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COMPENSATION FOR THE VICTIMS OF DOMESTIC VIOLENCE

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***ANALYTICAL
MONITORING
REPORT***

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1. Executive Summary

Domestic violence remains a significant social problem and a challenge for Kosovar institutions. In order to prevent this phenomenon, many laws and policies have been adopted. In fact, preventing and combating domestic violence has not yet fallen on the right track.

Among the actions taken in this direction, the inclusion of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence in the Constitution of the Republic of Kosovo, is also taken. This document is considered the main international document that lists the measures to be taken by the state in this regard. The Convention, in addition to the actions on the protection of the victims and the criminal prosecution of the perpetrators, recognizes the great importance of compensation and requires the states to undertake the appropriate legislative actions to realize it. Following this obligation, the Kosovar legislation provides compensation to victims of domestic violence, whether in criminal, civil, or administrative proceedings.

KLI has monitored and analyzed the implementation of adequate standards for the compensation of crime victims. This analysis presents the findings of the KLI regarding the manner and efficiency of the justice system in providing compensation to victims of domestic violence. This analysis is the derivative of 50 judgments of the Basic Courts of the country, within the last three (3) years, for the criminal offense of domestic violence.

KLI has found that in 50 analyzed cases, the victims were represented in only 22 cases. Even though the injured parties were represented by the victims' defenders in 15 of the 50 cases analyzed, there are significant dilemmas about the quality of this representation. According to the findings of the KLI, in only three (3) cases where there was already representation by the victim's defenders, compensation was claimed in the criminal procedure.

Moreover, despite the submission of the proposal for a legal property claim, the KLI has found that the Courts have in no case decided in criminal proceedings, thus instructing in civil proceedings, in every case.

KLI assesses that not guaranteeing the representation of victims of domestic violence, not presenting legal property claims in criminal proceedings, and not deciding on these claims violate the rights of victims of domestic violence and makes it difficult for them to realize compensation for the damage that has been caused.

2. Compensation of Victims

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence [*hereinafter: the Istanbul Convention*] is now part of the Constitution [*Article 22 (9)*]. Prevention of violence, protection of victims, and prosecution of perpetrators are the main goals of this Convention. In this regard, it also punishes acts of domestic violence, including physical, sexual, economic, and psychological violence. The Convention's request to states for the criminalization of domestic violence removes this offense from the spectrum of a private matter, enabling heavier punishment for the perpetrator when the victim is a family member.[1]

Chapter V "Substantive law" of the Istanbul Convention, contains the articles according to which states undertake to provide victims with adequate legal remedies against the perpetrators of the crime and against state authorities that have not fulfilled their obligations for the prevention of violence against women and domestic violence.

The Istanbul Convention obliges states to take measures for adequate compensation from perpetrators of violence.[2] Article 30 of the Convention defines the right of victims to compensation from the perpetrators of violence. Likewise, the Istanbul Convention provides for compensation from the State in the case of serious bodily or health injuries, when compensation from the perpetrator of violence is not possible.[3]

An important step towards fulfilling the standards derived from the Istanbul Convention was marked by the criminalization of domestic violence, with the entry into force of Criminal Code no. 06/L-074 of the Republic of Kosovo [*hereinafter: CCRK*]. Furthermore, in accordance with the standards defined by the Convention, the criminal offense of domestic violence is prosecuted *ex officio* and by proposal.[4]

According to the Code of Criminal Procedure No. 08/L-032 of the Republic of Kosovo [*hereinafter: CCPRK*] the victim has the right to reasonable compensation for the material, physical, and emotional damage caused by the criminal offense, for which the defendant has been found guilty according to the CCRK. The court that implements the criminal procedure examines the proposals of the parties, namely the victim or authorized persons, regarding their legal property claims, for the damages they have suffered as a result of the commission of the criminal offense from which they were harmed.[5]

[1] Council of Europe "Council of Europe Convention on preventing and combating violence against women and domestic violence" (See link: <https://rm.coe.int/168064d3f6>). (Last accessed on September 5, 2023).

[2] Court of Justice of the European Union - Opinion of 6 October 2021 in case no C-1/19 (ECLI:EU:C:2021:832), para.24.

[3] Article 30 of the Council of Europe Convention on preventing and combating violence against women and domestic violence.

[4] According to Law No. 03/L-182 on Protection from Domestic Violence, which is still applicable, domestic violence was dealt with in the civil procedure and only in cases where the perpetrator of domestic violence does not respect the protective order, it was transferred to criminal liability.

