

REGULATION NO. 2003/12

ON PROTECTION AGAINST DOMESTIC VIOLENCE

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo,

Taking into account, *inter alia*, the International Covenant on Civil and Political Rights, the European Convention on Human Rights and Fundamental Freedoms, the Convention on the Elimination of all forms of Discrimination Against Women, and the International Convention on the Rights of the Child,

Recognizing that domestic violence, in all its forms, cannot be tolerated and that there should be effective legal protection and assistance mechanisms for victims of domestic violence,

Hereby promulgates the following:

CHAPTER I: General Provisions

Section 1 Definitions

For the purposes of the present Regulation:

1.1 “Domestic relationship” means a relationship between two persons:

(a) Who are engaged or married to each other or are co-habiting with each other without marriage;

(b) Who share a primary household in common and who are related by blood, marriage, or adoption or are in a guardian relationship, including parents, grandparents, children, grandchildren, siblings, aunts, uncles, nieces, nephews, or cousins; or

(c) Who are the parents of a common child.

1.2 “Domestic violence” means one or more of the following intentional acts or omissions when committed by a person against another person with whom he or she is, or has been, in a domestic relationship:

(a) Inflicting bodily injury;

(b) Non-consensual sexual acts or sexual exploitation;

(c) Causing the other person to fear for his or her physical, emotional or economic well-being;

(d) Kidnapping;

(e) Causing property damage;

(f) Unlawfully limiting the freedom of movement of the other person;

(g) Forcibly entering the property of the other person;

(h) Forcibly removing the other person from a common residence;

(i) Prohibiting the other person from entering or leaving a common residence; or

(j) Engaging in a pattern of conduct with the intent to degrade the other person.

1.3 “Victim” means a person subjected to domestic violence as defined in section 1.2.

1.4 “Petitioner” means a person who files a petition for a protection order or an emergency protection order.

1.5 “Respondent” means a person who is alleged to have committed an act or acts of domestic violence and against whom a protection order or an emergency protection order is sought.

1.6 “Protected party” means a person subjected to domestic violence and for whose benefit a protection order or an emergency protection order is sought.

1.7 “Law enforcement authority” means the Civilian Police of the United Nation Interim Administration Mission in Kosovo, also known as the United Nations International Police or UNMIK Police, and the Kosovo Police Service.

1.8 “Victim Advocate” means a person who is authorised by the competent authority to advocate victims’ interests as an authorised representative and to provide support and assistance to victims.

1.9 “Child” means a person who has not reached the age of eighteen (18) years.

Section 2

Measures in Protection Orders, Emergency Protection Orders and Interim Emergency Protection Orders

2.1 A protection order may:

(a) Prohibit the respondent from committing or threatening to commit any act of domestic violence against the protected party and/or a person with whom the protected party has a domestic relationship;

(b) Prohibit the respondent from harassing, annoying, contacting, or otherwise directly or indirectly communicating with the protected party and/or a person with whom the protected party has a domestic relationship;

(c) Prohibit the respondent from approaching within a specified distance of the protected party and/or a person with whom the protected party has a domestic relationship;

(d) Prohibit the respondent from being at the place of work of the protected party or at another specified locality;

(e) Limit the access of the respondent to the child of the protected party on such conditions as may be appropriate;

(f) Prohibit the respondent from entering or remaining in the temporary or permanent residence of the protected party, or a portion thereof, regardless of respondent’s ownership or occupancy rights;

(g) Order an authorised person to accompany the protected party or the respondent to the residence of the protected party and supervise the removal of personal property belonging to that person or another specified person;

(h) Order the seizure of weapons (as defined in UNMIK Regulation No. 2001/7 of 21 February 2001 On the Authorization of Possession of Weapons in Kosovo), including hunting and recreational weapons;

(i) Order the respondent to allow the protected party to use the residence shared by the respondent and the protected party, or a portion thereof;

(j) Order the respondent to pay the rent or mortgage on the temporary or permanent residence of the protected party and/or to pay for the maintenance of the protected party and any child the respondent has an obligation to support;

(k) Order the return of the child of the protected party to the protected party;

(l) Grant temporary custody of the child of the protected party to the protected party;

(m) Prohibit either the respondent or the protected party from disposing of any property for a temporary, specified period of time;

(n) Grant the protected party the exclusive possession and use of specified personal property of the protected party;

(o) Order the Police Commissioner to suspend or revoke a Weapon Authorization Card issued under UNMIK Regulation 2001/7 of 21 February 2001 on the Authorization of Possession of Weapons in Kosovo; or

(p) Order any other measure that is necessary to protect the safety, health or well-being of the protected party and/or a person with whom the protected party has a domestic relationship.

