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Fighting Domestic Abuse – The OSCE Women’s Access to Justice Project in Albania

Introduction

In this article we shall share the experience of the OSCE Presence in Albania (“the Presence”) in enhancing access to justice for women who have been victims of domestic violence and shall assess the added value of the Presence in assisting the Government in preventing and fighting this form of abuse. By making effective use of its expertise, the Presence has targeted the issues from a strategic perspective and has contributed to: (i) improving the legal protective framework against domestic violence; (ii) raising general public awareness about redress mechanisms available to victims; and (iii) enhancing the capacity of victims’ advocates and justice actors to request the implementation of the law and to ensure it is enforced.

International and Local Dimensions

Domestic violence is a violation of human rights that cuts across all cultural, ethnic, educational, and economic backgrounds. It is a major impediment to the realization of effective gender equality and it imposes heavy human, physical, emotional, and financial burdens on all governments and citizens. Along with other forms of gender-based violence, domestic violence has long received international condemnation, with most governments acknowledging that they have a positive obligation to take effective steps to address this issue. In its efforts to promote the effective implementation of the *UN Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW),¹ the UN General Assembly urged all member states to “exercise due diligence to prevent, investigate and [...] punish acts of violence against women” whether perpetrated by the state or by private actors.² Article 3 of the *European Convention of Human Rights*, which requires all public authorities to take relevant measures to ensure that individuals are not “subjected [...] to inhuman or degrading treatment”,³ has been interpreted by the European Court of Human Rights as including domestic violence by private

1 United Nations, General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, Resolution A/RES/34/180, 18 December 1979.

2 United Nations, General Assembly, *Declaration on the Elimination of Violence against Women*, Resolution A/RES/48/104, 20 December 1993, Article 4 (c).

3 *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome, 4 November 1950, Article 3.

persons.⁴ Other non-binding, though equally authoritative, international instruments condemn domestic violence and require governments to adopt policies directed at its eradication.⁵

In line with OSCE commitments, preventing and ending violence against women, including domestic abuse, is also an area of increasing focus for the Presence. These commitments include the *2004 OSCE Action Plan for the Promotion of Gender Equality*, which calls on the OSCE to develop programmes in line with this priority,⁶ as well as *OSCE Ministerial Council Decision 15/2005 on Preventing and Combating Violence Against Women*, which urges participating States to grant women victims full and timely access to justice and effective remedies, and to adopt adequate legislation in this area.⁷

Against this background, the Albanian government has an obligation under international and domestic law,⁸ as well as a moral duty, to take effective action to advance women's rights and to protect them from violence. Indeed, while the lack of official statistics makes it difficult to provide an accurate picture of the situation, domestic violence appears to be common, with several sources stating that more than a third of Albanian women perceive themselves as victims of such abuse.⁹ Nevertheless, such violence is often seen to be a private family matter. A 2006 Presence study showed that, due to ingrained gender bias, crimes of domestic violence are under-investigated,

4 See e.g. European Court of Human Rights, *Case of A. v. the United Kingdom*, judgment, Strasbourg, 23 September 1998, para. 22.

5 Non-binding instruments include the *UN Declaration on the Elimination of Violence against Women*, cited above (Note 2) and *Recommendation 1582 (2002), Domestic violence against women*, of the Parliamentary Assembly of the Council of Europe.

6 Cf. 2004 OSCE Action Plan for the Promotion of Gender Equality, Annex to Decision No. 14/04, MC.DEC/14/04 of 7 December 2004, in: Organization for Security and Co-operation in Europe, *Twelfth Meeting of the Ministerial Council*, 6 and 7 December 2004, MC.DOC/1/04, Sofia, 7 December 2004, pp. 38-53, here: pp. 39-53. *The OSCE Action Plan* was approved in 2004 by the 56 participating states. It calls for gender-mainstreaming throughout the OSCE structures and relevant project activities, including in the area of violence against women.

7 Cf. Decision No. 15/05, *Preventing and Combating Violence against Women*, MC.DEC/15/05, 6 December 2005, in: Organization for Security and Co-operation in Europe, *Thirteenth Meeting of the Ministerial Council*, 5 and 6 December 2005, Ljubljana, 6 December 2005, pp. 50-54. The Ministerial Council Decision also requires states to adequately train and sensitize public officials in dealing with violence against women and children.