[5] Article 459.2 of the Code of Criminal Procedure of the Republic of Kosovo.

Whether the court will decide on the claim in a criminal procedure or refer it to a civil procedure, the merits of the court's decision, by which the accused is found guilty, acquitted of the charge, the charge is rejected or the criminal procedure dismissed, is important.[6] In the first situation, when the accused is declared guilty, the court can decide on the legal property claim of the injured party, if it has been submitted, in whole or in part, and for the remaining part it directs in civil litigation. While, in other situations, the court directs the injured party to pursue the legal property claim in civil litigation.

In cases where compensation cannot be provided according to the above-mentioned ways, the Law on Compensation for Victims of Crime ensures the right to compensation from the Crime Victim Compensation Commission.[7]

3. Submission of Proposal for Compensation

Article 458.1 on legal property claims in the criminal procedure has defined the conditions that must be met in order for the claim to be considered in this procedure. Thus, "*the legal property claim as a result of the commission of the criminal offense is determined by the proposal of authorized persons in the criminal procedure [...]*", from which it is determined, that among other conditions, the condition of the existence of the proposal of the legal property claim in the criminal procedure must be met, for the criminal court to decide on the legal property claim by judgment.

In this regard, KLI has analyzed 50 judgments of the Basic Courts, issued in the years 2020-2022. These decisions are related to the criminal offense of domestic violence [Article 48 of the CCRK]. Among the 50 judgments, KLI has found that the victim did not claim compensation in 24 cases (48%), while they claimed compensation in another 20 cases (40%). However, in 6 other cases (12%) the judgments do not mention whether the victim sought compensation or not.



Indicator no. 1 - Submission and non-submission of the legal property claim, for the years 2020, 2021, 2022.

[6] Article 462 par 2 and 3 of the Code of Criminal Procedure of the Republic of Kosovo.

[7] "Victim Compensation Program" (See link: <https://md.rks-gov.net/desk/inc/media/D42B1893-B42D-4BF4-B6D7-B1675BD7BAEB.pdf>). (Last accessed September 15, 2023).

Despite the fact that the victims have submitted a claim for compensation for the damage caused by the criminal offense in 24 cases, the KLI has found that in none of the cases have the courts decided the criminal procedure. As a result, the courts have instructed in civil litigation in all cases of the existence of a legal property claim.



Indicator no. 2 - Proposal for the realization of legal property claims in the criminal procedure

According to the analysis of the judgments, it was identified that in 31 cases, the courts instructed the party/victim in the civil litigation.

Whereas, in 19 other cases, they did not act in this way. In these cases, the Courts have not referred to civil procedure, based on Article 461 of the Code of Criminal Procedure No. 04/L-123: *"Authorized persons can withdraw from the proposal for the realization of the legal property claim in criminal proceedings until the end of the judicial review and realize it in a civil dispute. When the proposal is withdrawn, the same proposal cannot be presented again, unless otherwise provided by this Code."* However, this article does not prevent the injured parties from presenting their legal property claim in civil proceedings, but only during criminal proceedings. For these reasons, even in these cases, the Courts should instruct the parties to realize their legal property claims in civil proceedings while it remains at the disposal of the injured parties if they do so.[8]

On the other hand, in one of the judgments, the KLI found that the Court, while not referring to the civil procedure, wrongly referred to Article 454 of the CCPRK, which deals with the effect of other decisions related to the compensation of procedural expenses, when the criminal procedure is dismissed or when the judgment is obtained by which the defendant is acquitted of the charge/rejected.

4. Representation of the Injured Party in Criminal Proceedings

In addition to the aforementioned findings, what draws attention is the lack of representation of the victims in the procedure. The Istanbul Convention requires states to take *"the necessary legislative or other measures to ensure, in accordance with the conditions provided for by their domestic law, the possibility for governmental and non-governmental organizations and counselors on domestic violence to assist or support the victims, at their request, during investigations and court proceedings related to the criminal offenses provided for in accordance with this Convention"*. [9]

[8] Commentary on the Code of Criminal Procedure, Prof. dr. sc. Ejup Sahiti / Prof. dr. sc. Rexhep Murati / Mr. Xhevdet Elshani, pg. 1105-1106.

[9] Article 55.2 of the Istanbul Convention.