2.2 An emergency protection order may order one or more of the measures provided for in paragraphs (a) – (h) of section 2.1.

2.3 An interim emergency protection order may order one or more of the measures provided for in paragraphs (a) – (c) of section 2.1.

Section 3 Relationship with Other Orders

3.1 Notwithstanding any other order issued by a court or other competent authority, a protection order, an emergency protection order or an interim emergency protection order may be issued in accordance with the present Regulation.

3.2 The issuance of a protection order, an emergency protection order or an interim emergency protection order shall not prejudice the property or custody rights of any person beyond the duration of such order.

Section 4
Assistance of Legal Counsel

The victim and the respondent may be assisted by legal counsel in all proceedings related to a protection order, an emergency protection order or an interim emergency protection order.

CHAPTER II: Protection Orders and Emergency Protection Orders

Section 5
Court Jurisdiction

5.1 The municipal court which has jurisdiction over the municipality where the petitioner permanently or temporarily resides shall be competent to review a petition for a protection order or an emergency protection order and to issue such order.

5.2 Any municipal court shall be competent to review a petition for a protection order or an emergency protection order and to issue such order, where the competent court in section 5.1 has transferred a petition for a protection order or an emergency protection order to that court and such court has jurisdiction over the municipality where the protected party has changed residence, taken up a temporary residence or where such transfer is in the best interests of the protected party.

5.3 If a claim pursuant to the applicable law on marriage and family relationships has already been filed in a competent court, such court shall also be competent to review a petition for a protection order or an emergency protection order and to issue such order.

5.4 The review of a petition for a protection order or an emergency protection order and the issuance of such order shall be conducted by a single judge.

5.5 The court that issues a protection order or an emergency protection order shall be competent to determine any violation of such order pursuant to section 15.

Section 6
Petitions for Protection Orders or Emergency Protection Orders

6.1 A petition for a protection order may be filed by:

- (a) The protected party; or
- (b) The legal representative of the protected party.

6.2 A petition for an emergency protection order may be filed by:

- (a) The protected party;
- (b) The legal representative of the protected party;
- (c) A person with whom the protected party has a domestic relationship;
- (d) A representative from the Center for Social Work in the municipality where the protected party permanently or temporarily resides;
- (e) A person with direct knowledge of an act or acts of domestic violence against the protected party; or
- (f) A Victim Advocate, upon the consent of the protected party.

6.3 A petition for a protection order or an emergency order shall be filed in writing or orally pursuant to the Law on Contested Procedure and shall include the following:

- (a) The name of the court;
- (b) The name, address and occupation of the petitioner and the respondent;
- (c) The name and address of the protected party and/or a person who has a domestic relationship with the protected party and who is to be protected by the protection order or emergency protection order and the relationship of such person(s) to the respondent;
- (d) A clear description of the subject matter of the dispute, including the specific reason(s) the petitioner fears that the safety, health or well-being of the protected party and/or a person who has a domestic relationship with the protected party and who is to be protected by the protection order or emergency protection order is jeopardized by the respondent;
- (e) The specific protective measures requested; and
- (f) Where possible, evidence to support the petition.

6.4 A petition for a protection order or an emergency order may be filed together with a claim filed pursuant to the applicable law on marriage and family relationships.

6.5 The petitioner is discharged from court taxes.

6.6 The petitioner shall have a Victim Advocate represent his or her interests, upon his or her consent, including during the appeals process.

6.7 If the disclosure of the permanent or temporary address of the petitioner, the protected party and/or a person who has a domestic relationship with the protected party and who is to be protected by the protection order or emergency protection order would endanger such person(s), the one or more following measures may be taken:

- (a) The petition may provide an alternative address;
- (b) The alternative address provided in the petition shall be the only address reflected in public court documents and records; or
- (c) If the judge determines that disclosure of an address in the court records is necessary, the records which reflect that address shall be sealed.

Section 7 Review of Petitions for Protection Orders

7.1 The court shall decide on a petition for a protection order within fifteen days of receipt of the petition.

7.2 In reviewing a petition for a protection order, the court shall hold a hearing so that the following persons may be heard:

- (a) The protected party and/or an authorised representative;
- (b) The respondent and/or an authorised representative;
- (c) The petitioner;
- (d) A representative from the Center for Social Work of the municipality where the person referred to below permanently or temporarily resides in a case where,
 - (i) The petitioner is under the age of eighteen (18) years or lacks legal capacity; or
 - (ii) The alleged acts of domestic violence impact on a person who is under the age of eighteen (18) years or lacks legal capacity; and
- (e) Any witness deemed necessary by the court.

