



REPORT ON KNOWLEDGE AND IMPLEMENTATION OF THE GENDER EQUALITY STANDARDS IN COURT DECISIONS

*Report on the main findings from monitoring of the judicial practice in Tirana,
Durrësi, Shkodra and Vlora District Courts*

January 1, 2011- June 1, 2012

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i. Acknowledgement

This report is prepared under the framework of the implementation of the project:” *Pursuing strategic litigation cases to advance women’s human rights and increase their access to National and International Protection Bodies*”. *The project is implemented by CLCI, through monitoring of the court decisions for the period January 2011- 1st of June 2012. This Project is financially supported by United Nations Development Programme (UNDP).*

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CLGI hopes that findings, conclusions and recommendations of this survey to be useful for all the actors engaged in gender equality and non-discrimination issues.

Prof. Dr. Aurela Anastasi
Executive Director of CLCI

ii. Abbreviations

ECHR	European Convention on Human Rights.
ECHR	European Court of Human Rights [Strasbourg].
CEDAW	Convention for Elimination of All Forms of Discrimination Against Women.
CC	Criminal Code of the Republic of Albania approved with the Law no.7895, dated 27.1.1995, changed.
CPrC	Criminal Procedural Code of the Republic of Albania approved with the Law no.7905, dated 21.3.1995, changed
CPC	Civil Procedures Code of the Republic of Albania approved with the Law no.8116, dated 29.3.1996, changed.
FC	Family Code [2003] approved with the Law no.9062, dated 8.5.2003.
DC	District Court.
FVL	Law “On measures against violence in family relations” [2006] changed.
PO/IPO	Protection Order; Immediate Protection Order.
UNDP	United Nations Development Programme.
CLCI	Center for Legal Civic Initiatives.

iii. Methodology

Under the framework of the implementation of the project “*Pursuing strategic litigation cases to advance women’s human rights and increase their access to National and International Protection Bodies*”, implemented by CLCI, supported by UNDP (United Nations Development Programme), it is realized a monitoring process on the Court Decisions for the period January 2011- 1st of June 2012. As far as the methodology is concerned, realizing of this monitoring involves some main steps, such as:

- ❑ *Identification of the Courts.* Based upon the interest of identifying the typical problems, monitoring is focused on Tirana Durrësi, Shkodra, and Vlora District Courts;
- ❑ *Preparation of the monitoring forms.* In order to prepare the aspects and the elements of the monitoring form it was set up a working group of CLCI. Firstly some court decisions were piloted in order to come to the final variant of the monitoring form which had to be a model that involves inclusive elements. A number of lawyers are consulted as well to get their opinion on the contents of the monitoring form. So, it was concluded in the aspects and elements to be monitored by this monitoring form.
- ❑ *Setting up of the monitoring team.* CLCI selected the monitoring lawyers in Durrësi, Shkodra, Vlora and Tirana District Courts. In the selection process there are taken into consideration the following criteria:
 - The level of knowledge and competences on the issues of gender equality and non-discrimination;
 - The experience in relation to offering legal services for the issues object of this monitoring;
 - The experience in relation to monitoring skills on the efficiency of the justice system from the point of view of gender;
- ❑ *Training of the monitoring staff.* Aiming at using a unified methodology and an adequate understanding of the monitoring form during the monitoring process it was organized the training of the monitoring staff. There are organized as well training events with the members of pro bono team, with the students of the Law Faculty of Tirana University, aiming at their active involvement in monitoring.
- ❑ *Monitoring of CLCI practices.* The monitoring findings are enriched with the practices of the cases of clients followed by CLCI on the issues object of monitoring focused in the period January- December 2011 and January - June 2013. There are used as well the data taken from the court sessions on issues that CLCI lawyers offer free of charge legal services. Experiences and previous reports produced by the Center for Legal Civic Initiatives are also used based on previous monitoring processes in the district courts always in relation to the aspects of gender equality.

The object of the monitored court cases

- ❑ *Monitoring of constitutional and international standards in relation to gender equality and non-discrimination:* in order to realize such a monitoring in all the court decisions during the period subject of this monitoring, some cases in process and the practices of the clients of CLCI

are focused upon quoting of standards defined by: the Constitution of the Republic of Albania; CEDAW Convention; European Convention on Human Rights, respectively article 14 of the Convention and Protocol 12 of this Convention, as well as other international acts in relation to gender equality, ratified by the Republic of Albania. It is analyzed the place occupied by these acts in the legal basis of the lawsuits and in the reasoning of the court decisions;

- ❑ *Monitoring of the gender aspects in the court decisions of cases having as their object the dissolution of marriage and its consequences.* Monitoring is focused on the accessibility of the spouses in the court, on the consequences of the division of the matrimonial property, as well as of the property deriving from cohabitation; on the issues of the institution of maternity and paternity; on the problems related to the payment for the alimony; on the aspects of exercising of the parental responsibilities after the family dissolution; etc;
- ❑ *Monitoring the gender aspect of some penal decisions:* Monitoring is focussed in some criminal offences such as exercising of prostitution; sexual intercourse by violence; trafficking in women and children etc. Application of the legal changes in the Criminal Code, respectively during the years 2012 and 2013, of course within the period of monitoring, brought in the focuss of monitoring the following articles: *130/a of the Criminal Code 'Domestic Violence'; article 43 (a) of the Criminal Code 'Loss of parental responsibilities'; article 121 (a) of the Criminal Code, 'Persecution'; article 321 of the Criminal Code, 'Acts opposing court's decisions'.*
- ❑ *Monitoring of the complaints presented to the Commissioner for the Protection Against Discrimination and monitoring of the People's Advocate practices in Albania, in relation to gender equality and protection from discrimination.*

iv. Summary of the main findings

Approval of the anti-discrimination legislation and the ratification of the international Conventions that underline the principles and the standards of equality and non-discrimination is only the beginning of the attempts to know these rights. Their implementation goes through a long way and in these attempts the judicial power plays an important role.

The standards are still fragile and unknown. It is likely that a lot of cases of violated rights are not sent at all to the court and are not treated at all under the framework of protection from discrimination. This happens even when these rights are violated openly. On the other hand, it does exist the danger that when such cases are presented as violated rights, in the trial process they may be reduced into less important cases, or in cases that fade away. Obviously in the process of attempts to consolidate gender equality and gender non-discrimination there are also positive experiences which need to be promoted aiming at making them known and followed by other positive ones.

Legally the spouses enjoy equality of rights and responsibilities in some important moments and aspects of their matrimonial life. This is identified in the entire formal acts and conditions requested for the binding in marriage [consuming the marriage as an act]; during the marriage [marriage as a relation] and in the case of marriage dissolution [as one of the forms of the end of marriage]. During these life and legal processes occur facts and events that cause the violation and disrespect of the rights. Based on the nature of the relations, in family and matrimonial relations, in order that the law to become a reality it is requested that the equality to be ensured in the relations between the spouses themselves, in relation to their own person, so, in relation to each other, to the property, as well as in their relation with their children. That's why the spouses and the other members of the family themselves should be protagonists of the protection of equality and non-discrimination standards during their family and matrimonial life. The authorities as well play a specific role in the protection of the rights of the spouses. So, it is the duty of the court authorities, as public authorities, to know and to apply clearly all the respective factors that may cause discrimination, or inequality when they take a decision for the division of the property in cases when the marriage is ended or dissolved, when they take a decision in relation to exercising of the parental responsibilities, or in cases when they have to issue a Protection Order due to domestic violence, etc..

Gender discrimination is closely linked with the discrimination related to the marital status [single, widow, married or divorced]. In discrimination influences as well the civil or marital status, pregnancy, parental belonging, parental responsibilities, etc, reasons that are faced openly, or may be faced as 'hidden reasons' during the trial of family issues. According to the law "On protection from discrimination", in article 7, entitled 'Protection from discrimination', it is underlined that "Every action or failure to act of the public authorities or of natural or legal persons who take part in the private or public sectors and life, which creates bases for the denial of equality against a person or group of persons, or which expose them to an unfair, unequal treatment when they are in the same or similar circumstances in comparison with other persons or other groups of persons constitutes discrimination". This means that the elimination of all privileges and of discrimination should be guaranteed for everyone, in every process, or procedure with any authority, especially in the court decisions.

The matrimonial and family life has huge influence in the quality of life of each individual. That's why the focus of monitoring was upon family and family members. The aim of monitoring was to bring to light through cases and figures what happens in the courts, or to analyze what is sent to the court and becomes subject of judicial conflicts which as a matter of fact can not be understood from the analysis of single cases.

Monitoring was focused in 4 district courts: in Tirana, Durrësi, Vlora and Shkodra district courts. In this way, in the process of the selection of the sample, CLCI took care for the geographical distribution of the information and of the monitored data, but even took into account the judicial activity and the number of the cases presented and treated in these courts. Monitoring included a period of time of 17 months, from 1st of January 2011 up to 31st of May 2012. We have to stress the fact that in this process, we faced some difficulties to know the court decisions of Judicial District Courts of Durrësi, Vlora and Shkodra because it was only Tirana Judicial District Court which offers the possibility to know the court decisions through internet. Thus, it is necessary that measures to be undertaken on strengthening of transparency of judicial power through the publication of court decisions in all judicial district courts of Albania, respecting the rights on protection of personal data of judicial parties.

In relation to the object of monitoring the attention was focused on the court decisions and on the practices of CLCI on the issues having as their object as follows:

- International and national standards in relation to gender equality in family issues;
- Dissolution of marriage and the consequences in relation to marital property, parental responsibility, etc;
- Gender impact on the issues related to the Protection Orders;
- Implementation of the provisions of the Criminal Code such as articles 130/a, 113, 320, 321 with gender impact;
- Monitoring of the independent institutions such as the Commissioner for the Protection from Discrimination and the People's Advocacy.

Table of the monitored decisions according to the object and courts

<i>Court</i>	<i>According to the object</i>			<i>Period from January 1 2011 to 31 May 2012</i>
	<i>Dissolution of marriage</i>	<i>Protection Order</i>	<i>Criminal cases for eg. article 130/a of the CC, etc</i>	
<i>Tiranë</i>	1092	421	138	
<i>Vlorë</i>	295	81	<i>There isn't any</i>	
<i>Shkodër</i>	336	83	<i>There isn't any</i>	
<i>Durrës</i>	423	232	7	
<i>Total</i>	2146	817	145	

Findings on the knowledge and implementation of the international standards: one of the objectives of monitoring was the identification of the situation of referring to and of implementation of the international and national standards related to gender equality and non-discrimination in the matrimonial and family life. So, in this report, in the summary of findings, it is dedicated moderate space to the list of the normative acts that reflects these standards. ***Given that discrimination in general and the gender-based violence discrimination in particular is an endemic phenomenon, global and regional, that violates core rights and fundamental freedoms, the attention to set standards in***

international instruments has been ongoing. In this direction our country has made progress in the ratification of such standards. As such instruments of particular importance in the field of equality and non-discrimination can be mentioned the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW¹); ECHR, in particular Article 14 of the Convention and its Protocol 12, the Convention on the Rights of the Child (CRC), etc.. According to the Constitution, after ratification, any convention becomes part of domestic legislation. If it is not self-applied, a law should enable this. Parliament recently ratified the Council of Europe Convention² “On prevention and combating violence against women and domestic violence”, known as the Convention of Istanbul. Meanwhile progress is evident even in the national legal framework.

Monitoring data on referring and applying the international standards seem to have been focused only in the decisions of Tirana District Court. Monitoring did not produce any data related to reference to International Standards in the court decisions of Durrësi District Court. In Vlora District Court in the monitored decisions, based upon the legal basis object of this monitoring process, it is not mentioned at all the reference to acts such as CEDAW Convention, or the Law “On protection against discrimination” etc. In the decisions given in Shkodra District Court there is not at all any reference to international standards and to the international jurisprudence during the monitored period. It is observed that in the decisions given by this court during 2013 there is a specific attention to reflect in these decisions extracts from the Constitution of the Republic of Albania, or from other international instruments.

As a conclusion, as it is clearly seen in the monitored cases, the reference to the international standards and to the jurisprudence of ECHR is used in very few of the court decisions. The same conclusion can be drawn even for the implementation of such laws as “On protection against discrimination” and “On gender equality in society” at a time that their effect is more evident in the issues of the public right.

Gender impact in the decisions having as the object dissolution of marriage and its consequences: The aim of monitoring of the judicial practice is the identification of the positive aspects and of the defects related to respecting of the standards of gender violence in very delicate moments as it is the dissolution of marriage and its consequences. From the point of view of how the provisions of the Family Code are positioned there are identified three main pillars of the principle of equality: the principle of equality between husband and wife as spouses; the principle of equality between husband and wife as mother and father, so as parents for their children; the principle of equality of children despite the marital status of the parents.

NUMBER OF THE MONITORED DECISIONS HAVING AS THE OBJECT DISSOLUTION OF MARRIAGE ACCORDING TO THE COURTS AND YEARS				
Courts	Tirana	Durrësi	Vlora	Shkodra
2011	618	272	213	257
2012	474	151	82	79

Statistics indicate that in the national level there is an increasing tendency of the number of issues with the object dissolution of marriage³.

1 CEDAW Convention of 1979 is ratified from 185 states. **Albania ratified CEDAW Convention in 1993** (Law no. 1769, dated 9.11.1993)

2 Law No. 104/2012 “On ratification of the Convention of the Council of Europe “On prevention and combating violence against women and domestic violence”

3 Statistical yearbook of the Ministry of Justice, Tirana, 2010. In this document there are data for the previous periods as well.

Some of the conclusions deriving from monitoring of the decisions having as the object dissolution of marriage include as follows:

- ❑ *Woman as a spouse is taking more and more the courage to be active in presenting the suit in front of the district court for the dissolution of marriage.* According to the courts, taking in consideration all the figures and periods of monitoring the percentage goes from 53% (the lowest) to 70% the highest.
- ❑ *The situation of the decisions for ceasing of the case having as the object the dissolution of marriage is presented to be heterogeneous as compared from one court to the other. It is observed that the tendency is that these decisions cover a considerable number.* The decisions to cease the case go up to 15%-25% for Tirana, Vlora and Shkodra district courts. In Durrësi district court there is a low percentage of the ceased cases with this object.
- ❑ *Among the cases with the object the dissolution of marriage that end by ceasing the case, the highest percentage is covered by cases when the suit is presented by the wife, such cases cover a percentage quite higher as compared to the cases when the process is initiated by the husband.* In about 60% of the ceased cases in Tirana District Court, with the object dissolution of marriage, the person who has presented the suit has been the wife; In Durrësi District Court this situation, based on the period of monitoring goes approximately to 67-75%; in Vlora district Court it is about 74% of the cases. The same situation happens in Shkodra district Court.

There is an increasing tendency to dissolve marriage through reciprocal consent of spouses, based on article 125 of the Family Code. This is the article that foresees this way of dissolution. For Tirana district these cases cover up 7% to 11% of the requests; for Shkodra district this figure goes approximately up to 16% of the cases during 2011 and 19% of the cases for the year 2012. The decisions to dismiss the cases are not included in this figure. For Vlora district the dissolution of marriage on consent of spouses is a figure that covers up to 4% of all the cases. For Durrësi district it goes up to 9-10%. The agreement presented in this case can not be an acceptable one if there are differentiations and inequality, or equality just to be mentioned as such, because in reality very soon it will bring about inequality. In order to be able to understand this situation vigilance and professionalism is needed from the court. The family Code foresees the right of the court to refuse the dissolution of marriage on reciprocal consent if it found that the agreement does not ensure adequately the interests of the children, or of one of spouses. During the process of monitoring it is not identified any case or any decision that goes deeply into such analysis.

- ❑ *Living separately as a reason for dissolution of marriage according to article 129 of the Family Code (Either spouse can request dissolution of their marriage when they have lived separately for a period of 3 years) is presented in a limited number of cases.*
- ❑ *Dissolution of marriage with the request of one of the spouses remains the most 'used' form for the dissolution of marriage.* The reasons mostly reflected in the court decisions are those reasons that are related with gender stereotypes which still remain part of discriminating mentality. Some of the reasons and some of the gender stereotypes identified in the court decisions for the dissolution of marriages are as follows: maltreatment and gender based domestic violence appears as the determinant reason in dissolution of marriages; discriminating stereotypes in relation to family rights and obligations and family relations; discriminating stereotypes in relation to the role of the woman in the family; discriminating stereotypes in relation to the economic rights of the spouses, to the administration of the property and incomes, to the family expenses and decision-making in relation to them; refusal to fulfill family obligations towards spouses and children, as well as related to the so-called 'ludomania' phenomenon that seems to have become a concern in the reality of the Albanian families.

Findings on the consequences of the decisions for dissolution of marriage in relation to spouses and exercising of parental responsibilities include:

- ❑ *After the marriage dissolution in most cases the children are left under the care of their mother. So mother remains as the main exerciser of the parental responsibility.* In Tirana District court these cases cover 87-88% of the monitored decisions for the period 2011-2012; for Durrësi District Court such cases cover 90% of the monitored cases for the year 2011 and 82% of the cases for the year 2012. Approximately the same figures are identified in Vlora and in Shkodra district courts.
- ❑ *There is not any categoric conclusion for all the courts in relation to the fact whether in couples that dissolve their marriage dominate the couples having children, or not.* Because this conclusion stands as a fact for Tirana district court with 60% of the couples, for Vlora district court with 56%-64% of the couples and for Shkodra district court with 70% of the couples, but not for Durrësi district court.
- ❑ While monitoring the respecting of some standards from the district courts, it is observed that the monitored courts more and more are showing attention and care to involve the psychologist in the trial processes with children aiming at understanding better and defining properly on the parenting plans after the dissolution of marriage.
- ❑ *It is a typology of the court decisions that in the reasoning of the decisions, in relation to the parent who exercises mainly the parental responsibility, the court is focused at the figure of the mother that is analyzed in details.* The court doesn't make the same analysis for the father. The children are left with their mother and the court makes a deep analysis of the figure of the mother to tell that why she is more appropriate to leave the children with. The monitoring of such a typology is focused mostly in Tirana District Court.
- ❑ *The husband is the subject that 'is lacking' in the processes with the object dissolution of marriage.*
- ❑ *Even in the cases when during the process of marriage dissolution and defining the exerciser of parental responsibility the father of the child is absent, the court takes care for the relations and contacts of the child with the father.* In these cases it is observed that, though in the absence of the father of the child, the court decides by giving to the father the right of access to the child and the right to take the child in holidays with the father, without making at all any analyses on the figure of the father, etc. These are mainly the cases when even the psychologist/social worker hasn't been able to contact the father of the child because he has emigrated, he hasn't an accurate address and he doesn't communicate with the family. As a matter of fact, such decisions (when the father is absent) of the same format with the decisions when the parent is present in relation to regulating the exercising of the right of keeping contacts with the children raise a question mark as far as the protection of the highest interest of the child is concerned and besides this such decisions remain almost not applicable.
- ❑ *Less requested and less applicable are those provisions that effect on the women's rights as spouses and on their economic position after marriage dissolution.* In the family Code there are some articles that regulate these issues mostly under the following: article no.139 of the FC 'Adoption of temporary measures'; articles 192 and 199 of the FC which contain regulations on 'Obligation between spouses'; article no. 153 of the FC that foresees the right to use the family residence; article no. 147 of the FC that foresees "compensation contribution", etc.

