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**RECONNAISSANCE ET EXÉCUTION DES ORDONNANCES DE PROTECTION RENDUES PAR
DES JURIDICTIONS CIVILES ÉTRANGÈRES :
QUESTIONNAIRE À L'ATTENTION DES ORGANISATIONS NON GOUVERNEMENTALES**

établi par le Bureau Permanent

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**RECOGNITION AND ENFORCEMENT OF FOREIGN CIVIL PROTECTION ORDERS:
QUESTIONNAIRE FOR NON-GOVERNMENTAL ORGANISATIONS**

drawn up by the Permanent Bureau

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INTRODUCTION TO THE QUESTIONNAIRE

In 2011 the topic of “the recognition of foreign civil protection orders made, for example, in the context of domestic violence cases”¹ was added as a new item to the work programme of the Hague Conference on Private International law (< www.hcch.net >). The Permanent Bureau of the Hague Conference has conducted preliminary background research on this topic² with a view to begin an assessment as to whether a new international treaty (*i.e.*, a new Hague Convention) or other instrument should be developed in order to ensure the recognition and enforcement of civil protection orders across international borders. Civil protection orders may include, for example, “no contact” and housing exclusion orders in cases of domestic violence, “stay-away” orders in cases of stalking, and other injunctions to protect victims or potential victims from crime or other harmful interpersonal behaviour.³

The Permanent Bureau has circulated a [Questionnaire](#) to Members of the Organisation in order to obtain further information on legislation and to assess the need for and feasibility of an international instrument in this area. The input of non-governmental organisations which might have experience in this field would also be very beneficial. Your responses to this Questionnaire, sharing any information you may have based on expertise you or your organisation may have, would be a valuable contribution to the current assessment.

The Permanent Bureau kindly requests that your answers be submitted (in either English or French) as soon as possible, but in any case by **1 February 2013**, in order to allow the Permanent Bureau sufficient time to analyse information received for the attention of the governing Council of the Hague Conference that will meet in early April 2013. Responses should be sent by e-mail to < secretariat@hcch.net > with the following heading and indication in the subject field: “NGO Questionnaire concerning the recognition and enforcement of foreign civil protection orders — [name of non-governmental organisation].”

Should you have any questions about this Questionnaire, please do not hesitate to contact Philippe Lortie, First Secretary, or Maja Groff, Senior Legal Officer, at < secretariat@hcch.net >. We are grateful for your time and assistance on this important project.

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Identification

Name of your organisation: GADC - Gender Alliance for Development Center

Country / Countries where based: TIRANA/ ALBANIA

Website of organisation, if applicable: www.gadc.org.al

For follow-up purposes:

Name and title of contact person: Attorney MRS. EVIS GARUNJA

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¹ Conclusion and Recommendation No 23 of the 5-7 April 2011 Meeting of the Council on General Affairs and Policy of the Conference (available on the Hague Conference website at < www.hcch.net > under “Work in Progress” then “General Affairs”).

² “Recognition and Enforcement of Foreign Civil Protection Orders: A Preliminary Note,” Prel. Doc. No 7 of March 2012 for the attention of the Council of April 2012 on General Affairs and Policy of the Conference (available on the Hague Conference website at < www.hcch.net > under “Work in Progress,” then “General Affairs”).

³ Please see Prel. Doc. No 7, *ibid.*, for examples of common protection order legal regimes and variations of these regimes in a variety of jurisdictions.

Part I. National protection order legislation

- 1.** Please briefly describe any civil protection order regime(s) in your jurisdiction, and describe, in your view / the view of your organisation, its / their main positive and negative features, as applicable. (Please attach another sheet, if necessary.)

On December 18, 2006, Albanian Parliament passed Law no. 9669, "On measures against violence in family relations" (Domestic Violence Law). The purpose of the law is to prevent and reduce domestic violence in all its forms and guarantee legal protection to victims of domestic violence by paying particular attention to the needs of children, the elderly, and the disabled (article 1).

Under the new law, every part of society has a role in preventing violence. The law outlines the roles of the Ministry of Labour, Social Affairs and Equal Opportunities, of the Ministry of the Interior, of the Ministry of Justice, of the Ministry of Health, of the Ministry of Education and of implementing structures such as police departments, emergency rooms, and local government in the prevention of domestic abuse and the protection of its victims.

The courts play a major role in granting protection orders as a take protection measures for victims and ensures that the latter have access to quick, affordable, simple services (article 2).

The prosecutors are responsible for intervention in criminal actions.

Social services, health services, and non-governmental organizations (NGOs) participate in a co-ordinated community response for the support, protection, and rehabilitation of victims of abuse.

