widespread tendency among all relevant professionals to encourage survivors to reconcile instead of pursuing criminal justice.”⁴¹³

The initial steps to design a set of policies on all forms of VAW were taken by adopting the 2016-2020 Strategy for Protection from Domestic Violence. Despite that, a long-term coordinated plan/strategy which places the rights of survivors at the center of all measures, giving due importance to all forms of VAW and to its coordinated implementation is still missing. In 2018, following the requests from women CSOs and protests provoked by failure of the police to prevent femicide and protect women survivors of violence, the Ministry of Internal Affairs established an Operational Team for combating VAW and DV. This body has a man-

date to discuss high risk cases and to provide recommendations to all institutions involved in the survivor protection process.

“Essential policies, measures and services must therefore be allocated appropriate state funding. Although some steps are being taken by the authorities to this extent (for example the 50% funding for the new national helpline on domestic violence), many important measures, including the Strategy on Protection from Domestic Violence, do not seem to receive any funding from the government. Almost all CSOs providing essential services for survivors of DV are still funded by international donors. The limited financial support available from public funds is further being reduced following the recent changes to the Law on Non-Governmental Organizations.”⁴¹⁴

Despite the declaratory state commitment to ensure active cooperation with CSOs, this obligation has not been implemented to a sufficient extent. The state hardly ensures any funding for women CSOs, so they strive for sustainability, since they are mainly financed through the projects supported by international donors. The Law on Free Legal Aid does not recognize CSOs as providers of pro bono legal assistance, meaning that women’s CSOs have to finance legal aid out of their own budgets, because it is crucial for survivor’s access to justice. In addition, the current process of licensing of social services that tends to include CSO services into a formal social service system, threatens to jeopardize the independent role of women’s CSOs and the feminist principles their services are based on. There are serious concerns that weakening the impact and sustainability of women’s CSOs will negatively affect availability of their services and protection of survivors. While a number of women’s support services exist for survivors of DV, these are not readily available in rural areas, and the existing DV shelters are usually filled to capacity.

⁴¹¹ GREVIO Report, Concluding remarks.

⁴¹² Ibid.

⁴¹³ Ibid.

⁴¹⁴ GREVIO Report, Concluding remarks.

Although some progress has been made in printed media with regard to the protection of victims' privacy, the media articles on VAW still include the sensationalisation and romanticising of violence. In this way the media encourage empathy towards VAW perpetrators and distract attention from their responsibility, presenting them as helpless victims of their own love and emotions.

The analyzed cases are indicative of widespread and numerous shortcomings in institutional practice: the prevention of violence has failed, although it was repetitive and included a high level of risk. Survivor's and the child's safety were jeopardized by the lack of urgency, due diligence and by responsible officials downplaying the violence. The survivors were not provided with general or specialized support services, nor informed about legal possibilities to seek protection orders. They were not referred to free legal aid before contacting the WRC on their own. Investigations and trials were delayed, without urgency, and there was a complete lack of multi-sectoral approach and communication between different state actors, the CSW had passive and not coordinating role – all of that jeopardizing survivors' safety. Evidence was not collected immediately after the violence was reported and professionals relied solely on survivors' reporting, not gathering other available evidence. The numerous and repetitive acts of violence were qualified as misdemeanor offences, in spite of intensity and repetitive threats. The failure of institutions to recognize emotional abuse of the child witnesses of partner violence, resulted in further exposure of children to violence and complete lack of protection. Survivors in both cases were exposed to secondary victimization, caused by repetitive reporting and presence and insults by the perpetrators in the court room. Counterclaims of the perpetrator against the survivor, in the first described case were taken into account by the police, again contributing to her intimidation and victimization. Mediation procedures took place, albeit banned by the Family Law and the IC. Lenient and inad-

equate penal policy caused low level of trust in institutional capability to protect survivors, prevent further violence and hold perpetrators accountable.

“Such tendencies seem to be the result of generally low levels of awareness of the gendered dimension of domestic violence (as well as those of the other forms of VAW). It is not viewed as a manifestation of unequal power relations between men and women but is frequently linked to alcohol addiction, personality disorders or poverty of the perpetrator.”⁴¹⁵ The wide range of training and capacity-building initiatives around DV were organised, however, a more practical approach involving on-the-job training, training based on protocols and guidelines and incentive schemes to ensure real and lasting change is much needed. Higher levels of awareness, sensitisation and capacity-building are needed not only in relation to domestic violence, but in relation to all forms of VAW, particularly in relation to sexual violence, including rape.

2.4.5.2 Recommendations

Common recommendations for all institutions in the protection system (judiciary, law enforcement agencies, centres for social work, health institutions)

- Introduce compulsory training focused on sensitization in order to prevent influence of prejudices and stereotypes on decision making and approach of professionals to VAW survivors

Legislator and Government

- Harmonize national policies with the Istanbul Convention and the EU Directive on victims and increase monitoring of the implementation of the Istanbul Convention;
- Ensure full compliance of legal definition of Rape with the Istanbul Convention, so that the central place of the definition would be a lack of consent, not coercion or threat;

⁴¹⁵ Ibid.

- Initiate amending of the Law on Protection from Domestic Violence for inclusion of compulsory work with perpetrators, their sensibilization and education;
- Establish inspectorates for supervision and disciplinary sanctioning of professionals accountable for omissions in managing VAW cases, and inform VAW survivors on its existence
- Further institutionalize and empower advisory role of the Operational Team, by official agreements or memorandums among member institutions and CSOs.
- Ensure the participation of women CSOs in all coordinating bodies established in order to monitor law and policy implementation;
- Amend the Law on Free Legal Aid so it recognizes women's CSOs as free legal aid providers;
- Ensure adequate funding of women CSO's with specialised support services for VAW survivors;
- Amend the Criminal Code so that the child witnessing domestic violence is recognized as a victim;
- Establish crises centres and one stop shops for victims of sexual violence with relevant protocols;
- Make precise legal distinction between misdemeanour and criminal liabilities in domestic violence cases, so that any form and gravity of violence among family members is Domestic violence crime;
- Introduce protection measures in criminal procedures in domestic violence cases
- Collect the data on the history of VAW and on professionals in each case and include procedures for recognizing the primary aggressor;
- Ensure proactive approach in processing domestic violence and VAW cases and avoid reliance solely on the victim's own testimony;
- Ensure consistent application of the Family Law regarding to initiation of proceedings to deprive or limit a visit to children, contacts and custody of a violent parent, or to use supervised visits;
- Enhance PRIS database for integrating data on misdemeanour and criminal proceedings and other relevant data related to VAW survivors;
- Prohibit the use of "confrontation" by judges in DV cases

Law enforcement agencies (e.g. police)

- Introduce specialised departments within police infrastructures solely for VAW cases

Centres for social work

- Initiate procedures to deprive or restrict child visitation, contacts and custody for the violent parent;
- Ensure objective and independent supervision and evaluation of work of social workers in VAW cases;
- Enhance human, technical and infrastructure capacities of centres for social work;
- Ensure employment and engagement of specialised and qualified social workers and psychologists

Judiciary (e.g. courts and prosecution)

- Make more visible court departments for informing and support of survivors and witnesses;
- Place the rights and interests of domestic violence survivors at the centre of all actions;

Media professionals

- Apply mechanisms for sanctioning media professionals to prevent publishing details on VAW cases that could put survivor at further risk.

2.5 NORTH MACEDONIA

Abbreviations

CC	Criminal Code
CPC	Criminal Procedure Code
CEDAW	International Convention on Elimination of All Forms of Discrimination against Women
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
GES	Gender Equality Strategy
IC	Istanbul Convention
LPDV	Law on Prevention, Prohibition and Protection from Domestic Violence
LSP	Law on Social Protection
LLA	Law on Free Legal Aid
NAP	National Action Plan
MLSP	Ministry of Labour and Social Policy
MoI	Ministry of Interior
SAA	Stabilization and Association Agreement
CSW	Social Work Centres
TPM	Temporary protection measures
VAW	Violence against Women

2.4.1 Introduction

A candidate country for EU accession, North Macedonia is a land-locked Balkan country of about 2 million people, according to the last census from 2002. The Stabilisation and Association Agreement between the former Yugoslav Republic of Macedonia and the EU entered into force in April 2004. Since 2009, the Commission has recommended to the Council to open accession negotiations with North Macedonia, a candidate country since 2005. Following the early parliamentary elections in December 2016, which resulted in the change of government in May 2017, the country has finally overcome its deep political crisis.⁴¹⁶

North Macedonia ratified the CEDAW and the Optional Protocol in 1994. In 2011 it signed the IC, but the ratification happened six years later in December 2017 and the Convention entered into force on 1 July 2018.⁴¹⁷ The country made several reservations to the text of this treaty.⁴¹⁸ The implementation and reporting on the progress of IC will be followed by the national commission as foreseen in the National Action Plan for the implementation of the Istanbul Convention (NAP 2018-2023). A special

⁴¹⁶ European Commission, The former Yugoslav Republic of Macedonia 2018 Report. Link or the number of the report?

⁴¹⁷ <https://www.coe.int/en/web/istanbul-convention/-/-the-former-yougoslav-republic-of-macedonia-ratifies-the-istanbul-convention>

⁴¹⁸ Art 30 paragraph 2, Art 44, Art 55 paragraph 1 in connection with Art 35 and Art 59. Art 30, Paragraph 2 will be implemented in line with the law for juvenile justice only for a child that with enacted order is considered a victim or a damaged party in connection with the act that is according to the law considered a criminal offence or misdemeanor with elements of violence. Art 44 will be implemented with the conditions listed in the criminal code in the section 12: application of the criminal legislature according to the place of perpetration of the crime. Art 55, Paragraph 1 in connection with Art 35 (physical violence) from the convention. Art 59 referring to the temporary residence permit.

multi-sectoral group has been formed to develop the NAP.⁴¹⁹

The state has also adopted several laws and mechanisms to advance gender equality. The Law on Equal Opportunities of Women and Men⁴²⁰ obliges public institutions to ensure equal rights and opportunities for women and men and to integrate gender into their policies, strategies and budgets through specific measures to reduce gender inequality. However, gender gaps and inequalities continue across all levels. Women make up only 39.5% of the employed, earn 17.9% less than men per hour of work⁴²¹, and are 64.2% of the country's economically inactive population.⁴²² Women's participation in decision making remains limited. Any progress, such as increased representation of women in the National Parliament and municipal councils, is due to electoral quotas. In executive bodies, where quotas do not exist, women's representation is low: women hold only 10% of ministerial posts and 4% of mayoral posts.⁴²³ Women in North Macedonia are disproportionately affected by domestic and gender-based violence: 82% of domestic violence survivors are women, and men receive 93% of domestic violence convictions.⁴²⁴ There is a strong need for more research and data on gender-based violence.⁴²⁵

2.5.2 Legal and policy framework

2.5.2.1 Legal framework

The Constitution of North Macedonia guarantees the principle of equality and non-discrimination on all bases (including gender), guarantees the respect for basic liberties and human rights, as well as the right to equal access to courts.

The national legislation defines some forms of VAW that reflect the IC standards in civil and criminal justice, as well as social and health-care systems. However, those definitions are not fully in line with Art 3 of the IC since they do not cover specific forms of VAW and the relationship between the victim and the perpetrator, especially in cases of intimate partner violence (IPV).⁴²⁶ The National Action Plan (hereinafter: NAP) foresees the development of a new law on prevention of VAW or amendments to the existing one and regulation of the forms of VAW as per Art 33 – Art 40 of the IC.

At the same time, with the introduction of the criminal justice protection of DV survivors, a system for civil and legal protection was established first by changing the provisions of the *Family Law* in 2004, and ten years later by adopting a separate *Law on prevention, prohibition and protection against domestic violence* (hereinafter: LPDV) in 2014⁴²⁷. The positive changes LPDV introduced were the following: regulating DV not only as physical violence, but also as economic violence, psychological violence, stalking, threats, bodily harm and sexual

⁴¹⁹ B. Nastovska, Mapping of Policies and Legislation on Violence Against Women and the Istanbul Convention in the Former Yugoslav Republic of Macedonia, European Women's Lobby, 2018, p. 3.

⁴²⁰ Adopted in 2006 and amended in 2012.

⁴²¹ "Gender pay gap in Western Balkan Countries: evidence from Serbia, Montenegro and Macedonia", FREN, Belgrade 2013. <http://www.fren.org.rs/sites/default/files/Gender%20pay%20gap%20in%20the%20Western%20balkan%20countries.pdf>

⁴²² Labour Force Survey, State Statistical Office of FYR Macedonia, Skopje, 2014.

⁴²³ www.vlada.mk; Local elections 2013, www.sec.mk.

⁴²⁴ Mirceva S., Caceva V., Kenig H., Voice for Justice, Assessment of the court procedures for domestic violence cases with special focus on the managing the cases from gender perspective, Institute for Sociological, Political and Legal Research - ISSPI, Skopje, 2014.

⁴²⁵ <http://eca.unwomen.org/en/where-we-are/north-macedonia> (access 21.2.2019).

⁴²⁶ B. Nastovska, 2018, p. 4.

⁴²⁷ LPDV, Official Gazette RM, No. 138 date 17.09.2014.

violence. In addition, LPDV defines “personal, close relationships” not only as relationships of persons who are married, but also relationships between persons who are in partnership relations, regardless of whether live or have lived in the same household or not. Moreover, the LPDV does not specify that these relationships are exclusively between spouses. Having this in mind, a step forward is made in defining DV not only between married partners, but also persons who are in extramarital relationships. Moreover, within LPDV a step forward is made in terms of protection of survivors in same-sex partnerships, which also means compliance with Article 4 – Fundamental rights, equality and non-discrimination of the IC, as it does not exclusively define partners as a man and a woman. Although this was a step forward in the prevention and protection from VAW, unfortunately LPDV only regulates DV which is restrictive and non-comprehensive. Indeed, one of the major shortcomings of this Law is that it is not gender-sensitive. This means that it fails to define domestic violence as gender based violence, since ‘domestic violence affects women disproportionately’ as defined in Article 2 of the IC.⁴²⁸ Thus, there is a great need for amending and innovating existing criminal legislation in order to provide comprehensive protection from all forms of VAW in this context.

*The Law on Social Protection (LSP)*⁴²⁹ and the *Law on Free Legal Aid (LLA)*⁴³⁰ are complementary to the LPDV. The LSP regulates the support to the DV survivors and their accommodation in shelters, while the LLA stipulates the procedure for providing free legal aid to the DV survivors and their representation in courts, as well as before the relevant institutions.

The Criminal Code (hereinafter: CC)⁴³¹ criminalized physical, psychological and sexual vi-

olence. However, DV is not defined as a separate criminal act. Instead, the act of ‘domestic violence’ is criminalized within the following criminal acts: Murder, Unmediated Murder, Bodily harm, Heavy bodily harm, Coercion, Limiting the freedom, threatening security, assisting in providing sexual services as well as Sexual attack on a child. In these provisions, the commission of one of these acts in the course of domestic violence is envisaged as an aggravating circumstance. The CC foresees a prison sentence of minimum 10 years to life imprisonment if the murder is committed as an act of DV. Having in mind DV is not criminalized as a separate criminal act (this also refers to the femicide which is not yet a separate criminal act) and that it is criminalized in other criminal acts which include physical violence, public prosecutors often ask for medical evidence in order to prove injuries and force used on the survivor. The CC covers a series of non-consensual acts that fall under sexual assault with higher penalties foreseen in cases where the perpetrator is in a close relationship with the survivor who is a juvenile. Rape, as stipulated in the national legislation, includes force/threat as a constitutive element of this crime, while the consent of the survivor is not considered at all, which is not in line with the IC (Art 36). Marital rape is not regulated in the national legislation. Sexual harassment is not covered with the criminal legislation, but is regulated in the Law on prevention and protection against discrimination⁴³², the Law on labour relations⁴³³, and the Law on the protection from harassment in the workplace.⁴³⁴

With the changes in the CC in 2004 DV was defined for the first time, and with provisions for nine crimes against life, body and safety of survivors, a more severe sanction was foreseen if the specific crime is committed in the

⁴²⁸ Id.

⁴²⁹ LSP, Official Gazette RM, No. 180/14, 2014.

⁴³⁰ LLA, Official Gazette RM, No. 161/09 and 185/11

⁴³¹ Criminal Code consolidated text “Official Gazette of the Republic of Macedonia” no. 37/96, 80/99, 4/2002, 43/03, 19/04 and Decision of the Constitutional Court: Official Gazette 48/01.

⁴³² Law on Prevention of and Protection Against Discrimination (“Official Gazette of the Republic of Macedonia” no. 50/2010, 44/2014, 150/2015, 31/2016 and 21/2018), Article 7, para. 3.

⁴³³ Law on labor relations Official Gazette of the Republic of Macedonia” no 74 from 08/05/2015, Article 9, para. 4.

⁴³⁴ Law on protection from harassment in the workplace Official Gazette no 79 from 31/05/2013.

context of DV. The CC does not recognize rape committed in the context of DV, leaving a significant number of survivors out of the system of protection against sexual violence. In practice, the most frequent cases are those of bodily injury, endangering safety and serious bodily injury committed in the context of DV.⁴³⁵ "The study of the National Network to end VAW and DV confirmed that sexual violence is not fully covered by the national legislation and it is left to the professionals to freely interpret what constitutes sexual violence, which leaves a legal vacuum in the system and allows prejudice to dominate during criminal prosecution procedures."⁴³⁶

According to the *Criminal procedure Law* (CPC)⁴³⁷ the public prosecutor and the police find out about a committed criminal act by direct observation, by a criminal report or through the application of a criminal charge. If a report for a committed criminal act has been filed to the police, the police will notify the competent public prosecutor in writing without delay. In cases of submitted reports for criminal acts related to DV, the public prosecutor calls the survivor to submit a statement. The public prosecutor may also call the suspect, but this is not mandatory. In the case of sexual offenses, a physical examination of the defendant and the survivor is ordered immediately, as well as DNA sampling for comparison with biological traces or other DNA profiles, for which no consent of the person is required. This means that in cases of sexual offences the law prescribes mandatory medical evidence. In the case of crimes committed in the course of DV, if the criminal offense violated the health of the survivor, the public prosecutor issues an order for psychiatric expertise to determine this. The investigation procedure should be completed within six months from the date of the order for conducting the investigative procedure. Upon completion of the investiga-

tion procedure, when the public prosecutors determine that there is enough evidence, they prepare and submit indictments to the competent court. Regarding the prosecution, the law provides the possibility of prosecution in the absence of the survivor, where she is not able or willing to testify. Nonetheless, it has to be mentioned that a written statement from the survivor should be part of the case. If the survivor gives up the motion for prosecution until the beginning of the main hearing, the court will stop the procedure with a decision, and if the survivor rejects the motion to prosecute from the commencement of the main hearing, the court will hold a retrial. If the injured party waives the prosecution, she loses the right to re-submit a proposal. By not giving the opportunity to survivors to re-submit a proposal, the legislator fails to protect survivors comprehensively since survivors often face threats from perpetrators and fear for their life, and as a result they often revoke the proposal. In one case, as a result of this provision, the survivor revoked the proposal before the main hearing due to the treats she was receiving from the perpetrator. After the revocation, the perpetrator filed a claim for false allegations against the survivor.⁴³⁸ The possibility for claims of false allegation is a big problem as this possibility discourages survivors to report violence.

In cases where public officials failed to prevent, investigate or punish the violence perpetrated, survivors have the option to bring lawsuits against them and have the right to seek protection from the court.

Besides the fact that the national legislation has been improved in the last few years, and certain level of compliance with international standards is ensured within the laws, one can note quite a few shortcomings in some of their provisions i.e. the lack thereof, and most importantly, in their implementation.

⁴³⁵ Gelevska, M. and Mishev, S. *Findings from the conducted judicial monitoring of cases of violence against women*. Association for Emancipation, Solidarity and Equality of Women - ESE, Skopje, 2017

⁴³⁶ B. Nastovska, 2018, p. 8.

⁴³⁷ CPC, Official Gazette of the Republic of Macedonia, No. 150/2010, 2010.

⁴³⁸ A license to rape in Macedonia: The torture of Natasha Velichkovska, Macedonian Mysteries Blog, <https://macedoniamysteries.wordpress.com/2014/07/15/a-license-to-rape-in-macedonia/>

2.5.2.2 National policy

a) Relevant strategies

In 2013 the Assembly of the Republic of Macedonia adopted the 2013-2020 Gender Equality Strategy.⁴³⁹ The strategy was developed based on findings and recommendations of the assessment of implementation of the National Action Plan for Gender Equality (2007-2012) and contains the national priorities in the area of equal possibilities of women and men for the eight-year period. The strategy is based on gender equality and enjoyment of human rights principles as cross-sectoral issues. The Assembly of the Republic of North Macedonia is responsible for monitoring its implementation. Goals of the Strategy are implemented through the 2013-2016 National Action Plan. The new NAP for gender equality 2018 - 2020 was prepared in 2018.⁴⁴⁰

According to the LPDV, the Government needs to adopt a National Strategy for Prevention, Prohibition and Protection from Domestic Violence⁴⁴¹ for the period of five years. The strategy is prepared by the Ministry of Labor and Social Policy in cooperation with other ministries. Its goal is to identify the mechanisms for prevention, prohibition and protection from domestic violence and the way they are implemented, as well as education of professionals, survivor support, measures for the treatment of perpetrators of DV, etc. The last adopted Strategy was the one for 2012-2015, which in itself clearly indicates the lack of commitment by the former government in this field. According to the law, the government also establishes a National Coordinative Body against Domestic Violence with a five-year mandate. This body consists of members of institutions including ministries, MPs of the Assembly of North Macedonia, local gov-

ernments, the Ombudsman, judges, public prosecutors and civil society organizations. The purpose of this coordinative body is to instantly monitor the situation with domestic violence in the country. The Ministry of Labor and Social Policy has prepared an Action plan for the implementation of the IC 2018-2023 and it has been adopted.

In 2015 and based on the LPDV the Government adopted a *Protocol for mutual cooperation of the competent institutions and associations for protection and prevention of domestic violence*. Also in 2015, several standard operating procedures/protocols (one multisectoral) for working with DV survivors were introduced for Centres for Social Work (CSW), police and health professionals. These protocols do reflect the survivor's needs, but they lack full protection. For instance, the law still lacks a definition of VAW, and professionals need more gender-sensitive trainings. Rulebooks developed for the MOI and the MLSP under the LPPPDV contain both risk assessment forms and safety plans on case-management basis.

b) Data collection and monitoring

Certain data on VAW is being collected but in an incomplete and inconsistent manner, despite data collection being crucial for evidence-based policy making, as the IC stipulates in Art. 11⁴⁴². There are no appropriate mechanisms established for systematic monitoring and analysis of the situation and trends in DV incidence by the Ministry of Interior, including records on repeated DV and on withdrawn and re-submitted petitions for criminal prosecution by survivors regarding the criminal act of bodily injury against the same perpetrator.⁴⁴³ The existing system, entrusted with gathering detailed statistics on

⁴³⁹ Official Gazette No. 27 dated 22. 2. 2013.

⁴⁴⁰ https://www.womenlobby.org/IMG/pdf/ewl_executive_summary_web_spread.pdf

⁴⁴¹ Carovska, M., et al. National Strategy for the Prevention and Protection of Domestic Violence 2012-2015, Ministry of Labor and Social Policy, 2012.

⁴⁴² Article 11, Council of Europe, *The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, November 2014,

⁴⁴³ Ad hoc Coalition, Association for Emancipation, Solidarity and Equality of Women – ESE, Written submission for consideration by the Committee on Elimination of All Forms of Discrimination against Women, 2018, 5. Available online: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT_CEDAW_NGO_MKD_30028_E.pdf

DV and providing public access to that data, has not been improved, in spite of the fact that UN agencies spent €120,000 for that purpose. Furthermore, the LYRICUS IT-monitoring software system for social services has not been upgraded (mainly due to insufficient human resources).⁴⁴⁴

“The Ministry of Interior (MOI) collects and publishes disaggregated *data on DV* and the MLSP collects data on DV regularly. Data from the judiciary is also collected, but there is a lack of data on perpetrators of criminal offences committed in aggravated circumstances of domestic violence. In official statistics of reported, accused and convicted persons, data on victims is also lacking. Femicides are invisible within the national statistics, and currently collected only by CSOs through media reports. The availability and transparency of the data collection is a continuing problem.”⁴⁴⁵

MOI collects *data on sexual violence* only for the criminal offences and the number of perpetrators that committed the crimes, yet they have very limited data on survivors. The national women's CSO network gathered data on sexual violence for the period from 2012 until 2017 collected by the MOI and the MLSP. Registered criminal offences by the MOI of various acts of sexual violence show a total of 526 cases during the past 6 years. On the other hand, the MLSP for the same period registered only 55 women survivors of sexual violence. The data shows an increase in reporting of sexual violence, but the reported numbers are still not in accordance with the estimated number of actual cases and they do not show the real situation of sexual violence in the country. The inconsistency in reporting also exists within the reported cases from different agencies that have a mandate

to react, protect and prevent sexual violence, due to the lack of joint data collection system on sexual violence. The problem of data inconsistency prevents the country from developing an evidence-based policy on protection and response to VAW.

There is no unique/integrated database for cases of VAW and domestic violence. This is particularly important to be able to follow trends (rising / declining numbers), regions / areas where DV occurs more, but also to identify perpetrators and register if the offence is recurring – and usually it is. Thus, if the perpetrator appears in the database it is expected that the survivor will be exposed again to a certain form of violence. One of the first gender-sensitive analysis of DV in the country was conducted by the CSO ESE in 2000.⁴⁴⁶ It confirmed that “the physical violence was reported as a personal experience by every fourth female examinee. It has manifested through several different forms, lighter and more serious. However, if one takes into consideration the fact that every third woman sought medical intervention and assistance, the problem of DV gains in its seriousness, not only according to its quantitative but also in terms of its qualitative dimension”.

c) Training of relevant professionals

The LPPDV envisages, among many activities, introducing continuous training programs for the staff in the institutions in charge of dealing with the DV.⁴⁴⁷ In practice, however, this is not ensured, as VAW survivors (especially DV survivors) often get the impression adequate actions are not being undertaken to protect them and police personnel do not offer them the information on available options for protection while acting in a passive manner.⁴⁴⁸

⁴⁴⁴ Z. Saltirovska/S. Dimitrijoska, Legal and Institutional Functionality in the Protection of Women – Victims of Domestic Violence in the Republic of Macedonia – Present Situation and Future Perspectives, *European Journal of Social Sciences Education and Research*, 2017, p. 134.

⁴⁴⁵ B. Nastovska, 2018, p. 5.

⁴⁴⁶ <http://www.esem.org.mk/en/pdf/Publikacii/Ostanati/2000/Report%20on%20the%20the%20implemented%20field%20research%20-%20%20Domestic%20Violence.pdf> (access on 21.2.2019.)

⁴⁴⁷ LPDV, Official Gazette No. 138 dated 17.09.2014.

⁴⁴⁸ Чаловска, 2016: 41-42. Cited by Z. Saltirovska/S. Dimitrijoska, Legal and Institutional Functionality in the Protection of Women – Victims of Domestic Violence in the Republic of Macedonia – Present Situation and Future Perspectives,

E.g., the MOI have not conducted a detailed training for the police officers working with survivors of VAW after the enactment of the Law and its protocols.⁴⁴⁹

State reports indicate positive trends, e.g. in 2013 analysis was conducted on court cases of DV from a gender perspective⁴⁵⁰ - the findings and recommendations from the analysis were used to implement trainings for over 100 judges from first instance courts.⁴⁵¹ In 2016, with the support of UNFPA, 3 specialized trainings were implemented for clinical management of rape, covering 64 service providers, 50 of which were healthcare professionals. The Ministry of Health has prepared the trainings according to the Minimal Basic Service Package (MBSP) for the RHS during humanitarian crises.⁴⁵²

Despite certain positive trends, problems identified in practice illustrate the lack of training for judges, public prosecutors and lawyers on important issues such as issuing special protection measures and avoiding the re-victimisation of women during trials. In addition, adequate, continuous, intensive and compulsory training on processing sexual crimes in criminal proceedings are still lacking for criminal judges, public prosecutors and the police. This is also the case with specialized trainings for civil judges and police on processing VAW cases in civil proceedings.

d) Survivor-oriented approach

VAW-related regulations and laws are available in the Official Gazette of the North Macedonia and can be found up-to-date on several web sites. Nonetheless, this information is not available to the general population, especially to women in rural areas or socially disadvantaged women.

As already noted, in 2015 LPPPDV introduced several standard operating procedures/protocols for working with DV survivors for CSW, police and health professionals. Those protocols do reflect the survivor's needs, but they still lack full protection of the survivor. Additionally, the police should be subject to joint trainings to fully implement such procedures.⁴⁵³

In order to comprehensively and effectively undertake measures for the prevention of and protection against DV, the Protocol for mutual cooperation of the competent institutions and associations for the protection from and prevention of DV has been adopted. This protocol ensures the efficient and successful cooperation of competent institutions and associations for the protection, assistance and support of survivors of DV, as well as providing treatment for the perpetrators of DV. This Protocol regulates the types, manner and content of cooperation between the competent entities when undertaking measures for prevention and protection of survivors of DV and undertaking legal measures against perpetrators of DV. The protocol obligates the institutions to develop a safety plan for survivors and their children, take measures to address existing or new needs for assistance and protection, provide information and cooperate with the members of the multi-sectoral professional team. However, there is no record if this provision is implemented in practice, especially when the perpetrator was released or has escaped. The National Network to End VAW and DV reported that there is no official information on how many local multi-sectoral teams have been formed so far, or what the results of their work are.⁴⁵⁴

European Journal of Social Sciences Education and Research, 2017, p. 137.

⁴⁴⁹ B. Nastovska, 2018, p. 8.