Findings from monitoring of the court decisions of the issues with the object the division of the marital property.

Property issues are very sensitive and important for the quality of the family life. During the management of the domestic violence cases at a time that according to the respective law on violence in family relations (2006 changed) subject of this law are ex-spouses as well, it is observed that the factors generating different forms of domestic violence are related to marital property and to the tendency of ex-spouses to enjoy this property by negating to their ex-wives their property rights.

- ❑ *The women are more active in presenting the suits for the division of marital property.* It is observed that for the period object of monitoring from 1st of January 2011 up to May 2012 in Tirana District Court it has resulted that in 69% of the cases the request to the Court for the division of the marital wealth is presented by women. *The husbands seem to be less active as compared to wives in relation to the request for the division of marital wealth, because they enjoy “de facto” such a wealth and they do not see any interest in the division of such a property in the court.*
- ❑ *Most of the court decisions for the division of the marital wealth in cases when the suing party is the woman are ceased.* Monitoring of Tirana District Court has provided us with the fact that such decisions consist of over 70% of all the cases. In Durrësi District Court 35% of the total cases are ceased from the court and in 100% of the ceased cases the suing party is the ex-wife. Some of the reasons are the difficulties of the access in the court and the difficulty to ensure an adequate defense in front of the court.
- ❑ *From the monitoring of the decisions issued in Tirana District Court it is observed that the women are the main benefiting party from the return of the marital property.*

Main findings from monitoring of court decisions and practices of CLCI on the issues having as their object the issuance of Protection Orders. In this aspect, the main findings refer to Tirana District Court.

THE NUMBER OF THE MONITORED DECISIONS HAVING AS THEIR OBJECT THE ISSUANCE OF PO/IPO ACCORDING TO THE COURTS AND YEARS				
Courts	Tirana	Durrësi	Vlora	Shkodra
2011	182	154	27	52
2012	239	78	54	31

There is not coherence and transparence in recording the data and the decisions related to PO/IPO and it seems from the system as if there is a lower number for PO/IPO. The comparison between the requests and the decisions in the course of time shows that the cases of denonciation of the domestic violence are increased.

- ❑ *Women are the most violated members of the family:* In 89% up to 92% of the cases in the monitored decisions in Tirana District Court for the period 2011-2012, the request to issue PO/IPO is presented by women. There are even cases when the suit is presented by men. For Durrësi District Court for the all the monitored period the figure goes up to 91.5% and in 87% of the cases the request to issue a PO/IPO is presented from women. In Vlora District Court the result of monitoring is that the figure goes up to 100% of the decisions for 2011 and 94% for the year 2012.
- ❑ *Children are subject of the request for protection from violence.* For the year 2011, in Tirana

Court Decision, in 36.5% of the cases it is requested protection for children as well. For the year 2012 this figure goes up to 30.5%. In Durrësi District Court for the year 2011, in 13% of the cases it is requested protection for the children as well. This figure goes up to 19% for the year 2012. There are cases in Shkodra district Court as well. There are 4 decisions where the children have made the request together with their mother.

- ❑ *The number of decisions that cease the case of requesting PO/IPO are still high in general, but specifically dominate the cases when the suing person is the woman. In Tirana district Court this figure goes from 91% to 92% according to the respective years. In Durrësi District Court, this figure goes approximately 84% of the ceased decisions when the PO is requested from women.*
- ❑ *In the relation between violator/victim the highest level of violence happens in the violence between spouses and ex-spouses.*

NUMBER OF THE MONITORED DECISIONS HAVING AS THEIR OBJECT THE ARTICLE 130/A OF THE CRIMINAL CODE ACCORDING TO THE COURTS AND YEARS			
Courts	Tirana	Durrësi	Shkodra
2012	26	7	0

Preliminary findings from monitoring of criminal court decisions on: issues having as their object application of article 130/a, ” Domestic Violence” of the CC, changed in 2012 and in 2013.

In relation to the practice followed by Tirana District Court, it is identified as followed: in relation to these issues there is a high number of ceased decisions [65%]; all the condemned persons for the criminal offence of domestic violence are men; by analyzing the court decisions it is has resulted that the court has given the decision for dismissal of the case for 17 cases out of a total of 26 cases. The decisions to dismiss the case are given in application of the law no.107/2012 “Giving Amnesty”. In relation to the measures and kind of decision given it is observed that: Out of 9 condemned persons, the criminal court has given the decision for imprisonment for 7 cases, by applying article 406 Of the Criminal Code of Procedures⁴ and in 2 cases the court has given the decision on probation. Concerning the relations between the violator and the victim of violence it has resulted that in 7 cases the violence has happened between spouses, in one case the violence has happened in the relations between parent/child while in another case the violence has happened in other relations.

Findings from monitoring the implementation of Article 320 of the Criminal Code “Preventing the enforcement of court decisions”⁵ and Article 321 of the Criminal Code “Acts opposing

4 Article 406 of CPr.C (Item “1” changed with the law no. 8813, dated 13.6.2002)(Item 1 changed with law no.145/2013, dated 2.5.2013, article 2). **Decision:**

1. In case of conviction the court commutes the punishment by imprisonment to one third. The sentence by life imprisonment shall be replaced by twenty-five years imprisonment.
2. If requested, the court decides even for the civil lawsuit.
3. The prosecutor and the defendant may appeal the sentence of the court.
4. There shall be applicable the provisions of chapter I I I of this title as long as they are compatible.

5 Article 320: **Preventing the enforcement of court decisions.** “Hiding, altering, using, damaging or destroying the possessions which have been the subject of a court decision, or carrying out other acts with the intent to not execute or impede the enforcement of the court’s decision, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment.”

court's decision", changed⁶. Monitoring in Tirana District Court.

The object of monitoring are some criminal offences related with gender elements. Monitoring is focused on some articles of the Criminal Code related to respecting of the court decisions. For these criminal offences, the defendants for committing of these criminal offences are men. 92% during 2011 and 94% during the year 2012. In relation to the measure of punishment it is observed that the imprisonment convictions [18% out of the total cases are condemned with two years] consist of a low number of cases as compared to other forms of punishment. It results that there is an increased number of cases where the relation between the convicted and the victim is a marital relation [12 decisions or 43 % for all the period of monitoring]. In the same number of cases it is even the relation between ex-spouses [12 cases or 43% for all the period]. It has also happened between ex-cohabitants [2 cases or 14% for all the period].

Findings from monitoring of the penal decisions related to implementation of the article 113 of the Criminal Code "Prostitution" changed.

According to the Criminal Code, article 113 (added with law no.23/2012, dated 1.3.2012) "Prostitution is punishable by a fine or up to three years of imprisonment Giving remuneration for personal profiting from prostitution is punishable by a fine or up to three years of imprisonment." Based on monitoring there are these main findings: for 'prostitution' are condemned mainly or only women; kind and measure of the applied condemnation is: from 47% up to 38% of the cases are punished with imprisonment while from 53% up to 62% are punished by a fine. Based on monitoring of penal decisions of Tirana District Court it has resulted that for the women condemned for prostitution there is a more severe punishment policy, which means that there are more women condemned with imprisonment and only for 7 of them (during all the period of monitoring) the condemnation is given on probation.

The age of the females condemned for prostitution from Tirana District Court is as follows: 10% of the condemned females are minors; 20 % of them are between the ages 18-20 years old; 43.3% of them belong to the age between 21-30 years old.

In relation to education of the condemned the data are as follows: over 63% of them do not have education or they have only up to 8 grades (the compulsory education). About 13 % of them have the high school education. While for 23% of them there are no available data. While in Tirana District Court the data are as follows: In 40 % of the cases, the condemned have the 8-grade compulsory education; in 13.3 % the condemned have high school education. In relation to the place of birth it results that in 83.3% of the decisions the place of birth of the condemned is reported to be from towns/cities.

The report is also focused on a concrete case analysis. CLCI has contributed by analyzing the case and explaining the anti-constitutional aspect of the article 113 of the CC. This is the case of B.Q. We are of the opinion that there is of value for the reader not only to see a specific profile of this Center, but it is also valuable to share with the reader the contemporary high level interpretations in the field of freedom and fundamental human rights achieved due to high level of expertise of this Center.

6 Article 321 (paragraph added with the law no.23/2012, dated 1.3.2012, article 44. **Acts opposing court's decision:** "Committing acts that oppose a court's decision about obligations arising from additional punishment ordered by it, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment. Committing acts that oppose a court's decision about obligations arising from Protection Orders given from the court, constitutes criminal contravention and is punishable up to two years of imprisonment."

In the report there are also findings from monitoring of the decisions of the Commissioner for the Protection from Discrimination

This institution is still used in a limited way. It also seems that knowledge in relation to understanding of discrimination and the protected area is limited, or wrong, or there is lack of accurate and full knowledge. Monitoring of the Commissioner for Protection from Discrimination is realized through annual reports produced by this institution in its official website. For the year 2011 there are presented to the Commissioner for Protection from Discrimination 3 complaints pretending for discrimination based on gender. In 2 of them it is not noticed discrimination due to gender, while the other complaint is not accepted because it didn't meet the requests of law no. 10221 dated 04.02.2010 "On protection from discrimination". For the year 2012 are presented 2 complaints pretending for discrimination due to gender. One of the 2 complaints is ceased for lack of possibilities to secure evidence, while the other one is still under the process of consideration. In the report produced by this institution it is said that even in other complaints taken into consideration have had elements of gender discrimination, but based upon verifications realized by CLCI staff it is not found such a thing.

Findings from monitoring of the institution of the People's Advocate: based upon a research made at the official electronic page of this institution and on the report produced for the year 2011 it is noticed that the report can not be opened. CLCI could not come to any conclusion in relation to the complaints for discrimination. CLCI staff verified the report produced by this institution for the year 2012. From the verifications done upon this report there are not found any complaints that contain discrimination due to gender.

v. Summary of the main conclusions and recommendations

Based on the findings of monitoring, on the main conclusions and on recommendations we have organized them into 4 main groups: related to the legal framework; related to encouraging of the awareness raising and training activities; related to enhancement of studies and publications in the field of gender equality; recommendations related to the improvement of the service offered to the public aiming at having access in the institutions and implementation of their rights.

We have to accept that these recommendations are not the first ones in their kind. There have been prepared as well previous studies and monitoring processes. Such studies and monitoring processes have come out with valuable sets of recommendations in relation to gender equality and non-discrimination in family and marital issues. Preparation of a summary of these recommendations and also creating a list of unfulfilled priorities so far would be a good suggestion. Another monitoring process is proposed as well to be for the involvement of such recommendations in the political documents.

1. In relation to improvement of institutions, of the legal frame and of the implementation of the norms in power

Monitoring identified that the legal reform has been a dynamic process. This reform is not accompanied with an adequate reflection of the international standards ratified in the court decisions. Some articles of the Family Code still need to be cleaned from ambiguity in order to avoid inequality that may be hidden behind their neutrality, for example the issue of the surname of the child. Some articles shouldn't have just declarative character, but to be accompanied with concrete effects, for example the case of the emergency measures.

Approximation of legislation with the international standards such as the Convention of the Council of Europe on prevention and combating violence, known as Istanbul Convention, ratified by our country, etc., still remains a continuous process. As it is underlined in the Progress Report of the European Commission of 2013, there are still problems of lack of knowledge of the jurisprudence of Human Rights Court and of lack of implementation of the standards in relation to the property rights, the right process, etc.

In family issues a special role is played by the psychologist. Regulations in the FC should be accompanied with an adequate role in the evaluation of the highest interest of the child through sub-legal acts in relation to the criteria, conditions, financial effects, etc., as obligatory elements for the psychologist of the cases with minors. It remains an important issue the formalization of the role of the psychologist. It is suggested the possibility of analyzing the costs of having a psychologist for such cases and such an analysis to be compared with the cost of having a psychologist involved in the administrative staff of the court paid by the state as a state employee. It is suggested as well, to take into consideration the fact of excluding from payment the parents of the child when they are unemployed, or to be applied an escalated form of payment in proportion with their level of payment. It has come the need to define better the tasks of the psychologists and of the social workers working at the municipalities, aiming at offering expertise in judicial issues when the parties do not possess paying abilities.

Meanwhile, when the results show inequality, this should be taken as encouragement for legal reforms and ongoing policies. It often seems that in neutral laws are hidden discriminating consequences from the gender point of view. In relation to this issue can be mentioned the legal aspects having to do with: problems with the property during the marriage and at the end of the marriage; a full regulation related to estimation of the unpaid work; the highest interest of the child and the parental responsibilities; compensatory contribution, alimony, etc. Based upon the difficulties of the parents who will keep the child to move freely, it is suggested to be foreseen the possibility of allowing the parent who has the custody of the child to go freely abroad with the child only by notifying the other parent and this to be foreseen as a part of parental plan in the court decision. It is suggested to take into consideration the possibility of adoption of temporary measures with the initiative of the court when such a thing is evaluated in the interest of the child during the process of marriage dissolution.

The changes in the Criminal Code of Albania are considered as positive steps ahead. The referring mechanism against domestic violence is in need of a better consolidation and co-ordination. In different round tables it is suggested to change the legislation on domestic violence by authorizing police to issue the Protection Order and the Immediate Protection Order, while the verification to be made by the court. To be also foreseen from the procedural point of view, the possibility of notification of the victims of the violence in cases of temporary release of the violator from the institution where he suffers the deprivation of liberty even by foreseeing such a thing in the provision of the decision. It is suggested a better organization of the lists of the stand by judges and of drawing the special lots at the courts in relation to the judges who will judge the Protection Orders aiming at avoiding delays.

Ratification of a number of conventions doesn't cover totally the problem, because the implementation of the conventions isn't yet in the requested level and the reference of the decisions to these conventions is limited. This happens even as an effect of the limited knowledge in relation to such conventions, but even because their self-application is not possible, since it is needed the issuance of a special law, or at least this fact is used as a justification for the lack of implementation of conventions.

2. In relation to awareness rising and training activities

If the rights are reflected in the laws, but when these laws are not known as they should, or when important group of laws remain inactive, then it is the same situation with the lack of laws. The work to inform and introduce the women to their rights should be a continuous work and not to be done just through the activities organized by NGO-s. Information and advise for women should be realized by institutions as well, such as by notaries, by lawyers, by officials of the Immobile Property Registration Office and why not even by the judges within the framework of the legal discretion, etc.

NGO-s through their activities have built direct contacts with persons and problems according to local diversities, but still they should disseminate information on the rights of the women during their marriage, after the marriage dissolution, on the children, on the property issues, etc. But awareness rising for men shouldn't be neglected. Men as well have to be aware on the principles of equality and non-discrimination.

An effective form of dissemination of information is the use of mass-media and of other forms of information, for example through the preparation and realizing of specific TV transmissions

An ongoing training program for the professionals of the field based upon thorough analyses of the decisions taken, as compared with the best experiences in respecting the standards of gender equality, is a continuous request to be fulfilled.

To be organized more activities in the form of seminars, roundtables, etc, by inviting as participants not only unemployed females, housewives, but also men.

3. The access in information and services including legal help and counseling

This issue should be addressed very carefully, because the missing legal help, or lack of financial means to cover the legal help, make the women withdraw from the process. Guaranteeing the legal financial help for the victims should be based upon a strong legal basis by considering this issue a priority. To raise the possibilities for an effective implementation of the law” On the Legal Aid”.

To set up a national register of addresses and to take into consideration as well the setting up of a special unit in the Albanian Post Office for the judicial issues. Putting order in the system of addresses, aiming at a correct notification of the parties, will reduce a lot the cases ceased by the court just because of lack of notification.

Informing the competent state institutions and providing the courts with the database of the shelters used to give shelter and rehabilitation services to the victims, as well as with a database for the violators.

4. Studies and monitoring activities as means to reflect on the situation and a need for improvement

It is recommended to raise the number and to improve the quality of studies undertaken in this field, in order to judge better on the standards of gender equality and non-discrimination in family issues and even wider. This is not only an obligation for NGO-s, but this remains a task and obligation for such institutions as the Universities, the School of Magistrates, The High Council of justice, etc.

I

Reference to the international and national standards in relation to gender equality and non-discrimination in monitored decisions

1.1. Legal standards object of monitoring

Given that discrimination in general and the gender-based violence discrimination in particular is an endemic phenomenon, global and regional, that violates core rights and fundamental freedoms, the attention to set standards in international instruments has been ongoing. In this direction our country has made progress in the ratification of such standards. As such instruments of particular importance in the field of equality and non-discrimination can be mentioned the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW⁷); ECHR, in particular Article 14 of the Convention and its Protocol 12, the Convention on the Rights of the Child (CRC), etc.. After ratification, any convention becomes part of domestic legislation. Parliament recently ratified the Council of Europe Convention "On prevention and combating violence against women and domestic violence"⁸. Precisely these Conventions and other instruments cited in court decisions that are monitored have become part of this document.

CEDAW Convention

At paragraph 16 of the CEDAW Committee's Concluding Observations for Albania, this Committee is focused upon the importance of the implementation of the Convention and of its Optional Protocol. According to this Protocol "...Specifically, the Committee remains concerned that the provisions of the Convention are not mentioned in the trials, which indicates that there is insufficient knowledge on the concept of substantive equality (de facto) of women and men and on the Committee's general recommendations in society in general and in women themselves, from all branches of government, including the judiciary in relation to women's rights under the Convention and its Optional Protocol. For this purpose, in paragraph 17 of the Concluding Observations the Committee recommends that the State party to systematically expand the knowledge and the concept of the Convention and its Optional Protocol".

As well as, in this document, it is repeated⁹ the issue of self-application of CEDAW Convention. The Committee requests specifically that our country as a party in this Convention should present in its periodic reports information in relation to judicial cases in which the Convention, or its provisions, are qualified as self-applied, which means that this convention and its provisions are applied correctly.

According to this Convention the States Parties agree to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other

7 CEDAW Convention of 1979 is ratified from 185 states. **Albania ratified CEDAW Convention in 1993** (Law no. 1769, dated 9.11.1993)

8 Law No. 104/2012 "On ratification of the Convention of the Council of Europe "On prevention and combating violence against women and domestic violence"

9 (A/58/38(Supp), par. 59)

public institutions the effective protection of women against any act of discrimination [article 2/c of CEDAW]. State Parties shall accord to women equality with men before the law. (During all the stages of the court procedures) [article 15/2 CEDAW]

European Convention on the Human Rights (ECHR)

This instrument of a specific importance, foresees that the principle of the gender equality is one of the fundamental principles of the Law on Human Rights. The European Court of the Human Rights continuously states that “the gender equality is one of the major aims of the Member States of the Council of Europe”. Lately gender equality is declared as one of the fundamental principles of the Convention.

Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Protocol 7 of ECHR, article 5¹⁰

Article 5 – Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

Protocol 12 of the ECHR, article 1

Protection from discrimination according to article 14 of ECHR, is fulfilled with article 1 of protocol 12 of ECHR. Article 1 – General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Protocol 12 enhances the range of application of article 14, by foreseeing a total independent application of the non-discrimination principle “of any right set forth by law”. This protocol enhances the range of protection from discrimination by including the negative obligation of the contracting parties, as well as the positive obligation (to take protection measures against discrimination, even when discrimination happens between private parties). The Protocol stands by article 14, without changing or abrogating such an article. Nevertheless, article 14, doesn't guarantee non-discrimination in absolute terms. On the contrary, it follows the approach approved by ECHR under its jurisdiction.

¹⁰ Entered into force in Albania in 01.01.1997

Convention of the Council of Europe "On prevention and combating violence against women and domestic violence" [Law No. 104/2012]

The definition of domestic violence and of the forms of domestic violence is given in international and national instruments and laws. Recently, Albania has ratified a very important instrument of the Council of Europe, the Convention "On prevention and combating violence against women and domestic violence". Considering domestic violence as a gender discrimination issue, the Convention in its article 3/b underlines that "domestic violence" shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;

General consideration on the European Court of Human Rights

The notion of discrimination is interpreted consistently by the European Court of Human Rights in its legal practices, in relation to article 14 of the Convention. More and more cases having to do with discrimination including gender discrimination¹¹ as well, go in front of this Court. Specifically, it is made clear that not any difference or change in treatment means discrimination. For example, as the Court observes, in judging the case of Abdulaziz, Cabales and Balkandali against United Kingdom: "the difference in treatment is discriminating in case that 'there is not objective and reasonable justification', which means that in case that if it is not followed a 'legitimate aim' or where there isn't 'a reasonable relation of proportion between the means used and the aim sought to be achieved'" (judgment of 28 May 1985, Series A, No 94, paragraph 2). The meaning of the term "discrimination" in article 1 aims to be the same with that of article 14 of the Convention.

Law "On gender equality in society" [Law No.9970/28.7.2008]

Based on the object of the law it seems that the law regulates the fundamental issues of gender equality in the public life, of the equal protection and treatment of women and men, of equal opportunities and possibilities to exercise the rights, as well as for the participation and contribution of women in the development of all fields of the society.

Given that public life has a direct impact on family life, for example, discrimination in labor relations, discrimination in education, training, etc., rightly it is said that adhering to these principles in recruitment etc. brings economic advantages for women and automatically increase their income and their management autonomy according to their family and personal interest

An important article is article no. 23 in relation to 'Evaluation of unpaid work'.

1. The unpaid work of women and men shall be considered as a contribution to the family and the society, in cases when he/she:

- a) takes care of the wellbeing of the family;
- b) takes care of the children;
- c) takes care of the other members of the family;
- ç) does agricultural work and home economy.

¹¹ For more information on decisions related to gender discrimination under the jurisprudence of the European Court of Human Rights, refer to: <http://hudoc.echr.coe.int>.

2. The subjects provided by item 1 of this article shall benefit from the community services, work and employment policies and vocational training based on the legislation in force.

Law “On Protection against Discrimination” [Law no. 221/4.2.2010]

There are cases when discrimination is related with marital status. None shall be discriminated on the grounds of sex, race, colour, ethnic origin, language, gender identity, sexual orientation, political, religious, or philosophic belief, economic, educational, or social status, pregnancy, parentage belonging, parental responsibility, age, marital or family status, civil status, residence, health status, genetic predispositions, disability, affiliation to a particular group, or for any other reason

According to article 7, ‘protection from discrimination’: Every action or failure to act of the public authorities or of natural or legal persons who take part in the private or public sectors and life, which creates bases for the denial of equality against a person or group of persons, or which expose them to an unfair, unequal treatment when they are in the same or similar circumstances in comparison with other persons or other groups of persons constitutes discrimination. The elimination of all privileges and of unfair discrimination is guaranteed for everyone, on the basis of the personal, political, economic, social and cultural rights assured by the Constitution of the Republic of Albania and international acts ratified by the Republic of Albania as well as by the laws in force.

Civil juridical protection and penal juridical protection against domestic violence

In the context of normative acts, the Law “On measures against violence in family relations” [Law No.9669/18.12.2006, amended] occupies a special place. According to this law: “Violence” is any act or omission of one person against another, resulting in violation of the physical, moral, psychological, sexual, social and economic

integrity. “Domestic violence” is any act of violence pursuant to point one of this one article committed between persons who are or used to be in a family relation”

Law “On the protection of the rights of the child” [Law No.10 347/4.11.2010] defines that ‘violence against children is intentional use of physical force, or other forms of force, either by threatening or actual, against a child or group of children, which results or is likely to result in injury, death, psychological harm, mal-growth or deprivation’. Violence against children in the family is considered a criminal offence: Article 124/b of the Criminal Code foresees that: “Physical, or psychological maltreatment of a minor, by sister, brother, grandfather, grandmother, legal guardian, or by the person obliged to take care of him is punishable by imprisonment from three months up to two years”. If the person who exercises parental responsibilities, is condemned as an author, or as a collaborator in a criminal offence against children, loses his/her parental responsibilities [article 43/a of the Penal Code]

Criminal Code of Albania amended, through article 130/a foresees specifically domestic violence as a criminal offence:

Assault, as well as any other act of violence against the person who is the spouse, former spouse, cohabitant or former cohabitant, family member or in-law, close to the offender; bringing as a consequence the violation of his/her physical, psycho-social and economic integrity is punished with imprisonment up to two years.

Serious threat causing death or serious injury against the person who is the spouse, former

spouse, cohabitant or former cohabitant, family member or in-law, close to the offender, bringing as a consequence the violation of his/her physic integrity is punished with imprisonment up to three years.

Intentional injury, against the person who is the spouse, former spouse, cohabitant or former cohabitant, family member or in-law, close to the offender, bringing as a consequence temporary incapacity to work for more than nine days is punished with imprisonment up to five years.

“The same acts committed repeatedly, or in the presence of children, are punishable by one year up to 5 years”.

1.2. Application of/reference to international standards and jurisprudence of ECHR in the monitored court decisions

The following analysis is focused on monitored decisions given in Tirana District Court. It is observed that during the year 2011, from 618 court decisions given in Tirana District Court, the judges are referred to international standards as follows:

- In relation to the Convention on the Rights of the Child (UN) the judges are referred in 64 cases. Based on monitoring the three most quoted articles in the court decisions are: article 3, quoted in 59 decisions; article 3/1 quoted in 2 decisions; article 3/1 together with article 1, quoted in 2 decisions. In 1 decision the article is not mentioned, but it is quoted only the Convention and the Declaration on the Rights of the Child. In another case in the court decision the Convention is quoted as the New York Convention “For the protection and respecting of the minor rights”.
- European Convention of Human Rights is quoted in 12 court decisions. The most quoted articles are article 8 [in 9 decisions] and article 8/1 [in 3 decisions].
- Constitution of the Republic of Albania is quoted in 29 decisions: In all these decisions it is quoted article 53 and article 54 of the Constitution. The articles are quoted separately, as well as combined with each other, or sometimes are quoted different paragraphs from both articles.
- Decisions of the German Constitutional Court are quoted in 6 cases: The object of all the decisions is dissolution of the marriage. Reference to the decisions of the German Constitutional Court is made in relation to the protection of marriage and family from the state. In 6 cases the reference is related to the decision of the First Senate of the Constitutional Court of the Federal Republic of Germany, dated. 17th of January 1957-BverfGE 6¹².
- In the monitored cases there is not any reference to the decisions of the European Court of Human Rights.
- In the monitored cases there is not any reference to the CEDAW Convention or to the decisions of CEDAW Committee
- Hague Conventions are quoted in 3 cases. These conventions are not linked directly with the issues object of this monitoring, but nevertheless the reference to these Conventions

¹² Decision no. 1022, 1181, 1472, 1540, 2662, 5271

by the court has to be estimated.¹³

It is observed that during the year 2012, from 474 monitored decisions, the judges of Tirana District Court are referred to international standards as follows:

- To the Constitution of the Republic of Albania the judges are referred in 18 decisions: During 2012 as well the judges refer mostly to articles 53 and 54.
- These articles of the Constitution are linked with the object of monitoring¹⁴.
- The decisions of the European Court of Human Rights are quoted in one decision. In Tirana District Court decision no.4322/02.05.2012, as a matter of fact, it is just mentioned ECHR, but there is not any reference to a concrete case [page15 of the decision].
- CEDAW Convention and the jurisprudence of CEDAW Committee are not quoted at all in the monitored court decisions.
- The Convention on the Rights of the Child (UN) is quoted in 57 decisions¹⁵.
- European Convention of the Human Rights is quoted in 16 decisions: So, the article 12, is quoted in 1 decision; article 8 is quoted in 2 decisions; articles 8 and 12 together are quoted in 8 decisions; Articles 8, 8/1 and 12 are quoted in 5 decisions.
- Hague Convention of 5 October 1961 “Abolishing the Requirement of Legislation for Foreign Public Documents” is quoted in 1 decision.

Monitoring did not produce any data related to reference to International Standards in the court decisions of Durrësi District Court. In Vlora District Court in the monitored decisions, based upon the legal basis object of this monitoring process, it is not mentioned at all the reference to acts such as CEDAW Convention, or the Law “On protection against discrimination” etc. In the decisions given in Shkodra District Court there is not at all any reference to international standards and to the international jurisprudence during the monitored period. It is observed that in the decisions given by this court during 2013 there is a specific attention to reflect in these decisions extracts from the Constitution of the Republic of Albania, or from other international instruments.

As a conclusion, as it is clearly seen in the monitored cases, the reference to the international standards and to the jurisprudence of ECHR is used in very few of the court decisions. The same conclusion can be drawn even for the implementation of such laws as “On protection against discrimination” and “On gender equality in society” at a time that their effect is more evident in the issues of the public right.

13 The Hague Conventions quoted in the decisions are: “Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil Commercial Matters” year 1965; and Hague Convention of 5 of October 1961. Refer to “year **2011: decision 1794**”; decision **3270, decision 10760**.

14 Related to this period of monitoring the quoting of the Constitution goes as follows: article 53 in 6 decisions; article 53, 53/1 in 5 decisions; article 53, 53/1, 54- in 2 decisions; article 53, 54, 54/1 - in 1 decision; article 53, 54/1- in 1 decision; article 53/1- in 2 decisions; In 1 decision it is not quoted the article.

15 article 12- in 1 decision; articles 12,13- in 4 decisions; articles 12, 9/3- in 1 decision; article 3 - in 28 decisions; article 3, 3/1- in 1 decision; articles 3, 12- in 3 decisions; articles 3,12,13- in 9 decisions; article 3/1- in 2 decisions; article 3/1, 9/3- in 2 decisions. Preamble of the Convention on the Rights of the Child and just mentioning of the Declaration on the Rights of the Child is used in 1 decision; Preamble of CRC, article 9/3 & just mentioning of DRC is used in 1 decision; Preamble of CRC, article 5, 9/3 & and just mentioning of DRC- in 1 decision; In 1 case the reference is New York Convention “For the protection and respecting of the minor rights” without quoting any specific article.

II

Gender Impact in decisions having as the object the dissolution of marriage and the consequences

The aim of monitoring of court practices is to identify the positive aspects and the defects in relation to implementation of standards of gender equality in delicate moments, as for example is the moment of marriage dissolution and the consequences coming after.

From the way how the provisions of the Family Code stand there are noticed three main pillars of the principle of equality:

- ❑ Equality between husband and wife as spouses: the principle of equality in this aspect includes personal relations, property relations, the rights and obligations deriving from the marriage relations from the moment of binding in the marriage till the end of marriage, by including not only the relations in marriage, but also the consequences of marriage dissolution;
- ❑ Equality between husband and wife as parents towards their children. So, as parents the spouses have responsibility, equal rights and obligations. In law the equality of spouses towards the children is not conditioned only from marriage, but this equality is conditioned just from the fact of being parents;
- ❑ Equality of children despite the marital status of the parents. There isn't any discrimination at all in the legal provisions not only for the children born out of marriage relations, but for the adopted children as well.

In order to analyze the issues of gender equality and of non-discrimination in the cases having as the object dissolution of marriage and consequences, we have analyzed the decisions having as their object:

- ❑ Issues related to active and passive legitimacy of the law-suits having as the object the ways used for the dissolution of marriage;
- ❑ Division of marital property and division of property between co-habitants;
- ❑ Parental responsibilities after marriage dissolution;
- ❑ Alimony for the children and for the spouse in need;
- ❑ Compensatory contribution, etc.,

NUMBER OF THE MONITORED DECISIONS HAVING AS THE OBJECT DISSOLUTION OF MARRIAGE ACCORDING TO COURTS AND YEARS				
Courts	Tirana	Durrësi	Vlora	Shkodra
2011	618	272	213	257
2012	474	151	82	79

At the national level, the statistics tell that there is a tendency to have an increasing number

of the cases having as their object the dissolution of marriage¹⁶. This typology is noticed even in the monitored courts. The table presents data monitored according to the courts that are analyzed in this study.

2.1. Some conclusions from monitoring of the court decisions having as their object dissolution of marriage

Woman as a spouse is encouraged more and more to present before the court the suit for dissolution of marriage.

As a conclusion, based upon the monitored suits having as their object dissolution of marriage, presented in percentage, the women have presented in front of the district courts their suits for dissolution of marriage as follows:

- Tirana District Court: from 53% of the cases in 2011, up to 58% of the cases for the year 2012, with an average of over 55% of the cases for all the monitored period.
- Durrësi District Court: from 54% of the cases for 2011 up to 55.6% of the cases for the year 2012. So even for this court it has an average of 55% of the cases of the suits for dissolution of marriage presented in front of the court by the women;
- Vlora District Court: from 54% of the cases in 2011 up to 66% of the cases for the year 2012. It is noticed an evident increase for the year 2012, by bringing the average percentage up to 60%.
- Shkodra District Court: For all the period of monitoring the average of the suits presented by women is 63% for the year 2011 and 59% for the year 2012.

Year	Monitored Decisions	Suitor: woman presented in number and in %	Suitor: man presented in number and in %	Court
2011	618	360 or 58.3%	258 or 41.7%	Tirana
01.01/31.05.2012	474	252 or 53.1%	222 or 46.8%	
2011	272	147 or 54%	125 or 46%	Durrësi
01.01/31.05.2012	151	84 or 55.6%	67 or 44.4%	
2011	213	115 or 54%	98 or 46%	Vlora
01.01/31.05.2012	82	53 or 67%	26 or 33%	
2011	257	160 or 62.2%	55 or 21.4%, both of the spouses 42 or 16.3%	Shkodra
01.01/31.05.2012	79	47 or 59.4%	17 or 21.5%, both 15 or 18.9%	

Through this table it is presented a wide picture of the situation.

¹⁶ Statistical Yearbook of the Ministry of Justice, Tirana, 2010.

From the monitoring process in Tirana District Court the figures are as follows: during 2011 for the cases with their object dissolution of marriage from 618 decisions monitored in total, the court, in 360 cases or in 58.3% of the monitored cases has started the case, because the woman as a spouse has presented the suit. While in 41.7 % of the monitored cases it has been the man, as a spouse, who has taken the role of the suing party. In relation to the monitored period during 2012, from 474 decisions monitored, in 53.1 % of the cases, or in 252 of them the request for the dissolution of marriage has come from the women, while in 46.8% of the monitored cases the request is presented by the man. The increasing number of the suits indicates for the problems with the marriage. But it is noticed that there is an awareness rising in women to be treated equally in the family relations and to be able themselves to request in front of the court for the dissolution of marriage in cases when such a marriage “de facto” has lost its meaning.

In Durrësi District Court, based on monitoring, the situation is like this: during 2011 it results a higher percentage of the cases with the woman as the person who has requested the dissolution of the marriage. So out of 272 monitored decisions in total for this year, 147 of them are cases with the woman, as a spouse, who has requested the dissolution of marriage, which means that in 54% of the cases the suitor is the woman, while only in 46% of the cases the suitor is a man. For a 5 month period of monitoring during the year 2012, there are monitored altogether 151 decisions and in 84 of them the request for the dissolution of the marriage is presented in front of the court by the woman, or it means in 55.6% of the cases. While in 67 of the cases, or in 44.4% of them, the request is made by the man.

In Vlora district Court: during 2011 there are monitored 213 decisions altogether for the dissolution of the marriage. Out of this number in 98 cases the suitor was the man, which means in 46% of the cases, while in 115 cases the suitor was the woman, which means in 54% of all the cases. So, the women have been presented in front of the court as the persons who have requested the dissolution of marriage in a higher number as compared with men. During 2012 there are monitored 82 decisions for the dissolution of marriage. In 26 of the cases the suitor has been the man, which means in 33% of all the cases, while in 54 of the cases the suitor has been the woman, which means in 67% of the cases. In only 3 of the cases there was an agreement between parties, which means in 3.7% of the cases. From the monitoring process in this court, it is noticed that in cases of dissolution of marriage, it is evidenced the fact that the court has tried to ensure the equality of parties in the process, as well as the equality between husband and wife. In general one of the main reasons for the dissolution of marriages is the fact that the spouses are bound in marriage without knowing each-other, by accepting to have an arranged marriage. The arranged marriages are destroyed very soon and the parties ask for the dissolution of the marriage in front of the court. The court decisions (in some cases) seemed to be the same in the interpretation of the decision. This has happened perhaps due to the fact that the cases of dissolution of the marriage are very alike each-other. Monitoring of the trial processes indicate that the court is cautious during the court sessions in order not to discriminate any of the parties by giving to them equal rights and opportunities to prove the facts that they pretended. This behavior of the court was noticed even in the aspect of not allowing the discrimination of the children from any of the parents. The court first listens to the psychologist, evaluates all the evidence, takes into consideration the judicial investigation and then decides on the custody of the children to be grown up and educated with the parent that not only ensures better conditions, but also with the parent who would not discriminate the rights of the children in relation to the meetings or relations with the other parent.

In Shkodra district Court: During the year 2011 are monitored 257 decisions. In 160 of them the suitors are women, in 55 cases the suitors are men and in 42 of them the request for the dissolution

of the marriage is presented from both of spouses, according to article 125 of the Family Code. During the year 2012: there are monitored 79 decisions. In 47 cases the suitors are women, in 17 cases the request for the dissolution of the marriage is presented by men and in 15 cases the request is presented by both spouses.

In most of the cases, the dissolution of marriage has derived from the issuance of the Immediate Protection Order/Protection Order upon the request of the victims (which means of the woman as a spouse).



The situation of the decisions for dismissal of the cases having as the object the dissolution of marriage is presented to be heterogeneous from one district court to the other. These decisions still remain high in number. Only in Durresi District Court these decisions (the dismissal of the cases having as the object the dissolution of marriage) are not too many.