7.3 The court shall immediately summon the persons referred to in section 7.2, in accordance with the Law on Contested Procedure. Where a representative from the Center for Social Work has been summoned, the court shall also request that such person present a written opinion assessing the situation of the protected party.

7.4 The hearing shall be held in the absence of the respondent where such individual was properly summoned and the petition is supported by sufficient evidence.

7.5 The petition shall be considered withdrawn if neither the protected party nor the authorised representative of the protected party appear at the hearing, where such persons were properly summoned and did not inform the court of the reasons for their absence. The withdrawal of the petition does not prevent the submission of another petition.

Section 8 Issuance of Protection Orders

8.1 The court shall issue a protection order to order one or more of the measures provided for in section 2.1, if it determines that:

(a) There are grounds to believe that the respondent has committed or threatened to commit an act of domestic violence; and

(b) The issuance of the protection order is necessary to protect the safety, health or well-being of the protected party or a person who has a domestic relationship with the protected party and who is to be protected by the protection order.

8.2. Whether or not there is a criminal proceeding against the respondent shall not prejudice a decision on a protection order.

8.3 The protection order shall state:

(a) The measure ordered by the court;

(b) The duration of the protection order, which shall not exceed twelve (12) months;

(c) A warning that a violation of the protection order constitutes a criminal offence;

(d) A notification of the right to appeal the protection order within eight (8) days from the receipt of such order; and

(e) A notification that the respondent may be assisted by legal counsel.

8.4 A protection order issued by the court shall be immediately served on the respondent, in accordance with the Law on Contested Procedure.

8.5 Within twenty-four (24) hours of issuing a protection order, the court shall deliver one copy to each of the following persons:

(a) The protected party and other persons named in the protection order;

(b) The petitioner;

(c) The local police station in the locality where the protected party and other persons named in the protection order reside on a permanent or temporary basis; and

(d) The Center for Social Work in the municipality where the protected party and other persons named in the protection order reside on a permanent or temporary basis.

8.6 A protection order shall be effective immediately upon issuance by the court and shall be enforceable against the respondent upon personal service on the respondent, in accordance with the Law on Contested Procedure.

Section 9

Review of Petitions for Emergency Protection Orders

9.1 The court shall decide on a petition for an emergency protection order within twenty-four (24) hours of the filing of the petition.

9.2 In reviewing a petition for an emergency protection order, the court shall hold a hearing so that the following persons may be heard:

(a) The protected party and/or an authorised representative;

(b) The respondent and/or an authorised representative;

(c) The petitioner; and

(d) Any witness deemed necessary by the court.

9.3 The court may hold a hearing in the absence of the respondent, where appropriate.

9.4 The court shall immediately summon the persons referred to in section 9.2, in accordance with the Law on Contested Procedure.

Section 10
Issuance of Emergency Protection Orders

10.1 The court may issue an emergency protection order to order one or more of the measures provided for in paragraphs (a) – (h) of section 2.1, if it determines that:

(a) There are grounds to believe that the respondent has committed or threatened to commit an act of domestic violence;

(b) The respondent poses an immediate or imminent threat to the safety, health or well-being of the protected party or a person who has a domestic relationship with the protected party and who is to be protected by the protection order; and

(c) The issuance of the emergency protection order is necessary to protect the safety, health or well-being of the protected party or a person who has a domestic relationship with the protected party and who is to be protected by the protection order.

10.2. Whether or not there is a criminal proceeding against the respondent shall not prejudice a decision on an emergency protection order.

10.3 The emergency protection order shall state:

(a) The measure ordered by the court;

(b) The duration of the emergency protection order, which shall expire at the end of the hearing for the confirmation of the emergency protection order;

(c) A warning that a violation of the emergency protection order constitutes a criminal offence;

(d) The date of a hearing for the confirmation of the emergency protection order, which shall be within twenty (20) days of the issuance of the emergency protection order;

(e) A notification that the respondent may be assisted by legal counsel.

10.4 An emergency protection order issued by the court shall be immediately served on the respondent, in accordance with the Law on Contested Procedure.

10.5 Within twenty-four (24) hours of issuing an emergency protection order, the court shall deliver one copy to the following persons:

(a) The protected party and other persons named in the emergency protection order;

(b) The petitioner;

(c) The local police station in the locality where the protected party and other persons named in the emergency protection order reside on a permanent or temporary basis; and

(d) The Center for Social Work in the municipality where the protected party and other persons named in the emergency protection order reside on a permanent or temporary basis.