⁴⁵⁰ Mircheva S. Chacheva V., Kenig N. Voice for Justice, Assessment of domestic violence court cases, with Special Focus on managing cases from a Gender Perspective, Institute for Sociological, Political and Legal Research - ISPLR, Skopje, 2014.

⁴⁵¹ Sixth Periodic Report on the CEDAW, 2017, p. 12.

⁴⁵² Sixth Periodic Report On The Convention On Elimination Of All Forms Of Discrimination Against Women, 2017, p. 12.

⁴⁵³ B. Nastovska, 2018, p. 12.

⁴⁵⁴ Ibid, 10.

2.5.3 Institutional framework

2.5.3.1 Coordinating body

"In 2015, the new Law on Prevention, Combating and Protection from DV (LPCPDV) established a national coordination body (NCB) for prevention of DV as a monitoring body. This body is chaired by the MLSP and is composed of representatives of different institutions including women's CSOs, but with representation of only 12%. However, this monitoring mechanism refers only to DV and does not address other forms of VAW. So far, the practice has shown that the appointed members to the NCB were not gender sensitive and did not recognize DV as a form of gender based violence (GBV). The work of this body was rather weak and the voice of the women's CSOs was not heard due to its inefficiency. For instance, the women's NGO ESE confirmed that the "NCB for prevention of DV is nonfunctional". Indeed, this body did not have any significant activities so far, such as monitoring, issuing recommendations, organizing trainings etc. The new NAP foresees the development of a new law on VAW that will ensure the functioning of the NCB for preventing and combating VAW and DV."⁴⁵⁵

2.5.3.2 Relevant CSOs

Women's CSOs in North Macedonia are facing considerable difficulties due to the lack of financial and human resources provided to them.⁴⁵⁶ Larger women's CSOs and networks are part of the working groups and bodies responsible for the development and monitoring of VAW prevention and protection policies at the central level. Smaller CSOs are active in local bodies for gender equality, but they are as a rule not part of the consultative processes in this field. As confirmed by the CSOs, in the period from 2015-2017 CSOs' activities were limited and "women's CSOs were not free to

express their opinion. Some important issues such as abortion, gender-based violence, sexual orientation and gender identity, sexual and reproductive rights, were not in the sphere of interest of the right-wing ruling party at that time. During this period, women's rights in the country were at risk, for instance: the law on abortion has been restricted, limiting the access to sexual and reproductive health services; the PPDV failed to regulate all forms VAW; and issues like sexual orientation and gender identity were not part of the public discourse at all. However, after the change of the political establishment in 2017 the situation is gradually improving."⁴⁵⁷

2.5.3.3 Allocation of adequate financial and human resources

Based on the Law on Social Protection and the *Rulebook on the method and procedure for assigning funds to civil associations for performing certain works in the field of social protection*, the Ministry of Labour and Social Policy should annually provide funds to support projects of associations for the protection of DV survivors. This includes the enabling of a continuously functioning national SOS line for reporting DV, providing help and conditions for temporary accommodation in a shelter for DV survivor. However, the state fails to ensure sufficient and sustainable financial resources for women's CSOs and there is no defined percentage of funding allocated for those organizations in the state budget. So far, the only record of state funding for women's CSOs was in 2015 when, in accordance with the Law on Games of Chance and Entertainment Games, two organizations providing services to women survivors of DV received financial support - the National DV SOS Help-Line and the Crisis Centre for emergency accommodation. Such data cannot be identified for 2016 and 2017⁴⁵⁸. According to the WAVE Report for

⁴⁵⁵ B. Nastovska, 2018, p. 4.

⁴⁵⁶ Mapping VAW and girls support services in the Republic of Macedonia, National Report, Stojanka Mirceva and Nikolina Kenig, Skopje 2015.

⁴⁵⁷ B. Nastovska, 2018, p. 4.

⁴⁵⁸ Monitoring Report on the implementation of the Law on prevention, combating and protection from Domestic Violence, National Network to End Violence against Women and Domestic Violence, 2016. Also, the City of Skopje in

2017, North Macedonia is lacking 185 beds in shelters, i.e. 89% less than the standards of the IC.⁴⁵⁹

Women's CSOs in the country so far only received funds from international donors. In the future this should change as per the planned activities of the NAP for the implementation of the Istanbul Convention.⁴⁶⁰

2.5.3.4 Specialist support services

SOS (help)lines: In North Macedonia there is a functional helpline that operates 24/7 free of charge and offers services in both the Macedonian and Albanian language. It is run by the National Council for Gender Equality and it is funded by the state. In addition, there are three other SOS lines run by CSOs that operate free of charge 24/7.

Shelters and counselling: In North Macedonia there are in total four shelter centres in the cities of Skopje, Sveti Nikole, Kochani and Bitola having in total 24 beds (places).⁴⁶¹ With regards to coverage per population, North Macedonia falls behind the set international standard of one place or one family place per 10.000 women. In 2015 only 4.51% of the total female survivors reporting violence were housed in shelter centers. Because of this, many women are not provided accommodation in the centers for domestic violence and they fail to leave the home.⁴⁶² Regarding a crisis center for rape survivors, according to the IC's standard, one Crisis Center for rape survivors for every 200,000 inhabitants, available in all regions should be provided by the state. In relation to this, there are several crisis centers run by CSOs, but crisis centers in the state system for protection is something the state is currently working on

according to the National Action Plan on the implementation of the Convention 2018-2023.

Rape crisis centres: In 2018, the state established three sexual violence referral centers and one rape crisis center, out of which three are accessible to women with disabilities. The rape crises center in Skopje is run by a CSO in cooperation with the MLSP, financed by the state and other donors. All other accommodation facilities are not able to support survivors of sexual violence and the country is lacking a specialized helpline.⁴⁶³

2.5.3.5 Protection of survivors/witnesses and legal aid

In the general provisions, the Law on prevention, prohibition and protection from DV regulates the aim of the law, gives the definition of DV including a glossary, regulates the competent authorities and institutions and their duty to act promptly in cases of domestic violence, the survivor's right to assistance, support and protection from DV, as well as the survivor's right to choose a person who will accompany her in the proceedings. In addition, the Law provides for help to, and protection for, children and people who are unable to take care of themselves; highlights the duty of citizens and officials to report DV; and stipulates the obligation of the government to adopt a national strategy for prevention, prohibition and protection from domestic violence for a period of five years and to establish a National Coordinative Body against Domestic Violence for a term of five years. According to the defined aim, this Law⁴⁶⁴ sets out required measures for the protection of DV survivors. More specifically, according to this law "the victim has rights

cooperation with Komercijalna Bank is providing some support for the functioning of the First family centre for victims of DV (HERA). B. Nastovska, 2018, p. 15.

⁴⁵⁹ WAVE COUNTRY REPORT 2017, WAVE – Women against Violence Europe 2017, pg. 17

⁴⁶⁰ B. Nastovska, 2018, p. 16.

⁴⁶¹ Dimishevska, E. & Shkrijel, S., *Mapping of services available for women victims of violence in the Republic of Macedonia*, National Network to End Violence against Women and Domestic Violence - A voice against violence, 2016, pg. 34

⁴⁶² Calovska-Dimovska, N., *Monitoring Report on the Implementation of the Law on Prevention, Combating and Protection from Domestic Violence*. National Network to End Violence against Women and Domestic Violence- Voice against Violence, 2016 p. 29

⁴⁶³ B. Nastovska, 2018, p. 12.

⁴⁶⁴ Id.

to be helped, to be supported and protected from domestic violence. The victim is entitled to be informed on her rights by the officials, to the protection measures and the procedures to exercise them, as well as to the available services for help and support”.

The multi-sectoral protocol offers relevant protection mechanisms for dealing with survivors of sexual violence. This protocol ensures that all women survivors will be interviewed only once and avoid the possible exposure to the perpetrator. The Criminal Procedure Law⁴⁶⁵ prohibits questions to be posed to the VAW survivor and to the witness that pertain to their sexual life, sexual predispositions, political and ideological affiliation, racial, national and ethnic origin, moral criteria and other extremely personal and family circumstances, which is in line with the IC (Art 54). However, this law makes an exception in cases where the answers to such questions are directly and obviously related to the required clarification of the significant criterion of the criminal offence, which is the subject matter of procedure. This indicates the importance of police officers taking care during interviews and while qualifying the offense. This stage is crucial in initiating the criminal proceedings against a perpetrator; any errors at this stage will have immense impact on the entire case.⁴⁶⁶

The current legal system and its implementation does not offer systemic support to survivors of sexual violence, which is a result of the cultural and personal beliefs of the professionals themselves, but also of the lack of a holistic and integrated approach to sexual violence against women. Significant progress in promoting women's access to justice was made with the provision of Article 55 of the Criminal Code which establishes a gender sensitive approach and protection against secondary victimization of women who are victims of criminal acts against sexual freedom and sexual morality,

humanity and international law. Thus, this article guarantees the right to be questioned by a person of the same gender in the police and public prosecution, not to respond to questions that refer to the victim's personal life, which are not related to the criminal act and to ask for questioning with the assistance from visual and audio aids, in a manner set forth in this law.

Legal assistance to the DV survivor is provided by counseling about the rights and legal procedures that can be initiated to overcome and prevent family violence by an expert in the CSW or in organizations involved in the implementation of protection measures. The LLA⁴⁶⁷ stipulates the procedure for providing free legal aid to the DV survivors and their representation at courts, as well as before the institutions. The Law does not distinguish positively the DV survivors; thus, if they are employed (regardless of their income) or have property registered in their name, they are not entitled to free legal aid. One of the main problems that further limits the right to free legal aid is the certificate of victim status. The victims are obliged to submit confirmation that they have been reported and identified as victims of DV in the Ministry of Interior and in the CSW. This practice is disturbing for the victims, who do not always have the will to report to both the CSW and the MoI, or any institution. Because of this practice, many victims do not apply for free legal aid to the Ministry of Justice. Exercising the right to free legal aid is also limited due to the long deadline for deciding on the submitted request. Although the Law states that this decision should be delivered within the maximum of 20 days, this deadline is as a rule not respected by the Ministry of Justice and the average time for making decisions on legal aid requests is 30-60 days.⁴⁶⁸ Because of the ineffective procedure when approving the free legal aid, DV survivors often receive free legal aid from the CSOs which provide a lawyer

⁴⁶⁵ Criminal Procedural Law (Art 217) Questions that are not allowed to be asked of the injured party or witness.

⁴⁶⁶ B. Nastovska, 2018, 12.

⁴⁶⁷ LLA, Official Gazette No. 161/09 and 185/11.

⁴⁶⁸ Press release to the media from the network of citizens' associations that provide legal assistance stating that the average time for granting free legal aid is 45 days.

Access to Justice in Macedonia, Press Release <http://pristapdopravda.mk/wp-content/uploads/2016/09/Soopstnie-za-mediumi-Finalno1.pdf> (accessed October 16, 2018)

free of charge in court proceedings for divorce, property division, custody of a child, child support or prepare requests for the imposition of temporary protection measures from DV.

2.5.4 Case studies

2.5.4.1 Investigation, prosecution and protective measures

According to the LPDV, reporting cases of DV is mandatory, and every citizen is obliged to report DV to a police station, social work center, association or national SOS line. Information about the survivor or perpetrator of violence, on the basis of which the survivor or members of her family can be identified, may not be publicly disclosed. Officials in the institutions that perform activities in the area of social protection, home affairs, health, child care and education, as well as the competent courts in DV proceeding, are obliged to act urgently, with due regard to the interests and needs of the survivor, and in particular when the survivor is a child, an older person, a person who is unable to take care of herself and a person with limited or deprived legal capacity.

The LPDV regulates the *protection measures* and the institutions responsible for offering protection to the victims and defines their responsibilities. The CSW will initiate the procedure immediately, and within 24 hours from the acquired knowledge, take measures for protection of the victim. The CSW, whenever aware that DV has been committed by a person who possesses firearms, are required to immediately inform the Ministry of Interior and within 24 hours submits a written notification.

LPDV regulates the *temporary protection measures (TPM)* and their proclamation. TPMs are proclaimed by a civil judge with a purpose to stop the violence immediately, eliminate the factors and the possibility for further vio-

lence towards the victim, alleviating the consequences arising from the violence (removing the perpetrator from the home, a prohibition to approach the home etc.). A proposal for pronouncing a TPM may be filed regardless of whether a criminal procedure is being conducted. TPM are imposed by the court, based on a previously submitted proposal for their pronouncement by: the Ministry of Internal Affairs; the Centre for Social Work; a parent or guardian (if the survivor is a minor), the survivor in person. When submitting a proposal for the measure, it is necessary for the person in question to provide the following evidence: the statement of the victim, the police report, appropriate medical documentation for the stated violation, the report from the CSW on the undertaken measures for protection, the statement of the witness before whom the threat was made or a proposal for hearing by providing attendance at the hearing, or if it is in written form or electronic form with delivery of the written, i.e. electronic proof, the statement from children if the violence is committed in their presence (to avoid bringing them to court). This is in accordance with the Law on civil procedure⁴⁶⁹ regulating the civil procedure for TPM. Nonetheless, this is not in accordance with the IC standards, according to which no evidence should be provided for protection measures to be issued. The law does not obligate the person in question to provide additional evidence such as sexual history of the victim.

Shortcomings regarding TPMs: The TPM are well defined within the LPDV. Data shows that women mostly seek the imposition of TPM due to combined physical and psychological violence.⁴⁷⁰ Nonetheless, in practice their implementation fails considerably. "The report of the National Network to end VAW and DV points out that violations of TPMs are not monitored carefully by the police and are often disobeyed by the perpetrator. The survivors are still withdrawing the requests for the TPM, which is a result of many factors, including lengthy proceedings in dealing with the perpetrator, lack

⁴⁶⁹ The Law on Civil Procedure, Official Gazette No. 79/2005 dated 21.09.2005.

⁴⁷⁰ Gelevska M., Mishev S. Findings from the conducted judicial monitoring of cases of violence against women. Association for Emancipation, Solidarity and Equality of Women - ESE, Skopje, 2017

of a gender sensitive approach to the victim by the judge and fear of retaliation by the perpetrator."⁴⁷¹

As already stated, there are a few shortcomings detected in this regard. The first one concerns the police. In the period from January 2015 to May 2016, 4858 reports of DV were reported in total to the police. From these, for only 86 cases the police initiated proposals to the competent court for pronouncing a TPM - removal of the perpetrator from the home and prohibition of getting closer to home, which accounts for only 1,77% of the cases.⁴⁷² This indicates a low level of awareness among police officers about the danger to the life and bodily integrity of the victims, and especially about the possibility of repeated violence, which most often happens.

The second shortcoming detected is related to the court proceedings and the hearing for TPM which is held in the presence of the DV survivor, the opponent (perpetrator of DV) and a representative from the CSW. Often the possibility for the survivor to encounter their perpetrator in the court room severely affects the survivors and is the reason they often to not persur legal proceedings again the perpetrators of DV. The Helsinki Committee in North Macedonia has had cases in which judges persuade survivors together with perpetrators to make peace and to revoke the filed claim.⁴⁷³ The hearings are held regardless of whether the perpetrator is present. When it comes to giving testimonies, survivors are facing re-traumatization throughout process due to the number of times they give statements. Monitoring of cases shows the survivors give statements to police, CSW officials, judges and even at times to public prosecutors. In this sense, the system causes re-traumatization for victims and fails to protect the survivor's well-being.

Another problem is that TPM's are often not proclaimed by the courts in a timely manner. From the monitoring of these cases which the CSO Helsinki Committee for human rights of North Macedonia has been conducting on cases of DV over the years, sometimes even accompanying the victim, in none of the cases has the court proclaimed the TPM within the 7 days prescribed by the law. The lack of coordination and communication between the competent institutions for protection of victims of DV has also been detected from CSOs, which certainly exacerbates this problem.⁴⁷⁴ There is also the problem of access to justice. Access to justice in the area of pronouncing measures for protection from DV is further complicated by the fact that survivors and institutions submitting proposals on behalf of the survivors are not exempt from paying the court fees, which are necessary to start the court proceedings.

The role of the Center for social work in acting upon cases: In 2014 a triple murder occurred in a small town of Kavadarci. A woman and both of her parents were shot dead by the husband of their other daughter.⁴⁷⁵ This case is mentioned as in this situation, the victim (the surviving wife) has asked multiple times for protection from the police and the CSW. They dismissed her claims as irrelevant and did not provided the needed protection. Moreover, the responsible employees that failed to identify the case as DV and help the survivor were only punished with a probationary period and were not suspended from their positions. This sends a message that not only perpetrators are tolerated, but also that institution's representatives which are directly responsible for the loss of lives are not held responsible and appropriately punished. Unfortunately, this is not an isolated case. Generally, CSW employees do not provide enough information to survivors

⁴⁷¹ B. Nastovska, 2018, p. 7.

⁴⁷² Calovska-Dimovska, N., Monitoring Report on the Implementation of the Law on Prevention, Combating and Protection from Domestic Violence. National Network to End Violence against Women and Domestic Violence- Voice against Violence, 2016, pg. 41

⁴⁷³ Monthly report on the human rights situation in the Republic of Macedonia, <http://mhc.org.mk/reports/745?locale=mk#.W-mse5NKjIU>, 2018, pg. 8

⁴⁷⁴ Monthly Report on Human Rights in the Republic of Macedonia JUNE-JULY 2018 http://mhc.org.mk/system/uploads/redactor_assets/documents/3165/_____-.pdf, 2018, pg. 6

⁴⁷⁵ "Determined the Identity of those killed in Kavadarci - details on the triple homicide", Press 24, (<https://www.press24.mk/utvrden-identiteot-na-ubienite-vo-kavadarci-detali-za-trojnoto-ubistvo>) (accessed October 6th, 2018).

about the requirements of the police or judicial authorities and the protection against DV available. Some of the survivors interviewed for one study responded that the employees were unkind to them, and all respondents answered that they have not received enough information about the protection mechanisms available. Some of the respondents felt discriminated against based on their status as the DV survivor.⁴⁷⁶ In another research,⁴⁷⁷ 70% of the interviewed VAW survivors in the territory of Skopje reported that the CSW insisted on them making peace with the perpetrator of violence, in one case the staff tried to justify the violence, while two of the victims were urged to withdraw the application.

Failure of the Police to register cases of DV and to protect victims: The police are often the first contact for the victims after they have been subject to violence. Regardless of the situation, the failure to recognise a case of DV and registering cases of violence as violation of the public order and peace by the police is detected as common practice.⁴⁷⁸ The police often fail to act promptly and protect victims, and this is the direct reason for the lack of statistics on gender-based violence. At times, police officers impose stereotypical and traditional views related to DV when they blame both the victim and the perpetrator. The police also often fail to perform a risk assessment when arriving at the scene. Even in cases where the police have properly registered the violence, often the risk assessment is not conducted,

nor the proposal for TPM issued. According to a study in this field⁴⁷⁹, interviewed women answered that in most cases the police did not inform them of the available services for victims of DV, of measures that the police can undertake against the perpetrator, as well as on the organizations or institutions that can provide assistance in cases of DV. In many cases the perpetrator has only been verbally warned, while only in few cases he has been detained in a police station. It is concerning that many survivors have reported that the police officers persuaded them to make peace with the perpetrator, and in several cases the survivor has been persuaded to withdraw charges.

In general, there is inadequate multi-sectoral action, information exchange and coordination among relevant institutions in DV cases.⁴⁸⁰ For instance, in spite of the foreseen responsibility for establishing multi-sectoral teams for protection, according to the LPPPDV⁴⁸¹, only a few Centers for social welfare (CSWs) have positive practice in establishing multi-sectoral teams, followed by a Security Plan for the survivors in cases when a victim's life is threatened. Moreover, in assessing the needs of the survivor carried out by the CSWs, securing the survivor's consent for taking protection measures was introduced, which presents an unnecessary administrative burden having in mind that these measures should be unconditional.

Due to these factors, survivors are reportedly not satisfied with the protection provided.⁴⁸² In cases where public officials fail to pre-

⁴⁷⁶ Calovska-Dimovska, N., *Monitoring Report on the Implementation of the Law on Prevention, Combating and Protection from Domestic Violence*. National Network to End Violence against Women and Domestic Violence- Voice against Violence, 2016, pg. 28

⁴⁷⁷ Final Report Informing and gathering data from users - victims of gender-based violence and Monitoring and recommendations for improving local policies to support and protect women - victims of gender-based violence, National Council of Gender Equality, 2015., pg. 7.

⁴⁷⁸ Helsinki Committee for Human Rights of the Republic of Macedonia, Monthly report on the human rights, September 2018, pg. 3

⁴⁷⁹ Final Report Informing and gathering data from users - victims of gender-based violence and Monitoring and recommendations for improving local policies to support and protect women - victims of gender-based violence, National Council of Gender Equality, 2015., pg. 5.

⁴⁸⁰ According to a statement of a woman who had a need for shelter, she had not been informed about the government shelters, nor had she been assisted with the continuation of her children's education once she had left the home with her children.

⁴⁸¹ Art. 23.

⁴⁸² Written submission for consideration by the Committee on Elimination of All Forms of Discrimination against Women, op.cit., 4.

vent, investigate or punish the violence perpetrated, survivors have the option to bring lawsuits against them and have the right to seek protection from the court. This is rarely the case in practice due to the distrust in the system which is not survivor-oriented, especially when the other side is the state. From conducted interviews with officials from the court and the CSWs, the lack of human resources in the institutions arises as part of the problem with the untimely acting and failures to properly investigate a case of violence and provide prompt protection. On the other hand, officials lack knowledge and experience to act in certain cases especially in the police, which is the main problem according to number of analyses, but also evident in the analyzed case.

2.5.4.2 First case

a) Fact of the case⁴⁸³

In a case of prolonged DV, a survivor faced the lack of proper protection due to the failure in following the systems set out and double victimization due to her interaction with the institutions that should be protecting her. The survivor is an Albanian woman, who has been exposed to DV from her husband for more than five years, and with whom she has two minor children. Apart from physical attacks, the survivor suffered psychological violence with threats to her life and control of her everyday movement. The violence was carried out in front of their children.

The survivor reported DV for the first time in 2013 in the nearest police station, after being beaten in the head, with visible injuries. Acting upon the report, the police imposed a misdemeanor fine to the perpetrator for violating public order and peace, without taking any further actions to protect the survivor. The second time she decided to report the violence was in 2017, when she was again physically attacked by her husband. Having in mind the

disappointing previous experience with the police, she decided to skip the police this time and report the case directly at the Macedonian Helsinki Committee (MHC), an CSO working with GBV survivors. After the case was reported in the MHC, the survivor was accompanied to report the case to the police and the CSW. She was not provided with any information, neither by the police nor the CSW, about the support available to her and her rights; the procedure she can initiate and the health protection, psychosocial support, counseling, legal aid and accommodation in a shelter that she should have access to.

The survivor was provided with free legal aid by the MHC and a request for a TPM was drafted and submitted to the court. The survivor was accompanied on the first and the consecutive court hearings by representative from the MHC. The court ultimately brought a positive decision on the TPM which forbids the perpetrator to threaten the survivor in any way, forbids him to go near her or near the place she works and lives at, and imposes counseling for DV perpetrators. The survivor eventually initiated a divorce procedure and got divorced, got employment and moved together with the children to her parents' house.

b) Case analysis

Identified shortcomings regarding the implementation of relevant law

In this case, the implementation of the relevant provisions of the LPDV was inadequate. The first problem in this sense is related to protection and support in terms of reporting by officials, despite their clear obligations set out in the law, and secondly, in terms of the further implementation of the protection procedure. The law clearly stipulates the measures for protection of victims and prevention of DV, according to which the victim has the right to help, support and protection from DV. The law also clearly states that reporting cases of DV is mandatory and envisages a fine in the amount

⁴⁸³ For the purpose of case analysis, several interviews had been conducted: Mensure Ljmani – a survivor; Olja Ristova – a judge at the Primary Court Skopje I – Skopje, Criminal court of the Republic of North Macedonia; Ina Djugumanova – the Helsinki Committee for Human Rights of the Republic of North Macedonia and Mirjana Mircevska Jovanovic – a journalist, Kanal 5 TV.

of 5,000 EUR for the responsible person and the manager of the institution tasked with activities in the field of social and child protection, employment, internal affairs, health and education, if they fail to do so. The practice shows that only in small number of cases do officials face any kind of repercussions in the case of a failure to act.

The first attempt by the survivor to report the suffered violence by her husband was followed by a lack of attention, understanding and action by the police officials. Although officials that perform activities in the area of domestic affairs are clearly obligated by the law to act urgently with due regard to the interests and needs of the survivor, the report was neglected as such by police officials and the survivor was left by herself. In particular, the police is obligated to always make an assessment of the risk to the life and physical integrity of the survivor and the risk of the repetition the violence in order to protect the survivor through appropriate risk management. As mentioned above, the police officer is also obliged to submit to the competent court within 12 hours a proposal for pronouncing a TPM. Nonetheless, in the report, the violence was treated as a violation of public order and peace and the perpetrator faced a misdemeanor fine. This is the first problem which survivors face when reporting VAW. The first contact with the institutions which are supposed to offer protection creates trust or distrust in those institutions depending on the experience. The practice, as well as case at hand, show that a large number of VAW cases are recorded as cases of violation of public order and peace, which further victimizes the survivor and sends a clear message of lack of understanding and will to provide protection on the part of responsible institutions. Consequently, the survivor is not provided with any information about the support she can get, about her rights and the procedure she can initiate.

In this case, the survivor mentioned on numerous occasions the prolonged and still existing fear for herself, but also for the closest members of her family, due to the lack of understanding, support and timely action from

the institutions. The survivor even stated that she noticed behavioral changes and disorders in her son, who was witnessing DV over the years. As the survivor stated during the interview, she felt unimportant, demotivated and de-stimulated, she was not thinking of divorce at that time and was only interested in her protection and detachment from the violent environment. While the survivor claimed at the beginning of the interview that she has been generally treated with respect by the police officers when reporting, while talking she realized that at first the police did not take her and her case seriously and suggested her to take her time and think about everything, because, as they alleged, according to their experience in similar cases, victims often report the slightest argument to attract attention and sometimes it turns out that they were not telling the truth.

The experience the survivor had in her case, with the reporting and the failure by the police to act and protect her, resulted in prolonged violence against her over the years. On the other hand, the second time she gathered the courage to report the violence, she decided to skip the police and went straight to the CSW precisely due to her previous experience. According to the law, the CSW has clear obligations to act urgently, with due regard to the interests and needs of the survivor, to initiate the protection procedure immediately, to initiate the procedure for protective measures at the latest within 24 hours from the acquired knowledge of a case of DV, in order to take measures for protection of the survivor such as providing shelter, appropriate medical treatment etc. Unfortunately, none of these obligations were fulfilled. Furthermore, after contacting the CSW the survivor was informed that the CSW cannot provide any support until she reports the case at the police, without giving her any further information on the procedure. She was also asked by a CSW officer if she has already started a procedure for divorce and she was advised to do that first. With this kind of action, the CSW not only failed to fulfill its obligation under the law to act immediately, but also showed an extremely insensitive approach to the issue and to the seriousness of the DV, the

importance of protection of and support for the victim. While the institutions are supposed to work together in a system of good cooperation in order to avoid further suffering of VAW survivors, the practice and this case in particular shows the real picture of the ineffective system for protection in the country.

Since the survivor was advised to first report the case at the police and start a divorce procedure and she was not offered with any kind of protection and information, she decided to ask for protection in an CSO which she heard offered help to survivors of DV. After the CSO got involved in the case things seem to have started turning around for the survivor and officials seem to have become more involved and more dedicated to provide protection. The survivor was provided with free legal aid and a request for TPM was ultimately drafted and submitted through the CSW to the court. As mentioned above, according to the law, TPMs are issued by a civil judge with a purpose to stop the violence immediately, eliminate the factors and the possibility for further violence towards the victim, and to alleviate the consequences arising from the act of DV. Although the law sets clear procedure and deadlines, none of these provisions were followed in the particular case.

The survivor was accompanied on the first and the consecutive court hearings by representative from the CSO. Speaking about the court process, what seems to be notable is the attitude of the judge who suggested reconciliation before the beginning of the first hearing and further advised the survivor and the perpetrator to find solution to their "problem" since they were young and have children together. The survivor was asked numerous times whether she was going further with the case or changed her mind since she and the perpetrator were married with children. Given that the defendant had declared that he wants to settle and wants to return home with the children, the survivor was asked several times whether she agreed to return home. On this matter, the survivor stated she believed she would not have been able to understand the whole process without the accompanying representative

from the CSO, due to the confusing details and lack of understanding by the judge of the concrete situation and general unfamiliarity with the process on the part of the survivor.

According to the conducted interview with a judge, problems are more detected in practice and implementation and not the legislation. On the one hand, judges are not trained enough, but on the other hand the main actors in these cases are not sufficiently trained and familiarized on the topic of DV. As already pointed out, the police often fail to recognize VAW. There is a great need for training on different levels and in all institutions involved in the system for protection in any way. While the lack of knowledge and sensitization are the root of the problem in terms of court proceedings, the lack of a good system of cooperation and coordination between institutions also needs to be addressed. Often the CSW or the Ministry of Internal Affairs fail to act promptly to court requests asking for information or reports or even fail to attend court hearings, which further prorogates the procedure and the effective protection of the survivor.

It needs to be emphasized that in this particular case the survivor was provided with protection only after an CSO got involved and the survivor received advice and support by an experienced CSO professional. Thus, the question inevitably arises regarding how other cases are dealt with in practice and how the anomalies of the protection system are to be addressed. Also, case at hand highlights the reality where CSOs provide for majority of specialized support services as well as the coordinating role in order to fill the many gaps in the institutional response to VAW.