As a conclusion:

About 25% or 1/4 of the suits for the dissolution of the marriages in Tirana District Court finish due to a decision to dismiss the case. In Durrësi District Court for the suits having as the object the dissolution of the marriage are less decisions that dismiss these cases. For such cases the figure goes from 2% up to 4.4% based on the monitored periods. About 15% of the suits in Vlora District Court for the year 2011 and less that 4% of them for the year 2012 deposited for the dissolution of the marriage ended due to a court decision to cease the case. In Shkodra District Court during the year 2011, 38% of the suits for dissolution of the marriage ended as a result of the court decisions to dismiss the cases, while for the year 2012 only 15% of the cases are dismissed through court decisions.

In order to see how the trial processes for dissolution of the marriage end we have analyzed the accepted and the dismissed cases which have as their object the dissolution of marriage. Considering the cases from the point of view of gender, will help us to see the consequences of the spouses, according to the gender, firstly for continuing, or for dismissing a process and then by analyzing the reasons and the motives that sends a case towards the legal reasons for dismissing the case.

Tirana District Court: It results that during 2011 the decisions to dismiss the cases go up to 24 % of the monitored cases, while for the monitored period during 2012 such decisions go up to 28% of

the cases. So, in total we can say that over $\frac{1}{4}$ of the suits presented at the court end due to a decision for dismissal of the case.

According to civil procedures provisions, it seems that in these decisions the reasons for dismissing the cases are legal, which means that the suing party has retreated the request through declaring in the court session that the suitor withdraws from the request, or despite the fact that the suing party is aware of the date and time of the court session this party is absent in the session. But, based on the practice of offering free of charge legal service by CLCI, we are of the opinion that there are other factors that influence as well. These other factors are such as lack of possibilities to pay for the psychologist, inaccurate information in relation to the address of the defendant and different social problems that women have to face, including here even the lack of possibilities for them to cover the expenses for hiring a lawyer.

Durrësi district Court: It results that during 2011 the decisions to dismiss the case include 4.4 % of the total cases and for the year 2012 the decisions to dismiss the cases include only 2 % of the total. So, it is noticed care and determination in the cases of marriage dissolution.

About 15.5% of the suits for the dissolution of marriage during 2011 and about 4% of them for the year 2012 in Vlora District Court end through decisions for dismissal of the case. During the year 2011, in 171 cases out of 213 that is the total of decisions monitored, the suit is accepted from the court and it is decided to dissolve the marriage. The children are left to be grown up and educated by their mother in most of the cases. For the other parent it is decided for the alimony as well as for the right to meet the children. The number of the accepted suits for the dissolution of marriage is quite high, up to 80% of the requests, which as a matter of fact is quite higher as compared to the number of the dismissed cases which is a number that goes up to 15.5% of the cases for the year 2011. While the rest of the cases, about 4.5% of them, are those decisions that turn back the cases to complete technical elements in their suits, etc. Through analyses of the reasons of dismissing the cases there are observed the following data: in 33 cases it is issued the decision of dismissal of the case, because the suitor was absent in the court session and based on the Civil Procedures Code, the court ceased the case¹⁷. In 9 cases the suit is turned back for defects in compiling the law suit, mainly for lacks in the addresses of the defendants which is considered an obligation of the suitor to present [article 154 CPC]. When the suitor does not present accurate addresses of the defendant it is not realized the notification of the defendant and the law suit is not accepted for not being complete, till everything to be fulfilled according to the law requests. The court may repeat the process several times till the suing party finds an accurate address, but can not prolong the process infinitely, so the court decides to turn back the lawsuit as a lawsuit that doesn't meet the requirements. During 2012, in 79 cases out of a total of 82 monitored decisions, the lawsuit is accepted and the court has decided for the dissolution of marriage. The children are left to be grown up and educated by their mother in most of the cases. For the other parent it is decided for the alimony as well as for the right to meet the children. During this year the number of the accepted lawsuits is higher as compared to those that are dismissed. The number of accepted suits goes up to 96.3% of the total. So the number of the dismissed cases is very low for this year. The dismissed cases go up to 3.7% of the total. In 3 decisions it is decided to dismiss the cases, because the suitor was absent in the court sessions, so based upon the Civil Procedures Code, the court dismissed the case. The reasons why the suitors were absent

17 Article 299 of the Civil Procedures Code: "The court decides to dismiss the case when:

- a) None of the parties requires within six months resuming of the suspended trial at their request, when the court has not decided for a future session in the decision of suspending;
- b) the claimant withdraws from judgement of the lawsuit;
- c) dismiss the case when provided by law. "Legal effects of termination of the trial."

in the court sessions during these two years of the monitoring process were explained with their withdrawal from the case by presuming that the pairs might have been reconciled out of the court by avoiding the dissolution of marriage.

Shkodra District Court: During 2011, about 38 % of the suits for the dissolution of marriage in Shkodra District Court end in decisions for dismissing the case. During the year 2012 it is given a decision to dismiss the case for 15% of the total cases.

The lawsuits for dissolution of marriages that end with a decision for the dismissal of the case, are quite high in percentage when the process is initiated by the wife, as compared with the cases when the process is initiated by the husband.

In 60% of the dismissed cases in Tirana District Court, having as their object the dissolution of marriage, the suitor has been the wife. In Durrësi District Court during the period of monitored years the percentage of such cases go up to 67-75%, nevertheless it is worth mentioning that in this court the decisions to dismiss the cases are very few. In Vlora District Court in 74% of the dismissed cases the suitor has been the wife. In Shkodra, in about 75% of the dismissed cases the suitor has been the wife.

In Tirana District Court: during all the period of monitoring [January 2011- May 2012] out of the total of the decisions to dismiss the cases there is an average of about 60 % of the cases in which the lawsuit for the dissolution of marriage is presented by the wives. The accurate data are as follows: 61% of the monitored cases for the year 2011 and 59% of the monitored cases for the year 2012. So we can come to the conclusion that the women tend to be very active in presenting in front of the court the lawsuit for the dissolution of the marriage, but it also noticed that women, as spouses, seem to have the tendency to withdraw from the process. Based upon the reasoning of the decision for dismissal of the case, we are of the opinion that the reasons are legal and totally in conformity with the civil procedures provisions. So the suing party withdraws from the request by declaring in the court session that this party withdraws from the suit, or despite the fact that this party is notified for the date and time of the court session they do not appear. In some court decisions, when the lawsuit is charged after the decision for dismissal of the case, the wife in the quality of the suitor declares that she has presented the same lawsuit for several times in front of the court, but she had withdrawn because she has always believed that the defendant will change his way of behaving towards her¹⁸.

The lawyers of CLCI, based upon the practices of offering free of charge legal services in defending these categories of women, have created the possibilities of going into deeper analyses of the situation and these lawyers share the opinion that there are even other factors that influence in such a situation. These other factors are such as: Lack of possibilities to pay for the psychologist in cases with minors, inaccurate address of the defendant and the existence of a number of social issues that women have to face. Among other factors can be mentioned the pressure put but the relatives and close people upon the woman, lack of knowledge on the law and on the rights given by law, low access in free legal assistance. Even in other studies, or from the opinions taken from the judges in relation to the decisions for the dismissal of the cases, there are cases when the lawsuit is presented by the woman, it is realized a sort of reconciliation which is not sustainable, on the contrary it is done just for the sake of the dismissal of the case by the court, and then later when things go for worse the

18 Decision No.953, dated. 14.02.2011 of Tirana District Court.

lawsuit is presented in front of the court this time by the husband. This happens due to the mentality of the husband who can not bear the fact that “his wife drove him out of his home”¹⁹.

In Durrësi District Court: for the year 2011 it results that from the decisions for dismissal of the case in 66.6 % of the total decisions the lawsuit for the dissolution of the marriage is presented by the women. For the year 2012, it results that out of the total of the decisions given for the dismissal of the cases with the object the dissolution of marriage, in about 75 % of such decisions the lawsuit for the dissolution of marriage is presented by the women. The reasons are almost the same.

District	Year	Monitored decisions	Decisions for the dismissal of the case	Suitor-women in %	Suitor- men in %
Tirana	2011	618	147	90 altogether or 61%	57 altogether or 39%
	1 January 31 May 2012	474	133	78 altogether or 59%	55 altogether or 41%
Durrësi	2011	272	12	8 altogether or 66.6%	4 altogether or 33.4%
	1 January - 31 May 2012	151	4	3 altogether or 75%	1 altogether or 25%
Shkodra	2011	257	98	160 altogether or 62.2 %	55 altogether or 21.4 %
	1 January 31 May 2012	79	12	47 altogether or 59.4 %	17 altogether or 21.5 %

In Shkodra District Court, 16.4% of the cases during 2011 and 19.1% of the cases during 2012 are related to the dissolution of marriage on reciprocal consent from both spouses. In these figures are included as well the decisions for the dismissal of the case by the court based on reciprocal consent.

There is an increasing tendency for the dissolution of the marriage based on reciprocal consent of the spouses.

Marriage is dissolved only by the court. It is very important for the court to know and apply quite strictly the principles of equality and non-discrimination which become more fragile and sensitive in relation to the consequences deriving from the dissolution of the marriage. According to the provisions of the Family Code, marriage can be dissolved on reciprocal consent [article 125 of the FC–when spouses agree]; Dissolution of marriage based on a period of separation [article 129 of the FC]; on the request of one of the spouses [article 132 of the FC].

Based on monitoring it has resulted that there is an increase of the cases of dissolution of marriage

¹⁹ Survey “Property rights of women” – publication in process.

based upon the agreement of the spouses by presenting to the court at the same time the request for the dissolution of marriage together with a draft- agreement that regulates the consequences deriving from the dissolution of the marriage.



Dissolution of marriage on agreement as one of the forms of the dissolution of marriage, should demonstrate a high level of responsibility on the part of both spouses. The process is turned into awareness raising sessions as well as into an educating process for both parties. It is a moment for spouses to give evidence and to demonstrate that both of them are determined in respecting the requests of the law and each-other morally and legally as ex-spouses who have consumed a period of life together. The agreement may not be acceptable if there are differences and inequality, or in cases when formal equality leads to real inequality. This is not easy to be estimated. That's why it is required vigilance from the court. Law foresees refusal from the court of the dissolution of the marriage agreed by spouses through a reciprocal consent. This happens when the court notices that the agreement does not ensure in an adequate way the interests of the children or of one of the spouses. Based on monitoring it results that there are not taken such decisions, or there are not decisions which go into a deep analysis in relation to such a situation. Family Code in order to stimulate dissolution of marriage based on a reciprocal consent, foresees the possibility of repairing the agreement within a period of three months.

According to the monitored period this way of dissolution of marriage [on reciprocal consent] covers about 7% up to 11% of cases for Tirana District Court. In Tirana District Court, during 2011, there are noticed 37 cases of dissolution of marriage on agreement of both spouses out of 618 monitored decisions. During 2012, in the first 5-month period of the year, out of a total of 474 monitored cases, only in 58 of the cases the marriages are dissolved on agreement between spouses. Presented in percentage the cases monitored during 2011 for the dissolution of marriage on agreement cover 7% of all the monitored cases without including the dismissed cases. While for the monitored cases of 2012 such cases cover 11% Based on monitoring, it is noticed that the draft-marriage in all the cases when the couple has children, foresees the growing up and the education of the minor children, the necessary incomes for the growing up and education of the minor children. In order to see the tendency of the application of the way of dissolution of marriage on agreement, it is prepared a study for Tirana District Court. During 2011, out of 37 decisions for dissolution of marriage based on reciprocal consent, 8 cases represent the decisions taken by the court for dismissal of the case. So,

there are 29 decisions taken by the court for the dissolution of marriage. In 22 cases the couples have achieved agreement and in the agreements the couples have agreed on the interest of the children, while in 7 cases the couples haven't had children. During 2012, out of a total of 58 decisions for the dissolution of marriage on reciprocal consent, 15 of the cases represent the decisions taken by the court for dismissal of the case. While out of 43 cases, in 31 of them the couples have had children and 12 other cases the couples haven't had children. So, as it is noticed, in Tirana District Court, there is an increasing tendency to apply this way of dissolving marriage when the parents agree in relation to the consequences upon the children and on the regulation of the personal and property relations after the dissolution of marriage. According to article 127 of the Family Code the agreement must contain the provisions for the care and education of any minor children, financial support for their care and education, provision for alimony if needed and if possible the division of their assets. So, as it is noticed from this provision, there are some parts of the agreement that are obligatory and some others that are facultative [property relations]. But what has resulted out of monitored cases? As far as the contribution for the spouse in need is concerned, it is noticed that there is not any agreement to contain this part. There is not any case for the year 2011 and for the monitored period from 1st of January to 31st of May 2012 where the decisions for the dissolution of the marriage on agreement and for all other monitored decisions for the dissolution of marriage, to have solved through agreement the contribution of each spouse in favour of the spouse in need.

Compared to the total number of cases, the cases that represent the dissolution of marriage on agreement seem to be very few in number, but nevertheless, the tendency is now going towards an increased number. These figures indicate a tendency for an increased number of dissolution of marriage on agreements. This form of dissolution of marriage is considered to be a sign of emancipation of the society, as well as an attempt of the spouses to find an adequate solution for the future of their children.

In Durrësi District Court: based on monitoring, it is noticed an increase of the cases of dissolving the marriage on agreement of spouses by presenting to the court a draft-agreement that regulates the consequences of the dissolution of marriage. They have identified 17 cases during the year 2011 and 31 attempts to solve out disputes through mediation out of a total of 272 monitored cases. 27 cases have been successful (or 10.3%). During the monitored period for 2012 there are identified 9 successful cases and 16 attempts to solve out disputes through mediation out of a total of 151 monitored decisions. 14 of such attempts have been successful. (or 9.5 %)

In Vlora District Court: It is evidenced that the draft-agreement achieved through mediation in all the cases consists of the decision for the growing up and for the education of the minor children, consists of the necessary contributions of the spouses for the minor children, but not in any cases at all is foreseen the contribution of the spouses in favor of the spouse in need. During 2011, there is not any case at all of dissolution of marriage on agreement. In only 3 cases during 2012 the marriage is dissolved on agreement between spouses, or putting it in percentage the dissolution of marriages on agreement covers 3.7% of the total monitored cases. During the monitoring cases it is noticed that this court respected the procedures and the parties in process. For example, the procedure of holding the reconciliation session was always applied, but as a matter of fact such a session was characterized from the formal environment, because the parties were determined to terminate the marriage. Only in very rare cases the spouses have been reconciled during such sessions.

In Shkodra district Court: During 2011, only 16.4% of the cases have dissolved the marriage based on agreement of the spouses. While for the monitored period of 2012 only 19.1% of the cases have dissolved the marriage on agreement of both spouses.

Dissolution of marriage on the request of one of the spouses remains the most “used” form. One of the reasons is related to gender stereotypes.

Out of monitoring it is noticed that dissolution of marriage on the request of one of the spouses is the most ‘used’ form for the dissolution of marriage. According to article 132 of the Family Code: “Either spouse can request the dissolution of marriage when, due to continuous quarrels, maltreatment, severe insults, adultery, incurable mental illness, lengthy penal punishment of the spouse or

due to any other cause constituting repeated violations of marital obligations, a joint life becomes impossible and the marriage has lost its purpose for one or for both of the spouses”.

Out of monitoring in Durrësi District Court results that there is only a very small number of cases [with an increasing trend] of dissolution of marriage on the agreement of both spouses, because most of the cases of dissolution of marriage happened according to the traditional way based on the request made by only one spouse. The court is careful in evidencing of the reasons presented for the dissolution of marriage, but this is done only by enlisting these reasons as explanations of the parties during the trial sessions, but not as a result of any thorough analysis. In all the cases the Court has dissolved the marriage without defining the fault which is underlined in the requests of the parties in the process. Nevertheless out of the analyses made on the decisions of the court it results that the main reasons enlisted for the dissolution of the marriage have been as follows: jealousy, violence, migration, intervention of a third party, lack of fulfillment of the marital obligations, alcohol, misconduct, a long period of imprisonment in a foreign country, practicing the religion from the wife, incompatibility of the characters and in other cases mainly due to arranged marriages.

In Vlora District Court the situation is as follows: Out of 171 accepted lawsuits for the year 2011, in 125 of them, which represent 73 % of all the cases, the marriage is dissolved based on the request of only one spouse. During the year 2012 out of 79 accepted lawsuits, in 65 cases which represent 82 % of all the cases, the decision for the dissolution of the marriage is given based upon the request presented by only one spouse. An identified reason for the dissolution of marriages is the economic condition. Due to bad economic conditions the spouses enter often into conflicts with each other that in the course of time lead to the dissolution of marriage. Another reason that explains for the dissolution of marriages is the mismanagement of the family incomes by one of the spouses, especially when one of the spouses has the vice of gambling. Reasons like this are very decisive for the dissolution of marriage. Another dominating reason that leads in the dissolution of the marriages is the living style (living together with the parents of one of the spouses). Living together with the parents of one of the spouses becomes a source of producing frequent conflicts by making practically impossible for the spouses to continue to live together. Another reason enlisted for the dissolution of marriages is the education level and the mentality of the spouses, because such a reason has led to lack of collaboration between the spouses and then practically towards the dissolution of their marriage. Another reason is living in rural undeveloped areas. Lack of development in these rural areas influences directly on the mentality and in the understanding between the spouses. Such a situation produces frequent disputes in the family which sooner or later leads towards the dissolution of the marriage.

In Tirana District Court, by excluding the dismissed cases, the figures are as follows:

In Tirana district Court, during 2011:

- 407 cases according to the article 132,
 - 37 cases according to the article 125
 - 27 cases according to the article 129.
- (With a total of 471 definite decisions for dissolution of the marriage).

While for the period 1 January-31 May 2012:

- 271 cases according to the article 132,
 - 58 cases according to the article 125
 - 12 cases according to the article 129.
- (A total of 341 decisions for dissolution of marriage)

In Shkodra District Court, based upon the data of the monitoring period, it results that out of 336 decisions in total, by excluding 35 cases solved due to the application of article 125, the other cases, which means 301 cases, or 89% of the cases in total, are judged by the court just based on the request of only one spouse.

Living separately is another reason for the dissolution of the marriage, but it is presented in a limited number of cases.

According to article 129 of the Family Code: “Either spouse can request dissolution of their marriage when they have lived separately for a period of 3 years. A spouse requesting dissolution of the marriage, based on the previous paragraph of this article, should specify in his/her petition the provisions for child support and alimony”. In Tirana District Court, during 2011 out of 471 definite decisions given for the dissolution of marriage, without taking into consideration the decisions for the dismissal of the cases, there are in total 25 decisions for the dissolution of the marriage based upon the reason for living separately for a considerable period of time. While for the period of monitoring including 1st of January-31st of May 2012 out of a total of 341 definite decisions given for the dissolution of marriage, without taking into consideration the decisions for the dismissal of the cases, there are 12 decisions in total given for the dissolution of the marriage based upon the reason of living separately for a period of time of more than three years. In Vlora District Court there are given 10 decisions based upon this reason during 2011 and 3 decisions for the same reason during 2012. Monitoring process on the decisions given by Shkodra District Court confirms that there is not any decision of this court for the dissolution of the marriage based upon the reason of living separately for a period of more than 3 years.