This is the first law on domestic violence which provides: immediate protection orders and protection orders which have different time of proceedings, protects wide cicle of family relationships, offers different measures of protection for the victims of domestic violence. Another positive aspect of this law is that the interested parts (victim) can initiate at the same time different proceedings civil and criminal one (Art 24 - Criminal Proceedings - Issuance of a protection order or emergency protection order does not inhibit interested parties to also initiate criminal proceedings with regard to acts or omissions that are classified as criminal offences).

The negative features of this law consisted on the fact that: the measures of protection for the victims are civil protection without any criminal restriction. Only in case when the court decission is not applicable or not executed or in case of Article 19/3 c (A remark that violation of an emergency protection order constitutes a criminal offence, pursuant to article 320 of the Criminal Code)

- 2.** Please briefly list any other protection order regimes (e.g., under criminal law, under police laws, etc.) in your jurisdiction which are important in your view / the view of your organisation.

A: Law no. 9749, dated 4 June 2007, "On the State Police" concretely:

Article 104

In order to avert threat or to prevent the disturbance of public from the locality or may prohibit him to enter the locality, for as long as the threat or disturbance persists.

Article 106

1. Protective measures are taken against mentally ill persons, persons under the effect of drugs or alcohol, and persons who carry contagious diseases. In cases as such, the Police medical institutions, rehabilitation centres or hands him over to the responsible person or custodian. protection of:
 - a) The person, whose state obviously indicates that he cannot control his actions or behaviour and for that reason may harm or endanger his own life or that of the others. Execution of the measure in the police premises lasts for as long as it is necessary, but no longer than 10 hours.
 - b) The minor who is no longer under supervision or has escaped from the parent or custodian, by returning him to the custodian or sending him to the minors welfare search and examination of these persons.

Article 108

Objects are impounded or seized only in cases provided by law and in full compliance with respective legal procedures. Outside the cases otherwise disciplined by law, objects may be impounded only if this is strictly unavoidable to avert imminent the owner if known.

Objects are impounded only as long as it is strictly necessary. term as may be required by the nature of the object, the owner restitution, impounded objects will be declared public property in compliance with the enacted legislation. It is the responsibility of the Police to carry out ascertaining actions to identify the owner of the impounded property.

B: Criminal Code (before March 2012)

Any of the following crimes from the existing criminal law may be considered domestic violence when committed between family members.

- Murder (articles 76 – 83, 85 of Penal Code)
- Threat (article 84)
- Wounding (article 88/b)
- Termination of pregnancy without consent (article 93)
- Denial of assistance (article 97)
- Causing of suicide (article 99)
- Abduction (article 109, 109/a)
- Trespassing (article 112)
- Forcing into and exploiting for prostitution (article 114)
- Insulting (article 119)
- Defamation (article 120)
- Limitation of the freedom of expression/speech, of movement or assembly (article 261)
- Violation of private life (article 121)
- Rape (articles 100-107)
- Other obscene acts (article 108)
- Abandonment (article 124)
- Denial of living means (article 125)
- Illegal taking of child (article 127)
- Coercion for cohabitation or termination of marriage (article 130)
- Damage to property or economic well-being (articles 150-154)
- Limitation on freedom to administer income (robbery/theft – (articles 139 and 134)

- Serious intentional injury (article 88, 88/a)
- Non serious intentional injury (article 89)
- Other intentional injury (article 90)
- Serious injury due to negligence (article 91)
- Non serious injury due to negligence (articles 92)
- Wrongful use of telephone (article 275)

The following actions also may be included as domestic violence if they cause injury:

- Holding monetary means
- Direct physical, psychological, sexual, and economic abuse of children
- Putting children in dangerous situations where they witness violence.

This action can only be blamed on the perpetrator of the violence, not the victim.

B2: Criminal Code (after March 2012)

Law No. 23/2012 for some changes on the Penal Code (law No 7895 date 27.01.1995)

Article 121/a - Stalking

Article 130/a - Domestic Violence

C. Under Article 284 of the Albanian Criminal Procedure Code, crimes of non-serious intentional injury, including rape and sexual harassment, can be prosecuted only when the victim files a complaint.

3. Have law reforms in this field been recently conducted or are they planned for the future in your jurisdiction? If so, please briefly describe.

Law no. 9669, dated 18 December 2006, "On measures against violence in family relations", as amended by Law no. 9914, dated 12 May 2008, "On some additions to Law no. 9669, dated 18 December 2006, 'On measures against violence in family relations'".