In conclusion, due to the non-implementation of the relevant provisions of the LPDV firstly in terms of protection and support in the reporting by officials, and secondly, in terms of further implementation of the protection procedure, the survivor was exposed to prolonged violence and suffered additional consequences. Although the existing legislation provides a clear procedure for protection in cases as this one, none of the mechanisms for protection

were used by the institutions. The survivor is still facing existential fear for herself, but also for her children and closest members of her family, connecting it with the lack of timely reaction from the institutions. She faced unprofessional and judgmental treatment and lack of proactivity by every actor in her case, except for the CSO. As the survivor stated, everything would have been easier for everyone if we only had a well-functioning system that protects survivors of any kind of violence as promptly and as effectively as it is supposed to.

2.5.4.3 Second case

a) Facts of the case⁴⁸⁴

In a case of prolonged violence by her partner, a survivor faced a lack of attention and action by institutions and was additionally exposed to attacks which had and still have consequences. The survivor is a young woman, age 25, Macedonian, who has been exposed to prolonged violence from her ex-boyfriend. She had been in the relationship for 5 months, 2 years ago, when the violence started and extended even after the relationship ended. Since the end of the relationship, the violence continued to the day of the writing of this report. The survivor suffered physical attacks, as well as psychological violence with threats to her life and control of her everyday movement. The case was reported to the police and CSW numerous times, and a motion for interim protection measures of DV was filed to the Civil Court of Skopje. The survivor reported the threats and attacks to the police over 20 times during these two years, but the police only recorded the reports as complaints and did not prosecute *ex officio*. She also reported the case to the CSW, but the Center did not take any action and failed to initiate a procedure for the protection from DV, despite the obligations set in the law. The survivor faced unprofessional treatment from both institutions suggesting that she is young and has to try not to fight with her partner in the future and everything will be all right for her.

Since none of the institutions took any effort and action to protect the survivor, she decided to report the case to an CSO – The Helsinki Committee for Human Rights. When she reported the case to the CSO, she was immediately accompanied to the police station to file a report on recent threats and check if there are any previous records on the reported attacks. This time the case was prosecuted *ex officio* and the police notified the Public Prosecution about the case. The survivor gave her statement before the public prosecution and the case is still in the procedure. Simultaneously with the help of the CSO the survivor initiated a procedure for issuance of TPM before the Civil Court. Despite the fact that, according to the LPDV, the Court is obligated to decide on the TPM within seven days from the day of the submission of the proposal for measures, six months later the Court has still not reached a decision on the measures. As a result of the lack of protection from institutions, as well as the ineffective prosecution of the case, in the meantime survivor was exposed to another attack which resulted in bodily injury.

Very recently, the court adopted a decision approving the proposal for pronouncing a TPM against DV and imposed the following temporary protection measures on the perpetrator of DV:

- banning the opponent from threatening the victim that he will commit domestic violence;
- prohibition to harass, disturb, telephone, contact or otherwise communicate with her, her family member, directly or indirectly;
- prohibition to approach the victim to a distance of less than 100 meters from the current residence of the victim and a certain place regularly visited by another member of the family.

The legal proceedings regarding this case are still ongoing.

⁴⁸⁴ For the purpose of case analysis, several interviews had been conducted: Rebeka Muzhdeka – a survivor; Natasa Petkovska – the Helsinki Committee for Human Rights of the Republic of Macedonia and Sanela Shkrijelj – the Ministry for labor and social policy.

b) Case analysis

Identified shortcomings regarding the implementation of relevant law

In this case, the survivor witnessed obstacles in the implementation of the provisions set out in the LPDV by different institutions. The law clearly defines the obligations of the police when a report of DV is filed. The police have the obligation to record the case and take further actions to protect the survivor. In this case, the survivor asked for any kind of protection from the violence and further threats by her ex-partner to be taken by the police. Survivor faced kind and understanding police officers who suggested to her to be more careful and told her they will invite her former partner for a conversation in the police station and that everything will be fine in the future. As she latter understood, the perpetrator was indeed called to the police station, but unfortunately this did not have any effect on his behavior. The survivor once again suffered an attack by her former partner, followed by threats through phone calls and massages. She once again reported these events to the police and was told that the report will be recorded as a complaint and that is all. According to the law, the police are obligated to always perform a risk assessment to the life and physical integrity of the survivor and the risk of the repetition of violence. Based on the interview with the survivor, it is evident that she clearly thought the police was on her side due to the good treatment and the words used by the police officers. Nonetheless, what is also evident is that this was their way to "console her" while not taking any serious action to protect her and provide further assistance, to prevent further attacks and threats and to approach the problem as they are supposed to. As she indicated, she later realized that the police and their failure to act were the reasons she remained exposed to the violence and faced the consequences in her life, which are still present.

After the numerous attacks and threats and the experience with the police, the survivor then decided to report the case at the CSW. The officer working there suggested to her to report to the police first. After a the survivor

informed the CSW officer that she has already tried that and the police failed to protect her, the officer ultimately answered he could not help her. The survivor was not provided with any information about her rights and the procedure she can initiate, or any information about the support she can get. In addition, in this case both the CSW and the Police failed to initiate issuing a TPM *ex officio* and it was submitted by the CSO. Moreover, since the police failed to record the previous attacks, there had been a lack of complete history of the attacks, which would additionally have proven the prolonged violence and given enough procedural weight to the case as is needed in the criminal procedure.

After the experience with the police and the CSW, the survivor then decided to report the case to an CSO and try to get the help from there. The CSO provided all the necessary information and explained to survivor the whole procedure and the options for TPM, as well as for criminal charges. Survivor had been immediately accompanied to the police station to file a report on recent threats. Only then was the report taken seriously. In this procedure the survivor gave her statement before the public prosecution and the case is still ongoing. It remains to be seen how the case will be processed. What invites caution is the negative experience which suggests that the police and public prosecution often rely solely on the survivor's statement and do not collect additional evidence in order to initiate a procedure. This is easy if guilt is recognized by the perpetrator, but if this is not the case, problems occur and the violence is harder to prove.

After the police, the survivor had been accompanied to the CSW to report the case and ask for protective measures. After the visit to the CSW, she was contacted by the same official from the Center offering her any kind of further assistance in the case which she refused. As she stated, she rejected the help due to the lost confidence in the Center, whose officer had ignored the legal obligation to take measures for the protection of the the survivor. Moreover, the survivor received no interest from the CSW to provide any kind of protection.

Once again, as in many other cases, after the CSO got involved in the case things started to function and institutions started to demonstrate the proactivity and will to provide support and protection. The survivor had been provided with free legal aid, she had been accompanied to the CSW and a request for TPM was drafted and submitted through the CSW to the court.

As already mentioned, the whole procedure so far lasted seven months, which is far from the deadlines set in the LPDV. At the first hearing, the survivor has once again faced a professional who lacks the understanding and will to solve the case as soon as possible and within the deadline for a TPM. The judge even pointed out to the survivor the possibility of giving up during the process, as many others have in similar cases. The survivor had difficulties staying strong during the court proceedings as she pointed out, but the failure of the system so far made her fight even stronger. Survivor pointed out she believes she would not have been able to understand the whole process without the help from the CSO.

Since the imposed TPM took effect the survivor stated she felt safer, but still has fears since she thinks nothing can stop the violence. Survivor stated that she feels that had the institutions acted promptly, the perpetrator would not have had such courage to proceed with the threats and the attacks. The institutions, according to her, had sent a clear message that not all forms of violence are equally important to them and perpetrators essentially get a free pass, while survivors remain in fear for their safety and the safety of their families. This statement was confirmed with recent developments in the case. The last events connected to this case occurred in January 2018 when the perpetrator tried to attack the survivor once again. She called the police who witnessed an attempted attack by the perpetrator. Moreover, after trying to defend the survivor, the police officer was also attacked. The perpetrator had been detained right away by the police and he is facing additional charges now. This means that even after the court imposed TPM, the perpetrator continued with the violence and was only arrested after he assaulted a police officer.

This case shows the consequences that can occur if the law is not applied appropriately in practice, and clearly emphasizes the need for a change in the practice of the institutions. A significant number of survivors decide not to report cases of violence due to the distrust in the institutions, especially the police and the CSW, and cases like this one clearly contribute to such an attitude on the part of the victims. Even when victims do report violence, their cases are often evaluated as less serious and are devalued by the officials, so that they are discouraged to proceed. Not even the continued violence in this case for over two years seemed to be serious enough for the responsible institutions to react. Like in the previous case, the survivor was provided with protection only after the involvement by an CSO.

In conclusion, the survivor in this case witnessed the failure by the police, the CSW and the judge in the civil procedure to act in accordance with the relevant law. The survivor obviously still faces difficulties, including fear for her freedom of movement and safety, and has almost irreparable distrust in the system for the protection against violence.

2.5.5 Conclusions and recommendations

2.5.5.1 Conclusions

North Macedonia ratified the IC relatively recently, in March 2018 and this instrument entered into force in July 2018. Save for recently adopting the NAP for the Implementation of the Istanbul Convention, no other significant changes in legislation aimed at the harmonization of domestic laws and regulations with the standards of the Convention have been undertaken since the ratification. The NAP envisages that the necessary financial resources will be obtained from foreign donors, the responsible ministry and local self-governments, but the document does not include a specific assessment on how much any of the planned measures will cost.

Sexual violence is still not fully covered by the national legislation and it is left to the professionals to freely interpret what constitutes sexual violence, which leaves a legal vacuum in the system and allows prejudice to dominate during criminal proceedings. By adopting a separate Law on prevention, prohibition and protection against domestic violence in 2014, North Macedonia introduced several positive changes in this field. Nonetheless, this law only regulates domestic violence, and while doing that still fails to define domestic violence as gender-based violence. Proper implementation of relevant laws proves to be one of the biggest challenges in combating VAW, even four years after the adoption of the Law.

In 2015 several standard operating procedures/ protocols were introduced for Centres of Social Work (CSW), the police and health professionals as responsible institutions and professionals. Those protocols do reflect the survivor's needs, but they lack full protection. For instance, the law still lacks the definition of VAW and professionals need more gender-sensitive trainings. One of the most serious problems is the fact that TPMs are often not proposed in high-risk cases. When the CSW or the survivor (ex parte) propose issuing such measure, judges usually take more than seven days as prescribed by the Law for making a decision on such a proposal. In addition, violations of TPMs are not monitored carefully by the police and TPMs are often disobeyed by the perpetrator. This all leads to survivors frequently withdrawing the requests for the TPM, as a result of many factors, including lengthy proceedings in dealing with the perpetrator, and fear of retaliation by the perpetrator.

Certain data on VAW is being collected, but in an incomplete and inconsistent manner. There are no appropriate mechanisms established for systemic monitoring and analysis of the situation and trends of DV incidence by the Ministry of Interior, including records on repeated DV reports and on withdrawn and re-submitted petitions for criminal prosecution by victims regarding the criminal act of bodily injury against the same perpetrator.

In general, the multi-sectoral action in this field is inadequate. Information exchange and coordination among the relevant institutions in DV cases, especially in urgent cases and in the context of implementation of TPMs, does not function well. For instance, regardless of clear legal provisions, only a few CSWs have positive practice in establishing multi-sectoral teams. Moreover, in assessing the needs of the victim carried out by the CSWs, securing the victim's consent for taking protection measures was introduced, which presents an unnecessary administrative burden having in mind that these measures should be unconditional.

When it comes to ensuring the legal protection of survivors, one of the main challenges are the difficulties related to the provision of free legal aid. The victims are obliged to submit a confirmation that they have been reported and identified as victims of DV, which is often disturbing for the victims and discourages them from seeking support. Exercising the right to free legal aid is also limited due to the long deadline for deciding on the submitted request. Because of the complex and ineffective procedures for access to state-funded free legal aid, women victims of DV often receive legal support from the CSOs, which provide a lawyer free of charge in court proceedings pertaining to divorce, property division, custody of a child, child support or preparing a requests for the imposition of temporary protection measures. On the other hand, the state does not ensure sufficient and sustainable financial resources for women's CSOs and there is no defined percentage of funding allocated for those organisations in the national budget. The women's CSO's so far receive the necessary funds mostly from international donors, while financing from the state remains almost negligible.

Problems identified in practice illustrate the lack of training for the judges, public prosecutors and lawyers on special protection measures, as well as on avoiding re-victimisation of women during trials. In addition, adequate, continuous, intensive and compulsory training on processing of sexual crimes in criminal proceedings are still lacking for criminal judges, public prosecutors and the police, as are the specialized train-

ings for civil judges and the police on processing VAW cases in civil proceedings.

2.5.5.2 Recommendations

Common recommendations for all institutions in the protection system (judiciary, law enforcement agencies, centres for social work, health institutions)

- Introduce compulsory training focused on sensitization in order to prevent influence of prejudices and stereotypes on decision making and approach of professionals to VAW survivors

Legislator and Government

- Harmonize the definition of rape with the provisions of the Istanbul Convention, by:
 - removing any conditions of use of force or threat of immediate attack on survivors and by
 - including the condition of lack of explicit consent to sexual act by survivor;
- Adopt Law on gender-based violence, emphasising domestic violence as a form of gender-based violence;
- Amend the Law on Prevention, Prohibition and Protection from Domestic Violence with regards to defining the notion of “violence against women”;
- Amend the Law on free legal aid so that the economic status of the VAW survivor be irrelevant when it comes to receiving free legal aid;
- Amend the Criminal Code by including a definition of gender-based violence and incrimination of all forms of gender-based violence;
- Amend the Law on litigation procedure and Law on criminal procedure in accordance with the requirements of the Istanbul Convention;
- Adopt new five year period National Strategy for Prevention, Prohibition and Protection from Domestic Violence;
- Develop an integrated database for gender-based and domestic violence cases;

- Establish efficient multisectoral cooperation framework among all governmental agencies (police, centers for social work, courts, prosecutor’s office) and women’s CSO’s;
- Ensure safe houses for domestic and gender-based violence survivors in accordance with the set international standards;
- Establish rape crisis centres and ensure their availability throughout the country;
- Introduce the institute of “confident or person of trust” who will provide survivors of gender-based violence with information about the support they can get, about their rights and the procedures;
- Establish inspectorates for supervision and disciplinary sanctioning of professionals accountable for omissions in managing VAW cases, and inform VAW survivors on its existence;
- Involve governmental structures in the work of the GREVIO Committee and monitoring proces

Judiciary (e.g. courts and prosecution)

- Prioritize addressing gender-based violence cases and comply with deadlines for Interim protective measures;
- Ensure that protection measures are issued in accordance with the estimated risk for survivor;
- Avoid hearings of survivor and perpetrator during the same court hearing to prevent victimization and re-traumatization

Law enforcement agencies (e.g. police)

- Consistently prepare police report immediately, in accordance with the law;
- Initiate interim protective measures *ex officio* every time there is an estimated risk for the survivor

Centres for social work

- Enhance human, technical and infrastructure capacities of centers for social work;
- Ensure employment and engagement of specialised and qualified social workers and psychologists

2.6 SERBIA

Abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPC	Criminal Procedure Code
CSO	Civil Society Organisation
DV	Domestic violence
FL	Family Law
GAP	Gender Action Plan
GBV	Gender-based violence
GEL	Gender Equality Law
GREVIO	Group of Experts on Action against Violence against Women and DV
IC	The Council of Europe Convention on preventing and combating violence against women and DV (Istanbul convention)
IPSP	The Individual Protection and Security Plan
LGE	Law on Gender Equality
LPDV	Law on Protection against Domestic Violence
VAW	Violence against Women

2.6.1 Introduction

A land-locked central Balkans country with population of over 7.5 million with diverse ethnic composition, Serbia is a member of the Council of Europe (CoE) and a candidate for EU accession. Serbia has ratified CEDAW and its Optional protocol as well as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention). On 21 November 2013, Serbia became the eighth member state of the Council of Europe to ratify the IC. The first official state report about the implementation of the IC was submitted to the GREVIO Expert Group in July 2018, followed by an alternative report by the group of CSOs, entitled “Improved Legislation, Failed Protection” in October 2018.

In line with national and international commitments, Serbia has undertaken certain measures in the area of gender equality, such as the electoral quota, protocols for combating VAW, targeted support to women’s entrepreneurship and initiating gender-responsive budgeting. Women’s CSOs and gender advocates have played a critical role in making these achievements possible. However, despite laws and policies promoting gender equality, women are under-represented in decision-making in all spheres of Serbia’s social, economic and political life. As a result, political discourse and budgetary allocations do not focus on or adequately finance gender equality measures. Studies have found that one in two women in Serbia has experienced domestic violence,

and that women and Roma are the groups that are considered most subject to discrimination.

Gender equality in Serbia has not yet been reached and women continue to face a number of problems in attempting to exercise their guaranteed rights. Existing efforts on gender equality and more specifically prevention and combating VAW need to be advanced, expanded and become a regular part of government institutions' work and financing. Challenging stereotypes about the roles and contributions of women and girls requires a long-term commitment at all levels. The position of marginalized women, who are discriminated on the basis of gender and other factors such as ethnicity and age, demand significantly more efforts.

2.6.2 Legal and policy framework

2.6.2.1 Legal framework

The equality between women and men is a fundamental constitutional principle and the Constitution stipulates that the state has the obligation to implement the equal opportunity policy, with the aim to effectively enforce the guaranteed principle of gender equality.⁴⁸⁵

Relevant laws do not include a definition of "violence against women" and "gender-based violence against women", and they generally use gender neutral definitions. DV, as a form of VAW, is the most regulated and recognized. Other forms of VAW are criminalized, such as female genital mutilation, forced marriage, rape and sexual harassment. Despite the lack of legal recognition of gendered nature of VAW Serbia reported to GREVIO that the definitions of VAW and DV, in new laws and strategic documents adopted after the ratification of the IC,

are in line with the Convention. Although some legal documents contain a definition of VAW, those adopted after the ratification of the IC have not been changed in this sense. Definitions of DV, and especially the list of protected persons, are mutually inconsistent in different laws and therefore also inconsistent with the definition contained in IC. The term "victim" is not used in most of the laws in the Republic of Serbia.⁴⁸⁶

*The Law on Gender Equality*⁴⁸⁷ defines GBV as behaviour that endangers bodily integrity, mental health or tranquillity, or inflicts material damage on the person, as well as a serious threat of such behaviour, which prevents or limits a person to enjoy rights and freedoms on the principle of gender equality. The New LGE was drafted, and several versions were presented, but it is not in parliamentary procedure yet. The Draft LGE (2018) contains the definition of "gender-based violence" whose content is partly harmonized with the IC. Following a public debate and under strong pressure of conservative individuals, groups and associations, including extremely right-wing political parties, as well as the private sector (with foreign capital), who during the public debate on the Draft Law required that it contained exclusively "gender neutral terms", the definition of "violence against women" was omitted, and the term "violence based on sex" was introduced, which is similar in content to the definition of "gender-based violence", but is gender neutral.⁴⁸⁸

The Law on the Prevention of Domestic Violence from 2017⁴⁸⁹ defines DV as an act of physical, sexual, psychological or economic violence of the perpetrator against a person with whom the perpetrator is either presently or has previously been in a matrimonial relationship or common-law marriage or partnership relation, or with a person he/she is blood-related to in

⁴⁸⁵ Article 15 of the Constitution of the Republic of Serbia.

⁴⁸⁶ Autonomous Women's Center Belgrade, Improved Legislation Failed Protection, Independent report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter: Alternative Report on the Istanbul Convention 2018), Belgrade 2018, p.4.

⁴⁸⁷ The Law on Gender Equality, Official Gazette of the Republic of Serbia, No. 104/2009.

⁴⁸⁸ Alternative Report on Istanbul Convention 2018, 5.

⁴⁸⁹ The Law on the Prevention of Domestic Violence, Official Gazette of the Republic of Serbia, No. 94/2016

the direct line, or side line up to the second degree or with whom he/she is in an in-law relation up to the second degree or to whom he/she is an adoptive parent, adopted child, foster parent or foster child or with another person with whom he/she is living or has lived in a common household. The Law stipulates that the mechanisms for prevention of DV apply to other criminal offences, explicitly listed in the Law. The general goal of the Law is to improve cooperation of state authorities and to enable effective prevention. Having that in mind, all authorities (state bodies, organizations and institutions) have an obligation to report any case of DV, and even threats of DV. The Law introduces an emergency protective order which can be issued by the police officer after risk assessment for 48 hours, which can be extended to additional 30 days by a court, based on the prosecutor's act. This measure, together with civil and criminal proceedings and measures, provide a good legal basis for protection from DV. This Law has a harmonized definition of DV in accordance with the IC, but does not contain the definitions of VAW and GBV against women.

The definition of DV⁴⁹⁰ from the *Family Law*⁴⁹¹ is mainly aligned with the definition from the IC. However, unlike the definition contained in the IC which explicitly includes different acts of physical, sexual, psychological or economic violence, the Serbian family law understands DV mainly as endangering behaviour without including the definitions of specific forms of violence, thus not covering explicitly, for example, economic violence. The definition of DV contained in this law is not overall satisfactory, because it is defined through endangering behaviour and not through types of specific forms of violence (physical, sexual, psychological and economic violence).

*The Criminal Code*⁴⁹² from 2002 was the first legal document in which DV was criminalized, hence finally acknowledged as a public issue, meaning that state has to protect victims/survivors and prosecute perpetrators. The CC was changed in 2016⁴⁹³ in accordance with the obligations set forth by the IC, and certain acts of GBV were criminalized: stalking, forced marriage, female genital mutilation and sexual harassment. Unfortunately, criminalization was done in a gender-neutral way. The legal definitions of these acts are aligned with the IC, while the definition of rape was not changed and still includes problematic conditions of use of force or threat.

According to the *Law on Prohibition of Discrimination* and the *Law on Gender Equality*, victims of any form of discrimination regulated by these laws, including harassment, degrading treatment and other forms of discrimination, may initiate a lawsuit against the perpetrator. In cases of gender-based sexual harassment and degrading treatment, the victim can file a complaint against the perpetrator to the Commissioner for Protection of Equality which is a specialized independent body examining the presence of discrimination and issuing recommendations and measures to remedy the violation of rights.

Different definitions of family members as well as the different usage and lack of definition of the notion victim/survivors⁴⁹⁴ affect the uniform application of the laws and create insecurity. Regardless, a legal basis gives a solid ground for protection and support. Interpretation of the law in accordance with the values recognized by the ratification of international documents and its implementation is crucial. For example, a lack of understanding of the

⁴⁹⁰ Article 197 par. 1 Domestic violence is the behaviour through which one family member is endangering the physical integrity, mental health or the tranquillity of another member of the family.

⁴⁹¹ The Family Law, Official Gazette of the Republic of Serbia, No. 18/2005, 72/2011 - other law and 6/2015

⁴⁹² The Criminal Code, Official Gazette of the Republic of Serbia, No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 i 94/2016

⁴⁹³ The Law on the Amendments on the Criminal Code, Official Gazette of the Republic of Serbia, No. 94/2016-7

⁴⁹⁴ Numerous regulations and documents use terms such as "victim", "victim of domestic violence" or "women victims of violence", but do not contain the definition of the victim. The term victim is not used in the Criminal Code, the Criminal Procedure Code, and the Family Law. Although the Law on the Prevention of Domestic Violence uses the term victim, the Draft Law on Gender Equality proposes the use of the term "the person who suffers violence". Alternative Report on Istanbul Convention 2018, 5.

phenomenon of DV, its dynamics, and security risks, stereotypes and prejudices is shown in the application of the institute of delayed prosecution, envisaged in the CPC.⁴⁹⁵ Additionally, although "in line with the Constitution of Serbia", a direct implementation of ratified international treaties is possible, but there is no example that this is really happening in the judiciary or institutional practice in Serbia.⁴⁹⁶

2.6.2.2 National policy

a) Relevant strategies

Serbia has, so far, adopted key strategic documents in this area containing measures to prevent and combat VAW, however, they are not effective, comprehensive and coordinated, lack broader VAW perspective as well as systemic monitoring and reporting on the implementation of measures.

The National Strategy for Gender Equality 2016-2020 and Action plan for the period 2016-2018 use the term GBV and VAW. Concrete and precise definition of VAW is not provided, although it is termed as a violation of human rights and a form of discrimination against women.⁴⁹⁷ The Strategy does not include all forms of VAW under the IC. During 2018, the Coordination Body for Gender Equality has conducted the evaluation of the implementation of the National Action Plan, but there is no available data. There are no reports on the implementation of the planned activities, some of which (e.g. establishing a data collection system, or financing the telephone helplines), although planned for realization in 2016 have not yet been realized.⁴⁹⁸

The National Strategy for Prevention and Elimination of Violence against Women in the Family and in Intimate Partner Relationship has expired (period 2011-2015) and the new strategy has not been adopted yet. The evaluation of this Strategy has never been done. No mon-

itoring process has been set up for the National Strategy for Improving the Position of Women and Promoting Gender Equality in the Republic of Serbia 2010-2015, there have been no comprehensive reports on its implementation, which makes it difficult or impossible to reconstruct whether and what activities have been carried out. External evaluation reports that the responsible bodies failed to recognize their own mandate and responsibility, and that there was no clear and systemic trace of the financial resources invested in the implementation of the Strategy.⁴⁹⁹

The General Protocol for Action and Cooperation of Institutions, Bodies and Organizations in Situations of Domestic and Intimate Partner Violence against Women in cases of domestic and intimate partner VAW constitutes a tool for a systemic, interdisciplinary, professional and comprehensive approach to domestic and intimate partner violence against women and sets the foundation for efficient multi-sectoral support and protection system. *Special Sectoral Protocols* gave specific instructions and guidelines for caseworkers and recognize different forms of violence, women and children as the most vulnerable group (but there is no special attention to marginalized groups of women) and provided specific instructions for professionals. The Protocols were adopted before the LPDV, but they are still in force and therefore it is important to ensure their application.

b) Data collection and monitoring

So far, a complete and uniform database has still not been established, and the methodology of data collection has not been harmonised, which means that data is non-compatible and non-comparable. Due to this systemic problem, there are difficulties in monitoring cases of VAW thus making it difficult to process cases and provide assistance and support to survivors. An SA survey based on methodology de-

⁴⁹⁵ The Criminal Procedure Code, Official Gazette, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014.

⁴⁹⁶ Alternative Report on Istanbul Convention 2018, 4.

⁴⁹⁷ Similarly: Autonomous Women/s Center, *Analiza usklađenosti zakonodavnog i strateškog okvira Republike Srbije sa standardima Konvencije Saveta Evrope o sprečavanju i borbi protiv nasilja nad ženama i nasilja u porodici*, 2015, p.4.

⁴⁹⁸ Alternative Report on Istanbul Convention 2018, 4.

⁴⁹⁹ Alternative Report on Istanbul Convention 2018, 7.

veloped by the EU Fundamental rights agency (FRA) was conducted and results are pending. The most important research in this field is still conducted by women CSOs through funds from foreign donations.

Both, Strategy for Gender Equality and National Strategy for Prevention and Elimination of Violence against Women in the Family and in Intimate Partner Relationship foresee the establishment of a uniform and standardised system for collection, recording and exchange of data on all forms of VAW, but this has not been realized.⁵⁰⁰ In 2016, the Republic Institute for Social Protection introduced the obligation to record, document and monitor domestic and intimate-partner violence cases in order to make the monitoring and reporting of the cases in welfare centres more efficient and effective. Statistics are not available at the web site of the Republic Institute for Social Protection⁵⁰¹, however, the Provincial Institute for Social Protection published the Integrated Report of the Work of Welfare Centres in 2017.⁵⁰²

c) Training of professionals

The training of professionals is continually being realized, without concrete possibility to assess the number, content, quality and impact of the trainings, as relevant data are not publicly available. "Serbia has introduced the system of accreditation of professional training in three areas - social protection, health care and education system, implying the prescribed procedure of quality, realization and reporting

verification. However, the data are not unified and easily accessible, they are rarely analysed, and there are no publicly available reports on the number of training courses and participants, as well as on the impact of training in practice."⁵⁰³ The LPDV has introduced the mandatory specialized training of competent police officers, public prosecutors and judges who apply this law, but not of other professionals (social and health care system, as well as education system).⁵⁰⁴ Generally, all institutions in the protection chain lack sufficient human resources coupled with the lack of knowledge, skills and sensibility, thus influencing the manner in which VAW cases are being handled.

d) Survivor-oriented approach

LPDV regulates the protection and support to survivors of DV through the right to information⁵⁰⁵, the right to free legal aid⁵⁰⁶, and Individual plan of protection and support to victim (IPSP)⁵⁰⁷.

Regarding the right to information, "the field practice shows that incomprehension of the complex legal system is among the greatest challenges for women survivors of intimate partner violence. They lack the information about each institution's mandate and obligations and find it hard to follow which law regulates different situations. The various institutional procedures have not been harmonized so it is unclear, even to the public servants working in the multi-agency context, what the exact rules and procedures are, especially re-

⁵⁰⁰ Alternative Report on Istanbul Convention 2018, 17.

⁵⁰¹ Since 2015, the content of the publicly available reporting has been significantly reduced (upon request, data tables can be obtained, for now without any financial compensation). The data are not classified according to all variables (the type of relationship between the perpetrator and the victim is shown unclassified related to the gender of the perpetrator and the victim, which prevents the conclusion on the gender nature of domestic violence). Alternative Report on the Istanbul Convention 2018, 17.

⁵⁰² The Provincial Institute for Social Protection, Integrate Report of the Work of Welfare Centres in 2017 available at <http://www.pzs.gov.rs/wp-content/uploads/2018/10/ОБЈЕДИЊЕНИ-ИЗВЕШТАЈ-О-РАДУ-ЦСР-У-АПВ-ЗА-2017.pdf>

⁵⁰³ Alternative Report on Istanbul Convention 2018, 24.

⁵⁰⁴ Ibid. During 2017, approximately 900 police officers (at three-day seminars) and about 400 prosecutors and judges (at two-day seminars) were trained for the implementation of this law. Every police station is required to have police officers who obtain specialized training and they are assigned to the implementation of the LPDV. A competent police officer can be an officer who obtains a five-day training organized by the Academy of Criminalistics and Police Studies.