2.2. Some of the reasons identified for the dissolution of the marriage and the gender stereotypes

Maltreatment and gender based violence as the reason for the dissolution of the marriage

In such cases there are identified lawsuits requesting the dissolution of the marriage that are presented either after, or at the same time with the request for issuing a Protection Order, or an Immediate Protection Order. Maltreatment and violence perhaps haven't been part of a PO, or of an IPO, so the case is presented only in the format of requesting the dissolution of marriage. During 2011 in the process of monitoring the decisions given by Tirana District Court, there are identified 94 cases of violence. 60 of the cases are related to exercising of physical and psychological violence. 18 cases are related only with physical violence and 16 only with psychological violence. In relation to the violence against children the situation is as follows: violence exercised in the presence of the children is referred in 37 cases. In 31 of these cases the children have just assisted during the violence, while in 6 of them it has been direct violence. There are identified 10 cases in which for the victim of violence is issued a Protection Order and directly after that the victim has presented a lawsuit requesting the dissolution of marriage. For the period between 1st of January – 31st of May 2012 there are identified 59 cases of violence. In 43 of these cases it is exercised physical and psychological violence. In 11 of these cases only physical violence while in 5 of these cases it is exercised only psychological violence. Violence in the presence of the children is exercised in 11 cases. In 7 of these cases the children have just assisted in the violence, while in 4 of these cases it has been direct violence. There are identified 10 cases of dissolution of marriage in which the victims of violence had been taken under protection through Protection Orders.

In order to illustrate what happens in such cases, in this report it is introduced the Decision No.953/14.02.2011 of Tirana District Court, as a typical example of physical and psychological violence exercised by the husband against his wife, systematically, in the presence of the children. The suitor (the wife) declares in front of the court it is not the first time that she presents in front of the court the same lawsuit requesting the dissolution of marriage, but she has withdrawn from the lawsuit believing that her husband will change the way of behaving towards her.

Decision No.9492/23.11.2011 issued in Tirana District Court, explains that although the marriage of the couple is bound based upon the reciprocal consent and feelings, it hasn't functioned normally. The relations in the couple have been worsening due to consuming of alcohol from the defendant, who as a consequence exercised physical and psychological violence against his wife. In other monitored decisions it is explained that jealousy for the wife has caused continuous disputes and disagreement which have been escalated into physical and psychological violence from the part of the husband against his wife. The defendant was unemployed and he started to gamble. Very soon he also lost his interest at his family as well. With the passing of time the relation in the couple started not to function any more. Disputes and disagreement happened everyday and became a characteristic of their marital life, until it came a moment when their living as a couple became unbearable²⁰.

Stereotypes in relation to the role of the woman, her rights and her obligations in her marital life, and in the family relations

Another explaining example is the Decision no. 16/13.01.2011 of Tirana District Court. In the reasoning part of the decision it is explained that "it is an arranged marriage. The arrangements are made by a third party. According to the explanations given by the suing party the disputes and contradictions on different problems or issues occurred very frequently, as a result of a bad treatment applied upon the suitor. The couple lived together with the parents of the defendant and the suitor (the wife) was considered as a woman used for work and for the preparation of the food and not as a spouse who should enjoy the same rights with her husband....".

Stereotypes in relation to the economic rights of the spouses, financial expenses in the family and decision-making in relation to such expenses.

Based on the analyses of the trial proceedings, as for example the case of the Decision no. 96/18.01.2011 of Tirana District Court, it is observed that the women face difficult situations in relation to the application of their economic rights. In the decision it is explained that the marriage is dissolved upon the agreement of the spouses. It resulted that though the marriage between the parties had functioned for a relatively long time and the relations of the couple had been good ones, at a certain moment of their marriage the husband tried to impose his own authority by destroying all the balances in the couple's relations. His wife asked to come back to Albania after a period of 10 years in emigration, while her husband didn't agree to come back to Albania. He justified his attitude through excuses that it was difficult for him to earn enough money to make his living. Although the spouses have agreed on turning back in Albania, the husband decided to stay in Italy and not to come back to Albania with his wife. During this period of time he administrated the common wealth of the couple without asking for or taking into account for the opinion of his wife".

Inability to fulfill family obligations towards the spouse and the children. 'Ludomania phenomenon'

The phenomenon called 'ludomania' seems to have produced grave consequences even in

²⁰ decision No.3193/04.04.2012 of Tirana District Court.

Albania. “Ludomania” is the addiction to gambling and to the vast number of gambling games available in the gambling market. It seems that the Albanian families as well are not excluded from the consequences of this phenomenon. The problems are especially grave for the families with vulnerable economic conditions. “Ludomania” is a progressive addiction. It starts as an entertainment and ends as a harmful vice for the life style of the individuals, families and common life. One of the consequences is the inability to fulfill the family obligations due to abusing with the family wealth. Abuse with the family wealth from the part of the husband is the reason of marriage dissolving as described in the decision no. 524/01.02.2011 of Tirana District Court which is not the only decision on such a kind of problem. “The husband was addicted to gambling by expending big amounts of money which influenced directly in the economic situation of the family. He passed the nights out of the house unable to take care for his children and for his wife.” So, the marriage has lost its aim and living together has become impossible.

2.3. Consequences of the decisions of the dissolution of marriage towards the spouses and in relation to the parental responsibility

From the reasoning of the court decisions it is identified that from the part of the court, in general, it is shown care during the trial proceedings especially for that part of the process that is related with the right of one parent, or with the right of both parents to exercise paternal responsibility for the minor children, taking always in consideration the highest interest of the child.

Mother is the parent mostly appointed from the court to take care of the children after the marriage dissolution and as such she is the main exerciser of the parental responsibility

District	Year	Dissolution of marriage		Exerciser of the main parental responsibility			Divorce on agreement
		with children	Without children	Mother	father	Both	
Tirana	2011	350	121	237	33	15	37
	01.01.- 31.05.2012	217	124	137	20	2	58
Durrësi	2011	98	174	88	7	3	4
	01.01. - 31.05.2012	55	96	45	4	3	3
Vlora	2011	76	41				
	01.01. - 31.05.2012	36	46	33	2	1	
	2011	198	59	115	14	30	42
Shkodra	01.01. - 31.05.2012	60	19	50	7	10	15

According to the monitoring of the decisions in Tirana District Court, the mother of the child in most of the cases results to be the main exerciser of the parental responsibilities towards the minor child. This is the conclusion that comes out of the monitoring.

In 237 decisions, which compose 88% of the monitored decisions for the year 2011, as well as in 137 decisions which compose 87% of the cases for the year 2012, it is decided for the mother to be the main exerciser of the parental responsibilities. So, the court in most of the cases charges the right of exercising the parental responsibility for the minor children to the mother of the child. It is also noticed that the court in the decision is also expressed on the alimony for the minor child. As it is mentioned above, trial proceedings indicate that the number of the cases that solve the issue of exercising the right of the parental responsibility and the issue of alimony for the minor children on agreement between spouses is increased. This indicator has got positive effects upon children, upon their material and emotional wellbeing, as well as for the relations between spouses after the dissolution of the marriage.

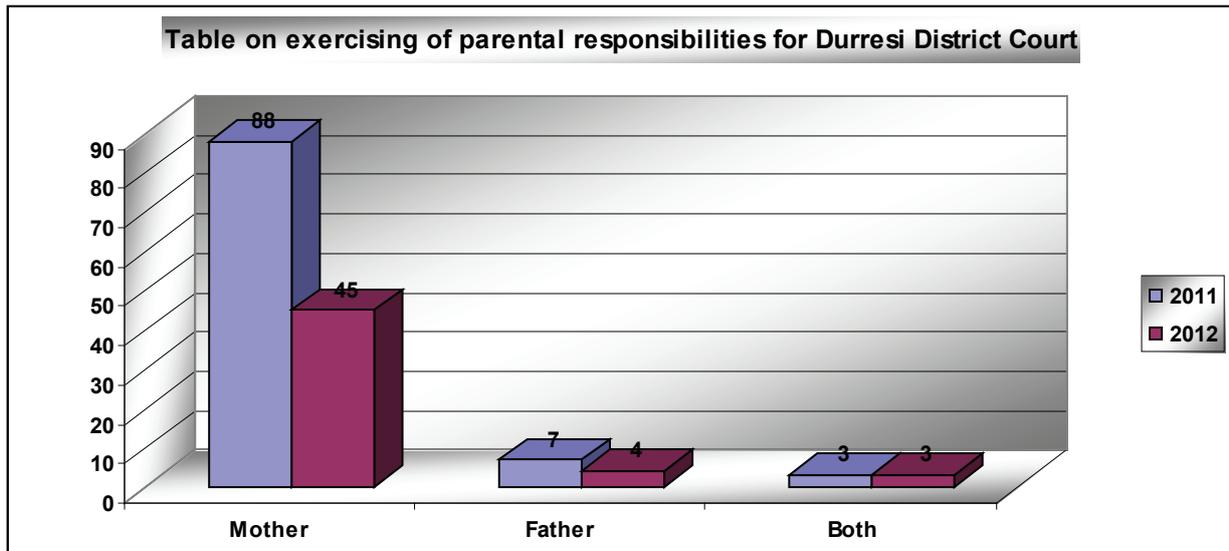
The table presents data in relation to exercising the parental rights for the minor children according to the courts. As it is noticed, out of the total number of the monitored cases it is subtracted the number of the decisions for dismissing the case.

In cases when the exerciser of the parental responsibility are both parents it means that the couple has had two or more than two children and the court has decided to divide them between the two parents, one with the mother, and the other with the father²¹. In only one case, the court has operated with the parental plan and a plan of meetings by setting so an equal right for contacts and visits of the parents with their children²².

In Durrësi District Court, it is noticed that the mother is the parent that is mostly charged by the court to take care of the children and as such she is the main exerciser of the parental responsibility. This has happened in 90% of the decisions for the year 2011 and in 82% of the decisions for the year 2012. Out of the monitoring it is identified that the court in most of the cases charges the mother with the right to exercise the parental responsibility for the minor children. It is observed that in any case, the court is expressed even for the obligations of the other parent towards the minor child. Solving the consequences based on the agreement of the spouses is a very important process. In this district court, mediation in solving the issues on agreement between spouses is an alternative which is applied successfully due to a pilot project of USAID. By applying such an alternative it is increased the number of cases that solve the consequences of the dissolution of marriage based upon the agreement between the spouses, especially related to the right of exercising the parental responsibility for the minor children and for the obligations of the other parent towards the minor children. This indicator has got positive effects upon children, upon their material and emotional wellbeing, as well as for the relations between spouses after the dissolution of the marriage.

21 Decisions for the year 2011: the responsibility is divided between two parents. These decisions are: decision no. 618, 886, 1433, 5839, 5997, 6020, 6177, 3046, 3049, 3208, 8779, 5526, 5648, 3493, 7424. Decisions for the period January-May 2012: Decision no. 3637/2012, 4307/2012.

22 The case of the decision no.5818/01.07.2011. the parental responsibilities are exercised by both parents.



In Vlora District Court out of monitoring of decisions, it is observed that the court in most of the cases gives the parental responsibility for the minor children to the mother, but there have been as well some cases when the parental responsibility for the minor children is given to their father. These cases happen only when during the trial proceedings the court verifies that the children express their desire to stay with their father. The certification is realized through the psychological tests. In some cases the experts are expressed that the child should be left with the father even because the child had expressed loudly such a request. At the same time an expert is authorized by the court to evaluate the economic situation of each of the spouses, their moral and health status, as well as the conditions in which the children live. Based upon the evidence and expertise presented in front of the court by the authorized expert, the court gives the decision on the parental responsibility. There are also very few cases when the parental responsibility is divided and it is also agreed who will take care to grow up and educate the minor children. In such cases it is decided that one of the children should be left with their mother and the other with their father²³.

In Shkodra District Court: There are given 226 decisions [out of the total of 336 cases it is subtracted 110 which is the figure which indicates the dismissed cases] and in all monitored decisions, during the period of time January 2011- June 2012, results that in 165 cases the minor children are left with their mother as the parent exercising the main parental responsibility. Only in 21 cases this role is trusted to the father by the court. In 40 cases such a decision is taken because the couple has more than one child, so the exercising of the responsibilities is divided between both parents by deciding to leave one of the children with one parent and the other child with the other parent.

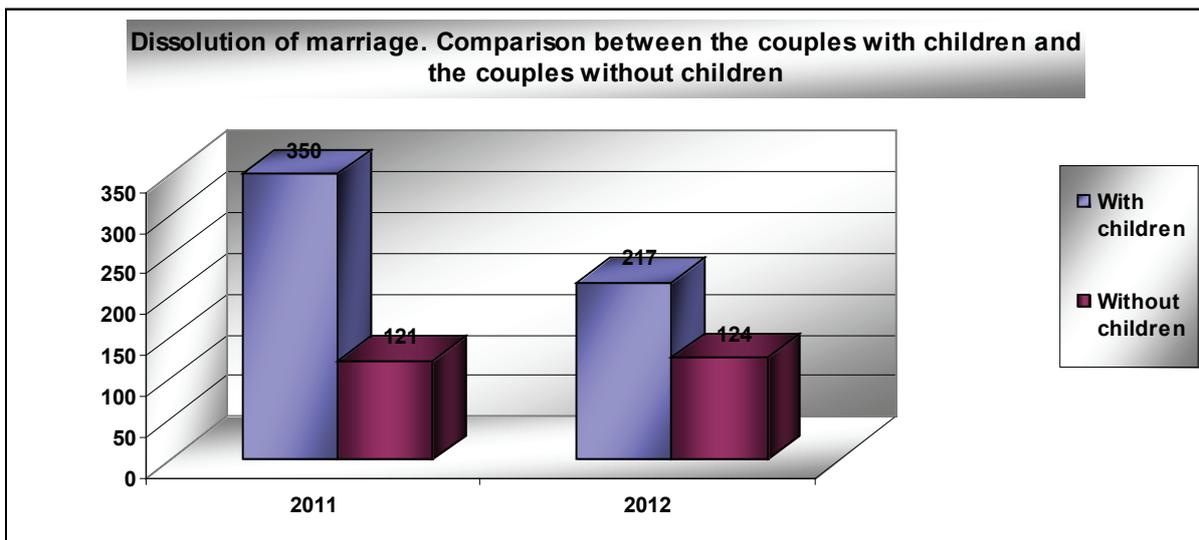
In Shkodra District Court: During the year 2011, out of 257 decisions, 98 of them were decisions to dismiss the case. So, during 2011 there have been 159 definite decisions on the dissolution of the marriages. Out of 159 decisions in 115 cases, the right to exercise the parental responsibilities for the minor children is left with their mother, in 14 cases the parental right is given to the father, while in 30 cases the right of exercising the parental responsibility is given to both parents. During the period January – May 2012, out of 79 monitored decisions, in 67 of them the court has decided the dissolution of marriages and has regulated the consequences between the spouses, while in 12 of the cases it is issued the decision of the dismissal of the case. Out of 67 decisions, in 50 of them the

²³ During 2011 there were 32 cases in which the children are divided between parents; During 2012 there were 12 similar cases. So in these cases the children are left to both parents.

right of exercising of the parental responsibilities for the minor children is given to the mother, in 7 cases the right of exercising the parental responsibility is given to the father while in 10 other cases the right of exercising the parental responsibility is given to both parents.

There is not any categorical conclusion for all the monitored district courts in relation to the fact if among the decisions for the dissolution of marriage the couples having children are more in number as compared to the couples without children. If we analyze the decisions issued in Tirana, Vlora and Shkodra District Courts for the dissolution of marriages it is observed that the couples having children are more in number as compared to the couples without children. But this conclusion can not be drawn for Durrësi District Court.

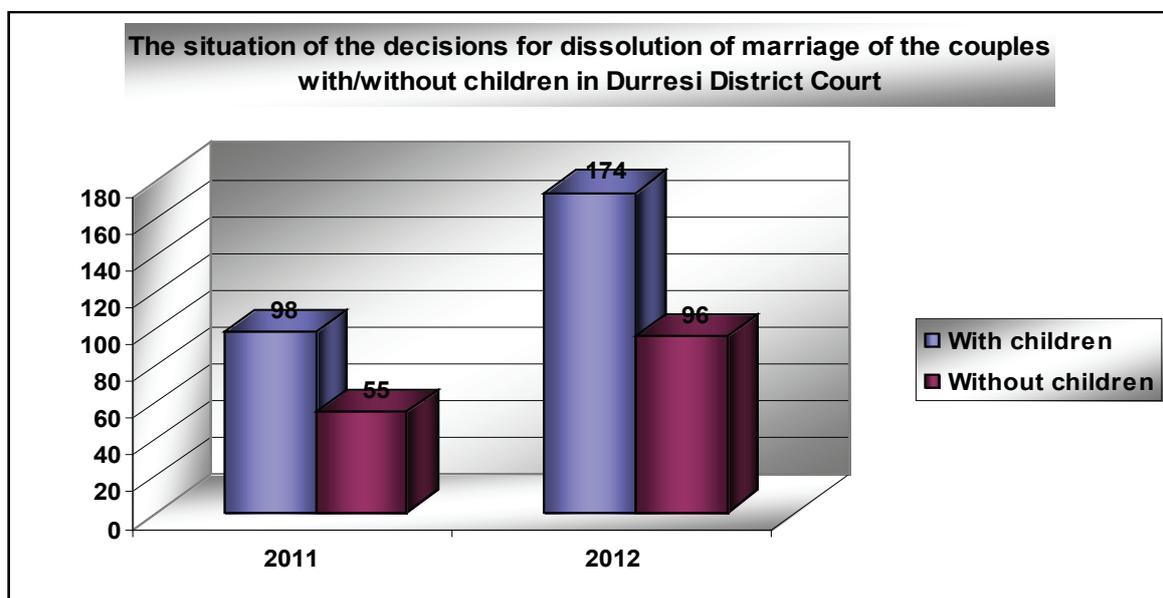
About 60 % of the couples that dissolve their marriage have children from this marriage. This is the conclusion for Tirana District Court. During the year 2011 in Tirana District Court, about 64% of the couples that dissolved the marriage have had children out of that marriage, while for the year 2012 this figure goes up to 57% of the couples for the monitored period. So, as a conclusion, approximately about 60% of the divorced couples have had children from the dissolved marriage.