Law No. 23/2012 "For some changes and ammendments on the Penal Code on the Albanian Republic (Law No 7895 date 27.01.1995) is ammended the Penal code regarding the penal offences of Domestic Violence and Stalking in Albania. (Art 121/a and 130/a).

The Ministry of Justice is following the job done by the work group in the reviewing of the Albanian Procedure Criminal Code, which may include the legal issues related to violence against women.

Recent changes of Penal Code made by the Law No. 23/2012 "On some additions and amendments to Law no. 7895, dated 27.1.1995 "Penal Code of the Republic of Albania", amended "[nw March 2012] which took time on discussions on the decriminalization of prostitution, brought no results. So, the proposal was crashed with the argument that the exercise of prostitution can not be accepted by the "tradition of the people" and etc. But, for the "gender equality" was added a paragraph which condemn the "opposing party." In the second paragraph of Article 113 is added a second paragraph with a new content: "Provision of compensation for the personal benefit of prostitution is punishable by a fine or imprisonment up to three years."

Till January 2001, our Criminal Code has Article 113 - Prostitution- which is punishable by a fine or up to three years' imprisonment. A report by the Council of Europe observed that Albanian law is unclear whether the prostitute and/or the client are punishable under the law. This is another issue for further negotiations with the interested stakeholders.

The decisision of the Minister Council Of Albania - No.334, date 17.2.2011 "For the mechanisms of the coordination of work for the refering cases of Domestic violence and its way of proceeding", which creates this mechanism with the resposability to

coordinate the local committee networks, interdisciplinary equips and local coordinators about the domestic violence.

New decisions of the Ministry of Health (secondary acts) for the implementation of the Domestic violence law.

The decision of the Minister's Council for "Fixing of criteria, procedures and level of Economical Help" for some Chances of the decision No 787 date 14.12.2005 for the Economical Help offered by Economical Help Office in Municipality for all victims of domestic violence whose have a protection order decision ("Vendimit per disa Ndryshime dhe shtesa ne Vendimin nr. 787 date 14.12.2005 te Keshillit te Ministrave, "Per percaktimin e kritereve, te Procedurave dhe mases se ndihmes ekonomike" te ndryshuar, dhe nenit 18/2 te tij.)

- 4.** In the experience of your organisation / in your professional experience, what are the main issues which arise in your jurisdiction with respect to the enforcement of civil protection orders? (e.g., what is being done well in your jurisdiction and what could be improved?)

Albania's Law on Measures Against Violence in Family Relations was passed in 2006 and includes a statement calling for its entry into force on 1 June 2007 (Albania 2006, Art. 26). The purpose of the law is "[t]o prevent and reduce domestic violence in all its forms by appropriate legal measures" and "[t]o guarantee protection through legal mbeshtetja falas le per te deshiruarto members of the family who are subject to domestic violence, paying particular attention to needs of children, the elderly and the disabled" (ibid., Art. 1). The law allows for victims of domestic violence to be issued protection orders, establishes special units for domestic violence in police departments, and outlines specific responsibilities for the ministries of the Interior, Health, and Justice, as well as local authorities (ibid., Art. 7, 13). Amendments to the law were added on 30 September 2010 (AI 2011; CLCI 6 Sept. 2011). These call for the establishment of a shelter for victims of domestic violence and a coordinated system of referring cases of domestic violence among authorities (ibid.; AI 2011).

The Ministry of Labour, Social Affairs, and Equal Opportunities is the agency responsible for implementing laws and programs related to domestic violence and gender equality (Albania n.d.). The Ministry is also responsible for implementing and monitoring the National Strategy on Gender Equality and Domestic Violence (ibid.; AI Mar. 2010, 8).

The government still needs to establish some services for domestic violence victims, including free legal assistance to victims, local governmental 24-hour hotlines, and local governmental rehabilitation centres for victims and abusers. Neither the social services provided by local governments or the health services provided by health service centres are "effective[ly]" serving victims of domestic violence.

The European Union (EU) reports that although Albania has made progress in establishing a "legal and institutional framework" to prevent domestic violence, resources to support the laws and policies are "insufficient" at both the national and local level (EU 3 June 2010, 3).

Many women who initially apply for protection orders do not complete the process (AI 2011; Orndorff Feb. 2011, 4; CLCI Nov. 2010, 7). The CLCI (an Albanian NGO) reports that between June 2009 and June 2010, 406 claims for warrants of protection and immediate warrants of protection were presented at court in Tirana (ibid.). But of those 406 claims, 116 were withdrawn by the claimant and 162 were closed when the claimant did not appear in court (ibid.). By November 2010, the court had issued a decision in only 128 of the 406 cases, 97 of which resulted in an admission of the claims (ibid.). Providing somewhat similar figures, AI reports that in 2010, the Tirana District Court received

538 petitions for protection orders, but it issued only 129 (2011). According to AI, many women withdraw their requests for protection because of social and economic pressures and the absence of free legal aid (2011).

