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**Training Manual for Judges and Prosecutors on Ensuring Women's  
Access to Justice**

**COUNTRY CHAPTER FOR ARMENIA**

In the framework of the project  
“Improving Women’s Access to Justice in the Eastern Partnership Countries”  
(Armenia, Azerbaijan, Georgia, Republic of Moldova and Ukraine)

December 2016

The project “Improving Women’s Access to Justice in the Eastern Partnership Countries” (Armenia, Azerbaijan, Georgia, Republic of Moldova and Ukraine) is a co-operative regional initiative between the Council of Europe and the European Union (EU) for the period 2015-2017. As part of the Programmatic Cooperation Framework (PCF), it is funded by the Council of Europe and the European Union and is implemented by the Council of Europe.

The project aims to identify and support the removal of obstacles to women’s access to justice while also strengthening the capacity of each participating country to design measures to ensure that the justice chain is gender-responsive, with a focus on training for legal practitioners.

This project published five country studies on *Barriers, Remedies and Good Practices for Women’s Access to Justice*<sup>1</sup> for Armenia, Azerbaijan, Georgia, the Republic of Moldova, and Ukraine, subsequently bringing together national stakeholders and experts at regional conferences to share experience and good practices, and organised national training seminars for judges and prosecutors, in partnership with national training legal institutions.

The *Training Manual for Judges and Prosecutors on Ensuring Access to Justice for Women* was developed by a group of national and international experts and includes a general common part and a national part specific to the relevant country.

The opinions expressed in this manual are those of the authors and do not reflect the official position of the Council of Europe or the European Union. The reproduction of extracts from this document is authorised on the condition that the source is properly cited.

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<sup>1</sup> The country studies on *Barriers, Remedies and Good Practices for Women’s Access to Justice* in five Eastern Partnership countries is available at the gender equality website of the Council of Europe.

Gohar Hakobyan is the Head of Criminal Law Division at the Ministry of Justice of the Republic of Armenia. She holds LLM in International Human Rights Law from University of Essex (2016) and Master's degree in Criminal and Criminal Procedure Law from Yerevan State University (2012) where she currently teaches. She is completing her Ph.D. dissertation on the right to privacy at Yerevan State University. In 2012 she took part in the Survey on Domestic Violence in Armenia which was reflected in her Master thesis on latent crime. From 2012-2014 she worked at the Ministry of Justice and the Academy of Justice of the Republic of Armenia. In addition, she carried out researches for the European Union and OSCE on several human rights issues. In her day-to-day practice she deals with drafting various legal acts seeking to harmonize them with international human rights law. Currently she is a member of the working group drafting the Law on Preventing and Combating Domestic Violence.

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## ABBREVIATIONS

<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CoE</b>	Council of Europe
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EU</b>	European Union
<b>GBV</b>	Gender-Based Violence
<b>IC</b>	The Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention)
<b>NGO</b>	Non-Governmental Organisation
<b>OSCE</b>	Organisation for Security and Cooperation in Europe
<b>PACE</b>	Parliamentary Assembly of the Council of Europe
<b>RoA</b>	Republic of Armenia
<b>UNFPA</b>	United Nations Population Fund

## INTRODUCTORY PART

### 1. THE CURRENT STATE AND PERSPECTIVES OF IMPROVEMENT OF WOMEN'S ACCESS TO JUSTICE IN ARMENIA

#### 1.1. An overview of the current state of gender equality in Armenia.

Armenia has been divided between Eastern and Western systems of values since achieving its independence. In this respect, one of the most sensitive cultural dilemmas that the country has faced is the issue of gender equality. On one hand, Armenia still has a traditional society with a specific understanding of gender roles that are considered to be acceptable for women and men. Gender stereotypes have a significant influence in the society. Because of these stereotypes, women's role is primarily seen in the private and family sphere which results in their low level representation in politics and other areas of public life.<sup>2</sup> According to the survey conducted by YSU Center for Gender Studies and Leadership, 78% of men and 75% of women agree that the most important calling of a woman is to be a mother.<sup>3</sup> On the other hand, integration in international community and ratification of the main international human rights documents predetermined the improvement of State human rights policy, including promotion of gender equality. The country undergone serious legal and judicial reforms intended to facilitate the implementation of its human rights obligations. In this context, both State authorities and civil society undertook various legal and social measures seeking to enhance women's role in the society and to ensure equal rights and opportunities for women and men.

The general state of gender equality inevitably affects all aspects of women's rights, including access to justice. And it is highly important for prosecutors and judges to get an insight of gender equality in Armenia, the reasons behind significant inequality between women and men in different aspects of life and its common forms in order to prevent the reflection of that inequality in the justice system.

It must be stated that in spite of a number of legal acts prohibiting discrimination on the grounds of sex (Constitution of RA, Criminal Code, Criminal Procedure Code, Civil Code, Civil Procedure Code, Administrative Procedure Code, Family Code, Labor Code, Judicial Code and etc.), *de facto* gender equality is a goal yet to be achieved.

Despite the considerable efforts both by the State and non-State actors, as noted by the OSCE in December 2013, "there are limited measureable results or specific outcomes that can be identified".<sup>4</sup>

In particular, according to the Global Gender Gap Report for 2016, Armenia ranks 102th out of 144 countries for gender equality. While equality of education improves Armenia's rank (27out of 144), the lack of participation of women in politics (125 out of 143 countries) and poor health outcomes (143 out of 144) demonstrate a profound gap in equality between women and men.<sup>5</sup>

Women are highly underrepresented in public administration. They represent only approximately 10% of parliamentarians, which is one of the lowest among the OSCE States,<sup>6</sup> and about 11% of high-level government staff.<sup>7</sup> Only 2 out of 19 ministers are women and women account for 4 of 60 deputy

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<sup>2</sup> Asian Development Bank, Country Gender Assessment, available at: <http://www.adb.org/sites/default/files/institutional-document/162152/arm-country-gender-assessment.pdf>

<sup>3</sup> ԳՀԱԿ, Հայաստանի գեղեցիկ երախյին բարոմետր, Երևան, 2015:

<sup>4</sup> Organisation for Security and Cooperation in Europe, "Country Visit: Armenia, Report of the Special Representative of the OSCE Chairperson-in-Office on Gender Issues, June Zeitlin".

<sup>5</sup> [http://www3.weforum.org/docs/GGGR16/WEF\\_Global\\_Gender\\_Gap\\_Report\\_2016.pdf](http://www3.weforum.org/docs/GGGR16/WEF_Global_Gender_Gap_Report_2016.pdf)

<sup>6</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2013: Armenia, p. 26.