In Vlora district Court: During 2011 from the monitored cases it is observed that the highest percentage of divorced couples had children, while the divorced couples without children were less in number. There are 137 cases altogether or 74 % of the decisions for marriage dissolution with couples who have had children out of that marriage, while in 76 cases or in 34% of the decisions for the dissolution of marriage the couples haven't had children. In principle the trial proceedings for dissolving the marriage of a couple without children finish quicker as compared to the trial proceedings for the couples having children. During 2012, out of 82 monitored decisions, in 46 of them, or in 56% of the cases, the couples haven't had children. While in 36 cases, or in 44% of the decisions for the dissolution of marriage, the couples have had children out of that marriage. From the total of 38 cases, in 33 of them, or in 89% of this total, the court has decided to give the main parental responsibility to the mother, while in 3 cases, or in 8% of the total, the court has decided to give the main parental responsibility to the father, in 1 case, or in 3% of the total, the court has decided to divide the parental responsibility between both spouses. This couple had two children. One of the children was left under the responsibility of the father and the other child of the couple was left under the responsibility of the mother.

In Shkodra District Court decisions for the dissolution of marriage, it was observed that the couples having children from their dissolved marriage are higher in number as compared to the couples who do not have children. Based upon the figures, out of a total of 336 decisions for the dissolution of the marriage, during all the monitored period, in 258 decisions, or in 76.7 % of the cases, it results that the couples have had children.

In Durrësi District Court decisions for the dissolution of marriage it is observed that the couples having children from the dissolved marriage are less in number as compared to the number of couples without children. Based upon the statistics of the monitoring, the highest number of the dissolution of marriage is among the couples without children. Based upon the monitored decisions the number of couples without children are about 64% of the total cases, while the couples with children compose 36% of the cases for all the monitored period from January 2011 up to May 2012.



The court shows always interest and care to include the psychologist in the trial proceedings with minors, aiming at defining a parental plan after the dissolution of marriage.

It is praised the fact that the courts, in all the monitored cases, have applied the article 155 of the FC²⁴, by asking for the expertise of the psychologist, or of the social worker, before issuing any temporary or permanent decision in relation to exercising the parental responsibility, the right of visitation, or giving the legal custody of the minor child to one of the spouses, or to a third person. During the monitoring process in Vlora District Court it is noticed that a psychologist was always appointed as a court expert in cases when the couple has minor children by considering the service of the psychologist as a very important procedure. In cases when the couple didn't have children the trial proceedings finished quickly, because there were not many problems to be solved. In cases when the couple had children from the marriage, the court listened first to the psychologist, took into consideration the living conditions of each of the spouses, in general, and then assigned the mother for growing up and educating the children, as well as by assigning for the father the time of meeting his children. The court defined as well the alimony of the father for his minor children. The court

24 Article 155 of the FC: "Before the court enters a temporary or permanent custody decision, rights of visitation, and assignment of parental responsibilities to one of the ex-spouses, the court must obtain the recommendation of a psychologist or a social worker, who, before giving an opinion, should investigate the material and moral situation of the family, their living conditions and the most appropriate place for the child to live".

was very careful in the aspect of non-discrimination of the children from their parents. The court listened first to the psychologist as the expert of this court, evaluated all the evidence during the trial proceedings and then decided to assign the parental responsibility for the growing up and for the education of the children to the parent who provided better conditions and to the parent who would not discriminate the rights of the children for meetings, or for relations with the other parent. The court was very cautious as well during the trial proceedings not to discriminate any of the parties by providing equal rights and opportunities to prove the facts that they pretended.

In Shkodra District Court, in all the decisions with the object the dissolution of marriage, the court was very careful in order to make possible the involvement of the psychologist in the trial processes with minors, in order to take into consideration the highest interest for the child and at the same time the court assigned the roles and the responsibilities of the parents after the dissolution of the marriage. The same observations have come out of monitoring processes for Tirana and Durrësi District Courts.

It is a typology of the court decisions that reasoning of the decision related to the parent who exercises the main parental responsibility is focused at mother's figure. The mother's figure is analyzed in details. This analysis is mainly realized for Tirana Court.

If you make analyses of the monitored decisions, it is the reasoning part of the decision that certifies that the court before taking the decision for assigning the right of parental responsibility for the minor children, realizes an analysis of the figure of the parent. This analysis, as a matter of fact, is mostly dedicated to the mother. So, it is realized a detailed analysis of the figure of the mother, of her skills, of her relations with the children, of her economic possibilities, etc. We are of the opinion that the court should make a thorough and more balanced analysis for the figure of the father as well, in both cases, either in the case when he is assigned to have the responsibility to grow up and to educate his children, or even in the case when the court assigns the right of the father to meet his children. So the court, should produce an analysis as well, even in the cases when the father is not considered to be the most proper parent, or to explain as well the reasons why the father should have either frequent or limited meetings with his children. This is worth for another reason as well. The dynamics of the family life and of the interest of the child may bring the need for change of the decision in relation to the exercising of the parental responsibilities. This can be realized either immediately by appealing the decision taken by the first level court, or even by requesting to change this decision when the conditions and the circumstances will change.

The court that will do the 're-evaluation' of the appropriateness of the parent who has requested to change the parental plan on his/her favor, has to know very well the reasons why the previous court decided to take that decision. This doesn't mean to prejudice, but to evaluate as correctly as possible all the reasons that justify this change towards the changing of previous conditions and circumstances, or towards the change of the reasons that previously are considered to be not in favor of leaving the children with the requesting parent. For example, in the decision no.3428/20.04.2011 of Tirana District Court, with the object the dissolution of marriage, the trial proceedings are hold in the absence of the husband. He is the father of five children. The court has taken into the consideration the opinion of the psychologist as well and has made analyses upon the figure of the mother and of the mother lack of possibilities to grow up her children²⁵.

25 The psychologist requested by the court through the psychological report has stated as follows: "referring to the lack of possibilities of the mother of the child to grow up and to educate her children, due to her grave health and emotional conditions it is recommended: the children F, V, L, N and E should be left to be grown up and for education with their father F.C. Having in mind the importance of the figure of mother in the life of the children it is recommended to have frequent and sustainable meetings of the children with their mother".

According to article 224 of the FC, *“If the parents of a child are incapable of carrying out their parental responsibility due to their incapacity, absence or for particularly grave causes, the child can be trusted to a family member, a person appointed as guardian, a foster family or a child-care institution. When these circumstances exist, the opinion of a social care office shall be obtained, according to the provisions on guardianship”*.

In this case which is taken into analysis the mother seems to be incapable due to reasons related to her health conditions, while the father of the children was absent in the process. Nevertheless, in the decision of the court it is not found at all any sort of analysis, or of evaluation of the reasons why the highest interest of the children is to stay with their father. It is not found as well any sort of analysis of the figure of the father of the children, in order to explain the way how to exercise the parental responsibility. So, the children are left with their father, who was absent during the trial and nothing is known about him. No doubt that it is very difficult for the court that under such circumstances to evaluate the highest interest of the children, but it seems that such a decision does not produce solution for the problem, because the mother is incapable, whereas the father is not known where he is. It is a case that the court should be expressed for the custody of the children. In this decision it is worth to mention that the court decides to assign the way how to exercise the parental responsibility, despite the fact that it was not the object of the law-suit. This is a positive aspect. It is also for the interest of the children, but in the concrete case the absence of the father of the children during the process, lack of possibility to evaluate his figure, disinterest for his children, make this decision nearly inapplicable. In the Decision no.5941/05.07.2011²⁶ as well the analyses of the court is focused only upon the figure of the mother. The children are left with their mother for growing up and education without any conclusion, or analysis on the figure of the father. The analyses of the figure of both parents will explain clearly the fact that with whom of the parents is realized better the highest interest of the child.

The spouse (husband) is the subject , who most of the time ‘is absent’ at processes on dissolution of marriage

There are cases, and they are not few ones, where the dissolution of the marriage has been granted in the absence of the husband/ wife. According to Civil Procedure, these are known as decisions where the well-known procedure of “notification by public announcement” is respected, and, which in fact, has to do with announcement.²⁷¹ The monitors report that these are mainly processes, during which the husband is absent. From a monitoring survey at the District Court of Tirana it results that in most cases there are the husbands who do not take part and that these are cases of the dissolution of marriages, when the couples do *have children*. The cases when the husbands do not take part in the court hearings involve two types of absences : the case when the husband has got notice of the hearing does not want to appear before the court or in case there is a lack of notification by public announcement because there are no information on his dwelling. The lack of dwelling addresses is certainly a repeated problem.

²⁶ See Decision No. 4584/ 2011 and Decision no1025/2012.

²⁷ According to Article 133 of CPC-Civil Procedure Code- (amended by Law No. 10 052, date 29.12. 2008, Article 4) (amended and added to Law No. 122/2013, date 18.04.2012. Article 120) “ When the person summoned to court the residence or the dwelling place in the Republic of Albania is not known, or he/ she has not chosen a dwelling or has not defined any representative of himself, according to Article No. 131 of this Code, the notification of acts is done by announcing a copy in the Court at the place the disputes are going to be judged as well as at the place of announcement, where he has had his last dwelling . This announcement will last not less than 20 days”.

It is noticed that even in case the father of the child is not present during the dissolution process of the marriage and the definition of obligations towards the child, it is the court which takes care of the relationships and contacts between the child and the father.

In such cases, we have noticed that although in the absence of the father of the children, the court decides giving the father the right to meet and take the child for vocations without making any analysis on him and his personality etc. There are mainly cases, where even the psychologist/ social worker has not managed to get into contacts with the father, because the later is in emigration or he has no exact address and does not communicate with the family. In fact, such decisions have put the protection of the highest interest of the child in doubt and besides this, part of decisions remain almost inapplicable. As a rule, in decisions taken to plan the schedule of the contacts between the father and the child, even in case when the parent is not present, the same provision as in case when the parent is present is rendered. The decisions are not diversified based on an adequate analysis case by case or on the implementation of the principles of the Code of Children's Right and Family Code in such cases.

We share the opinion that in such cases, the court should decide on a more limited parental and a more limited schedule of contacts with this parent. If this is considered as a violation of the rights from his part, than there is the possibility to change the decision.

The following statistics about the District Court of Tirana seem to be of interest:

In year 2011:

From 618 monitored decisions in total, 147 decisions are ceased, whereas in 471 cases final decisions on the dissolution of the marriage are rendered.. From 471 decisions 286 are decisions on the dissolution of the marriage, where the parents do have children.

-From 286 decisions on couples with children, in 237 cases the child is a responsibility of the mother and by 74 decisions the father has not been present. From 286 decisions on couples with children, only in 33 decisions the child is a responsibility of the father und the mother has not been present by 13 decisions. From 286 decisions the children are a responsibility of both the mother and the father in only 15 cases. As regards the later the parents have more than one child and in such cases not all the children are a responsibility of one of the parents.

In year 2012

From 474 monitored decisions in total, 133 decisions are ceased, whereas in 341 cases the final decisions on the dissolution of the marriage are rendered. From 341 decisions, 159 are decisions on the dissolution of the marriage, where the parents do have children. From 159 decisions on couples with a child, the child is a responsibility of the mother and by 37 decisions the father has not been present.

-From 159 decisions on couples with a child, the child is a responsibility of the father and the mother has not been present by 20 decisions. From 159 decisions the children are a responsibility of both the mother and the father in only 2 cases.

For both periods of time being monitored : There is no decision, in which it is not defined the right of meetings with the child/ the children in case one of the parents has been not present²⁸

28 See Decision no. 1036/2011 and Decision 1632/2012 of the District Court of Tirana on unlimited meetings of the child with the father , although the later has not been present in trail.

Thus, according to Decision No. 408/28.01.2011 of the District Court of Tirana, although the trail has taken part in the absence of and by the notification by public announcement and although the plaintiff/spouse has pretended that the defendant used to waste a lot of time gambling and consequently has left aside his responsibilities as husband and father for rearing the children, thus not contributing to the family, in the court disposition we read “The defendantenjoys the right to meet his children the first and the third Saturday of every month, from 16.00 o’clock am of Saturday until 16.00 o’clock of Sunday as well as to take the child with himself one month for summer vocations.” In the motivation part it is written “Starting from the greatest interest of the children, the Court explains that the father must never be deprived the right to meet the children, *every time he has the possibility to do such a thing*, because it is of the opinion that it is in the highest interest of them to have as close as possible relations with the father, a relationship which has its impact on the education, on the emotional situation and social life. The Court recommends also that despite the fact that the children have been left to mother for rearing and bringing up, they must have communication and affective relationships with the father too, which will enable a good rearing of them”. Thus, in the decision it is underlined that the right of meeting is in favor of father and available every time he has the possibility to do it and it is not considered as an obligation towards the child as regards the parental responsibilities. Even in the Decision No. 524 / 01.02.2011, a decision given in the absence of the defendant, the father of the children, “the later enjoys the right to meet und keep in his house his two children every Saturday from 18.00 o’clock am till 11.00 o’clock pm of the next day as well as for summer vocations from 16-th to 31 of August every year. In this decision too, the plaintiff pretends that the defendant has had the bad habit of gambling spending lots of money, which directly influenced on the economic situation of the family, he used to be out all the night without taking care of his children and wife. His alcohol affected situation caused many debates within the family, which in most cases took place in the presence of children und was accompanied by offences and psychological violation“.

At the District Court of Durres, in cases when the dissolution of the marriage is done in the absence of the husband, the father of the children, the Court has decided to give the father the right to meet and take the child on vocations, without making any analysis about him. There are mainly the cases when even the psychologist/the social worker has not managed to get in contacts with the father of the children, because he is in emigration, he has not any exact address and he does not communicate with the family.

The less demanded and implemented provisions are those which do have impact on the rights of the women as spouses and which do affect their economic situation after the divorce.

Family Code provides some provisions aiming to protect the family members in situations of family crises and insecurity. It has to do with cases when the emotional situation is unclear, when the marriage has not yet been dissolved, but, at the same time, there are some rights and obligations, which as regards their importance, cannot wait till the Court takes the final decision. Such is the Article 139 on “Adoption of temporary measures”²⁹Of importance are even the Articles 192 and 199 of the Family Code, providing provisions as regards “the obligations between spouses to provide alimony’, who

29 Article 139 “Adoption of temporary measures”: The court, upon request of one of the parties, may order temporary measures for child support, education and edification of minor children, alimony for the spouse, when deemed reasonable, provisions for use of the marital residence, and for the administration and use of assets created during marriage, if such exist. The decision for temporary measures is valid until a final decision is entered, but it can be amended or discharged by the court, if it is determined that circumstances have changed or when the decision was made based on incorrect information.

although they have decided to dissolve the marriage they still have obligations towards each other.³⁰

Another provision of special importance is the Article 153 of the Family Code, on the right to use the family residence, despite of the fact who has been the owner of it. According to the data gathered from the monitoring at the District Court of Tirana, the Article 153 has been the legal basis in two cases and only in one case it is quoted in the text of the judgment; in two cases the implementation of this article has been required, but it has been rejected by the Court³¹. In year 2012, the Article 153 is mentioned as a legal basis only in one decision. Thus, it is obvious that the rights provided by these articles, even when there exist reasons, are not demanded by the Court. In this way, the variety of the requests remains in a lot of well-known pretensions having consolidated practices, without mentioning the respect for the new institutions which ensure a more adequate protection.

As regards the economic status of the Albanian families, the article 147 of Family Code envisages the obligation for compensating contribution. This contribution is separated and apart from the obligation for alimony, it is a contribution in itself as an obligation of one of the ex-spouses to maintain the same economic status quo they had during the marriage. From the monitoring it results that these provisions of the Family Code are not applied in any of the cases.

Of course, under the conditions of the Albanian reality, these provisions, although neutral as the gender point of view is concerned, have a positive impact on women, in case they are required in juridical processes and if they are implemented. The advocates of the Center for Legal Initiatives are of the opinion that this has to do with the level of knowledge on these positions of gender effects, as well as with the social mentality and the low sensitizing level of the professionals to require them.

We have drawn the conclusion that while monitoring the decisions of the District Court of Tirana as well as those of the District Court of Durres there are no cases of implementing such provisions of the Family Code as: the Article 139 of the Family Code on “adoption of temporary measures”; the Articles 192 and 199 of the Family Code as regard the obligation for alimony between the spouses; the Article 153 of the Family Code on “the right to use the family residence”; the Article 147 of the Family Code on “compensating contribution“ etc. The monitors, in general, share the opinion that this has to do with the non- acquaintance of these provisions of gender effects, as well as with the social mentality and the need to make the spouses and the professionals, mainly the advocates, aware of requiring them.

2.4. Findings from monitoring the court decisions on issues on separate property regime between the spouses.

The property issues are very sensitive but even important for the economic status of the family. While managing cases of domestic violence and while implementing the provisions on Violence Law (an abbreviation of the” Law on Measures against Violence in Family Relations “ from 2006 /as amended), where the subject under protection are the ex-spouses, it results that one of the factors of the presence of various forms of violence is the joint property and the tendency of the ex-husbands

30 In year 2011: The Article 192/a and 199 of the Family Code : the obligation for providing alimony of a spouse to the other spouse has been implemented in one case of all the monitored decisions and it has been rejected by the Court (decision no 4684/ 2011) In year 2012-Article 192/1 and 199 of the Family Code - the obligation for providing alimony of a spouse to the other spouse has been applied in one case of all the monitored decisions and it has been rejected by the Court as not being based on the law (Decision No 158/2012)

31 See Decision No. 4684/2011 and Decision No 7425/ 2011 of the District Court of Tirana.

to enjoy it really in nature denying their wives every right to this joint property.

Women are more active in suing for the division of the joint property.

From the monitoring of the decisions of civil trials on the division of joint estate of the spouses , it results that : in 2011 the District Court of Tirana rendered 34 decisions, of which in 24 cases the claim for the division of the joint estate was presented by ex-wives and only in 10 cases by ex-husbands. In the period of time from January the first to May, 31, 2012 the District Court of Tirana rendered 20 decisions and in 13 cases the claim was presented by ex-wife and in 7 cases the suitor was the ex-husband. It results that during the period of time, subject of monitoring, from January 1, 2011 to May 31, 2012, the figures show that in 69 % of the cases the claim for the division of the joint estate of the spouses was presented to the Court by women.

In the District Court of Durres, there were 11 cases in year 2011. In 6 cases or in 55 % of these cases the issues are ceased because of the wife’s non- appearance in court as suitor. In the 5 remained cases, 3 decisions are taken in favor of husband, one case is solved with reconciliation and in one case it has been proceeded by remittal. In 2012 there were only 6 cases on division of the joint estate of the spouses. In two cases or in 25 % of the cases the issue is ceased because of the non- appearance of the suitor in court. And among the 4 accepted cases it is noticed that at a rate of 3 to 1 the joint estate is divided in favor of the husband.

Husbands are less active than the wives in suing for the division of the joint property, because they *de facto* enjoy the property and they have no interest to divide it by court.

From the monitoring of the court decisions, the statistics show that the claim for the division of the joint property by court, although it is the right of each spouses, is applied more by the wives. The fact itself, that approximately 69 % of the claims at the District Court of Tirana have been presented by women lead us to draw the conclusion that the ex-husbands do really enjoy the joint property and as such they don’t have any interest to divide it .In the District Court of Durres too, women seem to be more active in presenting the claims as well as in non- appearance in court, which leads to the cessation of the issue.

