EUROPEAN CENTRE FOR MINORITY ISSUES KOSOVO

Centre for Legal Aid and Regional Development

Policy Brief – Domestic Violence in Kosovo

30 July 2012

Domestic Violence is a global problem. Worldwide, on average, at least one in three women is beaten, coerced into sex or otherwise abused by an intimate partner in the course of her lifetime.[1] Kosovo is no exception.[2] Domestic violence is a complex issue that requires a comprehensive approach by all stakeholders involved. However, in this policy brief the European Centre for Minority Issues (ECMI) Kosovo and the Centre for Legal Aid and Regional Development (CLARD) will highlight the **persistent failure of the Kosovo judicial system to issue protection orders within the set legal time limit**.

Protection orders are orders from a court to protect victims of domestic violence from further harassment by, for example, prohibiting the perpetrator from coming within a certain distance of the victim. Although protection orders are in no way a foolproof method of fighting domestic violence, they have been recognised as a key tool to protect victims of domestic violence from further harassment. The issue has received considerable international and domestic attention in Kosovo, particularly following the death of Diana Kastrati after the court had failed to issue an emergency protection order.[3] The legal framework in Kosovo on protection orders is clear: in the *Law on Protection against Domestic Violence* the deadline for the decision on emergency protection orders is set at 24 hours, while the deadline for regular protection orders is set at 15 days.[4] The Kosovo Judicial Council has recognised the importance of this law and urged its rigorous implementation.[5] Nonetheless, ECMI Kosovo and CLARD are, at this moment, still faced with a case where, over five months after the petition for a protection order was submitted, no decision has been delivered by the municipal court. Therefore, ECMI Kosovo and CLARD urge the Kosovo government and judiciary to take a strong stand against this failure to adequately protect the rights of victims of domestic violence.

The Case

In February 2012, ECMI Kosovo and CLARD received a beneficiary claiming to be the victim of domestic violence at the hands of her husband, and sister and mother in law. The legal officer in charge assisted the victim in submitting a petition for a protection order to the responsible municipal court. However, the responsible municipal court failed to issue a decision on this request within the deadline of 15 days set by the law. In fact, it took around three months for the court hearings to be finalised and, although a prompt decision was promised, up to date, over two months later, no court decision has been issued.

[1] United Nations Secretary General´s Campaign: Unite to End Violence against Women (2008), ´Factsheet - DPI/2498´. Available at: http://www.un.org/en/women/endviolence/pdf/VAW.pdf

[2] *´Domestic and gender-based violence continues to be a challenge in Kosovo.´*, European Commission, Progress Report 2011, p.17.

[3] Protection orders are defined in the *Law on the Protection against Domestic Violence* (Article 1.9) as 'an order issued by a court decision providing protection measures for the victim'.

[4] Article 15-16, *Law on the Protection Against Domestic Violence*, No.03/L-182

[5] Kosovo Judicial Council Decision, No. 22/2012, 09 March 2012.

In this case, regardless of the clear deadline set by law and the recognized importance of quick action in domestic violence cases, the court has still failed to issue a decision on a petition for a protection order four months after it was submitted. The judge justified the delays by pointing to the absence of the perpetrators in the hearings as well as the wish of EULEX to monitor the case. However, no evidence was provided of the request by EULEX and the *Law on Protection against Domestic Violence* (Article 15.3) states that court hearings can be held in the absence of the perpetrator, if this individual was properly informed of the hearing. In addition to these delays, in at least three court hearings no court records were kept, in violation of Chapter X of the *Law on Contested Procedures* (No. 22/2012).

Considering these irregularities, ECMI Kosovo and CLARD have initiated a disciplinary procedure with the Kosovo Judicial Council against the responsible judge. However, regardless of the serious and urgent nature of the case, the Kosovo Judicial Council has, as of yet, not responded to the complaint. In fact, the judge in question has been promoted to the Supreme Court.