⁵⁰⁵ LPDV, Article 29.

⁵⁰⁶ LPDV, Article 30.

⁵⁰⁷ LPDV, Article 31.

garding the other institutions' jurisdictions."⁵⁰⁸

There are also a couple of problems regarding the IPSP. First and foremost, there is no data on the content and quality of the plans and the effects of their implementation.⁵⁰⁹ These plans should prevent repeated violence and it should contain further psycho-social or other support to empower the survivor, as well as progress monitoring and evaluation plan. The IPSP must stipulate the responsible entities to provide the support measures, the implementation deadlines, as well as the implemented measures for monitoring and effectiveness assessment. All criminal cases must be followed by the IPSP. However, the LPDV monitoring reports show that IPSPs are done in every second case, while the women participated in the IPSP creation in only 1% of cases.⁵¹⁰ "Survivors' safety does not seem to be a top priority to institutions. In most cases, women first separately give statements to the police or CSW while during the further proceeding they testify in front of the perpetrator."⁵¹¹ Solutions enacted by policy and decision makers, during the continuous period, did not give the intended results. The Ombudsman's reports⁵¹² reveal systemic inaction and severe professional misconducts regarding DV prevention and survivor's protection. Consequently, a series of femicides across the country continues. Based on media reports analysed by the Women Against Violence Network, it has been established that at least 225 women have been killed in the territory of the Republic of Serbia by a partner or family member in the past 7 years.⁵¹³ Although the number of femicides varies from year to

year, on average every year in Serbia, partners and family members kill at least 33 women, which means that every 11 days, one woman is killed.⁵¹⁴

2.6.3 Institutional framework

2.6.3.1 Coordinating body

None of the formed bodies monitor all forms of VAW encompassed by the IC and although there is a requirement for regular reporting by the Government, reports on the activities of the bodies and effects in the areas of monitoring are not publicly available.

The national coordination mechanism is the Coordination Body for Gender Equality of the Government Republic of Serbia, established in 2014. This body was entrusted with the activities of coordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by the IC at the national level. Although a website of this body was established, a large number of documents are missing, including reports on the work of the body itself (which should be submitted to the Government every three months).⁵¹⁵ There are no annual reports on the implementation of the AP National Strategy on Gender Equality for the period 2016-2018.⁵¹⁶ After adopting the LPDV, the Government established the Council for the Prevention of Domestic Violence which is competent to monitor the implementation of

⁵⁰⁸ M. Petronijević, Mapping of Policies and Legislation on Violence against Women and the Istanbul Convention in Serbia, EWL, 2018, 9.

⁵⁰⁹ Alternative Report on the Istanbul Convention 2018, 11.

⁵¹⁰ AWC, (2018) <https://www.womenngo.org.rs/vesti/1206-peti-nezavisni-izvestaj-o-primeni-zakona-o-spre-cavanju-nasilja-u-porodici>.

⁵¹¹ M. Petronijević, Mapping of Policies and Legislation on Violence against Women and the Istanbul Convention in Serbia, EWL, 2018, 7.

⁵¹² 4 <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/3710-2015-02-24-13-35-38> <http://ombudsman.rs/attachments/article/5032/Protection%20of%20women%20against%20domestic%20and%20intimate%20partnership%20violence%20Selected%20recommendations%20of%20the%20Protector%20of%20Citizens.pdf>.

⁵¹³ V. Lacmanović, Femicid u Srbiji: Potraga za podacima, odgovorom institucija i medijska slika, *Annals for Istrian and Mediterranean Studies*, 2019, p. 44.

⁵¹⁴ Ibid.

⁵¹⁵ <https://www.mgsi.gov.rs/en/coordination-body-gender-equality> (14.2019.)

⁵¹⁶ Alternative Report on the Istanbul Convention 2018, 15.

this Law and improve the coordination and effectiveness of prevention and protection from domestic violence and other acts of GBV. The Council submits an annual report to the Government (at the second session held in July 2018, the implementation of the Law was reviewed, and the first report to the Government has not yet been submitted).⁵¹⁷

2.6.3.2 *Relevant CSOs*

Women's CSOs are the most significant promoters of women's human right to live free from violence and policy implementation evaluators. The importance of women's CSOs role in putting VAW on the mainstream policy agenda is generally recognized by public administration, as well as the capacities of CSOs to provide both the policy solutions and direct services.⁵¹⁸ National public funds are usually not available to CSOs, while the state introduced costly licensing requirements. Existing public calls for project funding are described as controversial regarding their legal correctness⁵¹⁹. It is impossible to determine how much of the budgetary funds (national/regional/local) is allocated to support organizations in combating VAW.⁵²⁰ From the state budget (national/regional/local), minimum funds are allocated for the work of women's organizations that are members of the "Women against Violence" Network, so that they depend on insecure and insufficient foreign donor funds. As a result, some of them have closed their offices and the survival of the majority is on the verge of sustainability, with a large number of services and activities being conducted voluntarily.⁵²¹

The "Women against Violence" Network⁵²² is currently gathering 25 women's associations throughout the Republic of Serbia that provide services for women and children with experi-

ence of violence. Women's organizations specialized in this field have a decades-long experience in supporting women and their children, but also in conducting awareness-raising campaigns, conducting analyses, research and advocacy for policy changes, in independent monitoring and reporting, education of professionals, proposing amendments to the legal solutions. The provision of specialized services is inconsistent and provided mainly by CSOs (including therapy, counselling and support in cases of violence, an SOS help-line, other advisory and educational services and activities, legal information, and litigation and representation) despite insufficient financial support to ensure comprehensive and continuous service provision. Due to insecure sources of funding, the available professional resources oscillate and it is difficult to maintain the continuity of services at a satisfactory level.

2.6.3.3 *Allocation of adequate financial and human resources*

Laws and strategic documents that support an integrated approach do not contain the cost estimate of their implementation. The adopted documents generally contain general guidelines on the necessary funds for implementing a measure and the source of funding. It is not possible to obtain comprehensive data on the allocated and spent funds for the prevention and protection of women against violence. There are no publicly available data sets on human resources engaged in the implementation of integrated policies and measures, it is however clear from the reality that their number is insufficient.⁵²³ This situation could be changed for future strategic documents as in April 2018 the Law on the Planning System of the Republic of Serbia⁵²⁴ was adopted, according to which it would not be possible to adopt

⁵¹⁷ Alternative Report on the Istanbul Convention 2018, 15.

⁵¹⁸ M. Petronijević, op.cit., 16.

⁵¹⁹ <https://www.womenngo.org.rs/prakticne-politike/zagovaranje/1130-ministarstvo-povuklo-sporan-konkurs>

⁵²⁰ Alternative Report on the Istanbul Convention 2018, 12.

⁵²¹ Ibid.

⁵²² <https://www.zeneprotivnasilja.net/en/about-us/list-of-ngos>

⁵²³ Alternative Report on the Istanbul Convention 2018, 11.

⁵²⁴ <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2018/2386-17%20lat.pdf>

a state document without a financial calculation and estimate. The effect of this Law are yet to be seen in practice.

When it comes to human resources for the implementation of integrated policies, measures and programs for the prevention of all forms of violence covered by the IC, it is impossible to state their number in the competent state bodies, and especially whether they have adequate knowledge (the state report does not contain data on human resources).⁵²⁵ Institutions obliged to deal with domestic violence cases show that there are insufficient human and financial resources, the organization does not support specialization inside the systems and it usually means that workers responsible for these cases are also responsible for other topics. This affects the motivation, results in a lack of time and creates a possibility for fatal mistakes.

CSOs dealing with gender-based violence are mainly financed by international donors. This includes the specialized services for victims/survivors, as helplines. Shelters/safe-houses are managed by centres for social welfare and therefore financed from the local or republic budget. There are examples of safe-houses being closed due to lack of financing, like the safe-house in Subotica. It is crucial to allocate financial resources in the national budget for general and special protection and support so that they do not depend and exist on project basis. Project based services are neither permanent nor sustainable, which creates inequality in protection in different areas but also a decrease in the way of protection if the support of the activity ceases.

2.6.3.4 Specialist support services

SOS (help)line: Serbia still does not have a national help-line which fulfils all of the standards from the IC. The Ministry of Labour, Employment, Veteran and Social Affairs has repeatedly published a public call that has been withdrawn due to illegality⁵²⁶ and after strong opposition and pressure from CSOs⁵²⁷. However, in the end of the 2018, the Minister announced that this specialized service had been entrusted to the Centre for the Protection of Infants, Children and Youth, an institution that has never provided this kind of service, has no expertise, which is not a licensed provider, nor has engaged persons who completed appropriate training, which is all contrary to Articles 22 and 9 of the IC. Despite all these irregularities and the strong oppositions of the CSOs and individuals⁵²⁸, the so-called National SOS has been established as mentioned. An additional problem is that this service will be provided contrary to the basic principles, for example the violence will be reported regardless of whether the woman gives consent or not and the Ministry will monitor operators and have insight into all caller information.

Shelters and counselling: Shelters are a part of the social protection system, with standardization in accommodation and support and financed from the state budget. There are 14 shelters in Serbia managed by centres for social welfare. According to Women Against Violence Europe (WAVE) annual report⁵²⁹, Serbia does not meet the minimum standards regarding provision of shelter to women who have survived violence. There are currently twelve state run shelters with 257 beds available, providing only 35% of the requirement at the national level. Shelters are, in the majority

⁵²⁵ Special bodies, such as the Coordination Body for Gender Equality, or the Council for the Suppression of Domestic Violence are usually composed of high level state officials, which gives them certain political power, but they lack a support service large enough to perform operational tasks, including the monitoring, implementation of the strategies and laws for which these bodies were founded. Therefore, external experts are engaged for all key activities, which is the situation that does not contribute to the strengthening of internal capacities. Alternative Report on the Istanbul Convention 2018, 11.

⁵²⁶ <https://www.blic.rs/vesti/drustvo/afera-sos-telefon-ministar-djordevic-izbegava-odgovor-na-glavno-pitanje-a-u/nmwtsgb>

⁵²⁷ <https://pescanik.net/sve-je-moguće-2/>

⁵²⁸ <https://pescanik.net/završni-cin/>

⁵²⁹ http://files.wave-network.org/researchreports/WAVE_CR_2017.pdf

of cases (86%), run by CSWs⁵³⁰ and funded by the public budget. The quality monitoring of service delivery is not performed in any of the shelters in Serbia.

Rape crisis centres: Currently and limited only to Autonomous Province of Vojvodina, seven centres for survivors of sexual violence started their pilot phases.⁵³¹ Other part of Republic of Serbia remain uncovered by the similar centres.

Legal assistance: Free legal aid is not generally available, and the strict requirements to qualify excludes many survivors, where it does exist. Although the new Law on Prevention of Domestic Violence states that victims of DV have the right to free legal aid under a special law, the Law on Free Legal Aid has not yet been adopted by the government.⁵³² On 1 February 2017, services for victims of crime and witnesses offering information and assistance started operating in all Serbian Higher Public Prosecutor's Offices. This network is parallel with similar, already established departments with Higher Courts. There is no available data on their functioning and services provided.

Specialized services for minority women, women with disabilities and non-heterosexual women are not provided by the state; local helplines within Women Against Violence network in Serbia provide specialised support to Roma and women with disabilities.⁵³³

2.6.3.5 Protection of survivors/witnesses and legal aid

The Victims Support Service has been established in the higher courts and prosecutor's offices in four appellate areas, but this does not meet the needs of the largest number of VAW survivors, whose proceedings are conducted

in basic prosecutor's offices and courts. The experiences of survivors speak about the inadequate quality of information they receive from public service representatives.⁵³⁴ Services for providing support and assistance to witnesses and injured parties (victims) of criminal acts with elements of violence are established only in higher courts and prosecutor offices, which is not appropriate given the large number of VAW survivors, whose proceedings take place before the basic prosecutor's offices and courts.⁵³⁵

Failure to provide adequate, timely and effective protection and support to VAW survivors and witnesses is best illustrated by cases of femicide. Even after the amendments of the legislation and introduction of obligatory risk assessment, femicide still prevails. In May 2018, the Network Women against violence in Serbia issued a publication No Woman Less⁵³⁶, which included analyses of the police, prosecutors and social workers actions in cases of femicides in 2017, as well as reports on the effectiveness of trials in two court proceedings for femicide that members of the Network had been given permission to monitor. The conclusion is that in 10 out of 26 cases of femicide in 2017, police, prosecutors and centers for social work had information about the previous violence, but it was not enough for the killings to be prevented, because of lack of coordination and communication between state institutions.⁵³⁷ Network Women Against Violence, together with the families of murdered women, succeeded in their advocacy efforts to establish the National Remembrance day of Murdered Women in Serbia. For the first time in a decade of monitoring femicides in Serbia, a specialized police officer was charged and dismissed because he did not assess the risk in accordance with the Law on Prevention of Domestic Violence⁵³⁸.

⁵³⁰ Žene protiv nasilja, (2018) <https://www.zeneprotivnasilja.net/usluge-u-zajednici/srbija/sigurne-kuce>

⁵³¹ Alternative Report on the Istanbul Convention 2018, 36.

⁵³² AWC-ADOCATES, (2017:14) https://www.theadvocatesforhumanrights.org/uploads/serbia_report_final.pdf

⁵³³ M. Petronijević, op.cit., 11.

⁵³⁴ Ibid.

⁵³⁵ Ibid.

⁵³⁶ https://www.zeneprotivnasilja.net/images/pdf/literatura/Nijedna_zena_manje.pdf

⁵³⁷ Data contained in Alternative Report on the Istanbul Convention 2018, 70-71.

⁵³⁸ Murder of a woman in Pozarevac on 15.12.2017. A week before the murder, the woman reported violence to a spe-

Regarding legal assistance, The Law on Free Legal Aid was adopted in November 2018 and came into force on October 1st 2019. The Law stipulates that a person who obtains legal protection against DV can receive free legal aid. Legal aid exists in some municipalities and is financed from the local budget. NGOs greatly contribute to filling gaps in services by providing free legal assistance and representation, which is especially important for the victims/survivors of DV. Lawyers in nongovernmental organisations are allowed to provide only general legal information, while lawyers of the same degree of education in local government units have the authority to provide and to grant free legal aid. Exceptions are only given with regards to the procedures for granting asylum and for the purpose of protection against discrimination. The Law also contains provisions on the penalty for lawyers who provide free legal aid even if it is provided voluntarily and free of charge. By prohibiting citizen's associations from providing free legal aid to women and children survivors of DV, partner and sexual violence, Serbia further aggravates their position and access to justice.⁵³⁹

2.6.4 Case studies

2.6.4.1 Investigation, prosecution and protective measures

When an act of DV or immediate danger of violence is reported, a specialized police officer has to conduct a risk assessment and if there is an immediate danger, issue an emergency protective order for 48 hours. The risk assessment is based on the available information and a list of risks defined by the LPDV. The available data show inconsistent implementation of the measures defined by the LPDV and in some cases the number of proposals for the extension of emergency protective order is higher than the

number of newly reported cases of violence⁵⁴⁰. It can be concluded that in some cases an emergency protective order is imposed to the survivor as well as to the perpetrator and the police officer issues the order without assessing the situation and determining the primary aggressor. This can result in illegal behavior and create security threats to the survivors.

The prosecutor's office and the deputy in charge for dealing with DV cases (and other cases listed in article 4 of the LPDV) bear a crucial role in cooperation, through their position in coordinating the Group for coordination and cooperation. Some prosecutor's offices do not oblige with the Law (the reasons for this could be different, from the lack of resources to the lack of understanding of obligations and phenomena of VAW) and do not organize meetings of the Group according to the Law (once in 15 days). In addition, a small number of lawsuits for orders of protection against DV are submitted *ex officio* by the deputy public prosecutor, below 20 at the monthly level and IPSPs (as the obligatory result of the meeting of the Group and coordinating every specific case) are not created for every case and for each survivor. The number of plans developed remained below the legal norm, 50% of the number of new cases of DV viewed by the Groups.

Cases are handled and the measures implemented dependent on the attitude of an official toward gender roles, this is conditioned by patriarchal patterns. The practice of the public prosecution offices is that they usually do not prosecute the offender if the victim/survivor of the violence withdraws her statement as they testify that there is no other evidence. Often they do not understand multi-sectoral cooperation and instead fulfil their obligations formally, without putting the interest of the victims at the centre of all activities.

Prosecution offices (basic and higher) treat individual incidents of violence from the same perpetrator toward the same victim(s) as sep-

cialized police officer who did not assess the risk but sent the woman to a CSW. <https://www.blic.rs/vesti/hronika/ubica-se-namerno-zabio-ukamion-jelena-dan-pre-tragedije-prijavila-nasilje-a-kad-je/d89k5j8>. Cited by Alternative Report on the Istanbul Convention 2018, 71 fn 284.

⁵³⁹ Alternative Report on the Istanbul Convention 2018, 30.

⁵⁴⁰ Ibid.

arate criminal cases in which investigations are conducted by usually different prosecutors (for instance a report of rape or murder is investigated by a higher prosecutor, while DV or breach of protection measure in the same incident is investigated by a basic prosecutor). In this way prosecutors fail to maintain continuity and usually lose the victim as a witness.⁵⁴¹ Prosecutors usually rely solely on the statement of the victims. Due to the length of the investigation and secondary victimization, and without any provided protection, victims often withdraw their statements, causing the prosecutors to reject charges because of a lack of evidence. Survivors are often threatened with criminal charges for false accusation⁵⁴² in cases of withdrawal or change of testimony⁵⁴³.

Criminal and civil courts handle cases of VAW and DV. Civil cases are initiated by the victims/survivors in most cases, other legal authorities file significantly fewer acts. Surveys on judicial activity in cases of VAW, DV and intimate-partner violence are rare, but available statistics show that 20.37% of the cases ended with a first-degree sentence in less than a one month period. Sentences for criminal offense of DV and for others acts against the family are mild and in some cases judges in their verdict states as the mitigating circumstance for the perpetrator that he is “a family man” or that he is a breadwinner. 90% of the verdicts are convicting verdicts, but two thirds of the sentences are suspended. Prison sentences account for 40% of the total number of sentences.

Generally, penal policy in Serbia is lenient and not fulfilling the obligation stemming from the IC according to which state has to take the necessary legislative or other measures to ensure that the offences established in accordance with IC are punishable by effective, propor-

tionate and dissuasive sanctions, taking into account their seriousness.

2.6.4.2 *First case*

a) **Fact of the case**⁵⁴⁴

A highly educated woman of Hungarian ethnicity living in the city mostly with Hungarian inhabitants, left her husband (also of Hungarian ethnicity) and their family home in 2015 due to long and aggravated domestic violence. They have three minor daughters, who stayed with the father. DV survivor testified that during the marriage she suffered physical violence, even during pregnancy and in the last years of their marriage she suffered primarily psychological violence which was reflected in insults, degrading, labelling her as a “a mentally unstable person”, condemning her career ambitions, and finally communicating this attitude to their children with the goal to present her as an unsuitable mother without interest in her children.

Survivor reported the violence to the CSW a few months before she decided to leave, but they stated it is a family dispute and conducted mediation among spouses. Before this act, survivor called the police several times because of different situations (for example when the perpetrator threw her belongings out into the street), however this was not recognized by the police as DV. In addition, the perpetrator used institutions for further abuse as he reported her to the police as violent and “crazy”.

During the marriage the perpetrator was physically violent towards his wife (incidents with slapping, strangulation and pushing). In one situation, when survivor tried to call the police, the perpetrator ripped the phone from her

⁵⁴¹ Alternative Report on the Istanbul Convention 2018, 48.

⁵⁴² Results of the fact-finding research on the Implementation of Serbia’s Domestic Violence Legislation, available at https://www.womenngo.org.rs/images/publikacije-dp/2017/Implementation_of_Serbia_Domestic_Violence_Legislation.pdf, pg. 50

⁵⁴³ The first basic prosecution office in Belgrade published that treat on their website <http://prvo.os.jt.rs/?lang=lat> Alternative Report on the Istanbul Convention 2018, 48.

⁵⁴⁴ For the purpose of case analysis, several interviews had been conducted: Social Centre for social work - the director and the case worker; Prosecution office - the Public Prosecutor; the Provincial Protector of the Citizens - the Ombudsman Deputy for Gender Equality handling the complaint of the victim/survivor; survivor.

hand and then called himself with the statement that his wife is crazy and she wanted to attack him with a knife. The perpetrator threatened his spouse, threw her belongings from the bedroom and from the house, saying to her their children do not love her and she is not needed, whilst also saying to the children that their mother is crazy. The police intervened often (65 times) and usually suggested to survivor to behave properly or she will be hospitalized.

Survivor suffered pain in the stomach of unknown origin and therefore stayed in a hospital where medical staff did not determine the origin of pain. At the moment of reporting the case, there was no physical violence, traces or evidence of violence, but psychological violence was permanent. The woman filed a complaint to the Provincial Protector of the Citizens – Ombudsman, dissatisfied with the actions taken by the CSW.

Survivor filed a lawsuit for divorce and custody over children as well as a lawsuit for issuing the order of protection. When the perpetrator found out that she filed a lawsuit for issuing the order of protection in case of DV, he threatened to kill her. One of the girls used his words and took over the behaviour model, saying that she will do the same. The divorce and custodial case ended after three years. The Basic Court ruled that children are entrusted to the father for the independent exercise of parental rights and after the appeal of the survivor, the Court of Appeals decided to conduct the procedure and to rule the case itself. The judgment was that the youngest daughter should live with the mother and the two oldest with the father, the verdict has not yet been executed. In the judgement, the Court of Appeals states that partner conflicts of the parties were very serious and culminated with DV and this had a negative impact on the psychological development of the children as their opinion was not freely formed but given under the influence of the father, due to which the children do not have their own emotional perception of a particular situation and relations with their mother. However, the Court of Appeals didn't take into proper consideration the history and

dynamics of DV while reaching decision of parental custody. Clinical expertise conducted in this procedure showed that all three girls tend to idealize their father and manifest absolute obedience, while they see similar actions of the mother as negative and critically inclined, which all points to the instrumentalization and alienation of the daughters from the mother. Although the Court accepted the clinical expertise, they did not perceive these actions of the father as abuse.

The procedure for issuing the order of protection against the perpetrator was rejected and the procedure lasted for two years.

The criminal charges (filed by the victim) against him were rejected while the public prosecutor did not find any criminal act for *ex officio* action. Charges were filed for the psychological violence which is rarely punished. The public prosecutors also did not use available evidence enough, e.g. statements, reports of the healthcare workers and those from the centres for social work. One situation was prosecuted when the perpetrator threatened the survivor, but the Court rendered the acquittal. That was the only criminal case against the perpetrator.

The perpetrator filed a criminal charge against the survivor for the criminal offence of DV and this procedure ended by the principle of opportunity - she admitted the guilt and the prosecutor postponed the prosecution. The survivor stated that the public prosecutor advised her to accept it since her ex-husband was coming with new information (usually false) and by accepting this proposal ex-husband can not file a charge again or file a complaint.

b) Case analysis

Identified shortcomings regarding the legislative and procedural framework

Legislative framework as a precondition for protection of women victims/survivors of VAW is adequate, but the case at hand indicates necessity to create by-laws or internal procedures for every institutions in the chain of protection for the detection and recognition of the cases of VAW. These by-laws would enable development of a check list or some other way

for institutions to determine if the case should be treated as DV or VAW case.

It was mentioned in this report that there is a lack of human and material resources in institutions, but this should be interpreted not only as a lack in number of staff and financial support, but also as adequate training of staff and adequate management which includes the care of employees and work on their motivation to work.

The LPDV obliges institutions to cooperate and to handle all cases that did not end with judicial decision, but the practice shows us that a lot of cases are not dealt with because there is no complaint and institutions do not recognize violence. This is particularly problematic in cases of psychological violence, such as this one. The protection of the female children in this case should consist of mandatory report for doctors who performed clinical expertise and judge who used this expertise in creation of the judgement, investigation and proceedings by the police, centre for social work for the behaviour of the perpetrator against his daughters.

Responsibility and accountability of professionals in omission while handling the case is prescribed for every system and there is a responsibility prescribed in the LPDV (the responsible person in the state and other body, organization and institution will be punished for misdemeanour if they do not exercise immediate reporting or responding to the application or obstruct the reporting or reaction to any knowledge of DV or immediate danger, to the police or public prosecutor). In this case, however, no institution, staff member or responsible person was held accountable for omission.

Identified shortcomings regarding the implementation of relevant law

The survivor decided to report the case to the CSW and to seek help and protection a few months before she decided to leave, but the official from CSW stated it is a family dispute and conducted mediation among spouses. This was the first mistake at the initial stage of the protection, when the survivor is particular-

ly traumatized and vulnerable. While handling the case, the CSW officials made several mistakes. Firstly, they did not recognize any other mechanisms or measures that could be taken to exercise their obligation to prepare the child for living with the mother or to hold the perpetrator accountable for the violence committed. Their opinion was that more could be done if the court procedure did not last for more than three years. Secondly, they filed a lawsuit for the partial deprivation of parental rights of the perpetrator and a criminal charge against him for violence against children, but their attitude during the proceedings and the fact that the Centre did not file an appeal against the decisions, show inconsistency and reluctance toward the case. During the all stages the CSW did not provide active and continuous psycho-social treatment for the survivor and minor daughters and did not ensure unhindered contacts between mother and children. In that point the CSW violated the Law on Social Protection, the Family Law and the General and Special protocol in dealing with the women survivors of domestic violence, and at this point also the LPDV.

During the procedure, the Provincial Ombudsman found that the Centre violated several regulations in the proceedings, first of all it failed to provide protection and support to all survivors of violence as a result of the non-recognition of violence. The recommendation to the Centre was issued in 2015 stating that the CSW should prepare a plan of measures and a security plan for the woman and for minor daughters. Also, it was suggested for CSW to actively and continuously carry out the psycho-social treatment of the woman and minor daughters and to ensure unhindered contacts between mother and children. Additionally, the Provincial Ombudsman recommended to CSW to evaluate the type and degree of violence that the father committed against the minor children and to take measures, first of all to supervise the exercise of his parental rights and to initiate procedures for the protection of minor children. It was noted that further activities of the institutions, primarily the Centre, should be aimed at the clear identification of perpetrator and survivors of violence, as well

as the initiation of court and other procedures for the protection of women and children.

After this recommendation the Centre enrolled more actively in the case and filed a criminal charge against the perpetrator for violence against children but the public prosecutor considered that there were no elements of a criminal offense. The father was sentenced with a measure of corrective supervision over the execution of parental rights which he did not honour, due to which the Centre filed a lawsuit for the partial deprivation of parental rights. The Court decided that there were no elements of irregular exercise of the rights or duties of the parent.

Police officers did not identify the primary aggressor nor notice the type of violence perpetrator has committed against members of his family, and the measures they take, especially when entering the field, created in the woman a sense that the violence was minimized and the perpetrator favoured. Those activities were made before the LPDV came into force. The current situation is one where daughters still live with the father (two of them are over 18 years old) and there are no high risk situations, however the perpetrator's psychological violence against the girls created absolute obedience from them, which can be characterized as violence. The police, however, did not use the authority given by the Law and did not undertake a risk assessment. The Police violated the Law on the Police, the Law on Criminal Proceedings and the General and Special protocol in dealing with the women survivors of DV, and at this point also the LPDV.

Psychological violence was not recognized by the healthcare workers, probably because she did not mention it directly as survivor was not asked about it. The healthcare system violated the General and Special protocol in dealing with the women survivors of DV, and at this point also the Law on the Prevention of Domestic Violence.

The public prosecutor's office filed only one criminal charge against the perpetrator for psychological violence and threat against the woman, but for the violence committed toward

girls no charge was filed. The woman was also victimized in the institution and the violence she suffered was minimized when she was advised to end the perpetrator's criminal charge case by admitting the guilt and the prosecutor postponed the prosecution.

Lack of professionalism and due diligence was reflected in long procedures in court. The divorce and custody case lasted for three years and ended in the decision of the Court of the Appeals but even the institutions that had clinical expertise, did not investigate the case of violence against the girls. Also, the court did not analyse properly the case of psychological violence, did not recognize the consequences of the violence against the woman and children and did not recognize the risks. Further to this, the procedure of issuing the order of protection lasted for almost two years and the court found that there is no legal ground for their issuing.

The prejudices and stereotypes of professionals are noticed in every institution. The CSW saw the woman as competent and strong, willing to deal with every situation, and therefore did not cooperate adequately with her or provide continuous support. The director of the CSWs' opinion is clear from the way she presented the case: the woman is to be blamed for this situation because she did not cooperate more with institutions and her husband, in the best interest of the children. They think that communication with her "is perfect". "We work constantly with her, by supporting her, I can say it is perfectly possible and she is quite capable of coping. She turned to the psychologist outside the center when she felt that it was difficult for her." But the survivor stated that she is unsatisfied with the work of the CSW, especially in the last year and a half. The prejudices and stereotypes of the professionals are clear due to their attitude toward the position of the Hungarian woman in the family and her obligation to be firstly a good mother. This woman is highly educated, in a respectful position in the municipality and politically active, thus the community blamed her for this situation, often stating that this happens when a woman is seeking a career.

For this case the CSW organized one case con-

ference but there was no efficient answer to all the problems. There was no efficient communication or ideas for problem solving.

The main issue of concern within the criminal justice system in this case is the reluctance to prosecute the perpetrator of the psychological violence. The public prosecutors often do not investigate these cases properly and frequent decisions not to prosecute are usually explained by a lack of evidence. The clinical expertise or reports of the health care centres as well as reports of the CSW are rarely used. The public prosecutor showed a lack of interest, did not investigate all forms of violence and did not identify all survivors. The survivor did not receive any psycho-social and legal support during the criminal proceedings.