Most of the decisions on the division of the joint property, where the plaintiffs are females, are ceased. According to the monitoring process at the District Court of Tirana this includes more than 70 % of these decisions.

In 2011, the District Court of Tirana rendered 34 decisions on the division of the joint property. From these, 21 decisions or 62 % of them were ceased. In 15 or in 71 % of these decisions the plaintiff is the ex-wife. The same picture appears even as regards the decisions monitored during the period of time January to May 2012. The District Court of Tirana has rendered 20 decisions and 11 decisions or 55 % of them have been ceased and in 9 cases or in 82 % of them the plaintiff is the ex-wife.

Year	Monitored decisions	Ceased decisions in total	%	Plaintiff ex-wife	%
2011	34	21	62	15	71
January, 1 – May 31, 2012	20	11	55	9	82

The above table reveals the decisions of the District Court of Tirana on issues referring to Article No. 207 of Civil Code on the division of the joint estate of the spouses.

From the monitoring of these issues at the District Court of Tirana, and referring to the limited content of what has been written in the decision, it results that in 2011 among the 21 ceased decisions, in two cases or in 10 % of them the reason has to do with the request of the complainant to cease the judgment and in 19 cases or in 90 % of the cases, although the complainant has received notice on the date of trial, he/ she hasn't appeared in court. In the period of time from January to May 2012 it results a positive tendency in the solution of the disputes between the ex-spouses. Thus, among the 11 ceased cases, in three of them or in 27 % of them the issue were solved with reconciliation, in 8 cases or in 73 % of them the Court has ceased the judgment because the complaint, although informed, has not appeared in court. In all cases of cessation the District Court of Tirana has referred to Article 179³² of Code of Civil Procedures and 299/b³³ of the Code of Civil Procedures and it has ceased the judgment.

The withdrawal of judgment to cease the issue is without doubt a legal right. But, the great number of women, who withdraw the judgment on the division of the joint estate of the spouses by the court, is deemed to be stimulated even by other social- economic factors or by the lack of the juridical information.

The advocates of the Center for Legal Initiatives have, in their activity while providing free legal service from January 1, 2011 to May 2012, given advice to about 40 women on legal procedures and the required documentation needed for by Court as regards the division of the joint property. Certainly, this Center cannot meet all the needs for legal help. The responsibility of the state should be more prominent. At the District Court of Durres, in 35 % of the cases in total the issue has been ceased and in all these cases, that's to say in 100 % of the cases the plaintiff is the ex-wife and we can properly comment that the cessation of the judgment not in all cases means that the problem has been solved by any agreement outside the court.

From the court decisions being monitored at the District Court of Tirana, it is noticed that women are the main beneficiaries of the joint property in nature.

From the monitoring of the court decisions on such issues, we observe that in cases when the joint property is divided by the court, it results that even the women (as ex-wives) have been beneficiaries in nature of the joint property. Thus, for example, in 2011, it results that there were rendered 13 decisions (after having descended from the total number of cases the ceased decisions) on the division of the joint property by the court and in 7 cases it has decided to give the property in nature to the woman (ex-wife) whereas the man (ex-husband) has been compensated by her in Lek.

32 This Article sanctions the juridical consequences for the non- appearance of the parts

33 The Court decides to cease the judgment when...b) the suitor waives the claim...

III

Main findings from the monitoring of the court decisions and the practices of Center for Legal Initiatives on issuance of protection order.

It has been observed an increase of the number of claims on PO/EPO (Protection Order/ Emergency Protection Order), although the situation is not properly described in the database of the Court.

As it comes out from the monitoring of the decisions on EPO/PO from January 2011 to May 2012 ,at the District Court of Tirana, in year 2011 as well as during the first 5 months of 2012 an increase in the number of claims of EPO/PO is to be observed, as compared with the previous years monitored by the Center for Legal Initiatives. It is observed also that the Court, in general, does not reflect all the cases of PO/EPO in database, and consequently, they are not being reflected. A non-realistic presentation can lead to the false conclusion on a fall of the number of such cases. Thus, the monitors have to estimate these information in some directions. Even at round-tables with judges of courts involved in monitoring, it has been underlined that these claims have increased so much so they take a great volume of their work. This makes us think that the number can be greater compared with that resulting from monitoring. At the same time, the argument used by the advocates of Center for Legal Initiatives is based on the verifications of PO-s and EPO-s registered in the database of the Court. They have observed cases, in which their emergency protection order is not being reflected in the database of the Court as a decision. Thus, there are some cases of verified PO-s and based on their content it results that the PO is result of previous verification sessions of EPO, but if we search for this EPO in website in many cases is not to be found published as a decision. Let us list, for example, the following decisions : Decision No.1623/4.03.2011; Decision No. 813/09.02.2011; Decision No. 2316/12.03.2012. By monitoring no comparative data from other courts are brought about.

Women are the most violated within the families

It continues to result that the most violated person in the family relations is the wife.

Thus, in 89 % of the cases from the monitored decisions in 2011 at the District Court of Tirana, the claims of EPO/PO are presented by women. Remaining further in Tirana, in 92 % of the cases during the monitored period of time from January to May 31, 2012, the claims of EPO/PO are presented by women. There is no lack of cases when the claims have been presented by men .

Court	Period of time	Decisions on PO/EPO	EPO	PO	Plaintiff	
					Women	Men
Tirana	2011	182	113 or 62%	69 or 38%	162 or 89%	20 or 11%
	January 1- May 31, 2012	239	160 or 67%	79 or 33%	220 or 92%	19 or 8 %

Durres	2011	154	147 or 95.4%	7 or 4.6%	141 or 91.5%	13 or 8.5%
	January 1- May 31, 2012	78	76 or 97%	2 or 3%	58 or 87%	9 or 13%
Vlore	2011	27			27 or 100%	0
	January 1- May 31, 2012	54			51 or 94%	3 or 6%
Shkoder	2011	52	100 %	88.4 %	52 or 100%	0
	January 1- May 31, 2012	31	100 %	87 %	31 or 100%	0

At the District Court of Durres, in 91.5 % of the cases during the period of time– object of monitoring - from January the first to December 31, 2011, the claims of EPO/ PO were presented by women. The same commentary we have even for 2012, and it's understandable that this refers to the period of time as long as the monitoring lasts. Thus, in 87 % of the cases during the period of time-object of monitoring- from January the first to May 31, 2012, the claims of EPO/PO were presented by women.

At the District Court of Vlore the claims of EPO/PO have been mainly presented by females. In 2011, in all the 27 claims presented, the plaintiffs were women and in no case men have claimed of protection order. In 2012 there were monitored 54 protection orders in total. In 51 cases the plaintiff was a female and only in three cases the suits were men. We would like to point out that in all the three cases when the claims have been presented by men, the later have not claimed of protection order from their spouses but from other family members. Thus, in the three cases, it has been the father who has claimed of protection order from his own son because of the violence he used to exercise and which has brought about the use of violence by children against parents. And this, because the children used to come home late in the evening, because they used to come home drunken or nervous after having lost their money gambling³⁴. And, in general, the Court has decided in favor of the claims of the violated women, constraining the husbands to stay away from their wives, not to exercise any violent act and warning them that in case of a violation of the protection order, he should be charged with the criminal offence of having violated the protection order (as foreseeable by Article 320 of the Criminal Code).

In all decisions monitored at the District Court of Shkoder it results that the plaintiff is the wife and the defendant is the husband, which means that the claim has been presented by the wife.

During the whole period of time being monitored, in 40 cases, the denunciation is made by the victim herself through the police. In 43 cases, the victims are orientated by the referring system such as by organizations dealing with the protection of the victims of domestic violence as well as by the municipality and the organs of law and order.

The District Court of Shkoder issued in 2011, 52 emergency protection orders. 6 of them or 11.5 % of them were ceased at court hearing for the verification of the protection order . And in 46 cases or in

34 In 2013 at the District Court of Vlore there were monitored 6 protection orders, of which 3 were approved and three others were dropped .In these 6 cases, 5 claims were presented by women and only one of them was presented by a man. The only case when a man has presented a claim of protection order is that of the father-in law against the son-in law. Both lived in the same house and the son-in law used to exercise violence against the father-in law because of the debates they had with each other. Under such circumstances the father-in law has addressed himself to the court and has gained a protection order.

88 % of them, the Court has decided to issue the protection order at the court hearing for the verification of the protection order.

The same Court issued in 2012, 31 emergency protection orders. Four of them or 12.9 % of them were ceased at the court hearing for the verification of the EPO-s. In 27 cases or in 87 % of them the Court has issued PO at the court hearing for the verification of the EPO.

The cases of decisions on cessation of EPO/PO-s in general and especially of those where the females are the plaintiffs are still a lot in number.

Thus, in year 2011, from 182 decisions on EPO/PO issued by the District Court of Tirana, in 111 cases or in 61 % of the cases the Court has decided to cease the case. Thus, there are only 71 decisions on PO/EPO-s. From 111 ceased decisions, in 101 cases or in 91 % of the cases, the claim of PO/EPO were presented by females. In 2012, at the District Court of Tirana, from 239 decisions on EPO/PO-s issued by the District Court of Tirana, in 154 cases or in 64 % of the cases the Court has decided to cease the case and it has issued PO/EPO in 85 cases. From 154 decisions being ceased, in 143 of them or in 92 % of the cases the claim of EPO/PO-s were presented by females.

At the District Court of Durrës, in approximately 84% of the decisions being ceased, the appeals have been presented by females. From 154 decisions on EPO-s/PO-s issued by the District Court of Durrës in 2011, in 58 cases or in 37.6% of the cases the Court has decided to cease the case. From 58 decisions being ceased, in 49 cases or in 84.5% of the cases the claims of EPO/PO-s were presented by females. In 2012, from 78 decisions on EPO/PO-s issued by the District Court of Durrës and totally monitored, in 31 cases or in 39.7% of the cases the Court has decided to cease the case. From 31 decisions being ceased, in 26 of them or in 83.8% of the cases the claims of EPO/PO-s were presented by females.

At the District Court of Vlorë, in 2011 were monitored 27 protection orders. 19 claims or 70 % of the claims were accepted, 4 or 15 % of them were ceased and 4 others or 15 % of the claims were rejected. Whenever the Courts finds the pretensions to be based on evidence, it decides to issue the emergency protection order in favor of the plaintiff. In 2012, from 54 claims of protection orders, 40 claims or 74 % of them were issued, 10 claims or 19 % of them were ceased and 4 claims or 7 % of them were rejected.

The gender of the plaintiffs in decisions being ceased according to the monitored courts

Court	Period of time	Decisions on EPO/PO	Decisions on EPO/PO		Gender of the plaintiffs in decisions being ceased	
			Decisions being ceased	Decisions on EPO/PO	Women	Men
Tirana	2011	182	111	71	101	10
	January 1-May 31, 2012	239	154	85	143	11
Durrës	2011	154	58	96	49	9
	January 1-May 31, 2012	78	31	47	26	5
Vlorë	2011	27	8	19		
	January 1-May 31, 2012	54	14	40		
	2011	52	6	46	52	-
Shkodër	January 1-May 31, 2012	31	4	27	31	-

The reasons for the cessation of cases

At the District Court of Tirana, in year 2011, from 111 decisions on cessation, 78 decisions refer to cases being ceased because of the non-appearance of the plaintiff at court although she has received notice of it. From the 78 decisions being ceased of this reason, in 70 decisions the plaintiff was the woman as wife. Whereas in the other 33 decisions, the case was ceased for other reasons, for example: the plaintiff present at the court hearing declares that she waives the claim (in 6 cases), that she waives the judgment because of the normalization of the relationships (in 8 cases), the defendant declares in front of the court not to use violence any more (in 8 cases) etc. In the period of time, from January the first to May 31, 2012, from 154 decisions on cessation, 96 cases were dropped because of the non-appearance of the plaintiff at court although according to the Court she was aware of it and in 88 of these cases the claim has been presented by females. Whereas in the other 58 decisions on cessation, the case were dropped because of other reasons, for example: the plaintiff present at the court hearing declares that she waives the claim (in 17 cases), she waives the judgment because of the normalization of the relationships (in 13 cases), the defendant declares before the Court that he is not going to violate her any more (in 19 cases).etc.

As regards the reasons for cessation, from the monitoring of the decisions taken at **the District Court of Durres** it results that in 2011, in 23 cases, the plaintiff has been present at court hearings and she has declared that she wants to waive claim; in 35 cases the decision on cessation has been taken because the plaintiff has not appeared at court hearing although she, according to the Court, was aware of it. In 26 cases or in 74.3 % of the cases the female plaintiffs have not appeared at court hearings. In 2012, during the period being monitored, in 12 cases the plaintiff has appeared at the court hearing and she has declared she wants to waive the claim; there is only one case, when the plaintiff has waived the claim because the violator has declared before the court that he is not going to exercise violence anymore; in 21 ceased cases the plaintiff has according to the Court, been aware of it. Among these decisions, in 16 cases the women have not appeared at the court hearing.

At the District Court of Vlore, among the reasons for cessation it's worth to mention the non-coming of the plaintiff at court hearing, whereas in case of the rejection of the case the claiming party has not proved the pretensions to violence, either to physical or to psychological violence. We are of the opinion that beyond the right to waive the claim of EPO/PO-s there are a lot of social problems.

At the District Court of Shkoder, the reasons for cessation of PO-s, are mainly linked with the probation process. In general, all claims of emergency protection are accepted. The difficulty lays in the moment of verifying the protection order (in four cases no forensic-medical investigation has been made, making, thus, the probation process difficult; in one case it has to do with emotional violence (many times very difficult to be proved, because it is based only on the inner conviction of the judge) and in two cases, the victim herself has required the cessation of the protection order.

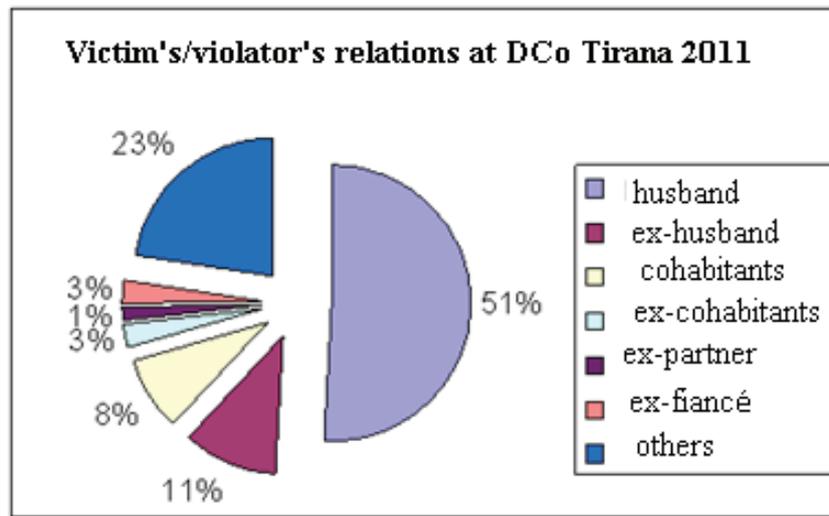
The children too, are subjects for whom protection against violence is claimed

In 2011, from 71 decisions on Emergency Protection Orders/ Protection Orders issued by the District Court of Tirana, in 26 of them or in 36.5 % of the cases protection order even for children has been appealed. From 85 decisions on Emergency Protection Orders issued by the District Court of Tirana in year 2012, in 26 cases or in 30.5 % of them protection even for the children has been appealed.

From 96 decisions on EPO/PO issued by the District Court of Durres in 2011, in 16 cases or in 13% of the cases protection even for the children has been appealed. In year 2012, from 54 decisions on EPO/PO issued by the District Court of Durres, in 10 cases or in 19 % of the cases protection even for the children has been appealed.

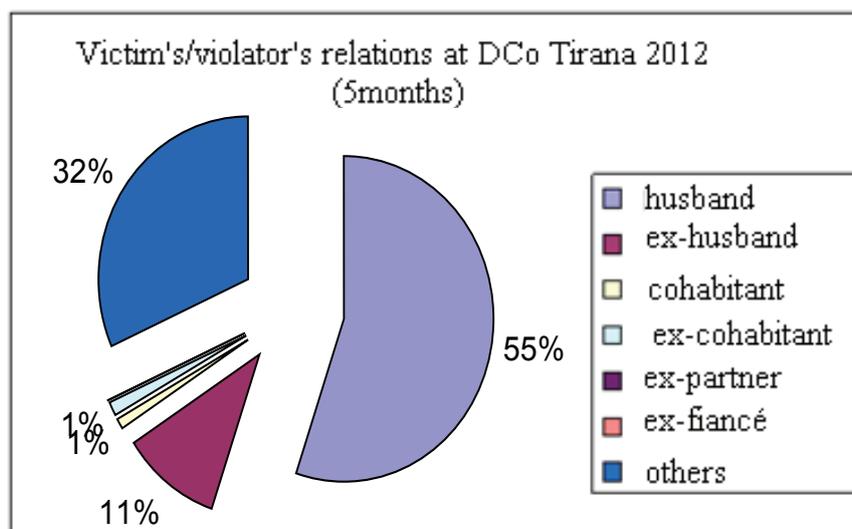
From the cases followed up by the NGO-s in Shkoder, from the moment the denunciation is done to the organs of law and order, even in case the children have been victims of assisted violence, it results that they have been treated as subjects appealing protection from violence. Proceeding in this way, a greater attention has been drawn to the highest interest of the children, providing them with psychological protection and welfare. There are 4 decisions, in which the children together with their mothers appeal protection at this court.

The relations between the violator and the victim reaches the peak violence in the relationships between the spouses and the ex-spouses.



By monitoring the decisions of all courts it results that as regards the relations between the violator and the victim the peak violence is to be observed in the relationships between the spouses, followed by the relationships between the ex- spouses.

It also results that other subjects of violence in family relationships, during the whole period of time being monitored, have been even the ex- cohabitants, ex- partners and ex- fiancés.



Based on the analysis of the court decisions, we would like to underline that we haven't managed to understand data as regards the relations between the violator and the victim in all the decisions on cessation of the cases.

The following table provide us with data on the relationships between the parties according to monitored courts.

Court	Period of time	In total	Family kinship						
		Decisions on EPO/PO	Husband	Ex-husband	Cohabitant	Ex-cohabitant	Ex-partner	Ex-fiancé	Others
Tirana	2011	71	36	8	6	2	1	2	16
	January 1- May 31, 2012	85	47	9	1	1	-	-	27
Durres	2011	96	31	23	4				38
Shkoder	2011	52	50	2	-	-	-	-	-
	January 1-May 31, 2012	31	30	1	-	-	-	-	-

The above table provides us with data on the relations between the parties.

IV

Preliminary findings from the monitoring of juridical decisions

4.1. Issues, whose object is the implementation of Article 130 / a “ Domestic violence” of the Criminal Code , as amended.

