



Shadow Follow up report Period 2016-2018

This report consists in implementing the recommendations of the CEDAW Committee included in the paragraphs 13 (b) and (d) and 23 (a) and (d), within two years, after the 64th sessions, held in Geneva on July 2016.¹ This report² is based on the information provided through the completion of questionnaires by some³ member organizations of the Monitoring Network Against Gender Based Violence. All network members⁴ gave opinions and suggestions during workshops and other activities.

Recommendation No.13 (b): Measures should be taken for strengthening the authority of the State Commission for Legal Aid in the Ministry of Justice in the view to provide primary and secondary legal aid while including here the establishing of the local legal clinics specialized in providing legal aid.

1. Law no. 111/2017 “On state guaranteed legal aid” became effective on 1.06.2018 and is emphasized as a positive step in the state report. The NPOs and international partners have actively impacted on its standards. Some of novelties are: *Clarity* of two types of primary and secondary legal aid, as well as the option of exemption from court tariffs and fees regardless of income and assets for the beneficiaries (article 25); the *improvement* toward a well-organized, well-administered, qualitative and professional service; *inclusion of new categories* of LA beneficiaries; *spread of LA over foreign citizens, stateless citizens and asylum seekers*.
2. There are enormous requests for FLA. NPOs raise concerns about increasing number of requests for LA and the failure of the state to meet them accordingly. Since the Directorate of FLA as Law 111/2017⁵ foresees it is not yet established and by-laws are not yet completed [state report paragraph 11], these complicates new law implementation.
3. Reported period 2016 – 1 June 2018 is regulated by the already abrogated Law no. 10038/22.12.2008 “On Legal Aid”. The analysis of this period highlights problems, which are important but not raised in the state report. The limited access in LA⁶ makes it identifiable as ‘unsuccessful or a non-functional’ service.

¹ Report of [CEDAW Committee](#) “Concluding Remarks on the Fourth Periodical”, 25 July 2016, paragraph 47.

² Prepared under the project "Establishing a network of non-profit organizations for a better implementation of international standards on gender equality and gender-based violence in Albania",. *The project is funded by the European Commission with support of UN Women and implemented by CLCI*

³Center for Legal Civic Initiatives, (CLCI); Albanian Women Empowerment Network (AWEN) (“Vatra” Psycho- Social Centre, ‘It’s Me, The woman’ & Association of Women with Social Problems”; Organization “Different & Equal”, Albanian Disability Rights Foundation, ADRF, Albanian Helsinki Committee (AHC), Community Development Center “Today for the Future”, Human Rights in Democracy Centre (HRDC) and Albanian Center for Population and Development (ACPD).

⁴ [Members of the network.](#)

⁵ [Article 36.](#)

⁶ UNDP, [Survey on Access to Justice in Albania](#), 2018.

The Ministry of Justice has reported a low number of beneficiaries⁷ whereas state report [paragraph 2] presents data not published before. Acknowledging the problems helps actors in resolving them. So some of them are:

- Lack of mechanisms' efficiency, red tape in the application procedures, long list of required documents and difficulties in meeting the law provisions. Former law does not specify adequate affirmative measures for particular vulnerable groups such as people with disabilities. The system in place can't issue *on line* data and documents.
 - The legal clinics don't cover the whole territory of the country. *The lack of a clear mapping of LA services* in the past and actually, especially in remote areas, makes impossible that victims benefit from the service⁸. State report accepts that such a situation has remained unchanged and that there are no clear progressive plans [paragraph 13-16]. LA Commission has not yet established any Legal Clinic comprising at the court level but there is one new at the Ministry of Justice. Plausible is the support of international partners and civil society.
4. Awareness of the vulnerable groups on types of LA, categories of beneficiary and on procedural matters, is low. The state structures lack this information as well. According to a research,⁹ the police, as the first contact point for victims of DV, don't provide information regarding the right to benefit FLA.
 5. *The cooperation of the NPOs* with the State Commission is still vague. Beside few positive remarks, the cooperation has been apathetic, slow and delayed. There were cases where no LA was provided by the SCLA. Consequently the interested parties had to resort via NPO. Sometimes SCLA delays have penalized the interested parties in the execution of their rights.
 6. *The designated FLA lawyers have not demonstrated the required professionalism.* This was quite striking in hot cases dealing with the rights of people with disabilities. The court has *no lists with lawyers* providing LA to victims of DV (2016-2017). Lawyers did not represent victims of DV always in the court¹⁰. Without commenting, data from different reports¹¹, make evident that *contribution of state in the LA is almost inexistent*. In 58% of court cases, the victims of DV are left without legal representation. In 21% of the cases victims have been assisted by NPOs; 20% by private lawyers and only 1% by LA Commission.
 7. *The juvenile victims of DV have not been legally represented.* Data show that only 1% of juvenile victims of DV are represented by an appointed attorney which is not in line with the Law "On measures against domestic violence". The situation

⁷ 'The analysis of the justice system in Albania', June 2015, p.313; [The Analytical Document of the Ministry of Justice](#) 'Detailed Information in relation to the sectors of the Justice System', Tirana 2017, p. 84-85.

