

Organization for Security and Co-operation in Europe
Mission in Kosovo

**REACT REPORT: RESPONSES TO CASES OF
DOMESTIC VIOLENCE IN LIGHT OF THE DEATH
OF MS. ZEJNEPE BYTYÇI-BERISHA**

Introduction

The Organization for Security and Co-operation in Europe (OSCE) Mission in Kosovo is concerned by the case of the murder of Ms. Zejnepe Bytyçi-Berisha and has issued this report to highlight the urgent need for the full implementation of the legal framework for the protection of victims of domestic violence in Kosovo. The OSCE has previously reported concerns regarding the implementation of the Law on Protection against Domestic Violence (LPDV).¹ The following report outlines the background of Ms. Bytyçi-Berisha's case followed by a discussion of Kosovo's obligations under the jurisprudence of the European Court of Human Rights and the duties and responsibilities of the Kosovo Police and prosecution regarding domestic violence. This report concludes with a series of recommendations to address the issue of domestic violence in Kosovo.

Case background

On 23 October 2015, a woman – Ms. Zejnepe Bytyçi-Berisha – was stabbed to death, allegedly by her husband, after several years of being subjected to domestic violence. Ms. Bytyçi-Berisha's husband has a history of domestic violence and criminal conduct. In 2002, Ms. Bytyçi-Berisha's husband was found guilty of a violent offense perpetrated against her, and was given a 6-month suspended imprisonment sentence.² In 2008, in a separate incident – not related to domestic violence – Ms. Bytyçi-Berisha's husband was convicted of illegally possessing weapons and was sentenced to a €300 fine.

In 2012, Ms. Bytyçi-Berisha attempted to commit suicide. An investigation was opened by the police into the suicide attempt to determine whether or not there was any criminal conduct. In her statements at that time, Ms. Bytyçi-Berisha said that she had reported to the police seven or eight incidents of domestic violence perpetrated by her husband against her and their 11 year-old daughter. In her statement, she noted that nothing was done by the police. She further stated that she had been subjected to physical violence from her husband repeatedly over the years, and the day before the suicide attempt, he was physically violent towards their daughter. In the case files for this investigation, there are photographs that made it evident that her daughter had sustained physical injuries. As explained in her statement, Ms. Bytyçi-Berisha's suicide attempt was in part due to her belief that there was nowhere left to turn. The attempted suicide appears to have been a final effort to seek help from the authorities.

Having concluded that Ms. Bytyçi-Berisha did indeed attempt to commit suicide and that her injuries were self-inflicted, the police decided that the case should be closed. The case file was shared with the prosecutor, who took no action. Despite her suicide attempt, her husband's history of domestic violence and other illegal conduct, as well as the reporting and photographic evidence of domestic violence in Ms. Bytyçi-Berisha's household, at no point does it appear that either the police or prosecution took any relevant further action in the case. Such actions should have included: an investigation into the domestic violence in Ms. Bytyçi-Berisha's household; advising Ms. Bytyçi-Berisha of the possibility to seek a protection order from the court pursuant to the Articles 13 and 14 of LPDV; immediate referral of the case to the Victim's Advocate Unit,³ which is within the prosecution's office and is authorized to seek

¹ OSCE, *React Report: Emergency Protection Orders in Domestic Violence Cases* (June 2011); see also OSCE, *Adjudication of petitions for protection orders in domestic violence cases in Kosovo* (March 2012), pg. 22.

² In 2003 Ms. Bytyçi-Berisha submitted a written statement to the Centre for Social Welfare – who provided social assistance to her family – stating that the situation in her home environment had stabilized.

³ Law No. 03/L-182 on Protection against Domestic Violence, 10 August 2010.

protection orders for victims of domestic violence with the victim's consent, or referring her to the Centers for Social Welfare (CSW), which are allowed to seek protection orders for minors.⁴

The CSW in Suharekë/Suva Reka did receive the case file from the police related to Ms. Bytyçi-Berisha's attempted suicide; however as late as three weeks after the attempt. The CSW had been aware on the situation of the victim and her family for several years since the family benefitted from social assistance, and moreover the CSW was informed in 2002 that the victim's husband had been violent towards her. In an interview with the CSW officials in November 2015, the OSCE was informed that CSW provided assistance to the daughter following the 2012 incident. However, this assistance has not been documented and the OSCE could find no evidence that a protection order was ever sought relating to her daughter.

Obligations under the European Court of Human Rights (ECtHR)

There is an abundance of case-law from the European Court of Human Rights stressing that authorities have positive obligations to protect individuals from domestic violence based on the European Convention on Human Rights and Fundamental Freedoms notably Article 2 (right to life), Article 3 (prohibition against torture and inhuman or degrading treatment) and Article 8 (right to respect for private and family life).⁵ States have "a primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed-up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions".⁶ The European Convention on Human Rights is directly applicable in Kosovo, and therefore the same positive obligations bind Kosovo institutions.⁷ According to the ECtHR's case-law, for a positive obligation to arise, it must be established that the institutions knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party, yet failed to take measures within the scope of their powers which, judged reasonably, might have been expected from them in order to avoid the risk.⁸ Based on the information available to the OSCE, in 2012 the Kosovo Police and prosecution failed to take reasonable measures despite what appeared to be a real and immediate threat to Ms Bytyçi-Berisha's life.