<sup>7</sup> Asian Development Bank, supra n. 1, p. xiii.

ministers.<sup>8</sup> Similarly, women are underrepresented in the regional and municipal administrative bodies. Thus, there are no women governors (head of region) out of 10 provinces, and only one deputy governor. To the contrary, women are better represented in non-leadership positions in the public sector and in civil society.<sup>9</sup>

As for the economic sphere, the number of female senior managers has declined, from 27% in 2012 to 23% in 2013. Instead, women are overly represented in health care and education which offer almost the lowest salaries. In general, women's average monthly wages represented only 64.4% of men's in 2012 and 2/3 in 2016<sup>10</sup> which gives Armenia one of the largest gender pay gaps in Eastern Europe and Central Asia.<sup>11</sup>

As regards the judicial system, only 24% of judges are women.<sup>12</sup>

This brief overview illustrates that the country has a long path ahead to achieve substantive gender equality. **The role of judges and prosecutors in this area is to ensure gender equality in access to justice. This role is essential since equality in general cannot be achieved without equality in judicial protection. And the goal of this training manual is to increase the capacity of judges and prosecutors in order to enable them to succeed in that role.** In fact, the need of capacity building activities among judiciary and the law-enforcement regarding women's rights was highlighted by the CEDAW Committee in its Concluding observations on the combined fifth and sixth periodic reports of Armenia. In particular, it recommended that the State "Sensitize the judiciary, law enforcement officials, education professionals, health care providers and social workers on the need to protect women's human rights and to comply with their reporting obligations in case such rights are being violated, and provide capacity building to judges, prosecutors, the police and other law enforcement officials on the strict application of relevant criminal law provisions".<sup>13</sup>

## 1.2. The implementation of the concept of equal access of women to justice in Armenia

Armenia ratified UN Convention on Elimination of all Forms of Discrimination against Women (CEDAW)(9 June 1993) and the Optional Protocol thereto (23 May 2006) and is signatory to the Beijing Platform for Action (1995) and the UN Millennium Declaration (2000). The country seems to show consistent efforts to achieve gender equality in line with its international obligations at least on the level of strategic action plans and State gender policy.

The recent developments in Armenian legal system seem to respond to the repeating requests from different international organisations on establishing an effective gender policy and gender responsive legal and judicial systems. Improving women's access to justice is an essential part of those developments.

A considerable amount of country's efforts towards this path has been carried out with the assistance of international agencies. Recommendations of the CEDAW Committee are particularly noteworthy. Hence, in its previous concluding observations on combined third and fourth periodic reports on Armenia delivered on 2 February 2009 the Committee expressed concern at "the lack of express and comprehensive legal provisions prohibiting discrimination against women, and at the State's preference for gender-neutral policies and programmes, which may lead to inadequate protection for women against direct as well as indirect discrimination [...]". CEDAW recommended that Armenia adopts a gender

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<sup>8</sup><http://www.gov.am/am/structure/>

<sup>9</sup> Asian Development Bank, supra n. 1.

<sup>10</sup> Round table at Yerevan State University, 10.06.2016, Nvard Manasyan's presentation on gender pay gap.

<sup>11</sup> Համընդհանուր պարբերական զննման համարչա հազար գլխան ճանցար ամառային համադրման տեղեկությունների համակարգի ընթացքը, Մարդու իրավունքների խորհուրդ, 7 November 2014, § 34.

<sup>12</sup> Gohar Shahnazaryan, Women's Political Participation in Armenia: Institutional and Cultural Factors, p. 4, available at: <http://www.css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/CAD-71-9-13.pdf>

<sup>13</sup> <http://www.refworld.org/publisher,CEDAW,,ARM,583863b34,0.html>

specific approach in its policies and programmes. The Committee urged Armenia to (1) enact appropriate national legislation containing prohibition of discrimination against women encompassing both direct and indirect discrimination (2) accelerate the adoption of the proposed law on gender equality and to embody the principle of equality of women and men in the proposed law on gender equality, (3) to ensure that the minimum age of marriage is raised for women to 18, and to remove any exceptions to this minimum age (because the different minimum legal age for marriage, set at 18 for men and 17 for women at the material time, was deemed to constitute discrimination against women). Further, The Committee also encouraged raising awareness with respect to the nature of indirect discrimination and the concept of substantive equality among Government officials, the judiciary and the public. It also called upon the State to set up an adequate structure of a national machinery for the advancement of women.<sup>14</sup>

Based on these recommendations, as well as other international and national commitments, the national gender policy was developed. The policy is based on two main documents, namely, The Gender Policy Concept Paper of 11 February 2010 and the Gender Policy Strategic Programme 2011–2015 of 20 May 2011. The objective of the Gender Policy Concept Paper was to create equal conditions, overcome all forms of discrimination based on sex, create equal opportunities and equal accessibility to economic resources for women and men on the labor market and employment sector, introduce a democratic political culture and establish tolerance in a dialogue on gender issues in the society through inclusion of a gender standard in all areas of life.<sup>15</sup> The second document, namely Gender Policy Strategic Programme, intended to increase participation of women in decision-making roles (in particular, by taking special measures to secure women's 30% representation in decision-making positions in legislative and executive branches of government); reduce discrimination in employment, social services, health and education; address negative gender stereotypes; and prevent violence against women and human trafficking.<sup>16</sup>

For the implementation of the Gender Policy Concept Paper and for promotion of gender equality, standing commissions were established in all regions of the country. Currently, the Government is drafting the new Gender Policy for 2017-2021.

Apart from the aforementioned, in 2011, the Armenian government adopted the Strategic Action Plan Against Gender-Based Violence for 2011-2015 which focused on actions to prevent domestic violence. This included the organisation of capacity building workshops for professionals tasked with prevention and support services and the development of public awareness campaigns about the problem of domestic violence.<sup>17</sup> As regards the judicial system, the Council of Court Chairpersons of RoA approved an action plan on 29 August 2014 aimed at promoting gender balance among candidate judges and in the judicial system. This action plan targets *inter alia* high school students and law students. In the framework of this action plan, a seminar was organised for students of Department of Law, Yerevan State University, where female Judge Margarita Hartenyan from Ajapniak and Davitashen Communities shared her successful experience and encouraged female students to trust in their abilities for further successful career to become a judge. For that same reason, several moot courts were organised in the high schools with the schoolgirls as judges.

As for legislative reforms, in 2013, the Law “On Provision of Equal Rights and Equal Opportunities for Women and Men” (hereafter addressed to as “the Law”) was adopted. This is one of the most important legal instruments to improve women's access to justice in Armenia. The main objectives of the Law are to ensure equality between women and men in all areas, provide legal protection against discrimination

<sup>14</sup> Available at: <http://www.refworld.org/publisher,CEDAW,,ARM,52dd05054,0.html>, Consideration of reports submitted by States parties under article 18 of the Convention, Fifth and sixth periodic reports of States parties due in 2013 : Armenia, §19, available at: <http://www.refworld.org/publisher,CEDAW,,ARM,56e7d3a64,0.html>

<sup>15</sup> Available at: [http://www.un.am/up/file/Gender-Concept-Paper\\_Engl\\_2010.pdf](http://www.un.am/up/file/Gender-Concept-Paper_Engl_2010.pdf)

<sup>16</sup> Available at: [http://www.un.am/up/file/2011-2015\\_Gender%20Policy\\_NAP-Eng.pdf](http://www.un.am/up/file/2011-2015_Gender%20Policy_NAP-Eng.pdf)