According to Law no. 23/ 2012 “ On some additions and amendments on Law no. 7895/ 27.01. 1995 “in the Criminal Code of the Republic of Albania “, as amended, the domestic violence is sanctioned as a special criminal offence in Article 130 / a.³⁵

As regards this offense, the monitoring was focused on the period of time from April to December 2012, that’s to say, after this amendment entered into power and began to be implemented in Criminal Code. The main findings seem to lead to the following conclusions:

As regards the activity of the District Court of Tirana, we observe that :

- 26 cases were presented before the court, but in 17 of these cases the Court has decided to cease the case .
- All the convicted, in the 9 already finished cases, for having committed the criminal offence of domestic violence are males.
- From the analysis of the decisions it results that the Court has decided the cessation for the 17 cases according to Law No. 107 / 2012 “On Amnesty “
- As regards the punishment length and types we notice that : Among the 9 convicted, in 7 cases the criminal court has commuted the punishment by imprisonment, applying Article No. 406 of Criminal Procedure Code and in two cases the court has commuted suspended sentence.(or probation).

The period of time being monitored	Decisions, Article 130/a	Decisions of cessations	The convicted		Type of punishment		Applying Article 406 of Criminal Procedure Code
			imprisonment	Suspended sentences			
31.04.- 31.12.2012	26	17	9	7	2	7	

35 Article 130/a of the Criminal Code “ Domestic Violence”: 1) beating, as well as any other act of violence against a person who is a spouse, former spouse, cohabitant, or ex cohabitant, close sex or close marriage relations to the offender, by violating the physical, psychosocial and economic integrity, is punished with up to two years imprisonment, as well as 2) a serious threat of death or grave injury against a person who is a spouse, former spouse, cohabitant, or ex cohabitant, close sex or close marriage relations to the offender, by violating the psychological integrity, is punished up to three years imprisonment, and 3) willful injury done to the person who is the spouse, former spouse, cohabitant or ex cohabitant, or close sex or close marriage relations to the offender, with the violation of the psychic integrity and causing temporary working disability for more than 9 days , is punished with up to 5 years imprisonment, 4) The same criminal offenses committed repeatedly or in the presence of the children are punished with up to from 1 to 5 years imprisonment.

As regards the relations between the violator and the victim it results that in 7 cases the violence has occurred between the spouses, in one case in the relations between the parents and the children and in one case in other relationships.

By monitoring of the decisions of the District Court of Durres, it results that there are 7 decisions, in which Article 130/ a of the Criminal Code is applied.

4.2. Findings from monitoring while implementing Article 320 of the Criminal Code “ Preventing the enforcement of court decisions” and Article 321 of the Criminal Code “Acts opposing court’s decision”, as amended.

District Court of Tirana
In 2011: In total 11 decisions.
 Article 320 applied in 10 decisions.
 Article 321 applied in one decision.
In 2012: In total 20 decisions.
 Article 320 applied in 16 decisions.
 Article 321 applied in 4 decisions.

The monitoring has brought about results only as regards the District Court of Tirana. Object of monitoring were even some criminal offences linked with gender elements, that’s why we have dwelt on with some Articles of the Criminal Code. Thus, the following table reveals data on the number of the convicted who have committed criminal offences, on the type of punishment and the gender of the convicted.

Year	Monitored decisions	The Convicted		The type of punishment and others					
		Male	Female	imprisonment	Fine	Suspended sentence	Acquittal	Remittal	Amnesty
2011	11	9	2	2	8	-	1	-	-
2012	20	16	1	2	9	5	1	1	2

- ❑ *The gender of the accused / convicted* : For such kinds of offenses, the convicted are mainly males. 92 % in 2011 and 94 % in 2012.
- ❑ *The types and length of punishment*: it is observed that the punishment by imprisonments (18 % of the total cases in both years) represents a few number of cases as compared with other types of punishment.
- ❑ *Family kinships between the victim and the violator*. It results that we have to do with an increase of the cases, where the kinships between the convicted and the victims are marital relations (12 decisions during the whole period of time or 43 % of the cases). The same can be said about the relations between the ex- spouses (12 cases during the whole period of time or 43 % of the cases) and between the ex-spouses (two cases during the whole period of time or just 14 % of the cases).

The following table reveals data on family kinships between the convicted and the victims according to the District Court of Tirana.

Article 320 & 321 of CC	Family kinships				
	Husband	Ex-husband	Ex-cohabitant	Cohabitant	Others
11	2	6	1	-	2
20	10	6	1	-	3

4.3. Findings from the monitoring of juridical decisions as regards the implementation of Article 113 of the Criminal Code “On prostitution“, as amended.

Law No.23/2012 “On some additions and changes to Law No. 7895 dt.27.01.1995” Criminal Code of the Republic of Albania, as amended, has brought about some changes to Article 113 of Criminal Code “Giving personal benefits from prostitution is punishable by a fine or up to three years of imprisonment.”

The amendment of Criminal Code entered into power in April 13, 2012. From monitoring, the following main findings result:

- ☐ *Only females were punished for prostitution:*

At the District Court of Tirana: by monitoring the court decisions on criminal offences as foreseen by Article 113 of the Criminal Code on “Prostitution” in 2011, it results that this court has taken 15 decisions in total and punished 17 women for this criminal offence. In 2012, from the monitoring it results that they have taken 12 decisions and punished 13 women.

At the District Court of Durres: in 2011 there results only one decision taken against such an offence and only one woman has been punished for it, whereas in year 2012 there are 5 court decisions and of these in 4 cases there are females who have been punished and just in one case a man has been punished “.³⁶

- ☐ *The types and the length/the amount of punishments: imprisonment/ fine:*

From the monitoring of the court decisions at the District Court of Tirana it results that a harsher punishment policy is followed against convicted females punished for prostitution, that’s to say the number of the women punished by imprisonment is greater and during the whole period of time under monitoring the execution of the sentence was suspended only in 7 cases.

Year	IMPEACHMENT WOMAN	THE CONVICTED	PUNISHMENT				ACQUITTAL
		IMPRISONMENT	FINE	PROBATION	ART. 406		
2011	Article 113	17	8	9	6	17	0
			47.1%	52.9%			
2012	Article 113	13	5	6	1	4	2
			38.4%	46.1%			15.3%

³⁶ From monitoring of other offences at this court the following data were gathered : in 2011, Article 114 “Exploitation of prostitution”- is applied in two cases, against a female und against a male. Article 114/a “Exploitation of prostitution with aggravated circumstances”- is applied in one case, and the convicted is a male. In year 2012, Article 114- Exploitation of prostitution”- is applied in three cases, of which in two cases the convicted are females and in one case the convicted is a male. Article 114/a “Exploitation of prostitution with aggravated circumstances”- is applied only in one case – and the convicted is a male.

From the monitoring it results that in 2011, 8 females were punished by imprisonment and in 6 cases of them Article 59 of the Criminal Code were applied, according to which the execution of the sentence was suspended.³⁷ The length of imprisonment given by the court to females for this criminal offense varies from 2 months up to 4 months. Whereas in 9 cases the court has punished females by fine, which varies from 66.000 lekë to 200.000 lekë. In all the cases the court has applied Article 406 of the Criminal Procedure Code, performing thus an accelerated trial.

In 2012, it results that 5 females were punished by imprisonment and in one of these cases the Article 59 of the Criminal Code was applied, according to which the execution of the sentence was suspended. The imprisonment length given by the court to these females varies from 20 days to 4 months. Whereas in 6 cases the court has punished the females by fine, which varies from 70.000 lekë to 300.000 lekë. In such cases the court has performed accelerated trial according to Article 406 of the Criminal Procedure Code. In two cases the court has rendered the decision of acquittal.

The representation by advocate

At the District Court of Tirana, as regards the representation by advocate, it results that in year 2011 the defendants were represented by advocates in 76.4 % of the cases whereas in 23.6 % of the cases they were not represented by any advocate. It is obvious that in the 13 cases where convicted females punished for committing the criminal offense of prostitution and represented by advocates, it results that in 8 cases or in 61.5 % of the cases in year 2012 the defendants were presented by female advocates.

Year	The convicted	Male advocate	Female advocate	Mainly female advocate	Mainly male advocate	Not represented at all	In Total
2011	Female	3 cases	3 cases	7 cases	-	4 cases	17
%		17.6	17.6	41.1		23.6	
2012	Female	2 cases	-	8 cases	2 cases	1 case	13
%		23		53.8	15.3	7.6	

The age of the convicted females punished for prostitution is reflected in the following data:

- 10% under age;
- 20 % between 18 and 20 years old;
- 43.3% between 21 and 30 years old

GRA	MINORS		21-30	31-40	41-50	OVER 50	IN TOTAL
2011	-	5	8	2	1	1	17
2012	3	1	5	2	2	-	13
Total No.	3	6	13	4	3	1	30
Total in %	10	20	43.4	13.3	10	3.3	100%

Data on the District Court of Tirana

37 Article 59 of the Criminal Code "Suspending the execution of a sentence" sanctions that "If the person and the circumstances under which the criminal act was committed are of little dangerousness, the court, while sentencing up to five years of imprisonment, may rule the probation of the convicted, thus suspending the execution of the sentence, provided that during probation he will not commit any other criminal act equally serious or more serious than the previous one. Probation extends from eighteen months to five years

The education level of the convicted females:

- More than 63% of them without any education or up to the 8 years school education.
- about 13 % with high school education.
- for 23% of them, there are no information at all on their educational level

WOMEN	NO EDUCATION	ELEMENTARY SCHOOL EDUCATION	8-YEARS SCHOOL EDUCATION	MIDDLE-SCHOOL EDUCATION	HIGHER SCHOOL EDUCATION	NO DATA	IN TOTAL
2011	4	1	5	2	-	5	17
2012	-	2	7	2	-	2	13
Total no.	4	3	12	4	-	7	30
Total in %	13.3	10	40	13.3	-	23.3	99.9

In 40 % of the cases, the convinced females have an 8- years school education, followed by 13.3 % of the cases in which the convicted females have a high school education or no education at all. These data refer only to monitoring at the District Court of Tirana.

Data on the place of birth: 83.3% born in town and 13.4 in countryside

FEMALES	COUNTRYSIDE	TOWN	ANOTHER COUNTRY	IN TOTAL
2011	2	14	1	17
2012	2	11	-	13
Total no..	4	25	1	30
Total in %	13.4	83.3	3.3	100

4.3.1 The analysis of a concrete case and the presentation of juridical opinions from CLCI (Center for Legal Civic Initiatives) on the anti-constitutionality of Article 113 of CC (Criminal Code): Casus B.Q.

Juridical processes: The District Court of Tirana hat according to decision no. 744/ 06.05. 2011 decided to declare B.Q guilty for committing the criminal offence of “prostitution”, as envisages in Article 113 of the Criminal Code. The Court of Appeal of Tirana has in accordance with decision no. 1430/ 21. 12. 2011 decided to leave in power the decision no. 744/ 06.05. 2011 of the District Court of Tirana according to which B.Q was declared guilty for committing the criminal offense of Prostitution, as foreseen in Article 113 of the Criminal Code.

Recourse to Supreme Court : Center for Legal Civic Initiatives has directed a recourse to Supreme Court requesting the acquittal of B.Q presenting the following argumentations :

Firstly, the decision of the Court of Appeal of Tirana, no. 1430/ 21.12. 2011, which left the decision no. 744/ 6.5. 2011 of the District Court of Tirana in power, although based on one of the articles expressly foreseen by the Criminal Code, is not an impartial decision. The defendant pretends that “ The punishment I am sentenced by the Court is impartial too”. As it was pretended even in judgment, the punishment foreseen for exercising prostitution, in the way it is sanctioned in Article 113 of the Criminal Code, makes this Article anti-constitutional.

Under such circumstances, the District Court of Tirana as well as the Court of Appeal of Tirana should not, just according to previous decisions, declare B.Q guilty for exercising prostitution, without having first done an incidental control, requesting the implementation of Article 145/2 of the Constitution, in order to send the question to the Constitutional Court, which is the proper court to assess if Article 113 of the Criminal Code “On prostitution” violates the Constitution.

The advocate of the Center for Legal Civic Initiatives has at both the District Court of Tirana and at the Court of Appeal of Tirana pretended that Article 113 of the Criminal Code violates the Constitution of the Republic of Albania and concretely, the principle of gender equality as foreseen by its Article no 18. Thus, Article 113 of the Criminal Code violates the principle of gender equality, indirectly discriminating females, because of their gender belonging. The object of this criminal offense are the juridical relations defined to prohibit prostitution with the aim of protecting the morality and dignity of individual and it is obvious that objectively the essential element of such a criminal offense, is the payment received for exercising prostitution.³⁸ Consequently, subject of this criminal offense is the person being paid for of having sexual intercourse, which gives a discriminating character to the legal act as envisaged for such an offense, because for such an offence two subjects are needed. In this way, it should be pointed out that, according to the Constitution, the legislator must protect all his citizens equally from the violation of dignity.

But, in this case, it doesn't happen so, because it is not taken into consideration the fact that the criminal acts of such a criminal offense, are not committed only by the profiteer of the payment, but even by the person who illegitimately profits from this criminal offense, as well as by third persons who can profit in different ways from exercising prostitution. Thus, both the person who has profited sexual intercourse as well as he/ she who has had sexual intercourse against payment, may have violated the norms of social morality and impinged the dignity of the individual. But, this does not mean that, only the person who receives money is responsible for this, because the other person too, who has given money against sexual intercourse, has impinged the norms of social morality and the dignity of individual. If the aim of the legislator is to protect the moral norms of the society, he / she should take into consideration the fact that the punishment for such an offense cannot be discriminating. In such a case, we are faced with a consequential discrimination, which together with the direct one, makes this Article anti-constitutional.

Secondly, although the Court of Appeal of Tirana in its decision considers the exercise of an incidental control as a guarantee in the relations between the constitutional norms and the legal ones, it has not argued / explained the reason why it has not exercised an incidental control of this case. In Article 145/ 2 of the Constitution it is sanctioned that “If judges believe that a law is unconstitutional, they do not apply it. In this case, they suspend the proceedings and send the question to the Constitutional Court”. This does not give the judge the right to use this exclusive right attributed by the Constitution, without giving any reason or argument as in case of decision no. 1430 / 21.12. 2013 of the Court of Appeal of Tirana.

Thirdly, if we take into consideration the statistical interpretation for solving such an issue, as international Courts of Human Rights normally do, it results that by implementing this legal provision, almost all the convicted persons were females (women or girls) who have accepted to have sexual intercourse against payment and offers made by males, because of their vulnerability. Their vulnerability, poverty and unemployment lead the females to a special risk of violence and abuse.³⁹This is explicitly obvious in the way it is usually interpreted by the Court and in the way

38 See: Ismet Elezi “ Criminal Law . Special part”, Tirana, 2009, page 153-155

39 See: General Recommendation19 of the CEDAW- Convention, implementing Article no 6 of the Convention on

this Article continuous to be concretely interpreted in my case. Such legal and juridical practices are irreconcilable with the equal respect towards the dignity of the female and the equal respect for her rights.

Fourthly, the respective courts should assess this provision which is in violation of the Convention on the Elimination of all Forms of Discrimination against women, ratified by the Albanian State. Thus, in its interpretation of Article 6 of the CEDAW, after the latest periodical report of the Albanian State at UN, the UN Committee on the Elimination of All Forms of Discrimination against women (CEDAW) explicitly recommends to the Albanian State a change in the Criminal Code, with the aim of preventing the victims to be subject of criminal prosecution or criminal punishment. This committee has repeated its special concern, which is to be found in previous conclusive remarks (A/52/38 (Supp),par. 70), according to which, the victims of trafficking and the prostitutes continue to be subject of criminal punishment in accordance with the Criminal Code.⁴⁰

Under such circumstances, the Court should reconsider this provision violating the Convention on the Elimination of All Forms of Discrimination against women, a Convention ratified by the Albanian State, that's why according to Articles 116 and 122 of the Constitution it is superior to the national laws. Due to the interpretation done by the CEDAW-Committee of this Convention, according to which, as we have explained above, the concern is expressed for the punishment of the prostitutes according to the Criminal Code, I consider Article 113 of the Criminal Code as a provision in violation of the Constitution. And this because the CESAW-Committee is the competent organ which can make the final interpretation of the CEDAW- Convention.

Fifthly Another argument derives from the comparative interpretation of this provision. For this, it is sufficient to analyze the experiences of other countries as regards this provision. We notice that many countries have made reforms in the Criminal Code since 1970-s and later on, in which a provision similar to Article 113 of the Albanian Criminal Code has been abrogated from the legislations of these countries⁴¹. Such an attitude was taken even by the Albanian doctrine, which in its interpretation of this article expresses the necessity of its abolishment.⁴²

The Center for Legal Initiatives has requested the Supreme Court to declare B.Q as not guilty, to suspend the judgment, to present the case for reconsideration to the Constitutional Court executing Article 145/2 of the Constitution of the Republic of Albania and to declare the confidentiality.

At present: This case is under judgment at the Supreme Court.

The Center for Legal Initiatives has, at the same time, sent to the Commissioner for Protection against Discrimination, an information on the basis of Law "On protection against discrimination" (2010) and it has requested the abrogation of Article 113 of the Criminal Code as being discriminative to women and girls.

As a result of this intervention changes were made in the Criminal Code in 2012.

the Elimination of All Forms of Discrimination against women (CEDAW).

40 See: conclusive remarks of the Committee on the elimination of all Forms of Discrimination against women " , session 46 , 12- 30 , July 2010

41 See " International approaches to decriminalizing or legalizing prostitution" October 2007, published in <http://www.procon.org>

42 See: Ismet Elezi the same material

V

The monitoring of the practices of the institutions of the Commissioner for Protection Against Discrimination and the Ombudsman about gender equality and non- discrimination

The findings from the monitoring of the decisions of the Commissioner fur Protection Against Discrimination can be summarized as follows:

This institution is still used rather limited and besides this, it seems that the knowledge on the understanding of discrimination and the protected terrains are limited or false or the pretenders don't have correct und complete knowledge on it. The monitoring of the Commissioner fur Protection Against Discrimination was realized through annual reports issued by this institution in the official Website. In year 2011 there were only three appeals on gender discrimination presented to the Commissioner for Protection Against Discrimination. In two of them, no discrimination because of gender were observed whereas the third one was rejected because it didn't fulfill the requests of Law no. 10 221/ 04.02. 2010 " On Protection Against Discrimination". In 2012 there were presented two appeals pretending discrimination because of gender. One of them was dropped because of the impossibility to gather evidences and the next one is still under consideration. Although in the report of this institution it is underlined that in other appeals being considered there were elements of gender discrimination, the verification made by the staff of the Center for Legal Initiatives has not found such a thing.

The findings from the monitoring of the institution of Ombudsman:

From an investigation made in the official site of this institution und in the annual report from 2011, it is noticed that the report cannot be opened/ accessed. The Center for Legal Civic Initiatives could not manage to draw any conclusion as regards the appeals on discrimination. In 2012, from the verifications done of the report of this institution, no appeals on gender discrimination was found. The aim of monitoring is linked with the accession of data in the electronic sites of these institutions.

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