10.6 An emergency protection order shall be effective immediately upon issuance by the court and shall be enforceable against the respondent upon personal service on the respondent, in accordance with the Law on Contested Procedure.

10.7 At the hearing for the confirmation of the emergency protection order, the court shall proceed in accordance with section 7. At the end of such hearing, the court may:

(a) Order the termination of the emergency protection order; or

(b) Issue a protection order, in accordance with section 8. Such protection order may modify the terms of the emergency protection order, where necessary.

Section 11

Appeals

11.1 An appeal against a decision on a petition for a protection order or a decision on the confirmation of an emergency protection order shall be filed within eight (8) days from the issuance of such decision.

11.2 The filing of an appeal shall not stay the execution of a protection order.

Section 12

Modifications, Terminations and Extensions

12.1 Where there are significantly changed circumstances, the protected party or the respondent may file a petition for the modification or termination of a protection order.

12.2 Upon receipt of a petition for the modification or termination of a protection order, the court shall proceed with a review of such petition in accordance with section 7. At the end of such review, the court may

- (a) Order that the protection order remain in force;
- (b) Order a modification of the protection order, where warranted by significantly changed circumstances; or
- (c) Order the termination of the protection order, where the criteria set forth in section 8.1 no longer apply due to significantly changed circumstances.

12.3 The filing of a petition for the modification or termination of a protection order shall not suspend the execution of the protection order.

12.4 Within fifteen (15) days prior to the expiration of a protection order, the protected party or his or her legal representative may file a petition for the extension of the protection order. If no petition for extension is filed, the protection order will terminate automatically on the day of expiration.

12.5 Upon receipt of a petition for the extension of a protection order, the court shall proceed with a review of such petition in accordance with section 7. At the end of such review, the court may:

- (a) Confirm the termination of the protection order on its date of expiration; or
- (b) Order the extension of the protection order, where the criteria set forth in section 8.1 apply.

12.6 Sections 8.4 to 8.6 shall apply to orders issued pursuant to the present section. Where the court orders the modification or extension of a protection order, pursuant to sections 12.2(b) or 12.5(b), section 8.3 shall also apply.

CHAPTER III: Authority and Responsibilities of Law Enforcement Authorities

Section 13 Interim Emergency Protection Orders

13.1 Outside of court hours, a request for an interim emergency protection order may be submitted to the law enforcement authorities by:

- (a) The protected party;

- (b) The legal representative of the protected party;
- (c) A person with whom the protected party has a domestic relationship;
- (d) A representative from the Center for Social Work in the municipality where the protected party permanently or temporarily resides; or
- (e) A person with direct knowledge of an act or acts of domestic violence against the petitioner.

13.2 The on-call or acting Regional Domestic Violence Commander of UNMIK Police may issue an interim emergency protection order to order the one or more of the measures referred to paragraphs (a) – (c) of section 2.1 of the present Regulation, if he or she determines that:

- (a) There are grounds to believe that the respondent has committed or threatened to commit an act of domestic violence;
- (b) The respondent poses an immediate or imminent threat to the safety, health or well-being of the protected party or a person who has a domestic relationship with the protected party and who is to be protected by the protection order; and
- (c) The issuance of the interim emergency protection order is necessary to protect the safety, health or well-being of the protected party or a person who has a domestic relationship with the protected party and who is to be protected by the protection order.

13.3 The interim emergency protection order shall state:

- (a) The measure ordered by the on-call or acting Regional Domestic Violence Commander of UNMIK Police;
- (b) The duration of the interim emergency protection order, which shall expire on the end of the next day that the court is in operation;
- (c) A warning that a violation of the interim emergency protection order constitutes a criminal offence;
- (d) A notification that the respondent may be assisted by legal counsel in the proceedings; and
- (e) An explanation that upon the expiry of the interim emergency protection order, the protected party may file a petition for an emergency protection order which, if granted, would be subject to a confirmation hearing or a petition for a protection order which, if granted, would be subject to appeal.

13.4 An interim emergency protection order issued by an on-call or acting Regional Domestic Violence Commander of UNMIK Police shall immediately be served on the respondent, in accordance with the Law on Contested Procedure.