<sup>17</sup> Available at: [http://www.gov.am/u\\_files/file/kananc-xorh/Ynddem%20brnutyan%202011-2015%20programm\(1\).pdf](http://www.gov.am/u_files/file/kananc-xorh/Ynddem%20brnutyan%202011-2015%20programm(1).pdf)



and support the formation of a civil society in this field. The Law addresses both direct and indirect discrimination, underlines discrimination on the grounds of sex, unequal pay, emphasises equal treatment in the public sector, labor, employment, health, education and voting rights. However, the adoption of the law did not go smoothly. There was a noteworthy public discussion on using the word “gender” in the title of the law. In particular, as it is addressed by the Special Representative of the OSCE Chairperson-in-Office on Gender Issues, the purpose of the law was misinterpreted by a group of people, including parliamentarians, insisting that the law on “gender” equality undermined the traditional notions of the family and fostered homosexuality.<sup>18</sup> As a result, the discussed word was removed from the title of the draft. The wide public also had quite a cautious attitude to the discussed term given the widespread homophobia: the society was concerned that the law could be used to promote homosexuality. Which is why the law was eventually renamed to stress that equality is between women and men in a traditional meaning of those words. The Law provided for the establishment of a coordinating body responsible for gender equality sector. In line with this requirement, the Council on Ensuring Equal Rights and Equal Opportunities for Women and Men (attached to the Prime Minister of RoA) was established in November 2014 by the N 1152-U decision of the Prime Minister. The main objectives of the Council are to coordinate the process of implementation of strategic and tactical programmes on ensuring equality between women and men as well as projects on combating gender-based discrimination and violence in all sectors of State policy and all levels of public administration. The Council consists of the most prominent actors in legislative and executive bodies, as well as in the judicial system. The work of the Council’s secretariat is coordinated by the Social Department of RoA government.<sup>19</sup> However, the Council is not a remedy for examining individual applications.

One of the examples of implementation of recommendations of international human rights bodies was removing all the differences regarding the minimum age for marriage for women and men.

A number of positive developments regarding the relevant legal framework are expected due to the constitutional amendments of 2015. In particular, the newly amended Constitution moved forward from simply guaranteeing general equality. A new article was added to expressly articulate that “women and men have equal rights”. Moreover, Article 86, that lists the main objectives of the State policy in economic, social and cultural spheres, highlights *inter alia* “promotion of *de facto* equality between men and women”.

In line with these constitutional reforms, many newly adopted and upcoming legal instruments enshrine provisions seeking to enhance gender equality.

One of those steps is taken by the new Electoral Code which provides for at least 30 per cent gender quota. The positive development is that every gender has to be represented not only for at least 30 per cent, but for 30 per cent in every three candidates of the party list.

One of the most significant achievements in the field of non-discrimination, including on the grounds of sex, will be the Law on Equality (a comprehensive anti-discrimination law) if the draft is adopted by the Parliament. This draft law was developed as a response to the numerous requests from international and the civil society. The draft law regulates the safeguards of eliminating discrimination in all spheres of social life, the definition and types of discrimination, remedies and mechanisms of legal protection against discrimination. Most importantly, according to the draft, an Equality Council will be established affiliated to the Human Rights Defender with the authority to examine complaints on discrimination. What is worth knowing for the judges regarding this law is that it will enable them to accept and examine suits on discrimination and impose the burden of proof on the respondent.

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<sup>18</sup>Report on country visit by Special Representative of the OSCE Chairperson-in-Office on Gender Issues June Zeitlin. 2013, pp. 2-3.

<sup>19</sup><http://www.gov.am/am/councils/>

Another important change will bring the draft Criminal Procedure Code which authorises the prosecutors to attend the pre-trial interrogations that will enable them to prevent women's human rights violations at that stage.

**Discussion on the draft Law on Domestic Violence and the role of judges<sup>20</sup>**

All the above mentioned reforms prove the State's commitment to establishing substantive gender equality in all areas of life including that of access to justice. **Judges and prosecutors have a key role to play in the achievement of that goal.**

*How the domestic courts apply and enforce international law*

In general, despite some specific drawbacks in the legislation (e.g. absence of the law on domestic violence), it still has the necessary tools to ensure equal access of women to justice, should the judiciary and the law-enforcement apply it in a gender-sensitive manner. International documents, ratified by RoA, are also part of the country's legal system. **Moreover, according to the Constitution (Article 5), in case of a collision between the norms of domestic laws and ratified international treaties, the international norms shall prevail.** Further, RoA Law on International Treaties (Article 5§1) explicitly provides: "The norms of RoA international treaties entered into legal force apply directly in the territory of RoA". In addition, procedural codes emphasise that international treaties ratified by RoA are part of procedural legislation. Considering that international agreements provide for much more comprehensive approach towards human rights protection, the proper application of international human rights documents would undoubtedly have a positive impact on judicial protection of human rights. However, proper application of law, especially international law, remains a more serious problem in Armenia, than imperfect legislation.

In particular, the domestic courts are in majority of cases reluctant to apply the norms of international law directly although they may provide for higher standards of protection than the domestic law. As a reason behind this, judges mention that the general norms prescribed in international treaties cannot be directly applied since they do not provide for a practical mechanism for effective application, and need clarification in the national legal system, which is often true. There are international treaties the application of which requires additional legal act or provisions or adaptation of existing tools. At the same time, other treaties do not require new legal acts or provisions and can therefore be applied directly by the courts. Judges could consider interpreting and applying those international law provisions through international court judgments and treaty bodies' general recommendations. For instance, the European Court of Human Rights' (ECtHR) judgments usually contain precise criteria for application of the Convention and should have direct effect.

In addition, often low instance courts do not give preference to international law even in cases of collision with domestic law. As a result, Armenia lost a number of cases at the ECtHR.<sup>21</sup> As for the norms of international soft law, the analysis of the court judgments shows that it is very rarely referred to. Even the Cassation Court that often uses international human rights conventions, covenants and case-law as theoretical and legal grounds for its reasoning, very rarely includes international soft law. **In this respect, it is important for judges to bear in mind that international norms can be directly applied in their practice whenever it is possible. This is completely lawful in Armenian legal system and will facilitate thorough and *de facto* application of international human rights law.**

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<sup>20</sup> The draft Law on Domestic Violence has not been submitted to the National Assembly as of 14 November 2016.

<sup>21</sup> See among others *Minasyan v Armenia*, *Sefilyan v Armenia*, *Poghosyan and Baghdasaryan v Armenia*.

### 1.3. The obstacles in ensuring women's access to justice<sup>22</sup>

#### *Barriers of socio-economic and cultural nature*

Unequal access of women to justice is conditioned first of all by general inequality between women and men. This inequality flows from Armenian culture: supremacy of men over women is widely accepted by the society. This system of values finds reflection also in the justice apparatus. Inequality is a widespread narrative in the society on the basis of which the relations between women and men are built. This narrative, though, has a specific feature: it does not create a discourse. Inequality between women and men is not seen and defined as inequality by the public at large especially in those environments where phenomena are formed and defined by tradition.<sup>23</sup> Being obedient to a man's order is considered as a sign of femininity.<sup>24</sup> Women should not be independent; they should respect the man's opinion in organising their time and life in the external world. Most importantly, they should behave in a certain way with other men; otherwise their morality may be questioned. And men are supposed to be the decision makers, the ones, whose "word is the law" and who have the control. This explains women's poor participation in public life and politics (only 10% of parliamentarians and 11% of high-level government staff).