⁸ Progress Reports of the European Commission constantly raised concerns on legal aid. See the [Progress Report of 2014](#), p. 43 and [Progress Report of 2016](#), p. 67.

⁹ [HRDC, Monitoring and Analysis of Tirana District Court decisions on the "Rights of Victims/Survivors of DV in the Judicial Process" during 01.01.2016-31.12.2017](#). Tirana 2017, p. 88-89.

¹⁰ *Ibid.* p.81.

¹¹ [Report submitted by Albania](#) pursuant to Council of Europe Convention on preventing and combating violence against women and domestic violence, January 19, 2017, p. 47-48; [GREVIO. \(Baseline\) Evaluation Report Albania](#), November 2017, p.62, footnote, 174.

is different in criminal proceeding where ex-officio lawyer has legally represented juvenile victims/perpetrators¹².

8. *The system lacks transparency and data.* Access of NPOs to data has been difficult and limited. The civil society has no information regarding the victims of GBV benefiting FLA from the SCLA for the period. Some data are disclosed for the first time in the paragraph 2 of the State Report. *The lack of a systematic and integrated database is still a problem.*
9. *The SCLA played a small role in the cases related to victims of DV and GBV.* There is no official website with adequate information for public and no informative brochures on the SCLA. Beside, there is a lack of trust toward the state institutions and lack of knowledge on legislation, victims also didn't asked for legal aid at SCLA; lack of cooperation among state structures and lack of adequate DV referral mechanisms. Also, the high costs for obtaining the necessary documentation for application for LA and insufficient professionalism of lawyer's effect on amount of LA requests. The victims of DV feel unprotected by the law. They are afraid to participate in court proceedings. A lot of cases are dismissed¹³. Some victims lost their lives. Others life has been under threat even when equipped with PO. These cases discourage other women, especially those living in rural areas.

Regarding recommendation 13 (b), is suggested:

10. To draft by-laws considering the national and local context and in compliance the with law 111/2017 and approve them without delay. Bylaws provide simplification of procedures and avoiding delays for obtaining documentation for LA by enabling the use of online systems that release the beneficiaries from excess burden as well as considering needs of the people with disabilities¹⁴.
11. To improve effective execution of PO/IPO through strengthening actual structures and cooperation of the referral mechanisms.
12. Guaranteeing that the service be provided by experts and free psychological service for victims of DV be reality.
13. Guaranteeing the financial support and technical assistance for the existing clinics and the establishing of new ones at local and rural level. Providing concrete budget dedicated to victims DV and GBV on municipalities to support their compensation/reparation and offer services such as: housing, psychological support, legal support, economic empowerment, etc.
14. Strengthening and institutionalizing the cooperation with the NPOs while enabling the latter to provide the services and be supported by the state¹⁵.
15. Supporting the informative and preventive programs against all forms of GBV in cooperation with the NPOs; supporting the awareness activities and the legal

¹² Reference in Footnote 6, p. f.81

¹³ A newly graduated judge, expert in DV was killed in broad daylight, in Tirana, on 30 August 2017 by her former spouse. She has already been threatened with the intent of murder, but the former spouse asked for summary trial and benefited from the amnesty.

¹⁴ UNDP, [Survey on Access to Justice in Albania](#), 2018.

¹⁵ See [the Report](#) of the Commissioner of Human Right of CoE, Dunja Mijatovic of May 2018, paragraph 92.

education of the citizens by means of awareness campaigns in the media, street law, publications, debates and roundtables.

Recommendation 13(d): Shifting the burden of proof in the cases of sex- or GBV in favor of the plaintiff.