In Kosovo, the Office for Victim Protection and Assistance (OVPA), which operates within the Office of the Chief State Prosecutor, has a mandate to, among other things, offer crime victims representation, counseling, and support for access to the justice system.[10] Therefore, the defender of the victims is considered the official authorized person, who helps the injured party from the first contact with the competent protection bodies and throughout the judicial process, being obliged to participate in all sessions. [11].

Despite these determinations, KLI has found that out of 50 cases analyzed, the victims were represented only in 22 cases, in 15 of them by the defender of victims, while in seven (7) other cases, they were represented by lawyers, that they engaged. Expressed as a percentage, it appears that the victims had representatives in only 38% of the cases, resulting in no professional representation for the victims in 62% of the other cases.



Indicator no. 3 – Representation of victims in criminal proceedings.

The lack of representation of victims of domestic violence makes it difficult for them to realize their rights. In these cases, providing professional protection to victims of domestic violence is a prerequisite for the effective realization of the rights of victims of domestic violence. For this reason, the institutions must ensure that in each case of domestic violence, the victims have professional representation.

4.1. The quality of representation of domestic violence victims

Despite the fact that the injured parties were represented by the victim's defender in 15 of the 50 cases analyzed, there were significant issues regarding the quality of this representation.

According to the findings of the KLI, in only three (3) cases has there already been a representation by the defender of the victims, and compensation has been claimed in the criminal procedure. It follows that in 12 other cases, the defender of the victims, despite his role that he "*directly helps the injured party from the first contacts with the competent protection bodies, advises, [...]*" did not submit a legal property claim at all, taking into account the importance of compensation for the injured party, after the damages caused by the criminal offense.

[10] Furthermore, see [8] Commentary on the Code of Criminal Procedure, Prof. Dr. Sc. Ejup Sahiti / Prof. dr. sc. Rexhep Murati / Mr. Xhevdet Elshani, pg. 1105-1106.

[11] KLI, "The Istanbul Convention in courts' decisions in Kosovo", Arrita Reznqi,

The lack of proper representation causes losses for the injured party, starting from the procedures for determining protection measures, and ending with the failure to submit a proposal for the realization of the legal property claim or withdrawal/renunciation of the claim entirely.

5. Failure to Decide on the Legal Property Claim in Criminal Procedure - Referring to Civil Litigation

The Code of Criminal Procedure has given the court the opportunity to decide on the legal property claim, in the case of submitting a proposal for the realization of the claim, as long as it does not delay the criminal procedure [12], and when the data collected in the procedure represent a basis safe for full judgment.[13] The findings of the KLI show that the courts have in no case decided on the proposal for the legal property claim.

Realizing the compensation of victims from the damage caused in criminal proceedings addresses different functions within the criminal justice system. This is because the compensation is presented as a social response to the emotional and financial consequences suffered by the victim and the fulfillment of this right in this procedure fulfills the victim's need for reconstructing their life in financial, physical, emotional and social aspects more quickly.[14]

While it is recognized that financial compensation cannot fully repair the pain and suffering caused by the crime, it can provide victims with essential support. This is because the injured party may have numerous financial consequences, which include medical expenses, loss of income caused by the inability to work, and other non-material damages related to the emotional state, which can hardly wait until the settlement of the civil contest.

On the other hand, not deciding in criminal procedure damages the support of the criminal justice system by potential victims. The possibility of compensation in the criminal procedure, which can result in a faster epilogue, encourages the cooperation of the victim with the police, from which the reporting of the cases would increase, which would enable the perpetrators of domestic violence to be punished. Such action would positively affect the prevention of this criminal offense.

[12] Article 457, Code No. 08/L-032 of Criminal Procedure.

[13] Article 462, Code No. 08/L-032 of Criminal Procedure.

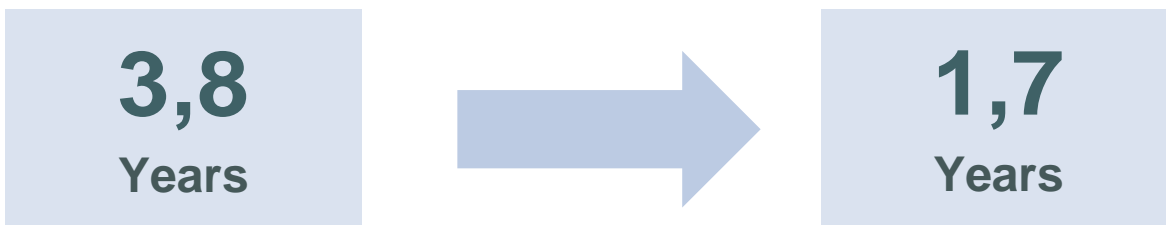
[14] The Role of Victim Compensation in Rebuilding Victims' Lives, Marlene A. Young, Ph.D, pg. 3