The DV survivor suffered serious consequences reflecting on her psychological/mental health while there was no clear opinion of the institutions that the woman was a survivor and that the man was a perpetrator accountable for the violence he committed. The survivor lost trust in the institutions. The daughters were never recognized as victims/survivors and no institution reacted in order to protect them. The parental right of the father, the perpetrator, prevailed over the right of the children to live a life free of violence. Currently, there is almost no communication between the mother and her children.

To conclude, in this case the institutions did not exercise their authority, instead letting individual attitudes toward the case prevail. An additional problem was a lack of understanding by the institutions of the violence the perpetrator was committing against the children in the situation, using them to undermine the women's authority, status in society and to

break a bond between mother and her children. Criminal charges were submitted, however the prosecutor did not find any criminal act for *ex officio* action; psychological violence was not recognized in any of the institutions.

Patriarchy, its norms and customs shaped the inadequate institutional response manifested in treating survivor as a bad mother who had abandoned her children. The fact that she had a career was understood as a reason why she was unsuitable to take care of them. The community blamed survivor for the marriage and family break-up. The community attitudes shaped the institutional behaviour, while the prejudices of the caseworkers influenced their activities. The DV survivor still has no communication with her children. She has no support from her family or professionals. In addition to this, the children weren't recognized as victims of DV and did not have any psychological support to recognize and overcome the trauma, violence and manipulation they faced.

2.6.4.3 *Second case*

a) **Fact of the case**⁵⁴⁵

A woman was killed by her male partner at a local football stadium. At the time of the murder, victim was 21 years old and the murderer was 23 years old. They were in an emotional and sexual relationship (but didn't live together), during which the male partner was violent. The boyfriend was jealous during the relationship and accused his girlfriend of being unfaithful. The victim reported the violence to the police at the earlier stages of violence and based on the available information, under the influence of her parents. The police reacted immediately and implemented their authority according to

⁵⁴⁵ For the purpose of case analysis, several interviews had been planned and few had been conducted. For the purpose of interviewing officials from the CSW, the institution was directly contacted and a written request was sent, but the Director did not give a permission to the employees to participate in the research and they informed the researcher to seek for the permission from the Ministry. After the investigation on the authority of the institutions, a request was sent to the Provincial secretariat for social policy, demography and gender equality by the Centre for Women's Rights. The answer was not received. The police were contacted and the permission was requested from the Ministry of the Interior. After contacting them several times, there no answer was received from the Ministry. The Basic Prosecution Office and the Deputy in charge of the Group for coordination and cooperation refused to participate. The Higher Prosecution Office - the Public prosecutor was interviewed. A woman familiar with the case and the president of a local Women's Association was interviewed. The head of the local police station also gave the first information of the case and asked to be interviewed, but she did not receive permission from the Head of the Police.

the LPDV. Having in mind the violence in a intimate partner relationships is also DV by this Law, but not a criminal offence by the CC, protection could be given based on the LPDV and the Family Law, but criminal charges could be raised for some other offence, depending on the situation and the prosecutor's opinion. The police undertook a risk assessment and issued an emergency barring order for 48 hours which the Court extended for another 30 days (as a maximum of protective measure at this time, given the fact that the institutions started to deal with the case). The perpetrator violated the order and a jail sentence of 14 days was issued for him (the maximum is 60 days in prison for violation of an emergency barring order). Only few days after the termination of the prison sentence the perpetrator contacted the victim and asked her to meet him. The victim agreed with the intent of resolving the issues they had had thus far. They met at the football stadium in the late afternoon where the violent boyfriend killed victim by stabbing her 22 times, 7 of which were in the area of the head and neck. The body was found by the stadium warden. After the murder, the perpetrator went to his grandmother's house and claimed he killed his partner because he had to. In the newspapers was the perpetrator's statement that "she (the victim) will be his, or God's" and that he committed the act as a result of jealousy. The Police arrested the murderer in the grandmother's house. The victim was under extended parental care until she was 21, but there is no available data about the reason of this.

During the investigation the public prosecutor ordered the medical examination of the perpetrators psychological state and the level of pain the victim suffered during the act; by the expertise it has been established that she suffered severe pain and psychological suffering. The perpetrator was charged for criminal offense of severe murder in a cruel way. Based on all the relevant evidence, the Public prosecutor suggested the plea agreement and 30 years of jail, which the parties agreed to. He was thus sentenced to 30 years of jail. Her parents were unsatisfied with the sentence and filed a criminal complaint against the Public

prosecutor deputy who was in charge of the case. The complaint is still in process.

Based on available information, the police issued an emergency barring order, as mentioned, but they did not undertake the risk assessment again when the perpetrator was leaving the jail. Having in mind all the information, the history of violence and the fact that perpetrator was violent and jealous, the risk assessment should have been revised. In addition to this, the perpetrators' primary family showed signs of a dysfunctionality and he was violent toward his grandmother, mainly in the form of psychological and economic violence.

Having in mind the situation in his primary family, it is questionable why the CSW did not react sooner, even when the woman reported the violence. It is not known whether the Group for coordination and cooperation discussed this case after the first reporting of the violence as they should have. A local women's association noticed the link between the model of behaviour of the children in early age and violence and criminal acts they commit as adults and developed a model of working with children from problematic families. They recognized the link of violence suffered as a child with violence committed as an adult. This shows the sensitivity of the community, but the permanent support of the authorities and municipality is still lacking.

Institutions blamed the victim and a part of responsibility was attributed to her because she "voluntarily" came to meet him. This was also one of the circumstances that have affected the level of punishment. Institutions had to provide the victim with all the information and help her recognize the risks and empower her to get out of a violent relationship.

"The former head of the police station, when we were addressing him, tried to resolve the cases by talking. He talked both to one and the other, to both the man and the woman, it is irrelevant who was violent to whom. He went out to talk to them to fix it." Ljiljana Gusic, president of the women association "Udahni zivot" in Stanistic, a village in the municipality of Sombor, being questioned on whether she saw

any difference after the LPDV was implemented says: "I don't see any, I see it's even worse. Nothing better, just worse." She is very active in society, familiar with the problems and focused on developing and implementing programs for the improvement of the position of women and children. Therefore, it is interesting to hear the opinion of the person like her on the influence of this Law while the local community is the place where human rights have been most directly protected or violated.

b) Case analysis

Identified shortcomings regarding the legislative and procedural framework

This case shows it is necessary to upgrade the risk assessment procedure and to have a mandatory assessment when new information occurs; for example the violation of the order and the termination of the prison sentence. The police should assess the situation again and determine whether the risks have been changed and are more dangerous.

It was mentioned in this report that there is a lack of human and material resources in institutions. This should be interpreted not only as a lack in the number of staff and financial support, but also of adequate training of the staff and adequate management which includes the care of employees and efforts to boost their work motivation.

Although the responsibility and accountability of professionals in omission while handling the case is prescribed for every system and there is a responsibility prescribed in the LPDV, in this case no institution, staff member or responsible person was held accountable for the omission.

Identified shortcomings regarding the implementation of relevant law

At first glance, the institutions were implementing all of their obligations. However, given the history of repeated intimate partner violence and the fact this led to gruesome femi-

cide in public space, indicates major failures of the system of reaction to vAW. As mentioned, the police used their authority from the LPDV, but did not recognize additional risks and did not assess it in all the stages of the case development. The CSW had information about problems in the family of the perpetrator, however it seems that they were not actively involved in problem solving. Further to this, the perpetrator showed violent behaviour toward the grandmother, however there is no information about the activity of the institution in this instance.

A lack of professionalism and due diligence can be noticed in the lack of activity of the institution during the emergency barring order and after the violation of the order. When the perpetrator violated the order, institutions used their authority and sanctioned him, however the investigation was lacking and the risks were not detected in full.

Although this case should have been discussed at the Group for Coordination and Cooperation, there is no formal, available information about it. Informally, it was not discussed because the period of time was short between the violent situation and the murder. The institutions should have discussed it even after the murder so the gaps could be detected, and protection improved for future cases.

Problems with the media

The case was reported in several media outlets⁵⁴⁶ and as the reason for the murder media repeatedly and sensationally emphasized the murderer's statement that the victim she was unfaithful therefore had it coming. The lack of clear attitude that the perpetrator is to blame for the murder is shockingly evident.

To conclude, this case was reported after the LPDV came into force, however it shows a lack of understanding of the VAW and particularly femicide phenomena, risk assessment and cooperation between institutions. In addition, during the research the Police, the CSW and the Public Prosecutor office rejected (or asked

⁵⁴⁶ <https://www.blic.rs/vesti/hronika/ubio-sam-je-prevarila-me-je-majka-mladog-ubice-je-otisla-u-policijsku-stanicu-a-nakon/dtkbd3x>

for additional permissions) to be interviewed. Based on all of the available information and the fact that we did not have the opportunity to get information from these institutions, it is concluded that more could have been done for the protection of the woman. This municipality was one of the best in the creation and implementation of the coordination model among institutions which is why the refusal of the institutions to give an interview is of particular concern.

2.6.5 Conclusions and recommendations

2.6.5.1 Conclusions

The legal basis for protection and support of women survivors of gender based violence in Serbia is *largely* harmonized with international obligations, CEDAW and the IC. The national legal system in general does not support the advancement of the position of women in all spheres of public and private life and *de facto* equality between women and men is not a main governmental goal. For example: the new Law on Gender Equality has not been adopted yet, the Law on Financial support to the Families with Children reduces the achieved level of human rights of women with children, the announced changes of the Law on Social Welfare will decrease the number of social services, the definition of rape includes consent as a part of incrimination and it is necessary to use force or threat to attack the life and body and vary from the standard of punishing of any sexual activity without consent.

Violence against Women is not a recognized category in laws and therefore all manifestations could not be prevented and perpetrators punished in the same manner. The definition of family creates the most difficulties while the CC is narrower than the Family Law and the LPDV. E.g., violence between intimate partners

who did not have a child together and did not live in same household could not be qualified as the criminal offense of domestic violence, the perpetrator could suffer criminal a sanction only if there are elements of other criminal offenses such as bodily harm. The survivor can obtain protection in civil proceedings and court could issue an order of protection and/or emergency protective order. If the state has a strict attitude toward gender-based violence against women, women must have the same level of protection and support and therefore the subjects protected in criminal and civil law should be treated the same.

On the other hand, when analysing the VAW framework, the Republic of Serbia has the legal and institutional framework for effective protection and prosecution of gender-based and DV cases, however the implementation of legal measures is not adequate. Improvements are necessary, especially at the institutional level, which will contribute to the motivated and skilled workers and equip authorities with the necessary financial and human resources. Continuous education is necessary for all institutions and caseworkers and it should consist of the improvement of knowledge in the specific field of work, but also training which will influence the change of attitudes, deal with prejudices and stereotypes and prevent discriminatory behaviours (especially toward Roma women, women with disabilities etc.) and develop skills necessary to understand and successfully deal with DV cases, as well as VAW cases in general. Understanding the phenomena of intimate partner violence, DV in all forms and manifestations will influence the trust in institutions by survivors and effective and adequate sentences.

At the roundtable held in Belgrade on 15th of September 2019⁵⁴⁷, representatives of the judiciary emphasized the problem of under-utilization of all available measures in cases of high-conflict divorce proceedings and ancillary proceedings. Such are protective measures which judges could proclaim *ex officio*. Judg-

⁵⁴⁷ The roundtables was organized with the aim of presenting the first draft of national report for Serbia contained in this study to representatives of all relevant institutions and CSOs. Additionally, roundtable was used for validation and adaptation of conclusions and recommendations for Serbia.

es also raised concerns over non-satisfactory communication with other relevant institutions such as CSW, even expert witnesses. The inquisitory principle in family disputes provides judges with significant competencies, but these competencies are not being utilized sufficiently, thus emphasizing the necessity of compulsory, continuous and intensive education and trainings.

One of the conclusions also from the roundtable was the recognized need to stimulate the use of expert witness' opinions as evidence for proving the existence of psychological violence. In order for such a goal to be achieved, more efforts by judges in providing expert witnesses with concrete and helpful instructions need to be made.

Additionally, data collection, the strict implementation of legal obligations (and accountability for non-compliance of the professionals/ caseworkers) and effective and permanent support services for survivors still need to be actively and constructively addressed by the State. The prevention of VAW and DV has to be a national policy supported by adequate resources, the creation of responsive attitudes (especially the media image) and by a policy of zero tolerance toward violence in general and especially against women and girls. It can not be said that is the current situation.

The implementation of the all available legal measures is still a challenge while statistics show inconsistency in the handling of cases and understandings of obligations of all relevant institutions in the chain of protection from and reaction to VAW cases. A lack of statistics and a database on the national level prevents the creation of a clear estimate of the institutional treatment. The absence of individual plans for protection and support for victim/survivors shows that the principle of the IC that the survivor should be in centre of all activities is still not fulfilled in Serbia. Institutions do not use a holistic approach in handling cases and a lack of understanding of the risks, characteristics and dynamics of VAW is evident on every level of the system.

2.6.5.2 Recommendations

Common recommendations for all institutions in the protection system (judiciary, law enforcement agencies, centres for social work, health institutions)

- Introduce compulsory training focused on sensitization in order to prevent influence of prejudices and stereotypes on decision making and approach of professionals to VAW survivors

Legislator and Government

- Align all relevant laws in accordance with Istanbul Convention;
- Make legitimate the work of CSO's with specialized support services for women victims/survivors of VAW and financially support their work by including them in national and local level budgets;
- Establish inspectorates for supervision and disciplinary sanctioning of professionals accountable for omissions in managing VAW cases

Judiciary (e.g. courts and prosecution)

- Prosecutors need to use their authority and continue to conduct criminal investigation and proceedings *ex officio*, independently of the survivor's testimony;
- Judges should be specialized for VAW cases and be trained in this sense;
- Courts must make more visible the work of Department for informing and support for survivors and witnesses;
- Urgently improve the curriculum and method of trainings of judges and prosecutors so that it is continuous, comprehensive and compulsory;
- Establish centralised database for case management for all judiciary institutions;
- Groups for coordination and cooperation should develop individual plans for protection and support for every victim/survi-

vor for every case and inform them about the plan and the measures that will be implemented;

- Put the victim/survivor at the centre of all activities and create measures of protection and support based on her capacities and the current situation, as well as revise them when changes occur;
- Enhance the cooperation of courts with centres for social work, especially in cases of family disputes

Law enforcement agencies (e.g. police)

- Introduce compulsory risk assessment in different stages of procedure in order to prevent violation of urgent measures;
- Implement additional training of police officers to properly take into account the psychological aspects of violence when assessing risk

Centres for social work

- Enhance the cooperation with courts especially in cases of family disputes;
- Enhance the work of social workers to provide more comprehensive, precise and concrete social anamnesis with findings and opinions in VAW cases;
- Enhance human, technical and infrastructure capacities of centres for social work;
- Ensure employment and engagement of specialised and qualified social workers and psychologists

Media professionals

- Apply mechanisms for sanctioning media professionals to prevent publishing details on VAW cases that could put survivor at further risk.

2.7 TURKEY

Abbreviations

AKP	Justice and Development Party
CC	Criminal Code
CSO	Civil society organisation
DV	Domestic Violence
FGM	Female Genital Mutilation
Law No. 6284	Law on the Protection of Family and Prevention of Violence against Women
GDSW	General Directorate on Status of Women
GONGO	Governmental non-governmental organisations
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
IC	Istanbul Convention
MoFSP	Ministry of Family and Social Policies
NAP	National Action Plan
POL-NET	Police Information System
VAW	Violence against women
VPMCs	Violence Prevention and Monitoring Centres
UYAP	National Judiciary Informatics System
TGNA	Turkish Grand National Assembly

2.7.1 Introduction

Turkey is a transcontinental country in Eurasia and Middle East and for this reason it had a spectacular role throughout the area. It is a secular democracy with a predominantly Muslim population of about 80 million people.⁵⁴⁸ Turkey has a very diverse culture that is a blend of various elements of the Turkic, Anatolian, Ottoman and Western culture and traditions, which started with the Westernisation of the Ottoman Empire and still continues today.⁵⁴⁹ Turkish culture is a product of efforts to be a “modern” Western state, while maintaining traditional religious and historical values. This unique historical legacy also accounts for the many complexities in Turkish political and social life.⁵⁵⁰

When the Turkish Republic was founded in 1923, it enacted important legal reforms to ensure the equality between women and men in political and civil rights. During the 1980s, a strong women’s movement raised public awareness of violations of women’s rights, especially VAW. Turkey ratified CEDAW in 1985. In the 1990s, gender equality improved in public institutions, universities and civil society with laws passed to eliminate discrimination against women and to protect survivors of domestic violence. Starting in 2000, with the great contribution of and demand from the women’s movement, Turkey updated its fundamental laws with respect to

⁵⁴⁸ <https://docplayer.net/57759465-Gender-equality-in-turkey.html>

⁵⁴⁹ www.nationstates.net/nation=the_turkish-state/detail=factbook/id=main

⁵⁵⁰ Meltem Müftüler-Bac, ‘Gender Equality in Turkey’ (Directorate General for Internal Policies, European Parliament 2012) 4. <https://docplayer.net/57759465-Gender-equality-in-turkey.html>

gender equality (Constitutional Amendments of 2001, 2004 and 2010, and adoption of a new Civil Code in 2001 and a new Penal Code in 2004). The first country to sign and ratify the Istanbul Convention in 2011 and 2012 respectively, Turkey has passed, in line with its obligations under the Convention, major legislative changes to prevent violence against women.⁵⁵¹ Turkey has undergone a GREVIO process which produced a Shadow report endorsed by 81 CSOs, a State report to GREVIO and a GREVIO Report to the state, thus contributing to a detailed analysis of situation regarding VAW and evaluation of the IC implementation in Turkey.

However, Turkey lags in implementing its national and international gender equality commitments.⁵⁵² Although the fact that today's Turkey has been an active participant in international developments when it comes to women's rights and VAW, it should be added immediately that systematic and widespread VAW persists.

2.7.2 Legal and policy framework

2.7.2.1 Legal framework

The Turkey CC was reformed with a gender equality perspective and revised in accordance with Copenhagen criteria in the anticipation of EU membership. This legal reform meant a change of legal attitude towards treating women as individuals and as controllers of their own bodies.⁵⁵³ The CC included more than thirty amendments towards gender equality and

the protection of sexual and bodily rights of women. The CC contains progressive definitions and higher sentences for sexual crimes; criminalizes marital rape; eliminates all references to patriarchal concepts like chastity, honor, morality, shame or indecent behavior; abolishes previously existing discrimination against non-virgin unmarried women; eliminates provisions granting sentence reductions in rape and abduction cases; criminalizes sexual harassment at the workplace and considers sexual assaults by security forces as aggravated offences.⁵⁵⁴ In relation to the issue of virginity tests which is the most controversial issues in Turkey, genital examination is regulated in a separate article in the New Law. With this arrangement, a person who sends a woman for genital examination or carries out this examination without a decision taken by an authorized judge and prosecutor is made liable to penalty of imprisonment from three months to one year.⁵⁵⁵ Acts of sexual violence were defined as acts committed against the integrity of individuals rather than against "general morality and family order"⁵⁵⁶ which was always protested by women's rights defenders. This change constitutes or can be read as "a paradigmatic shift in Turkish legislation in terms of gender policy."⁵⁵⁷ The new code seeks to protect sexual rights and bodily integrity instead of so-called honour and recognizes women's autonomy over their bodies and sexuality.⁵⁵⁸

The CC, however, does not criminalize all forms of VAW as required by the IC. First of all, the CC does not criminalize DV as such, and includes

⁵⁵¹ <http://eca.unwomen.org/en/where-we-are/turkey>

⁵⁵² <http://eca.unwomen.org/en/where-we-are/turkey>

⁵⁵³ E. Gözdasoglu Küçükalioglu, Framing Gender-Based Violence in Turkey, 2018. <https://journals.openedition.org/cedref/1138?lang=en>

⁵⁵⁴ Ibid.

⁵⁵⁵ Turkish Penal Code art 287.

⁵⁵⁶ Women for Women's Human Rights (WWHR), "Turkish Civil And Penal Code Reforms from a gender perspective: The success of Two Nationwide Campaigns, Istanbul: WWHR, 2005, p.3-17. <http://dl.dropboxusercontent.com/u/64736171/CivilandPenalCodeReforms.pdf> Last access: 12 October 2018

⁵⁵⁷ Müftüler-Bac (n 1) 9.

⁵⁵⁸ The old Penal Code included several articles that aimed to protect men's honor and the so-called moral values. For instance, a man's punishment for raping or abducting a woman could be reduced if he got married to her after the act (art 434). The reasoning for this is that marriage could restore the 'lost honour.' Another striking example is that the old code was providing the reduction of sentence to perpetrators of honour crimes if the victims were "caught in the act of committing adultery or 'illegitimate sexual relations,' or if there was evidence beyond doubt that the victim had just carried out such an act." (art 462)

no provision relating to the prosecution or punishment of perpetrators. Psychological violence is recognized in Law No. 6284, but it is not criminalized in the CC. Although the CC contains other offences which could cover psychological violence, these offences are designed to sanction isolated acts and fail to capture a pattern of repeated and prolonged abuse typical of psychological violence.⁵⁵⁹ Stalking is defined in Law No. 6284, but not criminalized explicitly and separately in the CC.⁵⁶⁰ Forced marriages are not criminalized as a specific criminal offence under CC, but according to the State Report they could be captured by other provision such as deprivation of liberty, human trafficking and sexual assault/rape.⁵⁶¹ Female genital mutilation is not prescribed as specific offence in the CC, although several criminal offences could cover FGM, such as intentional injury and the aggravated form of this offence resulting in permanent weakening or loss of any one of the sense or organs of the victims or loss of her reproductive ability. However, as indicated in the GREVIO report, the conduct of coercion, procuring or inciting someone to undergo FGM remains outside the scope of such provisions and does not appear to be criminalized under any other existing offence.⁵⁶² Forced abortion and the forced sterilisation are criminalized under the CC.⁵⁶³ Also, sexual harassment is subject to a criminal sanction according to the CC.⁵⁶⁴

Sexual VAW is categorised as an offence against individuals. However, the criminalisation of sexual VAW in accordance with the IC is only partially achieved. The definition of sexual assault/rape does not include the use of force, but on the other hand it also does not stipulate that rape can be based on a lack of consent, leaving room for different interpretations. The law prohibits sexual assault, including rape and spousal rape, with penalties of two to

10 years' imprisonment for attempted sexual violation and at least 12 years' imprisonment for rape or actual sexual violation. Marital rape is explicitly criminalised but it can only be prosecuted on the basis of a private complaint from the survivor, contrary to the requirement of the IC⁵⁶⁵. This burdens women survivors to conduct investigative activities and decreases the probability of prosecution of marital rape.

The CC covers all women, regardless of their marital status and provides criminal penalties for crimes such as assault, wrongful imprisonment, or threats. The law also provides for two to five years' imprisonment for sexual harassment. If the victim is a child, the recommended punishments are longer. Although the regulated punishments are high, the crime rates are still raising. This is a result of imprecise implementation and cultural hegemony of patriarchy, which can also be seen in the issue of child marriages and the discrepancies of the definition of the child in legislation. Although the Child Protection Law defines a child as anyone under 18, the Penal Code defines a child as anyone under 18 in some articles, and under 15 in others, and the Turkish Civil Code defines 17 as the legal minimum age for marriage. It is also an example of the lack of harmony of the relevant laws in Turkey which complicates and aggravates the struggle against gender based violence.

In 2011, Law No. 6284 on the Protection of Family and Prevention of violence against women (hereinafter: Law No. 6284) came into force, recognized as the most important legislative indicator of the legal struggle to prevent violence against women in Turkey. This Law is not criminal but civil law containing a definition of DV and VAW as well as prescribed protective measures (for the VAW survivor) and restrain-

⁵⁵⁹ In judicial practice is it mostly dealt with under the offences of threat, blackmail, coercion, defamation and ill-treatment. GREVIO Report, 75.

⁵⁶⁰ There is somewhat obscure information on criminalization of stalking in the State Report to the GREVIO. Compare the State Report to GREVIO, 47 with the GREVIO Report, 76.

⁵⁶¹ State Report to GREVIO, 48.

⁵⁶² GREVIO Report, 83.

⁵⁶³ Respectively articles 99 and 101 of the CC.

⁵⁶⁴ Article 105 of the CC.

⁵⁶⁵ Article 55. of the IC.

ing/preventive measures (issued by the judge to the perpetrator). Law No. 6284 prescribes a number of protective measures, which include: the provision of shelter for the survivor upon the approval of the prefecture; provision of temporary financial assistance; provision of counselling; provision of temporary physical protection; changing of workplace by judicial decision; changing of place of residence; banishment of the perpetrator of violence from the common residence shared with the survivor; and ordering the perpetrator to refrain from approaching to the survivor. This law extended existing protective measures to all women, regardless of their marital status.⁵⁶⁶ The fact that this law protects not only survivors of DV but also survivors of all forms of VAW, makes it legislative piece mostly aligned with the IC, although the Law itself does not qualify acts of VAW as misdemeanours or criminal offences.

The concept of “violence”, including physical, verbal, economic and psychological violence, as defined by this Law is in compliance with the IC. The protective and preventive precautions to be taken for both the protected person and the person committing or having the potential to commit violence are regulated in detail. The cautionary decision is taken in regard to the survivors and perpetrators of violence, *ex officio* or upon a request, by the judge, law enforcement officers and administrative chiefs within the scope of this Law. The decisions taken as per the provision of this Law may be appealed to the family court by the relevant persons within two weeks after the notification is received.⁵⁶⁷ According to law upon requests of the relevant person and applications of the ministry and law enforcement officers or the public prosecutor, the temporary injunction will be taken for six months for the first

time, or in the event of an existing violence threat, the duration or form of injunctions will be changed, cancelled or will proceed in the same way. It is the only protective measure which regulates the solution with the duration instead of day care. The civilian authorities shall decide on the day care for the children of protected person up to four months if it is deemed necessary. Protective injunctions are taken without searching for evidence of the act of violence, and implemented without any delay, yet there is no specific timeframe for making such decisions.

Statistical data indicates the wide use of Law No. 6284. From 2014 to 2016 over 1.2 million preventive measures and over 160.999 protective measures were issued.⁵⁶⁸ Despite the general recognition of the importance of this law, women's CSOs report gender-blindness and multiple problems in its implementation, such as: that some judges request women to make a new application with the new evidence in order to grant an extension if the duration of existing injunction orders expires; some judges requesting evidence in order to issue an injunction order, particularly a barring order; some law enforcement agencies are reluctant to act, belittling the violence or showing disbelief in the survivor's account of the incident⁵⁶⁹; and both spouses requesting protective and preventive measures leading to absurd situations in which both spouses get barring orders due to which neither of them is able to go home.⁵⁷⁰

To conclude, the effectiveness of the criminal justice system for VAW ultimately depends on the recognition and criminalization of different types of VAW by the CC. Although it is important to have a clear and explicit definition of VAW, the fact that such a definition is contained in

⁵⁶⁶ Nicole Pope, 'Good on Paper, Poor in Practice: Combating Gender Violence in Turkey' (2014) 4 Turkish Review 600-604.

⁵⁶⁷ For more details, see: F. Benli, The Status of the Law in the Fight against the Violence in Turkey and the World. Available online: https://www.opvang.nl/files/The_Status_of_the_Law_in_the_Fight_against_the_Violence_in_Turkey_and_the_World_FATMA_BENLI.pdf (last access March 2019)

⁵⁶⁸ A. Sargin, *op.cit.*, 6.

⁵⁶⁹ Açıyla Uçan, Damla Gürkan, Deniz Bayram, Hazal Günel, Martina Patrizia Gaidzik, Perihan Meşeli and Selin Kaner, Türkiye'de Erkek Şiddetiyle Mücadele Mekanizmaları İzleme Raporu, 2016, İstanbul: Mor Çatı Kadın Sığınağı Vakfı, pp. 48-54. Cited in A. Sargin, *op.cit.*, 8 fn 29.

⁵⁷⁰ A. Sargin, 9.

(civil) Law No. 6284, means it will become operational in terms of criminal justice only to the extent to which different types of VAW are criminalized under the CC. E.g. stalking is defined in Law No. 6284 as VAW, but it is not criminalized under the CC, exposing women survivors to burdensome justice-seeking process, without effective and dissuasive penal policy towards stalkers.⁵⁷¹ The fact that different VAW types which are not explicitly criminalized can be covered by some other crimes is not satisfactory for numerous reasons. Primarily it indicates shortcomings on the policy levels due to a lack of understanding of the specific nature and/or elements constituting different types of VAW, which ultimately leads to inconsistent judicial practice and often inadequate penal policy. Apart from endangering the goals of general and special crime prevention, this also reduces the effectiveness of the protection and support system for survivors for all forms of VAW.

2.7.2.2 National policy

a) Relevant strategies

Even though there have been significant improvements in Turkey's gender policy in the last two decades, especially within the aim of making Turkey's legislations closer to the EU *acquis*, the gap between legislation and its implementation remains a major problem. The dominance of patriarchal values that generate violence to subordinate women in society is one reason of ineffectiveness of legislation. However, the lack of support mechanisms and the lack of politi-

cal will and commitment are also determinant. Without political support, legal reforms could not introduce any social change in relation to a problem such as VAW as it has social, cultural and economic aspects.⁵⁷²

Nevertheless, as stated in article 7(1) of the IC, Turkey has an obligation to develop effective, comprehensive and victim-oriented policies to prevent and combat VAW as a state party.⁵⁷³ According to the IC, signatory states must also support and collaborate with non-governmental organizations and civil society that are actively working to combat VAW.⁵⁷⁴ Even though the goal of providing better protection to women has been a major subject of the Turkish government's agenda since 2000s, it is observed that its approach and attitude towards gender equality have hardly changed in the recent years. Governmental policies focusing on preventing VAW do not have a holistic approach that addresses patriarchy and gender inequality as part of the problem.⁵⁷⁵

At first glance there is a consistent approach taken by the authorities to couple measures against VAW with measures to promote gender equality in Turkey. In 2016 the NAP on Combating VAW (2016-2020) was introduced. In the same year, provincial Action Plans for combating VAW were introduced in 26 pilot provinces. In 2018 the NAP on women's empowerment (2018-2023) was enacted.