Based on these stereotypes, there is an unequal distribution of power in the society. As it was already stressed, women do not actively participate in the public life. As a result, women are dependent on men in most aspects of life, including economic sphere. Meanwhile, one of the most common barriers to equal access to justice for women is their economic dependence on men. Despite major changes in this area in the past decade, the majority of women earn way too little compared to men. Economic vulnerability often does not allow them to find the way out from abusive relationship and report about the violence against them. Unfortunately, the opportunities for women to equally participate in economic relations are limited mainly because they have to take care about the family and children. Women in Armenia are involved in the job market mostly for an incomplete working day (63.4% for 2014).<sup>25</sup> In 2014, only women (100%) were unemployed for family reasons.<sup>26</sup> This can be deemed as a form of domestic violence if a husband does not allow his wife to work.

The research conducted by Proactive Society NGO in 2012 with the commission of OSCE Yerevan office revealed that the most common forms of domestic violence are psychological and economic.<sup>27</sup> According to the mentioned study, 65.7% of the respondents answered positively to the following question: 'Would you leave the person who was violent against you if you had an apartment or financial independence?' This data shows how crucial is economic independence for ensuring women's security and access to justice.

#### *Legal and institutional barriers*

As mentioned above, women and men have stereotypical roles in the society. When women try to challenge those stereotypes or the traditional lifestyle, it may result in violence against them. Almost all litigating lawyers and NGO representatives interviewed for the purposes of drafting this chapter insisted that one the main obstacles for women's access to justice is that gender stereotypes have strong influence on the judiciary and the law-enforcement. **Judicial stereotyping is perhaps one of the most common barriers to justice for women all over the world.** Such stereotyping causes judges to reach a view about

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<sup>22</sup> See more detailed in the report on *Barriers, Remedies and Good practices for Women's Access to Justice in Armenia*, by Gayane Makaryan, available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b0f41>

<sup>23</sup> Aghasi Tadevosyan, *Gender Inequality and Everyday Practices: Problems and Challenges*, "Gender Issues in Contemporary Armenia: From Research to Politics", Yerevan, 2016, pp. 157-158.

<sup>24</sup> *Ibid.*

<sup>25</sup> Կանանց և տղամարդկանց սոստեսական գործունեությունը Հայաստանում, «ՕրսԵՋեն» հիմնադրամ, Երևան 2016, p. 5.

<sup>26</sup> *Ibid.*, p. 50.

<sup>27</sup> Proactive Society NGO, *Analysis of the Survey on Domestic Violence in Armenia*, conducted with the commission of OSCE, 2011, p. 37 available at: <http://www.osce.org/yerevan/88229?download=true>

cases based on preconceived beliefs, rather than relevant facts and actual enquiry.<sup>28</sup>The most common ways of gender stereotyping in the context of access to justice in Armenia are allegations (1) that women exaggerate the potential danger; or (2) they do not really want to leave their abusive husbands but simply warn them; (3) that in the end of the day they will reunite with their husbands, therefore the State should not intervene with family issues. Another form of stereotyping that affects access to justice is that women are expected to “keep the family” no matter what. This discourages them to seek justice. The most dangerous form of judicial stereotyping is perhaps adjudicating on the grounds of the woman’s morality. The logic of this type of stereotyping presupposes that a woman lacking morality deserves violence. The sentences in such cases are dramatically low. The woman’s sexual history or accusation of adultery may serve as justification for the man being “in a state of insanity” which resulted in murder. For instance, in the case of Diana Nahapetyan’s murder in 2012, the first instance court of Ararat and Vayots Dzor provinces sent her partner only to 3.6 years of imprisonment because it was argued that the victim had cheated on her husband. These allegations turned out to be a sufficient justification for the defendant to be ‘in a state of insanity’ and kill his wife. The provision of Criminal Code that this indictment was based on reads as follows: “the murder committed in the state of sudden insanity caused by violence, mockery, heavy insults or other illegal, immoral actions (inaction) of the victim as well as in the state of a sudden affect arising from a long term psychologically depressive situation caused by regular illegal and immoral behavior of the victim”. The maximum punishment for this offence is four years of imprisonment. This provision is too vague, especially with regard to the notions of ‘immoral actions’ or ‘regular immoral behavior’.

The details of this case are astonishing. Volodya M. killed his partner Diana Nahapetyan in presence of her daughters because, in his words, “she had been cheating on him for several months”. Volodya M. killed her in the course of a fight multiply wounding her (21 times) with two knives. In 2015 (after three years), the court decided that the defendant was in a state of cumulative affect because of immoral behavior of the victim and sent him only to 3 years and 6 months of imprisonment. It is noteworthy, that initially, the offence under review was qualified as a regular murder under Article 104 of RoA Criminal Code. Afterwards, it was changed to ‘murder with special cruelty’ under Article (2) 104 on the grounds that the murder was committed in front of the victim’s daughters, and the perpetrator wounded the victim with two knives multiple times. Eventually, it was re-qualified under Article 105 as a murder in state of insanity.

Discussion on Diana Nahapetyan’s case:

- What is “immoral behaviour or actions” that can result in a state of insanity?
- Violence based on jealousy, gender stereotyping and indirect discrimination.

With regards to this case, it is crucial for judges and prosecutors to eliminate the stereotype that unfaithful women deserve violence or that “immoral behavior” of women *per se* results in affect and justifies violence against them. **It would be useful for judges to question themselves whether they would make the same decision should a woman have murdered her husband for an affair. Judicial stereotyping not only impedes women’s access to justice but also increases mistrust in the justice system.**

Another form of gender stereotyping that may affect women’s access to justice is homophobia and transphobia. Intolerance and disrespect of the society towards these women is reflected in the justice system. For instance, with regards the famous case against Iravunk magazine, which published an article containing hate speech elements against LGBT community,<sup>29</sup> the courtroom management is worth

<sup>28</sup>Eliminating judicial stereotyping Equal: access to justice for women in gender-based violence cases, Simone Cusack, Submitted to the Office of the High Commissioner for Human Rights, 9 June 2014, p. ii.

<sup>29</sup>The article was titled “They serve the interests of international homo-addiction [sic] lobbying: the blacklist of the country’s and nation’s enemies”, which included a black list of 60 individuals’ names, calling for people to show “zero tolerance” towards them, deny employment, fire them from civil service jobs, and not greet them on meeting.

examining. First of all, the court did not prohibit the offensive questions and comments against the plaintiffs. Secondly, the judge of the Appeal Court herself asked irrelevant questions on homosexuality. And finally, after the hearing at the Appeal Court was officially finished, she made an inappropriate joke asking the plaintiffs' supporters in the courtroom: "Does Conchita [Wurst] know that you are defending her this much?"