Thus, the constant denial of this right by the courts in the criminal procedure can be taken as a failure to protect the victim, in particular from the negative effects of the crime, and a continuous discouragement from presenting property claims in this procedure. This is because referring to civil litigation in all cases presents numerous delays towards the realization of this right.

The main reason for discouraging injured parties from further proceedings is the length of court proceedings in civil cases, which is one of the main challenges to the administration of justice in Kosovo. This is because in cases where the legal property claim is not decided in the criminal procedure, the parties are obliged to initiate a new judicial process for the realization of the compensation.

At the same time, the development of a criminal and a civil procedure, for the same case, causes another burden on the justice system. This is because, for the same issue that could be concluded in a criminal procedure, a civil procedure shall be developed, therefore, taking into consideration the duration of civil cases, the impact on the trial in a reasonable time would inevitably be reflected.

According to the KJC's own calculations, the average duration of cases resolved in the first instance is 1,415 days, or 3.8 years. Whereas, this duration in the Court of Appeal is 1.7 years. Consequently, for a civil case to receive an epilogue, about 5.5 years should pass respectively.[15] In the case of victims of domestic violence, this period begins to run only after the criminal procedure is completed.



Indicator no. 4 – Case Duration in Basic Court from disputes with compensation of damage; Duration in Court of Appeal

[15] Merlaku A & Bllaca N. "Civil Justice 2022", Pristina. August 2023.

6. Compensation from the Crime Victim Compensation Commission

The importance of financial compensation for victims of violent criminal acts, as a secondary compensation, was taken into consideration when establishing the Program for the compensation of crime victims. This compensation from the state, although in most cases it is not equivalent to the damage suffered, can provide relief from the financial impact imposed on victims of domestic violence.

This right of crime victims to compensation is guaranteed through Law no. 08/L-109 on Crime Victim Compensation, which regulates the operation of the Compensation Program in more detail. According to the provisions of this law, according to Article 6, this right is also guaranteed to victims of criminal offenses that fall within the definition of domestic violence. Whereas, regarding the regular and immediate claims for compensation, namely the determination of its amount is decided by the Crime Victim Compensation Commission.

The commission decides on regular compensation claims and claims for immediate access to compensation. It should be noted that only a certain category of victims^[1], among whom are victims of domestic violence, are entitled to immediate compensation.

Depending on the fulfillment of the formal and material conditions of the claims, in accordance with Article 7 of the Law, the Commission takes a decision by majority vote, from which it can reject or accept the claim in whole or in part and determine the amount of compensation. The amount of regular compensation, depending on the types of compensation, can reach the value of ten thousand (10,000) euros, while the immediate compensation, for the total of all categories defined by article 9.2, cannot exceed the amount of three thousand (3000) euros.

In case the party is dissatisfied with the decision of the Commission, namely the height of the compensation value, the same may initiate administrative conflict in accordance with the legislation in force.

[16] Article 8.1 of Law no. 08/L-109 on the compensation of crime victims.

6.1 Processing of Compensation Claims by the Crime Victim Compensation Commission

Based on the data received by the Victim of Crime Compensation Commission, in the period January - September 2023, a total of 28 claims for compensation from victims of domestic violence were received. Out of 28 claims, the Commission approved 23 claims, while two (2) others were rejected, and currently, there are three (3) active claims that have not yet been examined.

Deciding on these claims, the Commission in the 23 claims approved for cases of domestic violence has offered a total value of 45 thousand and 95 euros, which on average is 1,960 euros per person.



Indicator no. 5 – The number of claims processed by the Commission within the period January–September 2023.

7. RECOMMENDATIONS

1

The courts should decide on the proposal for the realization of the legal property claim in the criminal procedure

2

Institutions undertake all necessary measures in order to ensure professional representation for victims of domestic violence.

3

OPAV and the defenders engaged should fulfill the powers and present a legal property claim on behalf of the victim in criminal proceedings.

4

Reasons for court judgments related to cases of domestic violence, refer to the Istanbul Convention.