The implementation of the laws on VAW were supported by a chain of measures, comprising three consecutive national action plans spanning the years 2007 to 2020⁵⁷⁶ and a nation-

⁵⁷¹ This finding is particularly worrisome given the results of Domestic Violence Against Women Research according to which 27% of women in Turkey were subjected to stalking at least once in their lives. This percentage would presumably be even higher if the women without partners were also interviewed. See: Shadow Report, 22 and 47.

⁵⁷² F. Ceren Akçabay, "Limits of the Legal Struggle with Violence against Women in Turkey", Gender Violence: Intersectionalities Conference. (July 2013)

⁵⁷³ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, art 7(2)

⁵⁷⁴ Ibid. Art. 9.

⁵⁷⁵ Yakın Ertürk, *Sınır Tanımayan Şiddet - Paradigma, Politika ve Pratikteki Yönleriyle Kadına Şiddet Olgusu* (Metis Yayınları 2015)14.

⁵⁷⁶ In 2007, the GDWS prepared the first National Action Plan for Societal Gender Equality for 2008-2013 which focuses on the elimination of gender based inequality in education, health, poverty, and access to decision making processes. The First National Action Plan had a comprehensive approach which aimed to introduce new legal arrangements, societal awareness and establish protective services and rehabilitation services. As that Action Plan has expired, updated versions of the National Action Plan on Combating Domestic Violence (NAP) covering the years

al action plan on gender equality which was launched under the auspices of the Labour, Social Services and Family and its predecessor. Currently, a specific chapter is devoted to policies in favour of gender equality under Turkey's Tenth National Development Plan covering the areas of education, health, violence, employment and participation in decision making and politics. An Action Plan spanning the period 2017-19 under the ongoing National Employment Strategy for 2014-2023 encompasses several measures aimed at expanding women's participation in the labour market. A Strategy Paper and Action Plan on Women's Empowerment has been launched for the period 2018-23 with the aim of ensuring women's enjoyment of their rights on an equal footing with men. All these sustained efforts were welcomed by GREVIO in the first evaluation report on Turkey.⁵⁷⁷

Likewise in the GREVIO report it is stated that the notion of "gender justice" has started to be used in the public sphere as an alternative concept to gender equality. The GREVIO Committee indicated that gender justice is a vague concept that tends to overly emphasise women's family duties as mothers and care-givers and carries the risk of reinforcing rather than contesting traditional and stereotypical roles of women. Therefore the Committee reiterated that the crucial concept on which the IC is based is that of gender equality and expressed their concern about the use of the concept of "gender justice", which might stem from a lack of understanding of the principle of gender equality and of the gendered nature of

violence against women. The Committee emphasized that a number of recent policies in Turkey might produce consequences in terms of greater *de facto* inequality and a heightened exposure of women to violence.⁵⁷⁸

The most concrete version of conservative approach can be found in the May 2016 report shared by "The Parliament Research Commission Founded to Investigate the Factors Which Threaten the Unity of Family and Divorce Incidents and to Make Recommendations Concerning the Strengthening of the Institution of Family," established in the TGNA at the outset of 2016. This report, publicly known as the Divorce Commission Report, in line with the government's persistent emphasis on their "necessity of reinforcing the family" argument, can be taken to be a sign of the ideology that encourages turning a blind eye to the VAW and discrimination against women as individuals for the sake of maintaining the unity of the family. This report includes suggestions of compulsory consultancy and implementation of conciliation in cases of divorce; the criterion of "consent" in sexual acts with children; possible marriages in cases of abuse between the perpetrator and the victim, which by implication saves the perpetrator from legal punishment; and the shortening of the period for restraining orders down to fifteen days for the accused that can be demanded by women in cases of violence. Although it was clearly stated as being against the IC among the suggestions were the compulsory enforcement of some alternative dispute resolution methods⁵⁷⁹ like mediation and negotiation in cases of DV, and closed sessions

2012-2015 and 2016-2020 have been prepared. The National Action Plan on Combating Violence Against Women 2016-2020 has the following 5 primary goals; legislative arrangements, creating awareness and transformation of mentality; providing protective and preventive services and strengthening the victims of violence; regulation and implementation of health services, cooperation among institutions and policies. See, UN Women website, <http://evaw-global-database.unwomen.org/en/countries/asia/turkey/2016/national-action-plan-on-combating-violence-against-women>, Last access: 10 November 2018.

⁵⁷⁷ GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence TURKEY (GREVIO Report Turkey), 15 October 2018, 14.

⁵⁷⁸ One such policy is what is known as the 4+4+4 education scheme, which allows pupils, subject to parental approval, to opt for home schooling from the age of 12 or to continue their education at specialist religious schools (Imam hatip). The Committee indicated that home- and religious-based education may reinforce the traditional role of girls as wives and mothers and therefore have a particularly negative effect on girls. 2017 Shadow Report, 46.

⁵⁷⁹ Although the IC envisages that domestic violence/violence against women, crimes against ex partners/wives or existing partners shall be arranged in such a way to be deemed as aggravated circumstances, Article 253 of the Code of Criminal Procedure arranges "dispute resolution" in Turkey. Moreover the scope of dispute resolution was serious-

in courts for cases relating to family law for the “protection of the privacy of family.”⁵⁸⁰

The Turkish government’s policies and the public officials’ statements focus merely on the unity of the family. “Omitting ‘Women’ from the name of the ministry in 2011 was not just a symbolic gesture but also a solid sign of the Government giving priority to family-oriented policies.”⁵⁸¹ The family’s interests are prioritized at the expense of individuals’ rights and women are seen not as individuals but as mothers and caregivers.⁵⁸² Thus, the government’s pro-family approach confines women to traditional gender roles and puts them in a much more vulnerable position by undermining gender equality and justifying male dominance. Moreover, this approach diminishes women’s issues and tags them as family issues.⁵⁸³ A more problematic issue is the government’s encouragement of non-intervention in the cases of acts of VAW. For instance, in April 2016, the Minister of Justice Bekir Bozdağ stated: “We should seriously reconsider how appropriate it is for the state to come between husband and wife with all its police, soldiers, judges, psychologists, social workers and experts. [...] We need to seriously address this. And we need to do it irrespective of the criticism from women’s organizations.”⁵⁸⁴ Within that period the dramatic increase in violence and discrimination against women including the murder of women or underage and forced marriages, raise serious obstacles to women living safely under the protection of basic human rights.⁵⁸⁵ Yet the government denies an increase in the murder

of women on the grounds that there is no prior data collected on the subject.⁵⁸⁶

In conclusion, it could be said that state officials are taking advantage of the lack of political will and thereby appropriating the discourse against gender equality as state policy. Especially in the last few years, it would not be wrong to claim that there is no system or state mechanism that ensures the trustworthiness and accountability of public officials. All of this results in non-intervention thus encouraging VAW and also contradicting the obligation of extra care in such cases. Public officers see no harm in tolerating VAW and cases of impunity for perpetrators continue to increase. The state seeks to fulfil its responsibility and liability concerning VAW by non-state actors with limited projects and activities of awareness raising. Most of the work done to conform to the terms of the Convention proved to be perfunctory and moreover resulted in the confining of women within religion- and society-based gender roles. Thus it is not surprising to see that Turkey has continuously been advised to make further sustained efforts to turn legislation into reality as regards women’s employment, education and political representation, tackling VAW, and early and forced marriages. This shows that much more comprehensive and systematic awareness-raising and training programmes should be conducted both for the population at large and for professionals involved in prevention and protection with a political commitment to gender equality.

ly expanded in November 2016 and its implementation was arranged in detail. Accordingly, offences investigated or prosecuted on complaint and crimes as malicious wounding, intimidation that do not require a complaint to be prosecuted are subject to dispute resolution. According to the regulations, crimes as wounding with a weapon, malicious wounding of wife and members of the first bloodline are not subject to dispute resolution. However, there is no legal arrangement in Turkey providing that dispute resolution is out of question in cases of violence to ex-partner/wife, existing partner and others living with her. There are thus occasions where dispute resolution is offered in such cases. See, 2017 Shadow Report, 49-50.

⁵⁸⁰ A text in English on the Divorce Committee is available on this site: <http://independentturkey.org/divorce-commission-looks-to-strip-womens-rights/> Last access: 11 November 2018.

⁵⁸¹ See also Shadow Report, 10-11.

⁵⁸² GREVIO Report, 7.

⁵⁸³ E. Gözdasoglu Küçükalioglu, Framing Gender-Based Violence in Turkey, par. 29. Available online: <https://journals.openedition.org/cedref/1138?lang=en> (March 2019).

⁵⁸⁴ CNN Türk website, <https://www.cnnturk.com/turkiye/bekir-bozdagdan-tartirilacak-sozler>, Last access: 12 November 2018

⁵⁸⁵ Shadow Report, 10.

⁵⁸⁶ See, Shadow Report, 22-23.

b) Data collection and monitoring

Data is being collected by the Ministry of Justice, the police (POL-NET) and the gendarmerie, however the police records are not made public and the criminal justice statistics do not separate DV cases from other criminal acts.⁵⁸⁷ Each institution has a tendency to collect data according to its own goals and area of responsibility thus leading to the lack of official consolidated data.⁵⁸⁸ This situation enables the usage of alternative sources of data⁵⁸⁹, which the authorities reject as inaccurate and often biased.⁵⁹⁰

Law enforcement agencies collect data using the standard form in use since 2009, however, the data collected through these forms is not available to the public, even if the competent ministries conduct any analysis of the collected data.⁵⁹¹ As opposed to the publicly unavailable data gathered by law enforcement agencies, those generated by the information system of criminal courts (UYAP) are published on the website of the Ministry of Justice and the Turkish Statistical Institute.⁵⁹² Although publicly available, UYAP contains only data related to the offence (relevant legal provision and the perpetrator) with no information on the survivor and her relationship with the perpetrator. In addition, cases dealing with DV are not regarded as a separate category in relation to other criminal cases, e.g. cases of DV may be documented as divorce cases, if they are taken to family courts, rendering some cases invis-

ble in the statistic.⁵⁹³ Due to this drawback, this data related to courts is generally of no use for VAW analysis.

Lack of “robust administrative and population-based data” is hindering the process of policy evaluation thus preventing the assessment of whether a particular policy or measure meets the need of survivors and fulfils its purpose. The GDSW has the ability, mandate and means to collect and analyse data pertaining to the application of Law No. 6284. However, there is apparent absence of administrative data from other sectors of government, notably the justice sector, limiting GDSW's grasp of the situation regarding VAW.⁵⁹⁴

To conclude, efforts to harmonise state agencies' practices and data collection are ongoing as the establishment of the centralised inter-institutional database is set as an overarching objective.

c) Trainings of relevant professionals

Law No. 6284 rendered the training of relevant professionals obligatory.⁵⁹⁵ All personnel or members of public institutions and organizations, and public occupational organizations, should attend training programmes on the “human rights of women and equality between men and women” and the curriculum of primary and secondary schools should include lessons about human rights of women and equality between men and women.⁵⁹⁶

⁵⁸⁷ Integrated Policies – Integrated Approach: Mapping of policies and legislation on violence against women and the Istanbul convention in the Western Balkans and Turkey, Executive Summary, European Women's Lobby, November 2018, 9.

⁵⁸⁸ GREVIO Report, 34.

⁵⁸⁹ E.g. Femicide Watch Platform. <http://www.kadincinayetlerinidurduracagiz.net/for-english>

⁵⁹⁰ GREVIO Report, 34.

⁵⁹¹ See, Shadow Report, 22-23.

⁵⁹² GREVIO Report, 34.

⁵⁹³ A. Sargin, 6.

⁵⁹⁴ GREVIO Report, 33.

⁵⁹⁵ See Article 16 paragraph 5 of Law No. 6284.

⁵⁹⁶ In the National Action Plan for Combating Violence Against Women, (2012-2015) which covers the period 2012-2015, the Government adopted a series of measures aimed at creating awareness and transforming mentality: educational activities for various social groups, preparation of materials, erasing expressions that reinforced discrimination against women from all educational materials including the university level, and the preparation of informative materials for sexual and reproductive health, violence against women and gender equality awareness for couples. In addition, many public officials were trained within the scope of in the Technical Assistance Project for Women's Shelters Against Domestic Violence what is briefly known as the Domestic Violence Project which was implemented between

The co-ordinating body has a leading role in ensuring the effective implementation of this provision. It is responsible for delivering regular in-service training on gender equality and VAW to state employees, including the staff of the VPMCs, and university students. It should also be credited for concluding a number of protocols which aim to guarantee the sustainability of the training provided to the personnel of key line ministries and state agencies, including the Council of Higher Education, the Presidency of Religious Affairs, the Ministry of Health, the Ministry of National Defence, the Ministry of the Interior and the General Command of the Gendarmerie. Training is furthermore supported by a number of guidelines, aiming at both pre-vocational and in-service training.⁵⁹⁷ However, a number of factors that commonly decrease the effectiveness of training are relevant to the situation in Turkey. These include a frequent turnover of staff, lack of mechanisms guaranteeing the continuity of training, and the absence of monitoring procedures to assess the outcome of training.

As required by the IC, there are no regulations that guarantee the continuity of the training provided for the training of professionals. The selection of the officials for the trainings is also random. For example, in the trainings given to law enforcement agents there are many special operations and special team members who do not work in the area of VAW. These people see the trainings as an opportunity to relax. In addition, there is no regulation that guarantees that the trained professionals will work with women who are subjected to violence, or that their training will be taken into consideration for promotion or reassignment purposes, or that whether they will participate in further trainings.⁵⁹⁸

27.12.2013-27.12.2016. It aimed to raise awareness and train public officials through the use of many publications. However, it is necessary to approach the contents and results of these activities with scepticism due to the reckless attitude of the Government to these issues. See 2016 Shadow NGO Report.

⁵⁹⁷ GREVIO Report Turkey, 46.

⁵⁹⁸ According to the information we have received from women working as professionals in the field, especially after the coup attempt on July 15, 2016 the work places of a large portion of the professionals who participated in these trainings have been changed and some have even been removed from service altogether. See, 2016 Shadow NGO Report, p. 27.

⁵⁹⁹ GREVIO Report, 53-54.

⁶⁰⁰ Ibid, 54.

⁶⁰¹ Ibid.

d) Survivor-oriented approach

The support structure and protection system for survivors of any type of VAW needs to be multifaceted, professional and survivor-oriented, as requested by the IC. In that regards, a solid infrastructure of support services was established based on Law No. 6284 comprised of VPMCs, fist-step stations, shelters and an SOS helpline. Among their many tasks, VPMCs provide assistance and guidance to the survivors or refer them to other support services and on a general level they coordinate all service providers by providing framework for cooperation between statutory agencies (social services, law enforcement agencies, the judiciary and the relevant CSOs).⁵⁹⁹ However, the lack of adequate financial and human resources (lack of specialist, qualified and experienced staff) prevents VPMCs from fully exercising their mandate in accordance with the proclaimed role and purpose. Also, fragmented structure of social services, creates a situation in which VAW survivors have to communicate and apply to other institutions and/or revert back to first institution to which they applied before being referred to a VPMC, risking secondary victimisation.⁶⁰⁰ Also, VPMCs are not competent to offer help to a number of groups of women with special needs (such as women aged over 60 years, women suffering from severe psychological disturbances, women with physical or mental disabilities etc). Since VPMCs are not competent, these women are being diverted to other institutions that do not offer specialist services for VAW survivors.⁶⁰¹

2.7.3 Institutional framework

2.7.3.1 Coordinating body

The institutional progress of gender equality in Turkey started in 1987 with the establishment of a separate unit “Advisory Board for policies with regards to Women” within the State Planning Organization with the participation of representatives from public agencies, CSOs and universities. This was the first time that a separate unit for gender equality was created in the public sector aiming to increase gender awareness in public policies. Upon the ratification of CEDAW, and in order to realize the goals of eliminating all forms of discrimination against women, a Directorate for women's rights and gender equality was established in 1990: the *General Directorate of Women's Status*⁶⁰² (hereinafter: GDWS). The GDWS was initially tied to the Ministry of Labour and Social Security, but in 1991 it was transferred to the Office of the Prime Minister. It coordinates the Women's Status Units which are established in different provinces in Turkey. Its main mission is to promote gender equality in Turkey by developing programs and policies to reduce all forms of gender based discrimination. The GDWS puts together the reports on gender policy including the periodic reports for CEDAW, the national action plans for gender equality, and runs the training programs for public institutions. It also works jointly with Ministries on gender related issues such as violence against women.⁶⁰³

A Ministry of State position for Women and Family Affairs was initially established to also deal with gender policy. However, when it was transformed into a separate Ministry in 2011, the Ministry for Family and Social Policies, with Decree No. 663, it was broadened

into a ministry in charge of dealing with all matters under social policy. On 8 June 2011, the GDWS was restructured as one of the main units under the Ministry for Family and Social Policies. The Ministry specifically addresses gender policy related issues; however, the term ‘women’ was omitted from its name.⁶⁰⁴ The closure of the State Ministry for Women and Family Affairs and its replacement with a Ministry of Family and Social Policies were described as steps back regarding the goal of gender equality by women's organizations.⁶⁰⁵ In 2018 Turkey officially switched their government system to an executive presidency which was stipulated by the 18-article constitutional amendment which was approved by the April 16, 2017 referendum. The Family and Social Policies Ministry and Labour and Social Security Ministry were merged under the new Labour, Social Services and Family Ministry with the new “presidential governmental system”, yet the GDWS remains a part of the new ministry.⁶⁰⁶

The GDWS's operations in the area of VAW are centred on supporting mechanisms for support and protection of the survivors, namely VPMCs, the first-step station, women's shelters and the social support hotline.⁶⁰⁷ The GDWS also has a mandate to ensure effective coordination of policies and measures to combat VAW through the functioning and the findings of the Committee for Monitoring VAW and the equivalent structures at the local level. Based on the concern expressed by the CSOs, the GREVIO Report states⁶⁰⁸ the need for the improvement of cooperation of these structures and the GDSW with CSOs.

⁶⁰² Kadının Statüsü Genel Müdürlüğü.

⁶⁰³ Müftüler-Bac (n 1) 6-7.

⁶⁰⁴ Müftüler-Bac (n 1) 6-7

⁶⁰⁵ Bianet web site, 08.06.2011, <https://m.bianet.org/bianet/kadin/130585-kadin-bakanligi-kaldirildi-kadin-orgutleri-ofkeli> Last access: 15 October 2018

⁶⁰⁶ AA News agency, <https://www.aa.com.tr/en/todays-headlines/turkey-decree-out-making-first-changes-in-new-system/1199042>

⁶⁰⁷ GREVIO Report, 32.

⁶⁰⁸ Ibid.

2.7.3.2 Relevant CSOs

Turkish feminist CSOs have so far led various successful campaigns covering different activities, from awareness raising on VAW and gender (in)equality to the passing of relevant laws. They were an indispensable partner to the authorities throughout the negotiation process of the IC, its ratification and the subsequent adoption of the necessary implementing measures, including Law No. 6284.⁶⁰⁹

The IC reiterates the importance of a multi-stakeholder approach to combating VAW entailing effective and substantial cooperation with women's CSOs on the basis of their vast experience and expertise. However, GREVIO is alarmed over the increasingly restrictive conditions experienced by CSOs, in particular independent women's CSOs who have advocated the IC and its principles. For instance, although the NAP 2016-2020 was prepared in pursuance of all international conventions, including mainly the IC and looked good on paper, independent women's CSOs emphasized that the new NAP was pre-

pared with limited CSOs participation contrary to their expectations and government's statements. They also indicated that the reports regarding the outcomes and efficiency of the previous NAP have not been shared with them.⁶¹⁰ The accountability of State agencies, at all levels, is also too weak for the implementation of those NAPs.⁶¹¹

Women's CSOs emphasised that the limited level of relations and co-operation between the Turkish government and independent women's organizations is an aspect of the change in the state policy about gender equality in their Shadow report on Turkey's Implementations of the Istanbul Convention (2017 Shadow report) which was submitted to the GREVIO Committee in September 2017.⁶¹² The independence and safety of women's CSOs is rapidly diminishing. Nine CSOs were shut down by a statutory decree during the state of emergency in 2016⁶¹³ and activists faced hate speech following their activities to condemn sexism and VAW.⁶¹⁴

⁶⁰⁹ Ibid., 29.

⁶¹⁰ 2016 Shadow NGO Report, 14.

⁶¹¹ Indeed, there is no specific budget for monitoring and combating VAW, as this is included in the budget of Directorate for Women's Status, whose budget is one of the lowest of all the Directorates in the Turkish government. Moreover this budget was reduced significantly over the years. See, EuroMed Rights, Situation report on Violence against Women in Turkey 2017, <https://www.euromedrights.org/wp-content/uploads/2017/03/Factsheet-2017-VAW-Turkey-EN.pdf>, Last access: 13 November 2018, 2.

⁶¹² The GDSW has ceased implementing awareness-raising activities in cooperation with independent women's organizations. It is known that primarily within the scope of the aforementioned project and the national action plan a number of trainings were organized for various groups of citizens in the framework of Article 14, as well as for professionals within the framework of Article 15. However, in the preparation and presentation of these materials, and in fact throughout all general preventive work for violence against women, in accordance with Article 9 of the Convention, the Government has at times not utilised the input of experienced independent women's organisations at all and at times included them only marginally. These organisations have sometimes not been invited at all or sometimes been invited at short notice so that they did not have enough time to prepare, and at other times the public authorities only invited GONGOs and the organisations which have close relations with the Government and left the rest out. As independent women's organisations which know the mindset of the Government, we are concerned about the content of these trainings not to be appropriate. Independent women's organisations are also concerned that the Government's incorporations with non-governmental organisations through mostly privileging the ones only have close ties with it, will especially in the eyes of the international community create the deceptive illusion that they are working with civil society, see 2016 Shadow NGO Report.

⁶¹³ With this intervention, many cities ceased to have any consultancy centres for women to apply to when being subjected to violence. The public authorities in many cities had also suspended ongoing work in collaboration with independent women's organizations by cancelling existing protocols. The civil society space has shrunk considerably. Women's rights activists have been detained and charges pressed against them. Furthermore, women's organizations have been left out of the decision-making processes and have had to struggle with GONGOs as of which the state is in continuous collaboration with. The activities of Adıyaman Women's Life Association, Bursa Panayır Women's Solidarity Association, Ceren Women's Organization, Gökkuşığı Women's Organization, KJA, Muş Women's Roof Organization, Muş Women's Organization, Selis Women's Organization and Van Women's Organization were suspended; then they were shut down and all their assets were confiscated. The act of shutting down these women's organizations which have been fighting back at male violence for years in their particular regions and showing exemplary solidarity with women is an attack against women's will to struggle against violence. Shadow Report, 19-20.

⁶¹⁴ Shadow Report, 20.

A worrisome trend undermining the work, funding and achievements of CSOs and leading to the shrinking space for legitimate CSOs is the establishment of so-called GONGOs - government-organised non-governmental organisations. As indicated by several CSOs in the Shadow Report, the state gives preferences to GONGOs in terms of participation in working groups, decision-making bodies and generally in consultation process leaving the independent CSOs out of the loop when it comes to communication and collaboration.⁶¹⁵

The described situation emphasises the need for the Turkish authorities to fully acknowledge and uphold the role of independent CSOs as their irreplaceable partners with insight into the situation on the ground and relevant experience and expertise in preventing and combating VAW.

2.7.3.3 Allocation of adequate financial and human resources

The financial and human resources in terms of law enforcement are one of the identified problems. The financial support for women without children is very limited, showing a bias towards 'family protection' instead of protection of persons against GBV.

The budget of the Ministry of Family and Social Policies (MoFSP)⁶¹⁶ under which the GDSW - the institution appointed to work specifically on VAW and for the coordination of the implementation of the IC in general - ranks as sixth

among other ministries with 4% of the overall budget in 2017.⁶¹⁷ The former Minister of Family and Social Policies, Fatma Betül Sayan Kaya, declared that 84% of the overall budget of 24,303,358,000 TRY, that is 20,519,581,000 TRY, was allocated to social assistance.⁶¹⁸ This data reveals the fact that despite its increasing share in the overall budget, the Ministry's main sphere of influence and activity has been transformed over the years into social assistance.⁶¹⁹ A significant part of the expenses is related to the protection/insurance of the unity of the family and the promotion of in-marriage reproduction. This can also be seen in connection with the Family Education Programme (FEP), returning to the family and homestay support activities (also marriage support in this context), Dowery Account and State Contribution Application, conditional health services (health and pregnancy), birth support, etc.⁶²⁰

Furthermore the state is not adequately transparent with the data on financial resources being regularly shared with the public and prepared with a view to all levels of financial literacy. Thus the GREVIO Committee stressed the importance of the authorities making use of strong financial data to assess whether appropriate resources are devoted to policies in the last report. The Committee also underscored that the aim of Article 8 of the IC is to ensure the allocation of appropriate financial and human resources not only for activities carried out by public authorities, but also for those of relevant non-governmental and civil society organisations.⁶²¹

⁶¹⁵ İstanbul Sözleşmesi Türkiye İzleme Platformu, Shadow NGO Report on Turkey's First Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter: Shadow Report).

⁶¹⁶ The Ministry of Family and Social Policies was broadened into a ministry, named the Ministry of Labor, Social Services and Family (MoLSSF) in charge of dealing with all matters under social policy and labor with the new "presidential governmental system" yet the GDSW remains as a part of the new ministry.

⁶¹⁷ MoLSSF official website. <http://aile.gov.tr/haberler/bakanligimiza-tahsis-edilen-kaynaklarin-yaklasik-yuzde-95i-sosyal-yardim-ve-sosyal-hizmetlerde-kullanilacaktir>. Last access: 12 November 2018.

⁶¹⁸ MoLSSF official website. <http://aile.gov.tr/haberler/bakanligimiza-tahsis-edilen-kaynaklarin-yaklasik-yuzde-95i-sosyal-yardim-ve-sosyal-hizmetlerde-kullanilacaktir>. Last access: 12 November 2018.

⁶¹⁹ As stated in the 2017 Shadow report the mentality governing social assistance is explicitly in line with government policies concerning women: the ministry's social assistance programme has six main headings (family assistance, education assistance, health services assistance, assistance for elderly and people with disabilities, project support and employment assistance) and there are 35 sub-groups under these six main headings. None of these main groups or sub-groups is directly or indirectly related to women as subjects facing violence, 2017 Shadow report, 17-19.

⁶²⁰ MoFSP Activity Report 2016, p. 46-49

⁶²¹ GREVIO Report Turkey, 27-28.

2.7.3.4 Specialist support services

VPMCs are the centrepiece of a state-run infrastructure carrying out multiple tasks, which combine co-ordinating and monitoring the implementation of protective measures, as well as offering general and specialist services. While the approach of providing both general and specialist services mainly through state-run institutions is not contrary to the requirements of the convention, GREVIO notes the possible limitations inherent to such an approach. Good practice developed throughout parties to the convention, supported by extensive research, shows that both the state and CSOs are needed to provide support to survivors. One reason is that certain survivors will hesitate to report their experiences of violence to state-run agencies and that many women are more likely to disclose their experiences to independent women's CSOs acting in absolute confidentiality. Hence, women's CSOs have an important role to play in providing essential services such as counselling, shelter accommodation or legal advice to women survivors of violence. The alarming levels of underreporting in Turkey offer further demonstration of the urgent need to provide women with avenues for support other than VPMCs, while taking additional measures to encourage reporting by survivors and to increase their trust in state-run agencies. These CSOs centres would furthermore offer a solution to one of the most significant barriers preventing survivors from approaching VPMCs, especially in smaller communities and/or rural parts of the country, namely the fact that they often employ relatives or acquaintances of the perpetrator and do not appear therefore to guarantee confidentiality.

SOS (Help)line: There is one women's helpline in Turkey called Emergency Domestic Violence Hotline (phone number: 02126569696; 05496569696). The helpline is run by Türkiye Kadın Dernekleri Federasyonu Aile İç Şiddet

Acil Yardım Hattı (the Federation of Women Associations of Turkey). The helpline does not operate 24/7, it is not free of charge and does not offer multi-lingual support. There is no funding allocated by the state for the running of this helpline. During 2016, this helpline received 2,277 calls. There is another line in Turkey (telephone number 183), run by the Ministry of Family and Social Policies, but this helpline is not a women's helpline, as it does not cover specifically situations of VAW. The helpline offers social support for women, children, elderly and the disabled. This helpline received 241,027 calls in 2016, out of which 40,830 involved women's support services. It is however unknown how many of these calls concerned VAW.⁶²²

Shelters: As of December 2016, there were 137 shelters in Turkey offering temporary accommodation to women survivors of violence and their children, with a total capacity of 3433 places. Out of this total, 101 shelters were affiliated to the MoFSP, 32 were run by local authorities (municipalities) and four shelters were run by NGOs.⁶²³ Applications for shelters are assessed by VPMCs and Provincial Directorates of Family and Social Policies in provinces where VPMCs do not exist. Women's CSOs report a number of problems associated with VPMCs, such as staff not informing survivors of their rights and available protection mechanisms; staff providing survivors with incorrect or dissuading information; refusal of requests for referral to the shelter or for support in cases such as when there is no injunction order under Law No. 6284; and staff forcing survivors to return home or reconcile with the perpetrators.⁶²⁴ State-run shelters operate on a 24/7 basis and survivors stay there for 3 to 6 months. Some problems identified by women's CSOs regarding access to state-run shelters are as follows: boys over 12 years old are not received in shelters, restricting their mothers' access to the shelters; survivors over 60 years of age are referred to senior care centres, rather than the

⁶²² WAVE Country Report 2017, p.99 Available online: http://files.wave-network.org/researchreports/WAVE_CR_2017.pdf

⁶²³ GREVIO Report, 61.

