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THE DIANA KASTRATI CASE: VIOLENCE AGAINST WOMEN AND KOSOVAR JUSTICE

Violence against women is a human rights violation, a consequence of the discrimination against women, in law and also in practice, and of the persisting inequalities between men and women. Up to 70% of women and girls experience physical or sexual violence from men in their lifetime.¹ Domestic violence also remains one of the most prevalent forms of violence against women in Kosovo. As 46% of women living in Kosovo cited evidence of domestic violence in their neighbourhood, and 12% had witnessed a husband beating his spouse.² However, more than half of the women suffering it did not report to the police.³

As a non-governmental organisation committed with the construction of an inclusive and democratic society, ECMI Kosovo intends to participate to the “16 Days Campaign for the Elimination of Violence Against Women”⁴ with this Information Bulletin. The story of Diana Kastrati, a victim of the tragic consequence of domestic violence and of the inability of the State to prevent it, should help raising awareness about the situation faced by hundreds of women in Kosovo.

¹ United Nations. International Day for the Elimination of Violence Against Women. See at: <https://www.un.org/en/events/endviolenceday/> (last accessed on 2nd December 2013)

² This data comes from the *Voice of Women* Survey. The survey asked 1,338 women across Kosova and from various demographic groups whether they had seen or heard arguments or violence in their neighbourhood in the prior twelve months. Ten percent replied “often,” and 36 percent “sometimes.” Three percent had heard or seen it “often” and nine percent “sometimes” Kosova Women’s Network (KWN), “Exploratory Research on the Extent of Gender-based Violence in Kosova and its Impact on Women’s Reproductive Health,” 2008, p.18.

³ *Idem*, p.16

⁴ Campaign promoted by UN WOMEN (United Nations Entity for Gender and Equality and the Empowerment of Women) and UNITE to End Violence Against Women (United Nations Secretary-General Campaign).

Although women are a vulnerable group, and should thus be subject of special protection, that was not the case of Diana Kastrati as she was shot to death on the 18th of May 2011 in day light in a Priština/Prishtinë's road by her former partner Adnan Jashari. Three weeks before passing away, she had presented a petition to the Municipal Court of Priština/Prishtinë requesting an emergency protection order as a consequence of receiving several threats.

Such complaints shall be resolved within 24 hours as per the applicable legal provisions, but her petition was just followed by the silence of the Court.

A long jurisdictional procedure

After the tragedy, the Office of the Disciplinary Counsel (ODC)⁵ launched on its own initiative a disciplinary investigation on the alleged misconduct of Judge Enver Shabani, who received the demand of protection and failed to treat it in due time. Although the Disciplinary Committee⁶ eventually sanctioned him with a minimalistic measure consisting of a reduction of his salary by 50% for two months, the president of the Republic of Kosovo Atifete Jahjaga rejected his reappointment, resulting in him being permanently banned from practicing as of 22nd of October 2013.

In April 2012, represented by the Law Firm Sejdiu & Qerkini and supported by NGO CLARD (Center for Legal Aid and Regional Development) and the European Centre for Minority Issues (ECMI), Diana Kastrati's parents initiated a lawsuit to the Constitutional Court against the KJC and against the Municipal Court of Priština/Prishtinë for their inaction and their inability of addressing the issue.

Following a long and complex jurisdictional procedure, the final Judgment on the 26th of February 2013 found the State of Kosovo guilty of a violation of the right to life (enshrined in article 25 of the Constitution and in article 2 of the European Convention on Human Rights) of obstructing the judicial protection of rights, and of obstructing the right to legal and effective remedies (enshrined in articles 54 and 32 of the Constitution and in article 13 of the European Convention on Human Rights).

Which consequences for the Kosovo legal system?

This Judgment sets up a precedent. It is the first time in Kosovo's judicial history where the State is held responsible for a violation of the right to life. However, there was a dissident opinion from Judge Robert Carolan who based his arguments on the fact that the protection order could not guarantee the non-commission of the crime. Although being a true statement, it is the obligation of any State based on the rule of law to protect and prevent through all

⁵ The ODC is an independent body that serves the Kosovo Judicial Council and the Kosovo Prosecutorial Council which is responsible for investigating alleged misconducts of judges and lay judges and present the case and its recommendations to the Disciplinary Committee, which eventually takes final decisions.

⁶ The DC is the organ which takes the final decisions on the sanctions to be imposed to the investigated Judges or lay Judges regarding the investigation and evidence provided by the ODC.

possible means the violation and abuse of the rights of their citizens, with a special emphasis on vulnerable groups.

Moreover, the Court observed that the Law on Protection against Domestic Violence and the Law on Kosovo Judicial Council do not offer effective legal remedies. The citizens remain unprotected against the inactivity of public institutions. Furthermore, the law does not foresee any other possibilities to act against KJC decisions apart from an appeal to the Disciplinary Prosecutor.

While the Judgment is seen as an achievement for the fight against impunity of domestic violence, it is also a warning about the need to enact better laws and improve those which were proved ineffective.

A case still not finally settled

In addition, the case did not end with the Constitutional Court Judgment. Three other disputes are still pending.

First, the parents of the victim are waiting for the second time for a response from the Court of Appeal about the custody of Diana Kastrati's daughter, who remains with the parents of her father. The issue had already been raised in 2010 when she claimed the custody of her daughter.

Second, the prosecution has been unable to criminally charge Adnan Jashari in Kosovo because he is untraceable at the moment. He is being searched by INTERPOL. According to the press and to the Ministry of Justice, he was arrested in Spain on the 7th of June of 2013. Briefly after the detention, EULEX asked for his extradition as the State of Kosovo is unable to do so as a consequence of Spain not recognising its existence. However, there has been no official information on the issue since that date. Mr. Jashari has not been extradited to Kosovo and whether he is still arrested in Spain or has been released remains unknown.

Third, the Kastrati family initiated one week ago a lawsuit against the State of Kosovo for non-economical damages based on the Constitutional Court's Judgement. Parallel to this process, the Advocacy Training & Resource Center (ATRC) and its partners⁷ in the Project "*Justice & People*" launched an initiative to change a provision (art. 69) on the Law on Public Financement Management which prevents victims of human rights violations to seek damages for non-economical prejudice. "*We need to collect up to 15,000 signatures throughout Kosovo in order to file a complaint against article 69 for unconstitutionality directly in the Constitutional Court*", states Anton Nrecaj, legal adviser of CLARD.

As it is the case in many fields, Kosovo possesses on paper some legal means to effectively ensure gender equality and protection of women against violence, but these efforts shall be continued with the adoption of a more ambitious regulatory framework. The Court's

⁷ The Center for Legal Aid and Regional Development (CLARD), the Law Firm Sejdiu & Qerkini and the Pro-Bono law firm Public International Law and Policy Group.

Judgement is a small step towards a system more compliant with human rights international standards;⁸ and should be followed by awareness-raising campaigns among the Kosovar society to make sure no woman seeking protection will be helpless.

About ECMI Kosovo

ECMI Kosovo is the principal non-governmental organisation engaged with minority issues in Kosovo, with the overarching aim to develop inclusive, representative, community-sensitive institutions that support a stable multi-ethnic Kosovo. ECMI Kosovo contributes to the developing, strengthening and implementation of relevant legislation, supports the institutionalisation of communities-related governmental bodies, and enhances the capacity of civil society actors and the government to engage with one another in a constructive and sustainable way.

⁸ Anti-Discrimination Law (2004), Law on Gender Equality (2004), Family Law, (2006) Law on Protection against Domestic Violence(2010) and the Provisional Criminal Code punishes the violation of equal status of individuals (Article 158).