These type of comments and jokes, even made after the closing of the hearing, demonstrate the prejudices of the judge and inevitably compromise his/her impartiality. **Judges must not only be impartial but also look impartial.**

The case under review is noteworthy because the founding president of the editorial council of the mentioned magazine was a Member of Parliament (MP) from the ruling party, which, along with other anti-LGBT statements by different MPs,<sup>30</sup> gave a reason to civil society to speak about 'State sponsored homophobia and transphobia'.<sup>31</sup> **The most important task for judges when ruling these kind of cases is not letting their prejudices compromise their impartiality.**

Victims of sexual violence are also subjected to judicial stereotyping. The concept of "ideal victim" introduced in the international (general part) of this manual works in Armenia as well. If the victim is sexually active, the stereotype is that she had a provocative behavior. The victim can be treated in a judging manner and asked irrelevant questions on her past sexual history.<sup>32</sup>

Another barrier to justice for women is their low representation in the judiciary and the law-enforcement. As mentioned above, only 24% of judges are women. Women are also underrepresented in the law-enforcement. Thus, only around 10% of prosecutors are women. Also, despite the recent rise of women's number in the police, there are very few women investigators and prosecutors. This creates a gender neutral and gender insensitive justice apparatus. Whilst it is very important for victims of violence, especially sexual violence, to have a woman investigator to question them at least for the first time. It could have decreased the level of latency of sexual abuse. For instance, findings of the public opinion poll conducted by the Proactive Society NGO as commissioned by the OSCE Office in Yerevan show that among the reasons for the reluctance of domestic violence victims to apply to the law-enforcement bodies are the lack of psychological skills of officers (18.4%) and lack of female police officers directly working with the victims (5.3%). At the same time, it must be stressed, that special training of the officers dealing with victims matter more than their gender since female staff may have gender stereotypes as well. **Therefore, in the context of access to justice, the gender competence of the judiciary and the law-enforcement plays a crucial role.**

*The shortcomings in the legal framework will be addressed in detail in the Special Part of this chapter.*

### **Special Part**

## **2. BARRIERS TO EQUAL ACCESS OF WOMEN TO JUSTICE IN THE CONTEXT OF CRIMINAL JUSTICE**

### **2.1. Domestic violence in the context of women's access to justice<sup>33</sup>**

#### *A) The nature of domestic violence and its prevalence in Armenia*

This chapter has a strong focus on the issues of domestic violence considering its prevalence in Armenia, absence of adequate regulatory responses and reluctance on the part of the law-enforcement to eliminate it. Despite consistent efforts of civil society and, to certain extent, State authorities on combating domestic violence, it remains one of the most serious problems in Armenian society. Moreover, it is certainly the

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<sup>30</sup> ՓԲՆԲ-ի մարդու իրավունքների վիճակի վերաբերյալ 2014 թ. տարեկան զեկույց, available at: [http://www.pinkarmenia.org/publication/2014lgbtsitrep\\_hy.pdf](http://www.pinkarmenia.org/publication/2014lgbtsitrep_hy.pdf) p. 9.

<sup>31</sup> From the interview with the lawyer of PINK Armenia, Lusine Ghazaryan, 07.06.2016.

<sup>32</sup> See more detailed in section 2.2. of this chapter.

<sup>33</sup> Domestic violence is referred to also as DV in this section.

most widespread form of violence against women in Armenia. While domestic violence is dangerous *per se*, it also has a high level of latency: it is hidden. This is why many persons -especially men- are skeptical when it comes to domestic violence; they simply do not realise how frequent that problem is in Armenia. Subsequently, they do not think the country needs special policies or budget to combat domestic violence. This is because certain forms of domestic violence are not seen as violence. Nevertheless, studies show approximately 60% of respondents think that domestic violence is a widespread problem in Armenia.<sup>34</sup>

**It is of paramount importance for judges and especially prosecutors to have a clear image of prevalence of domestic violence in the country. This will enable them to effectively respond to the current challenges, reveal latent crimes, bring perpetrators to justice, support victims and ensure their safety, make correct qualifications of the offences and take necessary measures to lower the level of domestic violence.**

To begin with, it is necessary to get the insight of domestic violence. It is often associated with only physical violence. In particular, the research conducted by UNFPA shows that 38% of the Armenian respondents consider that only battery and infliction bodily injuries can be qualified as domestic violence.<sup>35</sup> 25.7% of the respondents add sexual violence to the forms of domestic violence, whilst only 14.3% of the respondents think that psychological violence (i.e. intimidation, threat) is also a form of domestic violence alongside the physical violence.<sup>36</sup> According to the study conducted by Proactive Society NGO, 18.4% supplement the physical, sexual and psychological forms of violence with controlling behavior (strict limitation of movement) and only 3.3% cite also strict restriction of financial resources of an adult family member.<sup>37</sup>

However, it is already well-established in the international human rights law framework that domestic violence is much wider than simply physical assault. Recently, this comprehensive approach to domestic violence was enshrined also in Armenian legal system. RoA Law on Social Support hence defines domestic violence as “exercising violent acts (violence) of physical or sexual or psychological nature by one member of the family over the other or deprivation of economic means”. The articulation of psychological violence notwithstanding, the stated definition can hardly be regarded as a thorough one. It does not involve some forms of controlling behavior that do not qualify psychological violence (i.e. limitation of movement, controlling social contacts, etc.).

Domestic violence can be committed not only against women and not only by their intimate partners. However, violence by intimate partners over women overwhelmingly prevails over other forms of domestic violence. Thus, 61.4% of the victims responded that the perpetrator was their husband,<sup>38</sup> while only 2.3% of women reported being ever subjected to physical violence committed by someone other than intimate partner.<sup>39</sup>

As regards the prevalence of domestic violence in Armenia, according to official data provided by RoA Police, in 2012, 625 incidents of domestic violence were recorded, in 2013 around 500 incidents, in 2014, 575, in 2015, 784, and in the first eight months of 2016, 452 incidents.

Nevertheless, the studies and everyday experience of NGOs dealing with women’s rights as well as researches conducted by international agencies show that the real picture of domestic violence in Armenia is even more disturbing. In fact, domestic violence has a high level of latency. For instance, according to

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<sup>34</sup> Data collected by Women’s Rights Center ([www.wrcblog.net](http://www.wrcblog.net)), UNFPA Report on Nationwide Survey on Domestic Violence in Armenia, 2011.

<sup>35</sup> For the purposes of this section the following studies will be used: UNFPA Report on Nationwide Survey on Domestic Violence in Armenia, 2011 within the framework of UNFPA/Armenia “Combating Gender-Based Violence in the South Caucasus” (UNFPA CGBV) project, Proactive Society NGO survey, supra n. 24, Amnesty International “No Pride In Silence: Countering Violence in the Family in Armenia”, 2008.

<sup>36</sup> UNFPA survey, supra n. 30.

<sup>37</sup> UNFPA survey, supra n. 30. p. 29.

<sup>38</sup> Proactive society survey, supra n. 23, p. 38.