The Kosovo Problem

This case is not an isolated incident; rather, it represents a consistent failure of the Kosovo judicial system to issue protection orders without delays. In 2007, the OSCE already highlighted the unlawful delays in decisions on protection orders as a major problem and reemphasized this concern in its 2012 report on the '*Adjudication of petitions for protection orders in domestic violence cases in Kosovo*'.[6] Moreover, the issue received considerable domestic attention when on 18 May 2011 Diana Kastrati was murdered after the court had failed to take a decision on her petition for an emergency protection order within the legal time limit.[7] Both the OSCE reports and the Diana Kastrati case highlight the potentially serious, and sometimes deadly, consequences for victims of domestic violence when protection orders are not issued within the legally defined deadlines. The failure of the court in the case described above is all the more serious considering the attention this issue has received over the past few years.

International Standards

International standards confirm the importance of the protection order as a key tool in fighting domestic violence and emphasise the positive responsibility of the state to protect victims of domestic violence. The European Court of Human Rights has, on several occasions, ruled clearly that the European Convention on Human Rights - directly applicable to Kosovo under Article 53 of the Constitution – can act as a legal basis to provide protection for victims of domestic violence; that states have a positive obligation to protect victims of domestic violence; and, that enforced protection orders are a minimum requirement for compliance with this obligation.[8]

[6] OSCE Kosovo (2007), ´*Report on Domestic Violence Cases in Kosovo*´. Available at: http://www.osce.org/kosovo/26282 & OSCE Kosovo (2012), ´*Adjudication of petitions for protection orders in domestic violence cases in Kosovo*´. Available at: http://www.osce.org/kosovo/88713

[7] ECMI Kosovo and CLARD have supported the submission of a referral to the Constitutional Court regarding the failure of the Kosovo judicial system to protect Diana Kastrati´s rights.

[8] The ECHR protects the rights of victims of domestic violence under Article 2 'Right to Life' (see, for example, *Osman v. the United Kingdom*, 28 October 1998), Article 3 ´Prohibition of torture´(see, for example, *H.L.R. v. France*, 29 April 1997) and Article 8 ´Right to respect for private and family life´ (see, for example, *Bevaqua and S. v. Bulgaria*, 12 June 2008)

Conclusions

Kosovo´s legal framework is clear on the obligation of the courts to decide quickly on petitions for protection orders. ECMI Kosovo and CLARD experience, OSCE research and the Diana Kastrati case provide compelling illustrations of the potentially severe human costs of delays in such decisions. Nonetheless, judging by the presented case, the Kosovo judicial system is still unable to adequately protect the rights of victims of domestic violence. Therefore, ECMI Kosovo and CLARD urge all relevant stakeholder to ensure that:

- Kosovo courts respect the time limit set by the *Law on Protection against Domestic Violence* for the adjudication of (emergency) protection orders;
- Judges who violate the time limit set by law for the adjudication on petitions for protection orders face disciplinary measures;
- The Kosovo Judicial Council, which through its decision 22/2012 has recognised the importance of the prompt adjudication of protection orders, monitors closely the courts´ performance in relation to domestic violence cases.

Further reading

- OSCE Kosovo (2012) '*Adjudication of petitions for protection orders in domestic violence cases in Kosovo*''. Available at: http://www.osce.org/kosovo/88713
  Provides a comprehensive analysis of the main challenges in the adjudication for petitions for protection orders in domestic violence cases in Kosovo.
- Hasselbacher, Lee (Spring 2010), *´State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, and International Legal Minimums of Protection´*. Available at: http://www.law.northwestern.edu/journals/jihr/v8/n2/3/
  A thorough analysis of the obligations of states regarding domestic violence, looking particularly at the European Convention on Human Rights.
- Council of Europe (8 November 2011), *´Protection orders for victims of domestic violence´*. Available at: http://assembly.coe.int/Documents/WorkingDocs/Doc11/EDOC12786.pdf
  A report by the CoE Committee on Equal Opportunities for Women and Men Rapporteur, urging CoE member states to strengthen the effectiveness of protection orders.

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ECMI Kosovo is the principal non-government 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.