8 CEDAW was ratified by the government in 1993, while the 1998 Constitution prohibits any discrimination on the ground of sex. See *Albanian Constitution*, Article 18, para. 2, available online at: <http://www.ipls.org/services/kusht/contents.html>. See also the Family Code of Albania, which incorporates women's rights on matters covering marriage, divorce and property rights. An unofficial translation may be downloaded from the home page of the Albanian Institute for Policy and Legal Studies, <http://www.ipls.org>.

9 Cf. e.g. Spousal violence affects one in three Albanian wives, at <http://www.newswise.com/articles/view/513263>. According to the government, unofficial data indicates that one third of women experience domestic abuse. See also the Albanian Ministry of Labour, Social Affairs, and Equal Opportunities' *National Strategy on Gender Equality and Domestic Violence 2007-2010*, an unofficial translation of which is available at: http://www.osce.org/documents/pia/2008/07/32216_en.pdf. The Action plan for its implementation was adopted by the Albanian Council of Ministers on 19 December 2007 (Decision No. 913).

under-prosecuted, and under-punished by the judicial system.¹⁰ The poor performance of the judicial system vis-à-vis women victims of these crimes is not an isolated phenomenon, but the expression of a challenging situation regarding the status of women. In spite of some improvements in the lives of Albanian women, factors such as social and economic subordination, as well as patriarchal and conservative cultural attitudes still seem to run deep. This fosters a climate where gender-based discrimination and ignorance of women's rights are widespread, and where abuses committed against women by those closest to them are condoned and/or tolerated, including by the judicial system. To compound the judicial system's poor performance in this area, the majority of women, as a result of their marginalization, are unaware of their rights and the remedies available to them if these rights should be violated. Legal services also are often too costly and inadequate to respond to the needs of victims. While domestic violence cuts across social lines, occurs in all economic and cultural contexts, and is as common in the cities as in the countryside, its effects are perhaps more heavily felt in rural areas, where victims have even less awareness of their legal rights and/or access to legal assistance.

The 2006 Domestic Violence Law

Promoting gender equality and fighting violence against women have been put firmly on the Albanian government's agenda in an attempt to fulfil EU criteria. In December 2006, the Albanian Assembly approved the Domestic Violence Law.¹¹ While the adoption of this law was promoted by civil society,¹² the Presence played an important role along with other international partners in assisting its drafting in line with international standards and best practices. Throughout 2005 and 2006, the Presence worked with the Citizens' Advocacy Office¹³ to try to convince NGOs that it was important to focus on protecting victims first and then on punishing offenders. For this reason, the law concentrates on providing protection orders through civil proceedings.

The law seeks to prevent and reduce domestic abuse in all its forms and to protect those who are victimized by it, primarily women. Under the law, domestic violence is defined as violence taking place between current or former spouses or intimate partners or other persons in a family relationship. This can take many forms, including, physical, sexual, economic, and emo-

10 Cf. OSCE Presence in Albania, *Analysis of the Criminal Justice System of Albania*, Tirana 2006, p. 9, at: http://www.osce.org/documents/pia/2006/11/21952_en.pdf.

11 Law No. 9669, dated 18 December 2007, *On Measures against Violence in Family Relations*, as amended by Law No. 9914, dated 12 May 2008, *On some Additions to Law No. 9669, dated 18 December 2007* [hereinafter Domestic Violence Law]. The Law entered into force in June 2007.

12 Several NGOs, led by the Citizens' Advocacy Office, presented the draft law to the Assembly together with a petition with over 20,000 signatures.

13 Considered to be one of the leading NGO proponents of this law.

tional abuse.¹⁴ For the first time, domestic violence victims can petition the civil courts, requesting them to issue protection orders against their abusers to stop or prevent the violence committed against them and/or their children. They can do this through a swift, affordable, and simple procedure.¹⁵ Women requesting the issuance of protection orders can do so for free and without necessarily seeking legal assistance. By issuing a protection order, the judge can take several measures in an attempt to stop or prevent such violence. He or she may, for instance, order the abuser to leave the common house and not approach or communicate with the victim and her children while obliging him to pay financial support.¹⁶ While this law is a matter for the civil courts, it does provide that a violation of a protection order is a criminal offence, and that prosecutors are responsible for intervening in criminal cases.¹⁷

The law provides that every sector of society must play a role in addressing domestic violence. While the Ministry of Labour, Social Services, and Equal Opportunities is responsible for the formal co-ordination of the law's implementation, the Ministries of Justice, Health, and the Interior, as well as local government, all have a role to play by building up their abilities to prevent and respond to domestic violence cases. NGOs can also provide social services to victims and perpetrators.¹⁸ In December 2007, with the adoption of the *Strategy on Gender Equality and Domestic Violence* and the Action Plan, the Government reiterated its commitment to gender mainstreaming in public policy and to tackling the issue of domestic violence.