Responsibilities of the Kosovo Police and the Prosecutor

In Kosovo, when an incident of domestic violence is brought to the attention of the police, the police have specific obligations under the LPDV to protect the victim and prevent further violence from taking place. According to the LPDV, the Kosovo Police shall respond to any report relating to acts of domestic violence or threats to commit such acts.⁹ According to the Standard Operation Procedures for Protection from Domestic Violence in Kosovo (Domestic Violence SOPs) issued in 2013: "Kosovo Police as the usual first responder is obliged to provide information to victims, guide victims through the process and inform other actors."

⁴ See Article 13 Law on Protection against Domestic Violence, *Supra* note 3.

⁵ See Article 2(1) of the European Convention on Human Rights and Fundamental Freedoms (ECHR). The first sentence of Article 2(1) of the Convention enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate states to safeguard the lives of those within its jurisdiction. (See *L.C.B v. the United Kingdom*, ECtHR Judgement of 9 June 1998, para. 36).

⁶ *Kontrova v. Slovakia*, ECtHR Judgement of 31 May 2007, para 49.

⁷ Article 22 of the constitution, 15 June 2008. See also Article 53 of the constitution which gives supremacy to the standards set by the European Court of Human Rights.

⁸ *Osman v. the United Kingdom*, ECtHR Judgment of 28 October 1998, para. 116, and *Kontrova v. Slovakia* para 49, *supra* note 6.

⁹ See Article 24(1), Law on Protection against Domestic Violence, *Supra* note 3.

As the first responder, the police are required not only to investigate potential criminal conduct, but also to use reasonable means to protect the victim, such as: informing the victim about his or her rights, including the right to request a emergency protection order pursuant to Article 13 of the LPDV, which requires the court to rule on the request within 24-hours; informing the victim about legal, psychological, and other assistance services available; and informing other relevant actors immediately, including the Victim Advocates Unit and the CSW especially if a child is involved.¹⁰ The police shall also complete an incident report whether or not a crime was committed and provide a copy of the report to the victim.¹¹

In addition to ensuring protection of the victim, the police are required under the Criminal Procedure Code (CPC)¹² to undertake a number of actions to bring perpetrators of domestic violence to justice. After receiving information of a suspected criminal offence, the police are required to conduct an investigation to determine whether a criminal proceeding is warranted and to take *all steps necessary* to collect relevant information that may be of use in criminal proceedings. On the basis of information and evidence gathered, if there is a reasonable suspicion that a criminal offence was committed, the police shall draw up a police criminal report and submit it to the prosecution. If the police have deemed that no criminal offence was committed, they have an obligation to *send a separate report to the prosecutor, explaining that there is no basis for a police criminal report.*¹³

During these initial investigation steps, the police and the prosecutor work together, but the police have now more autonomy under the CPC, whereas under the prior Provisional Criminal Procedure Code (PCPC),¹⁴ the earliest steps of an investigation were the responsibility of the prosecutor.¹⁵ Upon receiving the criminal report, the prosecutor has several options available: dismiss the criminal report; request that the police gather supplemental information if the information contained in the report is insufficient; initiate an investigation based on the criminal report; or file an indictment directly.¹⁶ If the prosecutor becomes aware of any evidence related to the commission of another criminal offence during the investigation, they can initiate a separate investigation of the new criminal offence or expand the existing investigation.¹⁷ Domestic violence is not a separate offence in the Criminal Code.¹⁸ Cases of domestic violence are generally prosecuted as “Light Bodily Injury” committed against a “vulnerable victim” under Article 188(3) of the Criminal Code. Of note, prosecutors have the duty to investigate and prosecute this offence *ex officio*.¹⁹

Conclusion

In contravention of the legal framework applicable in Kosovo – including the international standards incorporated therein – none of the steps foreseen under the CPC or the LPDV appear to have been taken in the case of Ms. Bytyçi-Berisha by the police or the prosecution.

¹⁰ See Article 24(3) and (4), *Ibid.*

¹¹ See Article 24(4), *Ibid.*

¹² Code No. 04.L-123 on Criminal Procedure, 1 January 2013.

¹³ See Articles 69(1), 70(2), 81(1) and (4), *Ibid.*

¹⁴ Provisional Criminal Procedure Code of Kosovo, UNMIK/REG/2003/26, 6 July 2003.

¹⁵ See Article 70(2) CPC and article 200(2) and (3) PCPC. *See also* Guide to the CPC, p. 45.