13.5 The law enforcement authorities shall immediately deliver one copy to each of the following persons:

(a) The protected party and other persons named in the interim emergency protection order;

(b) The petitioner;

(c) The local police stations in the localities where the petitioner and other persons named in the interim emergency protection order reside on a permanent or temporary basis;

(d) The Center for Social Work in the municipality where the protected party and other persons named in the interim emergency protection order reside on a permanent or temporary basis; and

(e) The competent municipal court.

13.6 An interim emergency protection order shall be effective immediately upon issuance by the on-call or acting Regional Domestic Violence Commander of UNMIK Police and shall be enforceable against the respondent upon personal service on the respondent, in accordance with the Law on Contested Procedure.

Section 14

Responsibilities of Law Enforcement Authorities

14.1 The law enforcement authorities shall respond to any report of acts or threats to commit acts of domestic violence or a violation of a protection order or emergency protection order, regardless of who reports.

14.2 Where there are grounds for suspicion that a crime involving domestic violence was committed, the law enforcement authorities shall arrest the alleged perpetrator if a basis for detention under the Law on Criminal Procedure exists.

14.3 The law enforcement authorities shall use all reasonable means to protect the victim and prevent further violence, including, but not limited to:

(a) Informing the victim or the legal representative of the victim of his/her rights pursuant to this Regulation, including the right to request an interim emergency protection order pursuant to section 13 and the rights provided for under this section;

(b) Informing the victim about legal, psychological, social and other assistance services available from governmental institutions as well as from the authorised network of non-governmental organisations providing victim services;

(c) Informing the relevant service providers referred to in section 14.3 (b) of an incident of domestic violence and facilitating contact between the service provider and the victim, upon the request of the victim;

(d) Providing or arranging transport through another agency for the victim and the victim's dependents to an appropriate medical facility for treatment and/or a medical examination;

(e) Assisting the victim in removing only essential personal property if the victim chooses to leave the shared domestic residence;

(f) Providing or arranging transport through another agency for the victim and, where appropriate, the victim's dependents to a shelter or other suitable safe haven, upon the request of the victim;

(g) Providing protection, if possible, to the reporter of violence, in accordance with relevant legal obligations regarding protection of witnesses;

(h) In the case of a protection order or emergency protection order ordering the measure provided for in section 2.1(f), removing the respondent from the temporary or permanent residence of the protected party, or a portion thereof; or

(i) Providing the victim or the legal representative of the victim an official contact for an investigating officer within the law enforcement authorities should further assistance be required. In case of the absence of the investigating officer, any other officer within the law enforcement authorities will assist the victim.

14.4 The law enforcement authorities shall complete an incident report whether or not a crime was committed or an arrest was made and provide a copy of the incident report to the victim or the legal representative of the victim.

14.5 Where the victim is a person under the age of eighteen (18) years or a person who does not have legal capacity, or where the acts of domestic violence are so grave as to impact the safety or security of a person under the age of eighteen (18) years or a person who does not have the legal capacity living in the same residence, the law enforcement authorities shall immediately report the incident to the Centre for Social Work of the Municipality where that person permanently or temporarily resides.

14.6 Where there are grounds for suspicion that a crime involving domestic violence was committed, whether or not the suspected perpetrator has been arrested or his/her whereabouts ascertained, the law enforcement authorities shall regularly provide the

victim or the legal representative of the victim with an update on the status of the investigation, including any information on the whereabouts of the suspected perpetrator or his or her release from custody.

CHAPTER IV: Criminal Offences and Proceedings

Section 15

Violation of Protection Orders, Emergency Protection Orders and Interim Emergency Protection Orders

Whoever violates a protection order, emergency protection order or an interim emergency protection order, in whole or in part, commits a criminal offence and shall be sentenced to a fine of 200 EURO to 2000 EURO or imprisonment of up to six months.

Section 16

Prosecution of Criminal Offences Related to Domestic Violence

16.1 A violation of a protection order, emergency protection order or an interim protection order shall be automatically prosecuted.

16.2 The crime of light bodily injury, when committed within the context of a domestic relationship, shall be automatically prosecuted.

16.3 The crime of damaging the property of another person, when committed within the context of a domestic relationship, shall be automatically prosecuted.

CHAPTER V: Final Provisions

Section 17

Implementation

The Special Representative of the Secretary-General may issue Administrative Directions for the implementation of the present Regulation.

Section 18

Applicable Law

18.1 The present regulation shall supersede any provision in the applicable law that is inconsistent with it.

18.2 The provisions of the Law on Contested Procedure shall be applicable where not specified in this Regulation as a special contested procedure.

Section 19
Entry into Force

The present regulation shall enter into force on 9 May 2003.

Michael Steiner
Special Representative of the Secretary-General