16. In spite of the success reported by the state, there is room for legislative upgrading. Here we should highlight the definition of multiple discrimination as one of the most widely spread forms of discrimination, such as the compound and intersectional discrimination. It is also worth providing that Commissioner Against Discrimination review the requests submitted by subjects in compliance with the Law “On gender equality in society” *because this Law does not provide for any special body in charge of its enforcement.*
17. The main scope of the Law ‘On protection from discrimination’ is regulating the procedures before the Commissioner. As such, it shall provide for the process of presenting proof and for the shifting of the burden of proof from the plaintiff to the defendant, particularly regarding serious forms of discrimination. This will be in compliance with the EU anti-discrimination directives. Furthermore, this will boost the CAD performance in order to counter and prevent discriminatory behavior and it will add to its role alongside the one played by the courts.

Recommendation No.23 (a): taking of measures to encourage women in reporting cases of GBV, by providing LA in the rural and remote areas and by establishing a 24/7 free toll number.

18. In the rural and remote areas, women who are victims of GBV and DV report less than the women in urban areas. This is due to their closed mentality, insufficient information on their rights, lack of access and no reply from the LA Commissioner. Women in rural areas are mostly supported by the NPOs providing LA, counseling, information, preparation of files to be submitted to the court or to address to other NPOs or the SCLA.
19. *Free Toll Numbers* do not operate in every municipality. It is well known that hotline does not operate 24/7¹⁶. Based on NPOs’ monitoring¹⁷ most of the hotlines operate only for 8 hours. For the remaining part of the day the service is inaccessible [Vlorë, Shkodër] or completely inexistent [Pogradec]. There are cases when the telephone number displayed in the municipality official website is not operational or support provided lack professionalism. The State Report presents data on the 24/7 free toll number services without reflecting on the role of the civil society and the problems that rose by the lack of budgeting. Actually budget can’t cover three shifts of employees. The main financial supports are the donors.
20. The women from rural areas face more difficulties since referral mechanism in certain municipalities is not operational even because of lack of funds to support services such as emergency center, shelter for the victims of DV or rehabilitation services. Also, delayed cooperation and lack of coordination, becomes a serious

¹⁶ [Report submitted by Albania](#) for the Council of Europe Convention on preventing and combating violence against women and domestic violence. January 19, 2017, p. 51.

¹⁷ [Study of ACPD](#) during 2017 on the functioning of the National Referral Mechanism in the cities of Vlorë and Shkodër.

barrier among actors. Every member/part of the mechanism attempts to deal the case from its own perspective, failing to achieve a coordinated reaction. The multidisciplinary team meets irregularly. There is apathy in cooperation and not all actors are involved (for example the Regional Educational Directorate). The *frequent change of members of referral mechanism is a phenomenon*¹⁸ while the success relates to the sustainability of members. As a good example is the sustainability of some coordinators which resulted to be of vital importance for protection victims of DV.

Pursuant to recommendation 23 (a) we suggest:

21. Increasing financial and human resources in counseling lines while guaranteeing a faster and easily accessible service at any time 24/7. Central government assures the Free Toll National Line as a service to be provided by the state. The mobile counseling at local level should be budgeted 24/7 for the victims of GBV and vulnerable groups.
22. All institutions that are part of the NRM should appoint a sustainable and competent representative, who should participate in all NRM meetings and increase the coordination and cooperation among actors including specialized NPOs¹⁹. Apply protocols and guidelines that ensure institutional cooperation while aiming at establishing a service network at local level focusing on the victims needs according to different social groups considering the protection of their privacy/confidentiality and reputation of the victims of DV toward elimination of re-victimization and secondary victimization.
23. Provide specialized and integrated services for the victims of GBV and DV in every municipality including FLA and free psychological assistance/counseling²⁰ in each city/village.
24. Raising awareness through informative campaigns (particularly) in the rural areas and at the local level regarding how counseling lines, hotlines work and what service they provide.

RECCOMENDATION No.23 (d): Strengthening the system for the enforcement of court decisions, particularly those that deal with the PO/IPO regarding the victims of GBV, including the capacity building of the court administration, and among the court bailiffs.

25. The recommendations of the CEDAW and GREVIO committees have played a major role in amending the Law on DV [law no. 47/2018], whereas the NPOs have been a powerful lobby. Consequently, the subjects enjoying protection from this law has expanded [partners involved in an intimate relation (physical or

¹⁸ 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 Dures".

¹⁹GREVIO. (Baseline) Evaluation Report Albania, November 2017.

²⁰ See the [report prepared by CLCI and TLAS](#) on The role of the psychologist and the social worker for increasing citizen's access to the justice system and protecting the child's best interests. Tirana, 2014.

emotional); children subjected to violence or who have witnessed DV, etc.] and is well determined. The responsible structures for handling cases of DV, at the State Police might issue the Emergency Protection Order (EPO), which is in force until the court verdict. The EPO is issued when the risk analysis demonstrates that the violence inflicted poses risk to life, health and freedom to the victim. In the case of children, the court ex-officio might provide for the protection measures and might enforce protection measures and procedures as stipulated by the legislation in force as regards to the rights and protection of children. The law determines the obligation of state institutions to provide professional services for victim of DV for free.