<sup>39</sup> UNFPA survey, supra n. 30.



the *Coalition to stop violence against women*, in 2013-2015 only, NGOs party to the coalition received 5,171 initial calls on domestic violence.<sup>40</sup> In addition, the analysis of the results of the Proactive Society's survey reveals that 59.6% of the respondents (out of 2,695 participants of Armenia) have been subjected to domestic violence during their lifetime, while 38.4% during the past two years. In 2012, 10.5% of murders (12 deaths) were committed against women by their intimate partners or family members. In general, only in 2010-2015 around 30 women died as a result of acute battery and bodily injuries in the context of domestic violence leaving 45 children without mother care.<sup>41</sup>

According to the mentioned study, the most widespread forms of domestic violence appear to be threats and intimidation (44.8%) and battery or infliction of bodily injuries (34.8%). Apart from the aforementioned, 5.6% of the respondents claimed to be a victim of sexual violence, 15.1% were subjected to strict limitation of financial resources and 16% – to strict limitation of the freedom of movement.<sup>42</sup> For comparison, the research by UNFPA released one year before the aforementioned study revealed that of the women surveyed, 9% admitted to experiencing physical violence, 25% to psychological intimidation, 61% to controlling behavior, and 3.3% sexual violence, all at the hands of their domestic partners.

In order to effectively combat domestic violence, it is crucial to analyse the main characteristics of the victims. In this context, it is noteworthy that a direct ratio was discovered between the level of education and victimisation: the lower the level of educational attainment the higher the possibility of suffering from domestic violence. 26.3% of the victims of domestic violence in Armenia do not have 8 year education, 19.5% have 8 year education, 18% have completed secondary education, 13.6% of the victims have secondary professional education, and 13.6% high education. **The reason behind these statistic data is that women with no high or professional education typically are not likely to find jobs with decent wages and are economically more dependent on men. Also, they are less likely to challenge the existing stereotypes, learn about their rights and seek justice.**

As regards the age of domestic violence (DV) victims, the same study shows that the majority of victims in Armenia are 31-40 years old (22.3%), 51-60 years old (16.2%), and above 61 (15.7%). The least endangered group is 18-25 years old (10.5%).

It is worth mentioning that only 6.8% of DV victims reported to the police. This figure emphasises how high the level of latency of DV is. Those who did not report to the law-enforcement clarified the reasons for that behavior. In particular, the majority (41.6% of them) intended to spare their relative (albeit violator) from the risk of criminal liability, for 21.9% of them the reason was being embarrassed of the incident and its publicity, while for 20.2% - the desire to avoid red-tape.<sup>43</sup> **The prosecutors' role is to organise the work with the victims and instruct the investigators and police officers to organise their work in a gender sensitive manner; to ensure confidentiality of interrogations and to eliminate unnecessary red-tape for victims discouraging them to seek legal protection (such as unjustified delays, requirements on additional documents, protraction, etc. ). The same can be said about judges. The practice of prosecutors and judges could thereby directly challenge the above statistics and increase trust in the justice system.**

#### B) *Sex -selective abortions*

Pre-natal sex-selection is a specific form of domestic violence. It is a truly urgent problem in Armenia. While the normal sex-ratio at birth ranges from 102-106 males to 100 females, in 2011, the Council of Europe Parliamentary Assembly (PACE) found that the rate stood at 112 to 100 in Armenia. In 2013, the

<sup>40</sup> <http://www.media-center.am/hy/1443715499>

<sup>41</sup> See some of those cases in "Femicide: A silent epidemic", 2016 by Coalition to Stop Violence against Women, available at: [http://coalitionagainstviolence.org/wp-content/uploads/2016/05/Femicide\\_Report\\_ENG.pdf?be05b6](http://coalitionagainstviolence.org/wp-content/uploads/2016/05/Femicide_Report_ENG.pdf?be05b6)

<sup>42</sup> Proactive society survey, supra n. 23, p. 46.

<sup>43</sup> Ibid.

figure was 114-115 to 100 according to UNFPA. This ratio stands as the third highest in the world, after China and Azerbaijan.

The majority of women undergoing sex-selective abortions are forced to resort to it due to a significant pressure from their husbands and family. This practice is in itself a manifestation of gender inequality and discrimination. To put an end to this practice, **the Istanbul Convention requires State parties to criminalise forced abortions and psychological violence.** Unfortunately, Armenia has not yet ratified the said convention.

Apart from it, PACE stressed in its 2011 resolution on prenatal sex selection that: “the social and family pressure placed on women not to pursue their pregnancy because of the sex of the embryo/foetus/ is to be considered as a form of psychological violence and [...] the practice of forced abortions is to be criminalised”. None of these recommendations have been implemented.

**The Council of Europe Committee of Ministers has called on member States to prohibit pre-natal sex selection.** To that end, the Law on Reproductive Health and Reproductive Rights was amended to prohibit abortion after 12 weeks for any reasons, including on the basis of sex, other than special medical or social prescription. This amendment was based on the fact that the sex of the foetus is usually defined after 13 or 14 weeks. This reform is expected to significantly decrease the number of sex-selective abortions which could result in demographic crisis for the country. It means that an abortion, including on the basis of sex selection, conducted after 12 weeks with no special medical or social circumstances, is an illegal abortion which leads to criminal liability for the responsible doctor under Article 122 of RoA Criminal Code. This new regulation should be borne in mind when qualifying a criminal action as illegal abortion.

### *C) Early marriages*

Early marriages are also a specific form of domestic and gender-based violence. Although there are not very widespread in Armenia, there are a common practice for women of Yazidi origin, the largest national minority in Armenia, and are therefore worth addressing. Women of Yazidi origin normally get married at 14-16 years old. The State authorities usually do not check whether those marriages are forced or not. Nevertheless, according to RoA Family Code, marriage between persons one of whom is under 16, cannot be legally registered. At the same time, the Code provides that a 16 years old can get married with the approval of his/her parents (legal representatives) only when the other person getting married is at least 18.

Women whose marriage is not legally acknowledged have zero legal protection in terms of property rights and in many other aspects. In addition, as a rule, Yazidi women do not get high education. In fact, in the majority of cases they do not even go to high school. This has a negative impact on their socialisation and decreases their opportunities to learn about their rights. Hence, the chances to seek and receive justice for these women are dramatically low. Yazidi women contacting NGO hot lines for psychological help complain that in their community divorce is not possible. Also, they cannot even imagine the possibility to file a complaint against their husbands in cases of domestic violence. Practically speaking, this issue is not paid proper attention from the government or the law-enforcement. In particular, according to the Criminal Code of RoA (Article 141), having sexual intercourse with a minor under 16 is a crime when the perpetrator is 18 or above. The law does not provide for any exception if two of them live in a marriage-like relationship. The authorities learn about these cases usually after women get pregnant and apply for medical help. Criminal cases initiated in this regard in the majority of cases result in application of Article 70 of the Criminal Code, which means that the perpetrator is released from the punishment. The State does not intervene into the life of the Yazidi community on the basis of respect for the community's national traditions. However, **this non-intervention results in a lack of protection and redress for those minors.**

Recommendation: The State authorities are under the obligation to protect all minors, and their ethnicity should not be an obstacle for the enjoyment of their human rights. Therefore, prosecutors should not



request and the judges should not grant the conditional release for all perpetrators simply on the basis of their national traditions.