The OSCE's Role in Enhancing Access to Justice for Victims of Domestic Violence

While the adoption of the Domestic Violence Law was an important step in the fight against domestic violence, it is essential to ensure that the judicial system called upon to enforce it understands its scope and content. It is also important that the judiciary works together with civil society to guarantee effective protection to domestic violence victims. In order to address these issues, the Presence initiated the *Women's Access to Justice* project in 2007. The underlying approach taken by the Presence was that this form of abuse was a human rights violation and that the government had an obligation to take effective measures to address this problem. The project's aim, therefore, was to increase access to justice for victims of domestic violence by assisting the government in strengthening its capacity to prevent and redress the problem. The project was developed in line with the overall aim of promoting a fair, effective, and equitable judicial system – bearing in mind the OSCE

14 Cf. *Domestic Violence Law*, cited above (Note 11), Article 3.

15 Cf. *ibid.*, Articles 2, 10, 12, 17, and 18.

16 Cf. *ibid.*, Article 10.

17 Cf. *ibid.*, Articles 23 (6) and 24.

18 Cf. *ibid.*, Articles 5-8.

2004 Action Plan for the Promotion of Gender Equality. The Project aimed to enhance access to free legal advice and to a fair judicial system while increasing women's demand for justice by using affordable and effective redress mechanisms. The project looked to build expertise of the law and of remedial actions among individuals called to assist victims of domestic violence (pro bono lawyers and NGO representatives) and those responsible for enforcing the law such as the police, judges, prosecutors, and bailiffs. It also sought to increase public awareness of domestic violence and the new protection order law among women victims, civil society, and the public at large. In the medium to long term, the project aimed to reduce and eliminate the recurrence of this form of gender-based violence. In accordance with its objectives, the project targeted justice officials, police, lawyers, social workers, NGOs, women victims of domestic violence, journalists, and the wider public.

Bridging the Gap: Creating Empathy in the Justice System

The existence of a fair and accessible justice system capable of enforcing the law without discrimination is an indispensable tool in the fight against domestic abuse and encourages women to seek redress. Between April and September 2007, in co-operation with the Council of Europe (CoE), the Albanian School of Magistrates, and the Ministries of Justice and the Interior, the Presence hosted seminars for some 300 judges, prosecutors, police, and bailiffs on the new Domestic Violence Law. Held in major cities across the country and delivered by international and local experts, the seminars stressed the role of each different actor in enforcing the law, and raised their awareness of the causes and consequences of domestic abuse. Role-play exercises familiarized police officers, prosecutors, and judges with issues specific to handling domestic violence cases. Exercises were undertaken to build the participants' interviewing skills, as well as the judges' ability to hear protection order cases. While focused on the protection order scheme, the sessions also covered international legal standards, aspects of criminal law, as well as the judicial system's responsibility to investigate, prosecute, and punish domestic violence crimes. Finally, the training provided participants with the practical skills to request and issue protection orders against perpetrators of domestic violence in the context of simulated police interviews and court hearings. To facilitate justice actors in their work, standard pre-printed protection order forms were developed and distributed to all police and judges.

Making Legal Aid Possible: Building up the Role of Civil Society

The provision of free expert legal assistance in domestic violence cases is fundamental to encouraging women to seek redress for the crimes they have suffered where they are unable or unwilling to do so unaided. Training sessions not only addressed actors in the justice system, but were also held to build the capacity of civil society to assist and represent domestic violence victims – i.e. to increase *demand* for protection orders. In March and September 2007, approximately 60 NGO representatives (including lawyers, law students, and social workers) were trained in Shkodra, Tirana, and Vlora on how to provide legal and social assistance to victims of domestic violence. Participants received information on the new protection order law, on safety and confidentiality issues when dealing with domestic violence cases, and on basic approaches to providing legal, social, and psychological support. Emphasis was placed on providing participants with the practical skills to assist victims in preparing petitions for protection orders, or to act on their behalf, as provided under the law.¹⁹ The training also included sessions on co-operation with law enforcement authorities and the basics of licensing, fundraising, and campaigning techniques tailored to meet the needs of NGOs working in this area. The workshops, which were held in co-operation with two NGOs, provided a valuable forum for sharing experience and increasing co-ordination, including by laying the groundwork of a strategy to set up local referral systems in domestic violence cases.