The GADC, AWEN, and Network Against Gender-based Violence and Trafficking shadow report indicates that the law envisages protection for all family members, regardless of age or gender, and includes former family members, such as former spouses and partners (GADC et al. June 2010, para. 108). However, the NGOs note that protection orders are not granted in cases of other romantic relationships, such as between girlfriends and boyfriends or engaged-to-be-married couples (*ibid.*, para. 109).

According to information on the UN Secretary-General's database on violence against women, the Albanian government ran nationwide public education campaigns to raise awareness of domestic violence in 2007 and 2008 and provided training about violence against women to teachers in 2008 and to police officers in 2006 and 2008 (UN n.d.).

The EU and AI have also noted that police require further training and resources to ensure that protection orders are enforced, particularly in rural areas (EU 3 June 2010, 4; AI Mar. 2010, 7). While the police often initiate civil cases for protection orders, they do not always pursue criminal charges when it is the more appropriate response (*ibid.*; EU 3 June 2010, 4). AI notes that in 2008, the Tirana District Court initiated 228 civil cases for protection orders, but only 32 cases included criminal charges against the abuser (AI Mar. 2010, 15). According to AI, the Albanian police generally neglect to press criminal charges against abusers who violate protection orders, despite it being a criminal offence punishable by a fine or up to two years imprisonment (*ibid.*, 4, 7).

- Judiciary

Court statistics do not show how many cases related to domestic violence are prosecuted and how many result in convictions (AI Mar. 2010, 14).

The EU indicates that the Albanian judiciary needs "systematic training and capacity-building" in handling cases of domestic violence (EU 3 June 2010, 4). AI reports that although the law allows for it, some judges "are reluctant" to evict abusers from the home (AI Mar. 2010, 7). Because there is a housing shortage and low income levels in Albania, still other judges order the perpetrator to live in one part of the home and the victim in the other (*ibid.*).

Several sources report that victims of domestic violence do not have access to government-funded legal aid (GADC et al., para. 124; Vatra 2011, 13; CLCI 6 Sept. 2011), although access to free legal aid is required by law (*ibid.*; Vatra 2011, 13).

- 5.** Please briefly list the main national or regional support facilities for victims of domestic violence (and / or any crimes or behaviours described in Question 9, below).

The Albanian government operates a national shelter for victims of domestic violence (CLCI 6 Sept. 2011; Vatra 24 Aug. 2011; UN 31 Aug. 2011). In correspondence with the Research Directorate, a project officer with the UN joint program on Gender Equality and Domestic Violence explained that the shelter, which opened in Tirana in April 2011, can accommodate approximately 30 to 35 women and children (up to the age of 14) (*ibid.*). The Executive Director of the Vatra Psycho-Social Centre said that the national shelter can accommodate up to 40 people per day and that there is no time limit for how long they can stay at the shelter (Vatra 24 Aug. 2011).

Sources report that some NGOs also operate shelters for victims of domestic violence (ibid.; UN 31 Aug. 2011; US 8 Apr. 2011, Sec. 6). Three sources indicate that there are NGO-operated shelters in Tirana, Elbasan, and Vlora (ibid.; UN 31 Aug. 2011; Vatra 24 Aug. 2011). Although Vatra maintains that these are the only three NGO-operated shelters for victims of domestic violence in Albania (Vatra 24 Aug. 2011; ibid. 2011, 12), the UN project officer reports that there are also NGO-operated shelters in Shkodra and Pogradec (UN 31 Aug. 2011). Country Reports 2010also indicates that, in addition to the ones in Tirana, Elbasan (in Elbasan is a short term center for the domestic violence victim including the time need to take a protection order by her and to be after that refered to another shelter), and Vlora, there is another in Gjirokaster (US 8 Apr. 2011, Sec. 6).

In correspondence with the Research Directorate, the Vatra executive director explained that her organization operates a shelter, which can accommodate up to 20 people, and provides other services in Vlora for victims of domestic violence (Vatra 24 Aug. 2011). The Executive Director also indicated that the shelter in Tirana, the Centre for Women and Girls, can accommodate up to 14 people (ibid.). She added that whether they have a protection order, both of these shelters provide services and accommodation for victims of domestic violence (ibid.). She also noted that the "Hena e Re" shelter in Elbasan has the capacity to house 14 people, but requires the women seeking refuge to have a protection order against the perpetrator (ibid.). The UN project officer indicated that the NGO-operated shelters can accommodate 10 to 12 women and children (UN 31 Aug. 2011).