#### *D) Drawbacks in combating domestic violence*

The above presented informal data urge to take more effective steps to combat domestic violence (DV) since the current regulations and policies obviously do not work as effectively as expected. The main shortcomings in this sphere can be conditionally divided into legislative and institutional.

The main problem on the legislative level is the absence of a comprehensive law on combating domestic violence. The active Criminal Code, Family Code and other legal acts do not provide thorough regulations for all aspects of domestic violence. Criminal Code, for instance, does not specifically prohibit domestic violence. In fact, it does not even define violence as such. However, it does contain articles that can be applicable in cases of DV: murder (Article 104); Murder in a state of strong temporary insanity (Article 105); Causing somebody to commit suicide (Article 110); Infliction of willful heavy, medium-gravity or light damage to health (Articles 112-113, 117); Infliction of medium-gravity or grave damage to health in the state of temporary insanity (Article 114); Battery (118); Infliction of strong physical pain or strong psychological suffering (Article 119), Abduction of a person or Illegal deprivation of freedom (Articles 131, 133), Threat to murder or to inflict a heavy damage to one's health or to destroy property (Article 137), Rape, Violent sexual actions, Forced sexual actions, Sexual acts with a person under 16, Lecherous acts (Articles 138-142). The financial or other dependence of the victim on the perpetrator is treated as an aggravating circumstance under some of those articles, and is an element of the offense under Article 140. The penalties for the listed crimes range from public labor to life imprisonment.

Notwithstanding the variety of relevant articles, they do not cover all forms of domestic violence prescribed by the Istanbul Convention. In particular, so-called social violence (strict control of one's movements, limitation of social contacts, etc.), stalking, sexual harassment, certain forms of psychological violence, compelling a woman to make an abortion, etc.

The next problematic aspect of criminal legislation with regard to domestic violence is that it covers only certain forms and certain level of violence. Thus, the relevant provisions of Criminal Code are applicable mostly in cases of physical and sexual violence. Psychological violence is punishable only if there is a threat to murder; or to inflict a heavy damage to one's health; or to destroy property. **However, the newly amended Article 119 criminalises infliction of strong psychological suffering which the prosecutors could use to address psychological violence. This article could also be used in cases of severe social violence that results in strong psychological suffering.**

Even in case of physical violence not all types of violence constitute a crime. The Cassation Court held in the case of Arevik and TsovinarSahakyans that: *It flows from the content of Article 118 of RoA Criminal Code that battery is infliction of multiple (more than one) beats to the victim resulted in physical pain.*

The interpretation introduced above can be justified in other circumstances but not in cases of DV. In situations of domestic violence battery has a regular nature and is accompanied by permanent humiliation of dignity which cannot be separately qualified as a criminal offence under the active Criminal Code. This means that if a perpetrator inflicts one beat every day without inflicting strong physical pain, it cannot be regarded as punishable physical violence.

**Recommendation: In this regards, prosecutors can initiate prosecution under Article 119 of the Criminal Code for inflicting strong psychological suffering instead.**

*Some of more specific drawbacks in the relevant legislation will be addressed further in this chapter.*

#### *Absence of due diligence*

As regards the institutional shortcomings, there are vicious practices both at the stage of initiating criminal proceedings and in the courtroom. To begin with, victims of DV typically mention the following reasons for dissatisfaction with law-enforcement agencies: they recommend to tolerate violence not to destroy the family (15.3%); their attitude is indifferent (40.3%); domestic violence issues are dealt by

police officers of opposite gender and victims do not feel comfortable to tell them about the incident that happened with them (5.3%); police officers do not have basic psychological skills to understand or listen to victims of domestic violence (18.4%). For these reasons, many women avoid applying to law-enforcement and filing a complaint thereby increasing the possibility of double victimisation. Latency of DV cases is extremely dangerous for it results in serious consequences, including death. Discouraging women from filing a complaint and showing total indifference towards DV cases cannot be tolerated.

There were cases when women applied to the police asking to stop the violence against them. However, the police did not take necessary steps, and those women were either killed immediately afterwards or died from the injuries. Even according to the official data, in 2015 only 150 out of 784 cases of DV were investigated in the frames of criminal cases. The recent incidents happened in Gyumri last year and in Yerevan, Ajapnyak district in 2016. In the first case the woman had applied to the police for several times, and last time she came back home from the police station, she was found dead shortly afterwards. Police officers are responsible for that death since they did not undertake the necessary measures to protect her. In Yerevan the other victim of violence applied to the police where her report was not admitted despite *prima facie* signs of violence on her head. Shortly afterwards she died from the injuries.

*Recommendation:* This situation can be improved with strict execution of prosecutorial control over the initial stage of criminal proceedings (admitting reports on criminal offences and initiating criminal proceedings). Prosecutors should pay more attention to the complaints on failure to initiate criminal proceedings by the victims and their representatives, and, when necessary, exercise their right to initiate criminal proceedings on their own. Moreover, they could initiate criminal proceedings against the officers who refused to register the victim's complaints, which is currently a rare practice, or change those investigators who do not show due diligence in cases on domestic violence.

There is also a concern regarding necessary defense cases in the context of domestic violence. In particular, lawyers who took part in our interviews mentioned that sometimes law-enforcement officers put pressure on women who injure their violent husbands in the frames of necessary defense in order to withdraw complaints of both spouses against each other. Again, it must be reiterated that the importance of strict prosecutorial control over the failure to initiate criminal proceedings or drop the case cannot be underestimated. Especially, considering that the prosecutors receive within 24 hours the decisions on the mentioned actions and have the authority to confirm them or overturn.

It is very important to realise that domestic violence is not simply a private matter within the family, but a serious problem for the society at large. Therefore, legal professionals are not intervening into family issues when investigating DV cases. They are solving problems of paramount importance; problems that are crucial for internal security of the State.

#### *Mild qualification of the relevant offences and too lenient sanctions*

One of the concerns regarding DV cases is incorrect legal evaluation of the relevant offences. Firstly, the lawyers of NGOs express concern that law-enforcement agencies often try to qualify DV cases as mildly as possible. In particular, majority of cases are qualified as battery although the experts from civil society often find elements of more serious crimes in those actions, such as inflicting damage to one's health.<sup>44</sup>

<sup>44</sup>From the interview with the lawyer of Women's Rights Centre NGO's lawyer Elina Danielyan, 07.06.2016.

**If the elements of the offence exist, it is always better to qualify the violence under Article 119 rather than Article 118 since the former is a crime of public prosecution whereas the latter is a crime of private prosecution.**

Oftentimes, the fact of repeated domestic violence is not taken into consideration when qualifying the offence. Only the action that was reported directly before the arrest and proved by “material evidence”, such as medical report, is acknowledged in the indictment. There are many cases when the previous actions of physical and psychological violence did not affect the qualification and the perpetrator was accused of only one episode of violence.