¹⁶ See Article 83 and 101(2) CPC. Prosecutors had the same duties under the PCPC (*see* articles 208-209 PCPC).

¹⁷ See Article 103(4) CPC (*see* article 222(2) PCPC).

¹⁸ Code No. 04/L-082, Criminal Code of Kosovo, 1 January 2013.

¹⁹ Article 49 CPC (*see* article 6 PCPC). Some cases of domestic violence do not relate to physical violence, but threats. Investigations of Threat as a criminal offence pursuant to Article 185 of the Criminal Code are initiated following a motion filed by the injured party.

Both Ms. Bytyçi-Berisha and her daughter appear to have been left without any of the protections accorded under the law to victims of domestic violence even though the police and CSW knew of the violent past of Ms. Bytyçi-Berisha's husband. The police also had ground for reasonable suspicion that domestic violence was occurring based on the evidence in the case file accompanying the investigation of Ms. Bytyçi-Berisha's attempted suicide. It does not appear that any appropriate steps were taken to investigate potential criminal conduct on the part of Ms. Bytyçi-Berisha's husband by either the police or the prosecution. Not a single criminal report was raised in this case against Ms. Bytyçi-Berisha's husband for domestic violence at any time after the 2002 conviction. The relevant institutions appear to have taken too narrow a view of their roles and responsibilities in the case, focusing more on clearing the underlying investigation – in other words, determining whether Ms. Bytyçi-Berisha's attempted suicide was self-inflicted – than responding holistically to the broader issue of a violent household and following up with a separate investigation into the allegations of domestic violence.

The OSCE considers that this is not the only case where the institutions have failed to respond to domestic violence incidents appropriately. The OSCE regularly monitors cases relating to petitions for a protection order on the grounds that victims have been subjected to acts or threats of domestic violence, either physically or psychologically; in other words, on grounds that indicate criminal conduct by the perpetrator. In these cases, the OSCE rarely observes any parallel criminal proceedings against the perpetrators even when the protection order has been subsequently granted and a reasonable suspicion of criminal conduct exists.²⁰ This may indicate a failure to properly co-ordinate and take a holistic approach to domestic violence cases by the relevant institutions involved, ensuring both protection for the victims and punishment for the perpetrator. As an example, the OSCE has observed that there is no adequate follow-up to protection orders (for example, by the Victims' Advocates Unit or Kosovo Police) to ensure criminal proceedings are brought once a reasonable suspicion has been established.²¹ Similarly, discussions with CSW staff in 2015 indicate that CSW have been primarily informed of cases of domestic violence by the courts and not the Kosovo Police. As a result, it does not appear that the police are consistently performing their first responder role foreseen in the Domestic Violence SOPs, to "guide victims through the process and *inform other actors* [sic]." Finally, the OSCE has observed that delays persist in the hearing of petitions for emergency protection orders in domestic violence cases. In only 7 out of 13 cases monitored between 2013 and 2015 was the requested emergency protection order issued within the 24-hour mandatory timeframe.

²⁰ OSCE monitored 94 civil cases between 2013 and 2015 (13 of which were for emergency protection orders) during which the victim petitioned the court for a protection order on the ground that they had been subjected to acts or threats of domestic violence. Only in 28 cases criminal reports were filed by the police against the perpetrators for the alleged acts of domestic violence.

²¹ See also European Union Rule of Law Mission in Kosovo, *Police and Prosecutor Responses to Domestic Violence in Kosovo* (2015), pages 51-53 (presenting a study of Case 'X', chronicling a real-life series of incidents that occurred in the context of an abusive domestic relationship. In August 2014, the suspect allegedly assaulted the victim in a public place. The Kosovo police never sent a criminal report to the prosecution for this incident and no indictment has been filed to date in relation to this incident. Moreover, a civil judge interviewed stated that he/she does not "receive feedback if civil and criminal proceedings relating to the same victim and alleged perpetrator occur simultaneously") available at: http://www.eulex-kosovo.eu/eul/repository/docs/Libri_Final.pdf

Recommendations

- In accordance with their obligations under the Kosovo legal framework, Kosovo Police must investigate complaints relating to domestic violence and submit a criminal report to the prosecution if there is a reasonable suspicion of a criminal offence;
- Prosecutors must further review and carefully consider cases of domestic violence where the police did not deem that criminal proceedings were warranted;
- Kosovo Police, prosecutors, Victim Advocates Units, Centres for Social Welfare, and courts should improve co-operation to ensure that victims of domestic violence receive the protection needed and that perpetrators face criminal proceedings;
- Kosovo Police must immediately inform the Centres for Social Welfare about all acts of domestic violence, in particular when a child is involved, as well as the Victim Advocates Units;
- Review the implementation of the Standard Operation Procedures for Protection from Domestic Violence in Kosovo to ensure that effective coordination mechanisms are in place to assist victims of domestic violence;
- Courts must comply with the 24-hour time limit for the issuance of an emergency protection order.