Raising Awareness

Raising awareness of domestic violence is the best preventive strategy. Increased understanding of the causes and consequences of domestic violence and the redress mechanisms that exist can, in the long term, contribute to a change in mentality, thus reducing the recurrence of this phenomenon. In the context of the project, the Presence undertook an awareness campaign targeting a variety of audiences. In 2007, the Presence published the handbook *Seeking Protection from Domestic Violence* to raise awareness of the causes and consequences of domestic violence, explain the new law, and provide guidance to victims of abuse, NGOs, and lawyers on how to file requests for civil court protection orders. The handbook contains information for NGOs that provide psychosocial and legal support in domestic violence cases, and has been well used by these NGOs in the context of individual counselling sessions as well as community workshops and awareness-raising activities. While the handbook was initially conceived primarily as a resource for NGOs, victims, and law enforcement officials, it has increasingly been

19 The law allows certified NGOs to file petitions for protection orders directly with the court on behalf of victims of abuse.

shown to be a valuable tool in efforts undertaken by international actors to raise awareness of the problem of domestic violence and the new law. On the International Day for the Elimination of Violence against Women on 25 November 2007, the Council of Europe distributed the book *Seeking Protection from Domestic Violence* to Albanian parliamentarians in the context of its 2006-2008 campaign. The handbook was also used as training material by international donors such as UNDP and UNIFEM in workshops targeting police, district court, and local government officials, and education institutions as well as by the Albanian Association of Social Workers. The handbook was distributed to all university law faculties in Albania and several such institutions in other countries, and to students in the Faculty of Sociology at the University of Tirana, lawyers working on domestic violence cases, and the media.

To assist judges in the interpretation and application of the Domestic Violence Law, the *Albanian Judicial Bench Book on Protection Orders* was published in co-operation with USAID. Conceived as a “working tool”, the manual highlights the role played by the courts in preventing and punishing domestic violence and provides judges with guidance in implementing the law. For example, it gives judges practical tips on how to hold protection-order hearings and issue civil protection orders against perpetrators of abuse. The book was distributed to all serving judges and is reportedly also being used by family judges. It is also being used by the School of Magistrates, the Tirana-based entity responsible for the education and training of all judges in Albania, as teaching material for classes on Family Law and in its continuing legal education training curriculum. Sample petition forms for requesting and granting protection orders were prepared and widely disseminated to facilitate the implementation of the law. Although new to Albania, the standard forms are currently being used by domestic violence victims, lawyers, police officers, prosecutors, and NGOs. Reportedly, due to their clear layout and comprehensiveness, judges have begun to accept these forms and have taken decisions on their basis.²⁰ In December 2008, upon request of the Ministry of Labour, Social Affairs, and Equal Opportunities, the Presence published brochures and posters to raise awareness of the phenomenon of domestic violence and the new law. The brochures explain the procedure for requesting protection orders and contain the contact numbers of the police, shelters, and NGOs that provide assistance to victims of domestic violence. The material was distributed to regional directorates for employment, regional offices of the State Social Service, prefectures, labour unions, and local government authorities. The publications and material developed under the project can also be downloaded from the Presence website.²¹

20 Judge Rezarta Vigani interviewed by Ama Kraja at Tirana District Court, 14 February 2008; Judge Fida Osmani interviewed by Ama Kraja at Tirana District Court, 9 April 2008.