⁶²⁴ European Womens' Lobby, Mapping of Policies and Legislation on Violence against Women and the Istanbul Convention in Turkey, p.11.

shelters; shelters are reported to lack the physical conditions suitable for the disabled; and it is reported that lesbian and bi-sexual women have access to shelters only if they conceal their sexual orientation. Other problems identified with the state-run shelters are: insufficient number of shelters in proportion to the country's population; staff encouraging women to reconcile with their husbands; inadequacy of psychological support; lack of access to food at other than designated hours; restrictions on the use of mobile phones and internet; and lack of conformity between shelter entry and exit hours and official business hours preventing women continuing their jobs while staying there.⁶²⁵

Rape crisis centre: Specialised services for survivors of sexual VAW do not exist and there are no rape crisis centres or sexual violence referral centres in Turkey. This indicates a lack of recognition of sexual violence as a systemic problem without comprehensive public policy for prevention and combating sexual VAW or support for survivors. As stated in the GREVIO Report, the authorities have plan to establish three centres for women survivors of sexual violence, as a pilot project.⁶²⁶

2.7.3.5 Protection of survivors/witnesses and legal aid

The shadow report to GREVIO from 2017 remarks that gender bias is one of the biggest obstacles preventing the law enforcement officials from taking necessary measures immediately and collecting evidence properly.⁶²⁷ This perspective stems from the lack of knowledge on gender equality and discrimination against women. The CEDAW Committee drew attention

to the limited knowledge of the law enforcement officials and legal practitioners on gender equality.⁶²⁸ Law enforcement officials often first question the 'appropriateness' of the woman exposed to violence in the context of society's gender norms and then decide how they will act. Thus, their preconceived opinions become decisive instead of the facts of the case in question. There are also some court judgments in which "the rulings attempted to justify violence inflicted on women and sometimes on juveniles with reference to the victim's family background and attitude".⁶²⁹ In some other cases, it is observed that "police officers tried to convince domestic violence survivors to return to their alleged abusers rather than help them pursue their complaints".⁶³⁰

A monitoring report by Mor Çatı Foundation in 2014 identifies the problems in terms of the implementation of Law No. 6284 on the Protection of Family and Prevention of Violence against Women through first-hand experiences of the survivors of violence. The report argues that symbolic numbers of VPMCs are far from providing the supports indicated in legislation, which results in difficulties for the women survivors of violence in accessing shelters, in-kind and financial support, child care support, vocational training and job finding support; and the institution is insufficient in terms of fulfilling its coordination responsibilities as assigned to it by Law No. 6284. More specifically, the report indicates a number of implementation problems regarding the number and location of VPMCs; quality and behaviours of the staff; and, quality of the services provided by VPMCs.⁶³¹ Neither VPMCs nor shelters are enough and the existing shelters fail to provide quality services and safety. Women's CSOs, which would like to open shelters, cannot do that due to

⁶²⁵ European Womens' Lobby, Mapping of Policies and Legislation on Violence against Women and the Istanbul Convention in Turkey, p.12.

⁶²⁶ GREVIO Report Turkey, p. 66.

⁶²⁷ 2017 Shadow Report, 53.

⁶²⁸ Concluding Observations on the Seventh Periodic Report of Turkey, 2016 (Committee on the Elimination of Discrimination against Women 2016), 6.

⁶²⁹ European Commission (2013) Turkey 2013 Progress Report, (2013 European Commission Report), 27; Palmen and others, WAVE: Violence Against Women Comparative Report: Italy, Spain and Turkey, 61-62.

⁶³⁰ 2012 European Commission Report, 27.

⁶³¹ '6284 Sayılı Kanun Uygulamaları İzleme Raporu' (Mor Çatı Kadın Sığınağı Vakfı, 2014) 20-22.

lack of financial and political support.⁶³² Yet opening new shelters would not be enough. It is also important to closely watch how those shelters are operated and whether employees, women and children at those facilities are protected. For instance, when the municipal women's centres opened in line with Law No. 5393, the problem of lack of "qualified staff with a background in social work, psychology, law and health, and capable of responding effectively to the legal, social, educational and health needs of women and children" was identified.⁶³³

The quality, accessibility and quantity still being in question, physical, psychological and legal survivor support services are provided in Turkey. Legal measures support further enhancement of these services, and plans are made in that direction. Although there are some good examples, they remain geographically limited and the countrywide practices, such as shelters, fall short of addressing the needs of survivors.

Legal advice is one of the most demanded support services in combatting VAW. In line with the Legal Aid Regulations of the Union of Bars of Turkey regarding free lawyer support of bars, anyone who cannot afford legal aid and proceedings fees can benefit from free legal aid. In practice, whether women can benefit from free legal aid or not is determined based on their income status, there are cases when women with the same income status, but less purchasing power who are obliged to take care of their children or who have additional health expenditure due to chronic illness etc. cannot benefit from free legal aid. In cases when women own property or earn a salary, also including minimum wage, bar associations do not appoint free lawyers. Bar associations are supervised by the Ministry of Justice in terms of the budget they allocate to legal aid services. Therefore, women cannot benefit from

free lawyer services and cannot have a lawyer in their search for justice when they work even for a minimum wage or have a car or house registered to their name, even in case they are unemployed.⁶³⁴

Although both of the survivor support services (governmental and non-governmental) provide legal assistance, it is worth mentioning one particular project, the *Gelincik Project*, which has specifically served this purpose since 2011. The project is run by the experienced lawyers of the Ankara Bar Association, who have worked on children and women rights for a long time. Besides judicial support, the project assists survivors in finding shelters and jobs. The project has a free of charge telephone line (*Gelincik Line- Gelincik Hattı*) for women to reach them 24/7 whenever they need. Women, who cannot reach the Centre by their own means, are picked up by a private car accompanied by a woman lawyer. Following the first meeting, the survivor is taken to medical jurisprudence, afterwards, all necessary legal measures are taken and followed by the lawyers of the Ankara Bar Association. In case the survivor does not wish to go back to her home, she is taken to shelters in cooperation with the Bar. If the shelter does not have any available place, women are placed in a temporary guest house or hotel. Until the end of the case, the lawyers support the survivors. *Gelincik Centre* works with 40 expert and 350 voluntary lawyers. This project is a good example of legal support mechanisms, since it supports women through the whole legal process, and also undertakes their protection by helping them to find a shelter.⁶³⁵

⁶³² GREVIO Report Turkey, 7-8.

⁶³³ The capacity seems extremely low in comparison with the overall population of women which is app. 39 million. Additionally, the municipalities, with over 100,000 population, should be obliged to open shelters in compliance with the Municipality Law No. 5393. Sanctions should be put in effect for those that do not comply. Furthermore, the number of overall shelters in Turkey should be increased in line with the Istanbul Convention. 2016 Shadow NGO Report, 15-17.

⁶³⁴ 2016 Shadow NGO Report, 59.

⁶³⁵ Ç. Tozlu/A. Göksel, op.cit., p. 46.

2.7.4 Case studies

2.7.4.1 Investigation, prosecution and protective measures

Law enforcement officials and other relevant actors have a tendency not to intervene when a woman subjected to violence resorts to them. The reluctance and slow decision making process of the courts are other barriers that women encounter. They often do not launch criminal investigations and do not issue protection orders, rather encouraging survivors to reconcile with perpetrators to maintain the family unity. The law enforcement officials acting as mediators is very common where women are forced to get back with the perpetrator who exposed them to violence. When women return to the police stations to make another complaint or for another procedure they often find out that the perpetrator has also been invited by the police in the effort of arranging for a reconciliation.⁶³⁶ These concerns are echoed in the 2017 Shadow NGO Report to the GREVIO Committee.⁶³⁷ According to the report, law enforcement officials either do not act in time or they discourage women from making a complaint. Sometimes they do this explicitly, while at other times they discourage women by making them wait for a long time at the police station or by telling them that legal remedies are tiring and not effective in violence cases. It is stated in the report that it is frequently witnessed that women are held responsible for violence with a gender bias and accusations of 'not obeying their husbands' or 'provoking them.' When the law enforcement agencies refuse to take action, the crimes are not conveyed to the prosecutor, hence no proceedings can be initiated.⁶³⁸ Moreover, and as already stated, the report remarks that the gender bias is one of the biggest obstacles preventing the law enforcement officials

from taking necessary measures immediately and collecting evidence properly.

The GREVIO Committee also observed a tendency to view the protective civil measures foreseen under Law No. 6284 as a replacement for criminal prosecution. This runs counter to the need to uphold the criminal accountability of the perpetrator, especially in cases of repeat and more serious violence. Risk assessment and management procedures have been introduced but should be reinforced by incorporating a form of multi-agency response based on the human rights and needs of the survivor concerned, by providing co-ordinated safety and support for survivors and by ensuring that risk factors are reviewed on a case-by-case basis. GREVIO finds that an effective application of protective orders would require reviewing statutory agencies' tendency to issue such orders for short periods of time, without due consideration for the survivor's safety and the need for her empowerment and recovery. Finally, GREVIO highlights the need to uphold the principle stated in Law No. 6284 that the survivor's statement is evidence for the purpose of issuing protective measures, as well as the need for law enforcement agencies to take a proactive role in gathering evidence and reacting diligently to breaches of protection orders.⁶³⁹

There are no legal approach and corresponding legal arrangements in the Turkish legislation, especially in the CC, that define the violation of gender-based rights of women and adjudicate crimes against women through special orders. In the CC, crimes requiring *ex officio* proceedings are generally defined as crimes against the society, nation and state, while crimes including VAW are defined as part of offences against persons and mostly arranged as offences prosecuted on complaint. Offences as physical violence, malicious wounding, sexual assault, threats, vi-

⁶³⁶ Statistics on the tendency of the non-intervention from one of the rare studies called December 2014 Report on Domestic Violence against Women in Turkey shows the seriousness of this issue. "In 29 percent of the applications made to the police, women were reconciled with their husbands, 23 percent of the applications resulted in giving cautionary decisions, 41 percent of them resulted in the referral of the police to other institutions, organizations; whereas, in 13 percent of the applications nothing was done." See December 2014 Hacettepe University Report on Domestic Violence against Women in Turkey, 25.

⁶³⁷ See, Shadow Report, 52.

⁶³⁸ 2017 Shadow Report, 54.

⁶³⁹ GREVIO Report Turkey, 9.

olation of residence immunity, violation of freedom to work and labour, insult, violation of confidentiality of communication, violation of right to privacy are investigated on complaint within the 6 month period, in case the women facing violence withdraws her complaint, the proceedings and the investigation are suspended. Prosecutors do not have the authority and obligation to *ex officio* initiate proceedings in neither of these crimes, which results in women being continually pressured and forced by perpetrators of violence to withdraw their complaints. Besides, many of these offenses are within the scope of dispute resolution, which force women to meet with the perpetrators of violence.

There are many women in Turkey who do not file a complaint within the official complaint period of 6 months due to the trauma caused by the violence, rightful concerns that she would not be duly protected, social pressure or continued harassment of the perpetrator. Many men inflicting VAW are thus allowed to go on with impunity. There are also numerous women who are forced to withdraw their complaints due to the same reasons. Therefore, there exists a legal impasse caused by the fact that many gender specific offences that might be inflicted on women are prosecuted on complaint. Due to secondary trauma they experience in police headquarters and legal institutions and lack of empowering support throughout the process, women who have the courage to file a complaint are left alone during the proceedings. There are no *ex officio* proceedings in these offenses, while lawsuits and actions taken by perpetrators for the suspension of complaints generally end in their favour.⁶⁴⁰

All of the findings stated above indicate Turkey's failure to abide by the duty of due diligence, as

stipulated by the IC. This practice, particularly symptomatic for DV cases, gave rise to a number of judgments by the European Court of Human Rights, starting with the landmark judgment in the *Opuz v. Turkey* case. The *Opuz* group of cases⁶⁴¹ concerns the failure of the authorities to protect the applicants or their deceased relatives from DV. In these cases, the Court found violations of Article 2 (right to life) and Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights on a series of grounds, which include the fact that: (1) the authorities had not taken the necessary preventive/protective measures to protect the applicants or their deceased relatives from DV, despite the real and imminent risk of assault they knew or ought to have known about; (2) the authorities had failed to apply the available sanctions for non-compliance with protective measures, rendering these measures totally ineffective and giving impunity to the perpetrators; (3) the criminal investigations and subsequent proceedings against the perpetrators lacked promptness and diligence.⁶⁴²

2.7.4.2 First case

a) Fact of the case⁶⁴³

Rabia Aydın (birth 1990) used to live in a village called Pirebeyle which is in Bursa-Büyükorhan province, located in the West Anatolia. She was married for seven years when she was murdered by her husband Yaşar Aydın. She graduated from a primary school and had no other educational background. They had a consensual marriage; they wanted to marry each other although at first Rabia's parents were against this marriage. When she was murdered by Yaşar Aydın, they had two sons, a 4-year-old

⁶⁴⁰ 2017 Shadow Report, 51.

⁶⁴¹ See application 3621/07 Durmaz v. Turkey, judgment of 13/11/2014; application 646/10 M.G. v. Turkey, judgment of 22/03/2016; application 55354/11 Civek v. Turkey, judgment of 23/02/2016; application 63034/11 Halime Kılıç v. Turkey, judgment of 28/06/2016.

⁶⁴² GREVIO Report Turkey, 20.

⁶⁴³ For the purpose of case analysis, several interviews had been planned and few had been conducted. Rabia Aydın family's lawyer was interviewed. Establishing contact with Rabia Aydın's family was attempted, but they refused to meet and give any information to national researcher. Visit to Büyükorhan County Gendarmerie, attempted to learn additional information from the officials but they requested a formal permission from the Ministry of the Interior and did not share any information. Representative of the CSO following Rabia Aydın case was interviewed.

Mustafa and a 6-year-old Yiğit. Yaşar Aydın and his family, who lived in close proximity, sharing a courtyard, were prosecuted because of illegal arms possession and drug dealing crimes. Yaşar Aydın had also been convicted of assault and physical injury. In addition and separately of this case, he got seven months in prison and got drug addiction treatment in the meanwhile.

Rabia Aydın and her children were violated physically and psychologically during her marriage with Yaşar Aydın. Between 2007-2008 due to the increasing violence, she went to Büyükşehir County Gendarmerie a number of times (in Turkey in rural areas official the law enforcement agency are the gendarmeries). However, as her lawyer said officials did not do what they were supposed to do by law, they did not record the complaint in detail, neither had they advised the survivor of her rights, nor filed an official report on the case. Instead of providing protection to Rabia Aydın, they tried to mediate between her and her husband. Rabia Aydın's lawyer stated that there are records about several applications made by her in the commissioned gendarmerie station. Regrettably, gendarmerie officials did not share the records with the authors of this study.

According to statements of her lawyer who was informed by Rabia Aydın's brother, on one occasion after having objected to her husband's illegal activities, Yaşar Aydın poured gasoline on her and tried to burn her to death. Rabia Aydın was rescued by the villagers and went to the Büyükşehir Gendarmerie Station to seek protection for her life. After her request the Court decided to issue a suspended sentence for Yaşar Aydın in duration of three months. However, this decision was not detailed and there were not any protective and supportive measures put in place, nor was there any financial support and safe accommodation in the court decision. It should be added that Turkey was a part of the IC at that time and, according to the Convention, the court decision had to include all the necessary measures and follow the process of protection.

Although her burn marks were considered as "actual bodily harm" in the health report of Rabia Aydın, a lawyer was not appointed by Bur-

sa Bar Association. For this and other reasons Rabia Aydın could not go to the criminal court to complain against Yaşar Aydın about that occasion of violence. It does not seem that Rabia Aydın was introduced to her rights, nor was she notified about the procedure in an appropriate, gender-sensitive and situation-sensitive manner. After this terrific assault of Yaşar Aydın, on 6-7 June 2015, taking her younger son, Rabia Aydın went to live with her parents at their home in Soma, Manisa. Immediately after leaving her husband, she went to the Soma Civil Court of First Instance to file for a divorce; her case number is 2015/202.

Despite being under suspended sentence, Yaşar Aydın went to Soma and tried to see Rabia Aydın many times saying "his elder son missed her mummy", "he missed his younger son". On 1-2 August, Rabia Aydın filed a complaint against her husband who was wandering around her family's neighbourhood and went to the Cenkyeri Gendarmerie Station with her mother to give a statement against him. However, Yaşar Aydın was released immediately after giving his statement by the Soma Cenkyeri Gendarmerie Station. Four or five days after what happened in Soma, Yaşar Aydın contacted Rabia Aydın again. This time she accepted to see him. As her lawyer stated according to Rabia Aydın's brother Birol Alkan who is also an intervenor in the case, Rabia Aydın accepted to meet Yaşar Aydın because of family pressure on her and her desire to see her elder son. Yet again, to Birol Alkan, their parents were against this marriage from the very beginning, but they did not want their daughter labelled as a "divorced woman", since being a "widow woman" in rural areas is a type of stigmatization, as if they are "immoral". Rural perceptions can be e judgmental when it comes to women as a fragile group. In addition, they thought that Rabia and her children would need economic support to survive and live and for this reason they were planning to make her re-marry with another man without her consent. These are not alleged statements since after she had been murdered by Yaşar Aydın, Rabia's parents refused to take care of their grandsons.

Rabia Aydın and their younger son Mustafa met with Yaşar Aydın on the 6th of June 2015. Yaşar

Aydın brought their elder son Yiğit with him. Yaşar Aydın wanted his close friend Cevahir Aslan to rent a car and pick them up because his own car was broken. According to Yaşar Aydın's defense in the court file, he was bringing "his wife and son" back home to Bursa. Again, to Yaşar Aydın, Cevahir Aslan was driving the car as they were on the way back home. However according to Rabia Aydın's lawyer Rabia Aydın took only one day's worth of supplies for her younger with her indicating she had no intention of going back with him. Cevahir Aslan was accused as an accomplice in the very same case. According to Cevahir Aslan, after they got in the car Rabia Aydın and Yaşar Aydın started to argue. Rabia Aydın did not want to go back to Bursa and instead she wanted them to drop them off in Balıkesir. She wanted to go to Balıkesir since her parents could take them from Balıkesir. She told her parents that she was ill and she would be at the Balıkesir Hospital, she did not want her parents to know that she met with Yaşar Aydın as her parents did not want her to see him.

As Cevahir Aslan stated in his defense while they were on the way to Balıkesir the argument between Rabia and Yaşar was heated. Yaşar Aydın could not convince her of a reunion and wanted to stop and get out of the car. At that moment they had been ten kilometers away from Balıkesir. When Cevahir Aslan stopped the car Yaşar Aydın made her get out of the car asserting he would say goodbye to the children. As soon as she was out of the car, Yaşar Aydın murdered her by stabbing her 31 times in front of their children and Cevahir. As Cevahir Arslan stated, he could not prevent his assault and rescue her, and after Yaşar murdered Rabia they ran off leaving her on the roadside. After a while Yaşar Aydın wanted Cevahir to stop at a gas station to buy some water and two boxes of cigarettes. When they reached the gas station Cevahir Aslan told what happened and where to the gas station workers and wanted them to inform police. As to Cevahir Arslan, Yaşar Aydın wanted him to bring the children to his family in Bursa-Büyükorhanlı and fled after they left the gas station.

Paramedics specified that Rabia Aydın was seriously wounded when they found her, but still managed to tell them her husband abducted

her and their children and after stabbing her left with them. Rabia Aydın died on the same day, the 7th of August 2015. She was dead by the time she was brought to hospital. As for Cevahir Aslan, after delivering the children to their grandmother (Yaşar Aydın's mother) he went back to the crime scene and gave a statement at the Kepsut Gendarmerie. Yaşar Aydın was on the run for eleven days before he finally surrendered. A first-degree murder charge was filed. On the 13th of July 2016, the Court sentenced the defendant to aggravated life imprisonment. Although Aydın's family and lawyer claimed that the driver was an abettor and should be punished with the same sentence as the perpetrator, the local court acquitted the driver due to the lack of evidence. The lawyer appealed against the acquittance. On the other hand, a proper interview was not conducted with Mustafa and Yiğit since they were always with their grandparents (Yaşar Aydın's family). Despite their drug dealing trial, they kept the children with them. Also, despite the fact that the children witnessed the murder of the mother by their father and the circumstances they were handed to father's parents for care, and state officials were not further concerned with child protection and their best interest, so there were no child services interventions, despite several applications of Rabia Aydın's lawyer.

b) Case analysis

Identified shortcomings regarding the legislative and procedural framework

Problems with recognition and qualification of domestic violence cases: The domestic violence that preceded femicide was repeated and extreme, including an attempt to burn the wife. Due to the lack of explicit criminalization of DV in the criminal code, such cases are usually qualified as infliction of bodily harm. The Criminal code does provide criminal penalties for crimes such as assault, wrongful imprisonment, or threats. However, the law did not criminalise DV or make provision for the prosecution and punishment of perpetrators. In this case, a wrong qualification was made in the health institutions indicating lack of gender-sensitive approach and complete lack

of understanding of gender aspect of concrete violent event on behalf of health workers. As a result, Rabia Aydın was not appointed with the layer by Bursa Bar Association, thus preventing her from filing the formal complaint to the criminal court. This aspect of the case indicates inadequate or even complete lack of trainings of the professionals working with VAW survivors in a broader sense. This should include professionals in judiciary, in legal practice, law enforcement agencies and in the field of health care, social work and education. Training would not only allow the raising of the awareness among different groups of professionals, but would contribute to changing the outlooks and the conduct of these professionals with regard to VAW survivors.

Identified shortcomings regarding the implementation of relevant law

Ineffectiveness of the protection orders: Rabia Aydın was under protection at the time of the murder. This shows that no effective protection is provided to women facing violence. Although Turkey has a well-established framework for issuing emergency and protection measures, the de facto protection is missing and perpetrators do not face any serious consequences when violating protection orders. The system in Turkey focuses only on punishment whereas prevention and protection are also vital for women. This occurs because of the lack of integrated policies to end VAW.

Problems with the implementation of the protection orders: Rabia Aydın had the protection order, and yet she was the one who had to leave the house with her two children, not her husband. This is a common practice in Turkey and indicates the general attitude of professionals who give priority to the needs of perpetrator over the needs of the survivor and children. Since protection orders are not applied effectively and consequently do not provide protection or provide for the other needs of women such as financial and psychological support, women are forced to leave their own house in order to be safe and usually have to deal with the violence by themselves. Art. 20 of the IC states that "Parties shall take the necessary legislative or other measures to ensure

that survivors have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment."

The lack of due diligence of officials: In Rabia Aydın case, there is a lack of due diligence of officials in acting upon the report or the proceeding (professionals do not take ex officio measures/self-initiative to prevent, investigate or prosecute cases). State officials demonstrated a complete lack of a gender-sensitive approach and lack of recognition of the gender component of violence. The officials also enjoyed impunity as a result of their actions disregarding and/or non-complying with the law even though Rabia Aydın's lawyer filed several criminal complaints against officers at both gendarmerie stations. However, the prosecutors have declined to proceed no further to the contrary of the IC Art 5 which regulates "Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation." Law enforcement agencies are usually the first to be in contact with the survivor and it is all the more important that these state officials are able to recognize gender-based acts of violence, to adapt their approach to the vulnerability of the survivor and to refer them to specialist support service providers. In this case, police officers failed to implement every one of these requirements emanating from national legislation and set by the IC. Non-professional behaviour of police officers only emphasises the need to establish continuous and intensive training sustained with appropriate follow-up to ensure that acquired skills are adequately applied. No risk assessment was conducted and no other measure was planned or implemented taking into account the overall situation, relationship between survivor, perpetrator, children and the wider environment.

Lack of adequate support services: After the first violent incident, and after leaving their marital home with her younger son, Rabia

Aydin was not informed, neither by the police nor by court, on the possibility to receive financial support and safe accommodation.

Mediation and reconciliation: Although felonious injury of wife and members of the first bloodline are not subject to dispute resolution, there is no legislation that prohibits such a resolution in case of DV, even an informal one, as it was the situation in the case at hand, where such reconciliation was attempted by police officers at the police station.

Visitation rights of the perpetrators: In Turkey, there are several cases where women are murdered or further victimized while perpetrators use their visitation or custody rights. There are several incidents when men approach women and are violent while using their visitation rights. They usually come to see their children and they start to talk with the woman to persuade her to come back, and when they fail they may get violent. Women and children's safety should come first. Art. 31 of the IC states that "Parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardize the rights and safety of the victim or children". The right of the father (and his family as demonstrated in this case) to have custody of or contact with the children is prioritized over the rights of women and children to safety.

Impunity to abettors: In this case, the driver, a friend of the defendant, witnessed the assault and did not prevent or report it directly to the police or to the hospital. The attack happened as the family was on their way to Balıkesir. His early reporting could have been lifesaving since Rabia Aydin was still alive after the attack. Art. 41 of the IC requires that, "when committed intentionally, aiding or abetting the commission of the offences" should be considered as an offence. It is also a State Party's responsibility to "take the necessary measures to encourage any person witness to the commission of acts of violence... to report this to the competent organisations or authorities" (Art. 27).

2.7.4.3 *Second case*

a) **Facts of the case**⁶⁴⁴

Esra Öz (b. 2000), lives in a village called Alibeyli in the province of Manisa, Saruhanlı with her brother İbrahim Öz, her sister Nazike Öz and her father Ramazan Öz. Her mother has been under treatment since she has bipolar affective disorder. When the crime was committed, she was at the Manisa Mental and Neurological Disorders Hospital. (It is one of the most well-known and prestigious clinics in Turkey.) According to the hospital reports Esra Öz lives with certain type of difficulties, which has been evaluated as fifty percent disability. Esra Öz's father Ramazan Öz is also disabled and in need of nursing. The family suffers not only from health problems but also from economic problems. Nazike Öz who is also an intervenor of the case supports and cares for the family.

Nazike Öz filed a criminal complaint against Ayşe Demir (their aunt, Ramazan Öz's sister) and Seyfi Demir (Ayşe Demir's husband), in which she alleged that Seyfi Demir sexually abused Esra and kept her somewhere for a while to commit this abuse. On the sister's complaint, a criminal case was opened at the High Criminal Court of Manisa on 22.12.2015. The case file number is 2015/460. In the very same case file, Ayşe Demir is also accused of malicious injury of Esra Öz.

According to Esra Öz's statements in the case file, she went to her aunt's home to help with household works in August 2014. Seyfi Demir forced her to go into the house saying her aunt was there, waiting for her. However at that time Ayşe Demir was out. Seyfi Demir brought Esra Öz to the living room, closed the curtains and opened the sofa and laid her down. Then he got off her trousers and threatened her and said, "If you don't have sex with me, I will kill you!". Despite Esra's cries, he raped her. When he was done, he locked Esra in the pantry and threatened her once more and said, "If you tell anybody what happened here, I will kill you."

⁶⁴⁴ For the purpose of case analysis, several interviews had been planned most of which had been conducted: Several interviews with Esra Öz and her family's lawyer; two representatives of the CSO that followed Esra Öz; local journalist who had written an article about a similar case. Attempted contact with Esra Öz's family but they refused to meet and made excuses that they did not want public attention about the case.

Then Ayşe Demir came home and heard Esra, punching the door. Ayşe Demir opened the door and released Esra yet beat her since she was alone at home with her husband. After that she sent Esra home and she went to talk with her brother, Ramazan Öz. She wanted her brother to keep what happened between them as a secret. Nazike Öz witnessed this conversation. According to Nazike Öz's statements Esra's aunt Ayşe understood Esra was raped by her husband because the curtains were closed, and the sofa was opened. After the sexual abuse the two families did not come together for a while but then they started to meet again as if nothing had happened.

According to Nazike Öz's statements, after a while her sister Esra told her that she went to their aunt's home to help five months ago and Seyfi Demir took in Esra Demir once more but this time he put a piece of cotton on her nose and she fainted. As she said, she felt very exhausted when she regained consciousness and ran away from the house as soon as Seyfi Demir went out to the garden and as she came home found her own underwear was wet. Esra wanted her sister to keep this as a secret since she is afraid of her uncle in law Seyfi Demir's threats. As Nazike Öz's statements Esra Öz has been living in real fear and anxiety for almost one year. Furthermore, Esra Öz was unable to protect herself mentally and physically. For this reason, Nazike Öz reported the incident directly to gendarmerie at 1 pm of the night. The family was offered reconciliation in accordance with the Code of Criminal Procedure yet the family refused it.

Esra Öz recounted both incidents at the prosecutor's office. However, the school counsellor Özlem Çakır whose task was to act as a psychological expert according to the CPC stated that Esra Öz was unreliable since she was mentally disabled, and her statements were incongruent, which is why her statements could not be taken as a basis for a criminal case. After Esra Öz's statements before the prosecutor, she was sent to hospital and with her father's consent she was examined and swabbed. According to the Manisa State Hospital Forensics Department, Esra Öz's hymen is flexible and for this reason

she can have sex without depriving her of virginity. This kind of statement contained in the formal opinion of the hospital is highly problematic as a concept due to its potential to contribute to impunity for sexual violence cases.

After the investigation began, the Manisa Bar Association appointed a lawyer to Esra (since she is a minor and disabled, to appoint a lawyer is obligatory according to law). She was sent to the Manisa Provincial Directorate of Family and Social Policies and she was placed under protection. Besides a social examination a report was asked from this institution about her. According to the Clinical Psychologist Berna Pekar's official report "Esra is suffering because of what she lived through, she is in fear. She looks like as if she is not a minor, she behaves more mature and conscious than her age. Because of her trauma she is afraid of men and considers them a danger. She believes that men will harm her." Also according to the Manisa Mental and Neurological Disorders Hospital's expert report "She is not in a mental condition that she can fully understand and comprehend what she has lived through and since it is not possible for her to defend herself mentally or physically, the abuse affected her more severely."