26. The NPOs have identified that there are cases where public officials (bailiffs) do not have sufficient/adequate knowledge as regards to the GBV and legal standards asking the victim to pay for the execution of a decision related to a protection order (since 2010, law exempts this category from all financial obligations).
27. *The execution of the PO/EPO decisions is still problematic.* Law provides that a court decision is an executive title since the moment issued and this way be executed immediately. Due to the economic inability of the offender and his incapacity to a residence, or limited number of shelters for victims of DV there are cases where bailiff dismisses the execution of court decision risking the life of the victim and creating ‘good environment’ for recidivism while ironically the victim is equipped with PO/EPO. Cases when the victims is equipped with the, which is not executed, or with a protective measure which is not efficient have resulted in loss of their life.
28. Lack of cooperation between the state police, respective local institutions, as well as the bailiff’s office block their adequate reaction to apply the court decisions. Even though the law [article 23 of LDV and article 321 of the Criminal Code] stipulates sanctions against the responsible persons for the failure to execute the court decisions, reported cases are indistinguishable.
29. In certain cases, the victims do not want their abuser (who is most cases the spouse) to get imprisoned. The lack of information and the fear of retaliation are two reasons for such behavior. Therefore, in the two years period (2016/2017), 27 cases were submitted for review to the District Court of Tirana by the Prosecutor’s Office. Such requests were related to citizens that haven’t respected the PO/EPO. They have been prosecuted as such for their violation up to article 321/ 2 of the Criminal Code²¹.

Pursuant to the recommendation 23 (d) we suggest:

30. Abiding by the legal frame in adopting the by-laws in compliance with the amendments made to the law on DV including the reviewing and clarification of the protocols to be implemented for the communication and coordination of actions of the state police, the Bailiff’s offices and the offices of the social services, etc.

²¹ The sentence applied for this offence is from 1 month and 15 days to 1 year. In approximately 37% of cases for this criminal offence, the offenders were sentenced with 2-months imprisonment and in approximately 18% of the cases with 6-month imprisonment.

31. Establishing an effective judicial system that identify and punish the DV perpetrators and apply effective protective measures and respect the provisions and ethical behavior in court proceedings²². The same standards are necessary for the police and other actors. For this, it is necessary the constant monitoring of court decision and applicable procedure as well as activities carried out by other actors such as police, prosecutor's office, NRM with the view to ensure that court decisions are issued on time and they are giving adequate effects in protection of victims through protection measures and actors involved.
32. Strengthening the inter-institutional cooperation of the courts with the Bar Associations with the view to draft lists of trained lawyers to provide assistance to the victims of DV. Guaranteeing the psychological assistance and assessing the best interest of the child in each step of the investigation and court hearing through the experts in the field of psychology, as stipulated, as a positive model, by the Code of Juvenile Justice.
33. Increasing the number of workshops through a diversity of topics and planning continuous trainings for the public officials, considering bailiffs as well, who by law have the obligation to issue and enforce the PO/EPO. Considering in the training the role of judge and police and prosecutors. Regarding the police and prosecutor it is important to increase their professional capacities to submit requests for EPO in protecting victims of DV.
34. Enforcing the sanctions for public officials who do not execute the court decisions for PO/EPO or obstruct their enforcement in due time. These measures should be disclosed and cases of violations should be used as illustrations in the training sessions in order to prevent future situations.
35. Informing citizens on their right to benefit from FLA as stipulated by the new Law no. 111/2017 and create opportunities for citizens' education on their rights.
36. The School of Magistrates continue trainings of judges, prosecutors and other actors as the law foresees, by focusing on topics such as legal writing and reasoning of the court decisions; apply international standards [Istanbul Convention, CEDAW Convention]; improve communication skills with the victims, etc. School of Magistrates best practices serve as positive model for the School of Advocacy, Police Academy and other actors in their trainings. National best practices and international standards and practices be used as illustration to inform actors to incorporate these standards in their decision-making.
37. Ensuring the establishing shelters and supporting programs for the re-integration of the abused women as well as rehabilitating programs for the offenders including those suffering from mental health problems and those addicted to alcohol/drugs.
38. Full operational capability of support schemes dedicated to victims of DV such as social housing, economic aid, employment, etc.

²² See the [CLCI monitoring report](#).