21 At: <http://www.osce.org/albania/documents.html?lsi=true&limit=10&grp=404>.

Best Practices

The Presence has relied on its unique expertise to provide targeted and comprehensive technical assistance to the government and civil society in building their capacity to address these challenges. First, it has contributed to improving the legal framework protecting women from violence by supporting the drafting of the *2006 Domestic Violence Law*. Through various seminars, the Presence has contributed to increasing knowledge among justice professionals as well as NGOs about domestic abuse, and has helped to establish a cadre of professionals able to respond to and deal with such cases.²² By bringing together participants from different professions, OSCE training has laid the foundations for a more co-ordinated response to this problem. As a result of OSCE activities involving judges and other justice actors, women victims of domestic abuse have seen the chances of justice being done and their obtaining legal redress for the violence they have suffered improve – even if there are still no guarantees. Presence activities also contributed to increasing access to justice for disadvantaged women by promoting the use of NGO professionals as a cost-effective alternative to lawyers. By doing this, the Presence has assisted in creating a “critical mass” of people who are capable of assisting victims and committed to doing so. As a result of the training and public awareness campaigns, victims of abuse and NGOs have become more knowledgeable about domestic abuse and the legal framework for fighting it, and are increasingly seeking redress by applying for court protection orders. Trained judges and other legal professionals are now aware of their roles in implementing the law. The standard, pre-printed petitions for protection orders prepared and disseminated by the Presence have served to kick-start the protection order process.

Project activities have also found international resonance, as the project materials were included in the UN *Stop Violence Against Women* website,²³ and have served as a model for other OSCE missions working in this area. While it is too early to measure the real impact of Presence assistance in fighting domestic violence, the Presence’s work has undoubtedly created the preconditions for the effective operation of the protection order scheme. It remains to be seen whether, in the medium to long-term, domestic violence crimes decrease, are adequately addressed, and are investigated and punished.

22 Some police officials trained by the Presence have become trainers in later workshops organized by UNDP.

23 At: <http://www.stopvaw.org/Albania.html>.

Lessons Learned and Future Challenges

In spite of recent steps taken by the government to promote women's rights, including approval of the *Law on Gender Equality in Society* in July 2008,²⁴ more needs to be done to promote gender equality, the lack of which is often a root cause of violence against women. Improved legislation alone is insufficient to protect women from discrimination. As in other countries, inequality persists in the form of stereotypes regarding gender roles, while women are still currently under-represented at the highest levels of public life and in the job market. The Albanian government should look to step up its efforts to build the capacities of those state institutions called upon to implement the laws, while also raising public awareness about women's rights. Promoting and increasing the active participation of women in politics is also crucial to furthering gender equality, and an area where the Presence has once again shown leadership by developing a project in support of the government's efforts.²⁵ The latter should also renew its commitment to implement effectively both the *Gender Equality Law* and the *National Strategy on Gender Equality and Domestic Violence* by taking initiatives that are timely, coordinated, and adequately funded. It is hoped that continued Presence assistance in drafting the relevant secondary legislation and in promoting the institutional profile of the Directorate of Equal Opportunities, will ultimately contribute to this aim.

Turning to the specific problem of domestic abuse, the challenges looming ahead are clearly multi-faceted. Official data on the prevalence and consequences of domestic violence (as well as on the use of protection orders by the court) is urgently needed. In order to assess effectiveness and to determine what steps need to be taken next, such data now also needs to be complemented by independent evaluations of the initiatives undertaken so far. Furthermore, a more co-ordinated approach to protecting and assisting victims is needed among state authorities and in establishing partnerships between government and civil society. Under the leadership of local NGOs, forums and referral systems have been established in a number of cities, which bring together representatives of the police, local government, the judiciary, healthcare institutions, social service agencies, and NGOs. This model now urgently needs to be replicated in all regions of the country, with the government taking a proactive role. Such an approach needs to be supported by sufficient funding and resources to ensure victims receive adequate assistance through the establishment of shelters, crisis intervention centres, telephone hotlines, and other resources, as well as to sustain progress in the

24 Law No. 9970, dated 24 July 2008, *On Gender Equality in Society*, which entered into force on 16 August 2008.

25 The OSCE Presence "Women in Governance" project is due to be implemented between 2009 and 2011. The project aims to support women leaders across the political spectrum, provide a platform for mutually reinforcing networking, and bolster the public authorities' response to women's needs at central and local level.

long term. As prevention is better than cure, more needs to be done to educate and inform citizens, civil society, and government representatives about women's civil, political, social, and economic rights. Educational and awareness-raising programmes must target several audiences: not just women (to make them aware of their rights), but also men, children, and teenagers. Information on violence against women and domestic abuse therefore needs to be adapted and incorporated into the curricula of various educational institutions. This training needs to be institutionalized and held on a regular basis.

Given the overarching nature of its mandate, which ranges from supporting civil society, via media development and electoral reform, to advancing the rule of law, the Presence is well placed to continue assisting the government in improving its record regarding domestic violence as Albania prepares for further integration with the EU. This can be done while recognizing that local ownership and political will are key factors for achieving sustainable results.