Seyfi Demir, who has two sons, refused allegations, and asserted that he had been impotent and suffered from erectile dysfunction for ten years. He had no sexual intercourse even with his wife. According to him Esra Öz's accusations originated from her mental illness. On the other hand, there are other allegations about him being a rapist, another relative Meryem Demirel accused him of raping her, relatives thought Seyfi and Ayşe had to move back to the village from the city due to sexual harassment claims about him. All these allegations entered the case file as witness statements.

The accused Seyfi Demir was arrested for a short time but he was released with judicial control and sent to the Celal Bayar University, Medical Faculty to determine whether he really has erectile dysfunction. According to the hospital report, he has erectile dysfunction. In this process Esra Öz's sister Nazike Öz applied to Eşit Haklar İçin İzleme Derneği/the Association

for Monitoring Equal Rights (EŞHİD) on 2.10.2015 asking for their legal support. This association is a CSO working on protecting the rights of disabled individuals in particular. EŞHİD demanded participation in the proceedings as an intervenor. The Manisa 1st High Criminal Court accepted their intervention. However Özlem Kara's (EŞHİD's lawyer) plea of extension of inquiry was overruled by the court in the third hearing. Seyfi Demir was found not guilty because of the reports of the hospital stating that he has erectile dysfunction, even though the medical analysis was conducted 6 months to one year after the incidents and there was no blood test to prove he did not use any drugs in the meanwhile. Ayşe Demir was sentenced to 120 days prison and imposed a punitive fine for malicious injury of Esra Öz. The court pronounced its verdict on 16.06.2016. However, the justified decision at that time still was not sent to parties of the trial and the intervenor EŞHİD. Finally, EŞHİD's lawyer appealed against this court decision on 21.06.2016. The case is still on trial at Yargıtay (High Court).

b) Case analysis

Identified shortcomings regarding the implementation of relevant legislation

The lack of due diligence of officials: In Esra Öz's case, there is a lack of due diligence of the prosecutor and judges in acting upon the proceeding as they do not take *ex officio* measures/self-initiatively to prevent, investigate or prosecute cases. The officials have not taken necessary measures and enabled Esra Öz or her relatives to be heard, to supply evidence and have their views, needs and concerns presented. According to the report⁶⁴⁵ written by the Association of Women with Disabilities and the analyses of the violence against disabled women during 2013-2014, all of the disabled women from different age groups and disabilities are seen as the target of violence. However, it is mostly mentally disabled women who are subjected to sexual violence. Furthermore, it is mostly either a friend or family member who sexually abus-

es disabled woman, as was the situation in this case. Disabled women have difficulty in accessing supporting services both because of not being informed about their rights and due to a lack of a structure to access the complaint mechanisms. The solutions for the sake of moving the disabled women away from the violent environment should be common and accessible; the protective and preventive measures formulated in Law No. 6284 should be held considering the special situation of the disabled women. However, none of this occurred in the case at hand and no concrete and adequate protection was granted to Esra. Emergency, restraining and/or protection orders, as well as their duration, should have been issued on the basis of a comprehensive risk analysis. These orders generally should be issued in line with the special needs of disabled survivors of VAW.

Lack of due diligence and ignorance of the voice of the VAW survivor: The evidence in favour of Esra Öz such as medical reports were ignored and only the medical reports of the perpetrator considered in spite of their insufficiency in the judgment. Even though Esra Öz is a minor and according to the Turkish CC Art. 103 "All kinds of sexual attempts against children who are under the age of fifteen or against those who attained the age of fifteen but lack the ability to understand the legal consequences of such act" are a child molestation crimes, the perpetrator was acquitted. Officials (the police, prosecution, judge) relied solely or mainly on the perpetrator's testimony, did not gather other available evidence (e.g. psychological evaluation, witness/neighbour testimonies etc.) without further investigation. The school counsellor Özlem Çakır who was tasked with providing psychological expert opinion according to the CPC and who stated that Esra Öz was unreliable since she was mentally disabled, and her statements were incongruent, making her statements ineligible as a basis for a criminal case, demonstrated a complete lack of gender-sensible and professional approach. These kinds of attitudes and prejudices from professionals indicate the need for intensive

⁶⁴⁵ Women with Disabilities Association, 2013-2014 Report on Violence Against Women with Disabilities in Turkey.

trainings about VAW, disability and multiple discriminations for professionals who potentially engage with the positions meeting the needs of disabled women.

Veiling of Incest: Incest is a common form of sexual abuse of children. It has been defined as sexual conduct that occurs between family members. The IC emphasises in Art 43 that the offences must apply irrespective of the nature of the relationship between the victim and perpetrator. Furthermore, according to the Turkish CC Art. 103 "In case of performance of sexual abuse by antecedents, second or third degree blood relations, step father, guardian, educator, trainer, nurse and other persons rendering health services and responsible from protection and observation of the child, or by undue influence based on public office, the punishment to be imposed according to the above subsections is increased by one half". Yet incest is traditionally accepted as a secret, hidden in the dark or behind a disguise in the Turkish society like many other traditional societies. Yet it is a common crime especially for disabled people who are in need of family help to survive. The officials who share the social values also have a tendency to hide shameful incidents such as incest and conclude the cases before public learns about the case. Indeed, Esra Öz's case concluded rather rapidly (if we compare it with other first instance court jurisdictions) and does not appear in the Turkish media, therefore it could not get public attention and support.

2.7.5 Conclusions and recommendations

2.7.5.1 Conclusions

Not all forms of VAW are criminalized in Turkish legislative. Most notably, domestic violence is not criminalized as such, nor is it explicitly and separately criminalized psychological violence, stalking, forced marriages or female genital mutilation. The definition of rape does

not stipulate that rape can be based on a lack of consent, leaving room for different interpretations. The fact that different VAW types, which are not explicitly criminalized, can be covered by some other crimes is not satisfactory for numerous reasons. Primarily it indicates shortcomings on the policy levels due to lack of understanding of specific nature and/or elements constituting different types of VAW, which ultimately leads to inconsistent judicial practice and often inadequate penal policy. Apart from endangering the goals of general and special crime prevention, this also reduces the effectiveness of the protection and support system for survivors for all forms of VAW.

Law No. 6284 on the Protection of Family and Prevention of violence against women pertaining to civil law contains a definition of DV and VAW as well as prescribed protective measures (for the VAW survivors) and restraining/preventive measures (issued by the judge to the perpetrators). The definition of violence is in compliance with the IC as it includes physical, verbal, economic and psychological violence. Despite the general recognition of the importance of this law, women's CSOs report gender-blindness and multiple problems in its implementation, such as: that some judges request women to make a new application with the new evidence in order to grant an extension if the duration of existing injunction orders expires; some judges requesting evidence in order to issue an injunction order, particularly a barring order; some law enforcement agencies are reluctant to act, belittling the violence or showing disbelief in the survivor's account of the incident, and both spouses requesting protective and preventive measures leading to absurd situations in which both spouses get barring orders due to which neither of them is able to go home.

Even though there have been significant improvements in Turkey's gender policy in the last two decades, especially within the aim of making Turkey's legislations closer to the EU *acquis*, the gap between legislation and its implementation remains a major problem. The dominance of patriarchal values and focus on the unity of family generate violence to subor-

dinate women in society is one reason of ineffectiveness of legislation. However, the lack of support mechanisms and the lack of political will and commitment are also determinant. Without political support, legal reforms could not introduce any social change in relation to a problem such as VAW as it has social, cultural and economic aspects.

Concern was noticed that the notion of “gender justice” has started to be used in the public sphere as an alternative concept to gender equality. This practice is highly problematic due to gender justice being a vague concept that tends to overly emphasise women’s family duties as mothers and care-givers and carries the risk of reinforcing rather than contesting traditional and stereotypical roles of women.

Relevant data is being collected separately by different institutions where each institution has a tendency to collect data according to its own goals and competences and using different methodology thus leading to the lack of official consolidated data. Due to the lack of official, segregated and consolidated data on the occurrence of VAW, proper evaluation of effectiveness of adopted and implemented actions and measures is therefore lacking.

Obtained data suggest relatively regular training on gender equality and VAW for state employees. However, there is a number of relevant factors decreasing the effectiveness of training, including a frequent turnover of staff, lack of mechanisms guaranteeing the continuity of training, and the absence of monitoring procedures to assess the outcome of training. In addition, there is no regulation that guarantees that the trained professionals will work with women who are subjected to violence, or that their training will be taken into consideration for promotion or reassignment purposes, or that whether they will participate in further trainings.

The quality, accessibility and quantity still being in question, physical, psychological and legal survivor support services are provided in Turkey. Legal measures support further enhancement of these services, and plans are made in that direction. Although there are

some good examples, they remain geographically limited. And the countrywide practices, such as shelters, fall short of addressing the needs of survivors.

The independence and safety of women’s CSOs is rapidly diminishing. Nine CSOs were shut down by a statutory decree during the state of emergency in 2016 and activists faced hate speech following their activities to condemn sexism and VAW. A worrisome trend undermining the work, funding and achievements of CSOs and leading to shrinking space for legitimate CSOs is the establishment of so-called GONGOs, or government-organised non-governmental organisations. As indicated by several CSOs in the Shadow Report, the state gives preferences to GONGOs in terms of participation in working groups, decision-making bodies and generally in the consultation process leaving the independent CSOs out of the loop in regard to communication and collaboration.

A large discrepancy between formally proclaimed rights and the factual social position of women still persists in Turkey. It could be said that state officials are taking advantage of the lack of political will and thereby appropriating the discourse against gender equality as state policy. Especially in the last few years, it would not be wrong to claim that there is no system or state mechanism that ensures the trustworthiness and accountability of public officials. All of this results in non-intervention therefore encouraging VAW, but it also contradicts the obligation of due diligence in such cases. Public officers see no harm in tolerating VAW and cases of impunity for perpetrators continue to increase.

Strong patriarchal attitudes persist and obviously influence the national policy toward VAW and affect the implementation of adopted laws. The implementation of relevant legislation remains the biggest challenge in this regard due to embedded traditional social norms, lack of adequate, intensive and substantial educations and training for all state officials, but particularly for professionals in contact with VAW survivors.

2.7.5.2 Recommendations

Common recommendations for all institutions in the protection system (judiciary, law enforcement agencies, centres for social work, health institutions)

- Introduce compulsory training focused on sensitization in order to prevent influence of prejudices and stereotypes on decision making and approach of professionals to VAW survivors

Legislator and Government

- Amend the relevant law/s so that the child witnessing domestic violence is recognized as a victim;
- Establish inspectorates for supervision and disciplinary sanctioning of professionals accountable for omissions in managing VAW cases, and inform VAW survivors on its existence;
- Address and criminalize all forms of domestic violence and VAW in accordance with Istanbul Convention;
- Ensure full compliance of legal definition of rape with the Istanbul Convention, so that the central place of the definition would be a lack of consent;
- Establish specialized centres offering services 24/7, especially in regards to cases of sexual violence, including of provision of short-term support, forensic examination and medical care, as well as long-term counselling and support;
- Ensure accessibility and availability of shelters for VAW survivors, especially for women from vulnerable groups;
- Establish efficient multisectoral cooperation framework among all governmental agencies (police, centres for social work, courts, prosecutor's office) and women's CSO's;
- Establish centralised data base with unified data collection methodology and make public data on VAW and domestic violence cases;

- Exclude application of mediation in domestic violence cases;
- Avoid using the concept of "gender justice" as opposed to the concept of "gender equality" in relevant strategic and policy documents

Judiciary (e.g. courts and prosecution)

- Establish Department for informing and support for survivors and witnesses before courts
- Introduce compulsory trainings for lawyers on VAW

Law enforcement agencies (e.g. police)

- Law enforcement agencies should be equipped with gender-sensitive and preferably female staff trained and experienced in receiving and directing application in the field of VAW;
- Staff working in special police units should periodically receive training on legal arrangements regarding violence against women and staff refusing to implement the law should face sanctions

Centres for social work

- Enhance human, technical and infrastructure capacities of centres for social work;
- Ensure employment and engagement of specialised and qualified social workers and psychologists.
- Enable access to affordable housing services for VAW survivors and their children, by expanding social housing models and social protection benefits

3

Conclusions and recommendations: regional perspective

3.1 REGIONAL CONCLUSIONS

This research project started off with the assumption that systems of protection of victims/survivors of VAW exist in each of the countries concerned. Of course, it is a fact that the countries of the Western Balkans and Turkey have different timing and levels of adherence to international standards, especially to the Istanbul Convention. Nonetheless, even in such circumstances it was assumed that at least some elements of the system of protection are present in the countries concerned. All countries, with the exemption of Kosovo, are also parties to the CEDAW Convention. Thus, this research project aimed to examine the effectiveness of those systems in practice in terms of protecting the victims/survivors of VAW, focusing on legal, policy, and institutional dimensions of analysis, with law enforcement as a particular focus of attention.

The problems that the region face in this realm are mostly well known.

First, societal challenges, deeply held views of gender roles and stereotypes, coupled with persistent patriarchal norms and widespread discrimination of women in nearly all spheres of life present a momentous challenge to any system of protection from VAW. Post-conflict and transitional contexts in most of the countries involved further exacerbates the difficult situation of women in the region. As the national studies in this volume aptly show, these

deeply held societal norms permeate the system of protection and negatively influence its effectiveness in almost all stages and aspects of its functioning.

Second, the complex and multifaceted nature of VAW, and the related complexity of institutional responses to this harmful practice present an additional challenge, especially in the conditions where institutions in general are weak and ineffective. The high incidence of VAW in all countries concerned is certainly a factor to be considered in this context. The multidimensional and multidisciplinary nature of responses to VAW implies a joint and coordinated effort of many actors in the chain of protection, which adds to the demanding task of protecting the victims/survivors in practice.

Finally, the issue of political commitment to the actual implementation of international standards in this field is of particular relevance in the context of this region as a whole. There are situations in which the ratification of the Istanbul Convention has been a burning social and political issue, while in other contexts the Convention was ratified almost without internal obstacles and fiery national debates, and without any reservation. Nonetheless, even in the latter cases subsequent practice has shown that the level of commitment and political will on the part of the decision-makers is always a factor to be consid-

ered in the context of realization of standards of the Convention. In Bosnia and Herzegovina, for example, the sub-level governments have questioned some aspects of the Convention, while in Turkey the key political actors express opinions and openly support the values that in practice can be harmful to the realization of the right of women to be free from violence of any form and kind.

Even though the actual formal commitment to, and the actual realization of international standards in this field are uneven across the region, one can also notice a growing trend of gradual acceptance of international standards in all countries concerned. Indeed, legal and institutional framework, as well as specific policies of relevance for this field, increasingly follow and accept the relevant international standards. The requirement from the Istanbul Convention to implement state-wide comprehensive integrated policies for the prevention of and combating all forms of VAW aims at offering a holistic response to VAW. All countries have policies addressing different form of VAW, in form of strategies (e.g. BiH) or national action plans (e.g. Turkey). What a regional perspective also suggests is that national policies and strategies, as well as procedural guidelines, also by and large exist and are mostly well developed, containing goals, activities, measurement tools, indicators etc. Indeed, a survivor-centred approach is increasingly applied in strategic planning and policy development in this area. Although most of these strategic documents contain a definition of VAW, most measures, laws and bylaws are directed at combating DV and are gender blind. Nonetheless, although strategic and policy documents in this field are formally advanced, the fact that none of the countries in the region has a viable and reliable system of data collection certainly raises doubts if these documents are created based on real needs, priorities and evidence from the ground.

Nonetheless, the main lesson of the national studies in this volume is well known across different areas and across the Western Balkans: even the best, most advanced laws and policies do not easily and certainly not necessarily

translate into good practices of protection of VAW survivors.

When seen from a regional perspective, significant problems can be identified even at the level of the legal framework. The main and common problem in this sense is the narrow definition of VAW in all relevant legislation in the region. The laws in the region continue to operate with the concept of DV which is considerably narrower and certainly does not explicitly refer to women as envisaged by Article 3 of the Istanbul Convention. This approach in practice limits the mechanisms of protection to the private sphere and to the context of a relationship. The criminalisation of different forms of VAW significantly varies across the region. Most countries have separate laws on DV, such as Albania, BiH, Macedonia, Montenegro, Serbia. Other define the criminal act of VAW committed within domestic relationship as an aggravated circumstance, such as Kosovo. Still, more effort needs to be invested in the further alignment of national legislation with the Istanbul Convention in all countries in order to criminalise all relevant forms of VAW, as prescribed by the Convention.

Closely related to this problem is the fact that courts in the region rarely apply and refer to the standards of the Convention, which can also be seen in the broader context of an uneasy relationship between the courts in the region and international law in general. Of course, there are differences among the countries in this sense – for example, the courts in Albania seem to be more open to using international standards in this field – but the general trend remains.

In addition, some important international standards in this field are not implemented at the level of laws in the countries concerned. For example, in BiH, persecution, forced marriage and genital mutilation are envisaged as criminal offences only in one jurisdiction (Republika Srpska). The Istanbul Convention provides the minimum of common standards for the prevention, detection and criminalisation of different forms of sexual VAW, criminalising non-consensual acts of sexual violence, including rape. Fuelled by cases which gained international

public attention⁶⁴⁶, the definition of rape was in the special focus of analysis which showed that this requirement was only presented in Kosovo and partially Montenegro and Turkey, while in other countries the use of force or threat of force is required to prove rape. This means that the definition of rape would need to improve in many jurisdictions to encompass all situations, including marriage and relationships, involving sexual acts without consent, which would be in accordance with the Convention. In other contexts, such as Turkey, DV as such is not criminalized, and not treated as a misdemeanour. Focus in the Turkish legislation in this field has been entirely placed on protective and emergency measures. Similarly, in many jurisdictions, mediation is also not prohibited in GBV cases, and effective compensation mechanisms for survivors are largely missing.

What is also obvious from country studies is that there are usually many institutional actors responsible for the protection of survivors in the chain of mutual relationships and interconnectedness – in the form of referral mechanisms for cases of DV or similar bodies. They include institutional representatives from different levels of governance, but also representatives of religious authorities dealing with cases of DV (e.g. in Albania). Coordination of these actors at different levels of government remains a significant challenge. This lack of coordination and communication seriously affects the quality and effectiveness of the system of protection, as evidenced in tragic cases from Albania, for example, which were analysed in detail in this report. Even where reasonable and concrete procedures for protecting the survivors in practice are envisaged, they are often not followed in practice – due to the lack of knowledge and awareness or mere negligence of the persons involved. In some cases, these procedures are not adapted to the needs of the survivors, who often require protection late at night and outside of working hours of many institutions responsible for the protection of survivors.

As is the case with other areas of law, such as antidiscrimination law, there is also an obvious need for the better harmonization of relevant laws to make protections more effective in practice. This is particularly relevant for the area of family law, rights and responsibilities towards the children after an abusive relationship comes to an end, health care and provisions regarding social housing for survivors of violence etc. This challenge is even more pertinent in complex, federal states, such as Bosnia and Herzegovina, where survivors do not even enjoy the same level of protection across jurisdictions.

Another common conclusion of all national studies is that DV is still understood as somehow a less serious offence than others. This is evident in both laws and in practice, as courts tend to deliver suspended sentences and low fines even in more serious cases of repeated DV. In Serbia, for example, but also elsewhere, judges sometimes take as the alleviating circumstance for the perpetrator that he is “a family man” or a breadwinner. Similarly, the system of protection in Kosovo has often been criticised for reducing the prosecution of DV acts to a minimum and using the courts for issuing protection orders rather than prosecuting acts of DV criminal law. In this sense, as the critics rightly argue, civil proceedings continue to be perceived as a substitute for criminal proceeding and prosecution. In addition, proceedings are often not conducted with urgency, in accordance with legal obligations. This is related to both court proceedings in general, and for example to proceedings for issuing protection orders, sometimes with tragic consequences, such as in the cases from Kosovo. Finally, there is a further, internal hierarchy of seriousness of DV in this sense – psychological violence is often not taken seriously at the level of relevant laws, and the reaction of the system is often triggered only when the instance of violence is very serious, with physical consequences, or repeated. Criminal procedures for cases of VAW are often lengthy and criminal policy is lenient

646 Five men were convicted in a Spanish court for sexual abuse of an 18-year-old woman at the Festival of San Fermín. The Court convicted the men for sexual abuse, which carries a lower penalty than sexual assault because it concluded there was no violence or intimidation. Available online: <https://www.womenslinkworldwide.org/en/awards/cases/la-manada> (14.2019.)

with predominant suspended sentences which is not a deterrent and does not contribute to either general or special prevention of VAW.

Desk research and individual case studies in particular have revealed a number of common problems in the actual functioning of the system of protection at all stages. Firstly, the cases in question show that the initial reaction of responsible actors to instances of VAW is often inadequate. Many survivors interviewed for the purposes of this project have reported that they were not aware and that they were not made aware of their rights, as well as options and procedures for protection from violence. Furthermore, there is an obvious and rather serious problem of inadequate or non-existent risk assessment and subsequent referral of the cases of VAW to the relevant institutions. As the examples from Albania in particular suggest, various actors, including the police, exercise overt discretion in deciding which cases to refer to the body responsible for coordination of assistance to the survivors, although the law clearly says that all cases should be referred. The monitoring of situations involving DV is also a serious challenge. In this sense, it is particularly telling for example that in 10 out of 26 cases of femicide in Serbia in 2017, all relevant actors had information on previous violence. Patriarchal attitudes and bias are also evident in some reported cases where the police blamed the victim and her condition caused by prolonged psychological violence, without recognizing and identifying the primary aggressor. Public officers frequently do not perform their duties fully and do not apply the principle of due diligence as requested by the IC.

Another pattern in this field is that protective measures are rarely issued and that the monitoring of their application is rarely undertaken. Even when legislation provides for protection measures such as the removal of perpetrators from the family home, this is rarely implemented. Physical protection and separation of survivor from the perpetrator is also problematic, especially in smaller cities and villages. Some cases presented herein bring to our attention the absurd situations in which the immediate protection order is expected to be implement-

ed within the same household. Across the region, perpetrators who violate emergency and long-term protection measures do not face any or serious consequences.

Many problems identified in practice are in large part due to the inadequate training of professionals in the relevant fields. This is obviously a problem, as evidenced in many case studies presented in the report. For example, in a case from Bosnia and Herzegovina, a court psychologist working with witnesses advised the survivor of VAW to face the perpetrator in the courtroom, as a matter of directly facing her trauma. This is of course in direct opposition to the generally advised approach in the field according to which re-traumatisation of the survivor through subsequent contacts with the perpetrator should be avoided. In Serbia, for example, health care providers reportedly have doubts about the differences between violence and conflict within a family, they are not familiar with legal obligations and therefore are often confused if they would violate the confidentiality principle if the case would be reported. In Bosnia and Herzegovina, police officers often treat cases of DV as "marital disputes", and misdemeanour complaints are often filed against both the victim/survivor and the perpetrator. A further problem is that this knowledge gap is not adequately addressed. Training in this field is often not mandatory for various professionals – police and social workers in particular – and are often provided by NGOs, without continuity. The fact that professionals, especially in the police sector, fluctuate and change posts repeatedly, means that there should rather be a department or a "chair" reserved for trained professionals to deal with DV cases, as is generally established practice in the juvenile justice sector. Services for women survivors of sexual VAW virtually do not exist in the region and Turkey, with Macedonia being an exemption with only three sexual violence referral centres.

Another indication that DV is not taken seriously enough by the relevant actors in the countries concerned is the fact that resources are often inadequate and funds insufficient for providing all services and ensuring all the

rights of the survivors in practice. For example, in Albania, the financial support for survivors – e.g. in terms of ensuring their accommodation is provided at the local, municipal level – is uneven and not offered to all survivors across the state. In most countries shelters for survivors are often operated with donor support and by various NGOs, with limited and inconsistent support from the state budget. Counselling and psychological support for the survivors is also not consistently and widely secured. Localities within states where such support is provided for – usually bigger, urban centres – are an exception rather than the rule. Funding from the state for CSOs providing specialist services to survivors of VAW is scarce, partial and rarely provided. Women's CSOs are funded dominantly from foreign donors, raising concerns about the sustainability of such a funding model.

Finally, the support for the survivor both during and after the legal proceedings is often inadequate. Free legal aid is often not available to the survivors, due to various conditions and formal reasons. For example, in Bosnia and Herzegovina's Republic of Srpska and in Macedonia, only unemployed persons are entitled to free legal aid services, which leaves without such support employed women with minimum salaries. Furthermore, in order to benefit from free legal aid, in Macedonia the survivors are obliged to submit a confirmation that they have been reported and identified as survivors of DV in the relevant institutions. In Turkey, access to free legal aid is conditioned by income, while other important factors are not considered, such as the purchasing power, obligations towards the children etc. Another problem is related to the often-insufficient quality of legal aid, which is because the personnel in free legal aid centres often do not have systemic and continuous training in this field.

The support for the survivor after the proceedings is also inadequate. Psychological, medical and legal support as well as rehabilitation services are often insufficient. When it comes to continuing their lives and recovering after an abusive relationship, survivors do not receive enough economic support. Opportunities

for integration into a labour market are limited, due to the inequality and discrimination in labour relations, which remains one of the biggest challenges in ensuring economic independence for women survivors of DV. Many specialist services (shelters, counselling centres, legal and psychological support etc.) are provided by women's CSOs in most countries included in the present research and they generally lack financial and human resources.

In sum, the country studies have shown significant gaps and limitations of the systems of protection of victims/survivors of VAW in practice. The conclusions call for a true interdisciplinary approach that would go beyond the strict mechanisms of protection and extend to the fields such as antidiscrimination and labour relations, as well for continuous education of professionals and advocacy for genuine commitment of the decision-makers to the realization of international standards in this field.

3.2 REGIONAL RECOMMENDATIONS

- 1) Provide holistic and coordinated approach aiming toward protecting women from all forms of VAW with a clear methodology ensuring the effective application of the provisions of the IC;
- 2) Enhance and/or where it does not exist, establish efficient multisectoral cooperation and coordination framework among all institutional actors in the protection chain and women's CSO's;
- 3) Harmonize the definition of VAW in general as well as different forms of VAW with definitions contained in the IC, in particular eliminating consent from the definition of rape crime;
- 4) Establish a central and integral database that would be functionally linked to all relevant actors in the protection chain (CSWs, the police, prosecutors, judges) in order to avoid statistical data duplication and establish a monitoring system that allows for monitoring of individual cases and prevention of escalation of violence into murder;
- 5) Harmonize the relevant legislation with article 56 of the IC by introducing the appropriate variation of *person of trust/confidant* to the protection system in order to create preconditions for appropriate support services for VAW survivors, in order for their rights and interests to be adequately represented and taken into account at all stages through all institutional and non-institutional mechanisms of protection;
- 6) Apply emergency protection measures by which the perpetrator of violence is immediately and without delay removed from the apartment/house;
- 7) Develop specialized and mandatory training programs for all professionals in the sector of security, social protection and justice aiming to eliminate deeply-rooted gender prejudices and stereotypes in processing VAW cases;
- 8) Ensure unhindered access to legal aid services for VAW survivors without imposing restrictions based on financial situation and/or request to prove previously reported violence;
- 9) Establish departments within the institutions in the protection system which include certified professionals trained to handle VAW cases;
- 10) Advocate for the development and mandatory application of uniform risk assessment forms in cases of domestic violence and intimate partnership violence for all relevant institutions in the protection system in order to anticipate further steps for protecting the survivor, preventing repetition and escalation of violence in a more severe form (e.g. murder);
- 11) Ensure consistent financial support from state budgets for providers of specialized support services such as safe houses, SOS help lines, legal aid, persons of trust/confidants etc;
- 12) Stimulate courts to impose sentences that are commensurate to the gravity of VAW offences, in particular DV cases, exceptionally issuing sentences below the prescribed

- minimum, followed by detailed justification;
- 13) Ensure the judiciary (prosecutors and judges) consistently and with due diligence takes into consideration any aggravated circumstance presented in a specific VAW case;
 - 14) Stimulate prosecution to collect the all the necessary evidence during the investigative phase to reduce the dependence of the investigation and following criminal proceedings on victim testimonies;
 - 15) Establish the necessary safeguards to ensure VAW survivors are not mandated, either by law or practice, to participate in any counselling and/or mediation processes without their full and informed consent;
 - 16) Strengthen cooperation of governmental sector with civil society organizations in all countries, without exemption;
 - 17) Address seriously and with due diligence cases of verbal abuse, psychological violence and cyber gender violence, prior to their escalation into a more severe form of VAW.
 - 18) Apply mechanisms for sanctioning media professionals to prevent publishing details on VAW cases that could put survivor at further risk.

ANNEX: ACKNOWLEDGMENTS

For the purpose of presenting, discussing and validating findings, conclusions and recommendations in each national report contained in this study, round-tables were organized and realized in all seven countries with representatives of key institutions in the chain of VAW protection and ministries in charge, as well as women's CSOs active in the field of preventing and combating VAW, as participants. The round-tables were also attended by representatives of the national offices of UN Women, UN Women office for Europe & Central Asia in Ankara, OSCE and European Union missions/delegations to the countries covered by this research. In total, 140 persons participated at round-tables.

Roundtables were organized: on 28th of June, 2019 in Podgorica (for Montenegro); on 1st of July 2019 in Sarajevo (for Bosnia and Herzegovina); on 8th of July in Skopje (for Macedonia); on 18th and 19th of September in Tirana (for Albania and Kosovo); on 25th of September in Belgrade (for Serbia) and on 21th of November in Ankara (for Turkey).

We would like to thank representatives of governmental institutions and women's CSOs in validation of research findings, clarification and justification of the recommendations aiming to support future policy advocacy and platforms for actions.

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