Several sources indicate that the number of shelters in Albania is inadequate (AI Mar. 2010, 11; UN 14 Mar. 2011, para. 57; Vatra 2011, 12; EU 3 June 2010, 4; Albania Mar. 2009, 93). In a telephone interview with the Research Directorate, a faculty member at the School of Public Health and Health Services, George Washington University (GWU), who completed field work on domestic violence in Albania, explained that some organizations help victims who are in an emergency find a safe place to stay through informal networking (Faculty Member 24 Aug. 2011). Similarly, AI reports that in Durrës, some NGO employees, lawyers, or police officers provide temporary accommodation to victims in their own homes because of a lack of other options (AIMar. 2010, 11).

Sources report that NGOs providing services to victims of domestic violence rely on funding from donors (GADC et al. June 2010, para. 131; UN 14 Mar. 2011, para. 55, 57). The GWU faculty member explained that these NGOs have "limited and tenuous funding" and that, after a women has filed for a protection order, they are limited in how they can help (24 Aug. 2011). An example of this is found in the AI report, which indicates that between July 2009 and January 2010, a funding shortage meant that the NGO-operated shelter in Tirana could provide shelter to only a few victims who were in an emergency situation (AI Mar. 2010, 10-11). Albanian NGOs indicate that, according to the law, the government should provide funding to NGOs that offer legal and psycho-social support to victims of domestic violence; however, as of June 2010, the funding had not been implemented (GADC et al. June 2010, para. 131).

Part II. Recognition and enforcement of foreign civil protection orders

- 6.** In the experience of your organisation / in your professional experience, have you encountered problems of persons who are protected by a civil protection order in one State having this foreign protection order recognised and / or enforced in another State?

YES

- NO
 - Not in a position to know
- If YES, please describe:

Part III. Views on a potential international convention in this area

7. Are there other situations of which you are aware where a new international Convention, which may include an international co-operation system, may be helpful to victims or potential victims of behaviours commonly covered by civil protection orders (e.g., domestic violence, stalking, etc.), for instance, in order to share information among national authorities across international boundaries, to provide information to at-risk persons regarding international travel, to help ensure a civil protection order will be recognised and enforced abroad, etc.?

- YES
- NO
- Not in a position to know

Comments: Lack of information is one of our obstacles on the evidmentation of victims of violence, of their problems and the way how we can interfere to protect them in coordination and collaboration with other social actors.

8. If the Hague Conference were to develop a new international Convention in this area, in your view what would be the most desirable features of this new instrument? (Please check all which apply.)

- a. Immediate, *prima facie*, enforceability of foreign civil protection orders by enforcement officials
- b. An international civil protection order multilingual certificate which must be applied for in the State of origin in order to be internationally enforceable
- c. Co-operative mechanisms including an international database registering enforceable civil protection orders
- d. A Convention which covers civil protection orders issued by courts and by administrative and other authorities
- e. A Convention that provides that enforcement officers have liability protection for good faith actions
- f. A Convention which addresses a broad scope of types of civil protection orders (e.g., including those addressing the types of behaviours listed in Question 10, below)
- g. Other features. Please specify:

Further comments:

9. If the Hague Conference were to develop a new international Convention in this area, in your view which behaviours / situations should be covered or targeted by such a Convention? (Please check all which apply.)

- a. Domestic violence
- b. Sexual assault
- c. Dating violence
- d. Stalking
- e. Forced marriage
- f. So-called "honour crimes"
- g. Human trafficking
- h. All of the above
- i. Other behaviours / situations. Please specify:

Please provide any comments on your above choices:

10. Are you / is your organisation of the view that the Hague Conference should develop a new international Convention (or other mechanisms) for the recognition and enforcement of foreign civil protection orders (i.e., so that a person protected by a

protection order in one State can quickly have that order recognised and enforced in a foreign State)?

- YES
- NO
- Not in a position to know

Comments:

11. If desired, please give any comments the models described in [Preliminary Document No Z](#) (Section 4)⁴ or on any other existing model for a possible future Convention in this field (e.g., based on current national or regional instruments or otherwise):
12. Please attach any other information or resource documents to this Questionnaire which you consider may be useful for the current assessment.

⁴ See Permanent Bureau, Prel. Doc. No 7, *supra*, note 2.