**Recommendation: It is highly important that the full history of abuse is diligently investigated and reflected in the indictment.**

In some cases, potentially criminal actions do not get legal evaluation whatsoever. For instance, in the case of Siranush Aghabekyan her husband set their common house on fire after several episodes of domestic violence where Mrs. Aghabekyan filed two complaints against him but then dropped them. Surprisingly, no criminal proceedings were initiated with respect to that incident on the grounds that the house belonged to the perpetrator. However, as it flows from the certificate of ownership of the house, it belonged to both Mrs. Aghabekyan and her husband.<sup>45</sup>

**In this regard, it is worth reiterating that prosecutors have the authority to change the qualification of the offence as well as initiate proceedings when the investigative bodies fail to do so.**

Apart from it, the experts interviewed in the course of drafting this chapter, mention that one of the most serious institutional problems concerning combating domestic violence is that sentences applied in those cases are too lenient. For example, in 2016 the first instance court of Lori province fined only with 150.000 AMD a man, who had constantly beaten his wife and children and had kept his 6 year old daughter tied in the barn. Another example is above introduced case of Diana Nahapetyan (3.6 years of imprisonment for murder).

The same court of Ararat and Vayots Dzor regions fined Vardan Jamalyan, who had been beating his wife Naira Zohrabyan for 11 years (because, in his own words, “she had been communicating with immoral women”, or “the dinner was not ready upon his arrival”) only with 50.000 AMD.

In a very resonant case, Vladik Martirosyan was found guilty for 3 incidents of inflicting strong physical pain and strong psychological violence to his wife Taguhi Mansuryan and was sentenced only to 6 months of imprisonment. In spite of this verdict, the first instance court of Shengavit district decided to apply conditional release. After several months Mr. Martirosyan was charged with murder of his mother-in-law and inflicting heavy damage to the health of his wife and father-in-law (the case is pending).

In the case of Hasmik Khachatryan, her husband, who had been inflicting serious damage to her physical and psychological health for 9 years, was accused only with torture without aggravating circumstances, (because the past history of abuse was overlooked) and was sentenced only to 1.5 years of imprisonment and was released on amnesty in the courtroom.

**Recommendation: This unjustifiably tolerant attitude towards the violators is highly dangerous. It not only does not prevent violence, but also increases mistrust in the judiciary. Whilst, eliminating impunity is a crucial element of access to justice. Judges should impose sanctions that are commensurate with the severity of the violation. In particular, in the mentioned case DV had taken place constantly. In imposing sanctions it is important to ensure that repeated domestic violence behavior results in harsher sanctions. As regards the prosecutors, they can question the victims about the history of abuse, check and introduce the past files on the abuser in the court and, on that ground, request a more severe sanction.**

<sup>45</sup><http://www.media-center.am/hy/1399904618>

### *Failure to ensure victim safety*

Failure to ensure victim safety in cases of domestic violence is one of the most common barriers to access to justice for women. As was already mentioned, the law does not provide for possibility of protective orders. At the same time, there are no State-sponsored shelters for DV victims. Those held by the NGOs completely depend on external funding and are hence not permanent. In addition, the law does not allow emergency barring orders as well. There has been a long public dispute regarding so called “go” orders within legal community. There is an opinion that these orders forcing violent husbands to move out from their houses in order to protect women and children from domestic violence constitute breach of constitutional right to property. Nevertheless, when it comes to the balancing the rights to life and health with the right to property, the former shall prevail.<sup>46</sup>

In the described circumstances, women find themselves in an extremely vulnerable situation with no place to go and with perpetrators threatening them constantly. These problems do not contribute to women’s willingness and readiness to seek judicial protection.

For instance, in the above mentioned case of HasmikKhachatryan, Mr. Hakobyan, (the defendant), during criminal proceedings was constantly threatening the victim, even harmed her at the hearing. He threatened also representatives of civil society supporting HasmikKhachatryan. He literally said that he was going to kill HasmikKhachatryan and her father after release. Nevertheless, the court refused to grant the detention motion. In the other above mentioned case of TaguhiMansuryan the judge also should have known from the case file about the violent behaviour by the perpetrator, which, however, did not stop her from conditionally releasing him.

#### **Recommendation: What can be done by prosecutors for victims’ protection in this respect:**

- To request strict preventive measures such as detention.
- Also, they could give instructions to the investigators to apply protective measures provided by the Criminal Procedure Code (Chapter 12 of the Criminal Procedure Code) which are surprisingly almost never used in cases of domestic violence. Although these provisions usually target the witnesses of crimes and not victims, the law does not contain any limitation and can be equally applied for the protection of victims.
- Upon the complaint by the victim or *ex officio* initiate criminal proceedings against the perpetrators under Article 137 of the Criminal Code for threatening which takes place constantly in the course of investigation.
- They could also exercise the requirement of the Istanbul Convention, according to which States ensure “that the victim/survivor is informed about liberty of alleged perpetrators (whether bail, permanent or temporary release or escape).<sup>47</sup>

### *Courtroom management*

As regards the court trial, judges often show gender neutral and insensitive approach to DV victims and/or do not prevent other participants of the trial from such behavior. In particular, in all cases where the violence was based on jealousy, women’s moral characteristics were under review. In a recent case of HeghineDarbazyan, who was killed by her former husband, in the course of the trial her moral features were discussed all the time. Moreover, the judge asked her children questions about her morals. As if, in case the victim had really had an affair, it could be regarded as a mitigating circumstance for her murder.

<sup>46</sup> See more on emergency barring orders in General Part of this manual.

<sup>47</sup> <http://www.icj.org/wp-content/uploads/2016/03/Universal-Womens-access-to-justice-Publications-Practitioners-Guide-Series-2016-ENG.pdf>

*Recommendation:* Regarding the role of judges in DV cases, it is essential to ensure a gender sensitive atmosphere for an objective examination instead of neutral style of the hearing when, if no one is objecting, offensive questions are asked and comments made. It is especially dangerous in case the victim or her representative does not have a lawyer. The participants of the hearing may end up blaming the victim. This does not contribute to the elimination of judicial stereotyping but rather deepens it.

**The judge's role is to prevent this scenario and make sure his/her or society's stereotypes on women's morals or the victim's personal qualities do not affect the judgment.**

#### *E) Crimes of private prosecution*

Article 183 of the active Criminal Procedure Code lists the crimes of private prosecution that may only be prosecuted on the basis of an injured party's complaint and are subject to dismissal upon reconciliation of the accused and the injured party. That list includes battery, willful infliction of light damage to one's health, inflicting heavy or medium gravity damage to one's health in the state of insanity and others. It was already stated by CEDAW and reiterated in the Istanbul convention that dependence of criminal proceedings solely on the victim's complaint does not contribute to establishing justice or preventing crimes in gender-based violence (GBV) cases, especially in the context of domestic violence. Declaring the main forms of domestic physical violence as cases of private prosecution, the State literally contributes to their latency. Thus, as it was introduced above, 41.6% of DV victims do not report to the police seeking to spare a relative from criminal liability. In this respect, the State has to ensure justice for victims without additional pressure on them. **To that end, law-enforcement agencies must evaluate the danger and injured party's opportunities, and if necessary, initiate or continue criminal proceedings ex officio.** Often, DV victims are simply deprived of the opportunity to file a complaint because of isolation, or drop it due to threats. However, withdrawing the complaint does not eliminate the danger. In the light of the aforementioned, Siranush Aghabekyan's case vividly illustrates the ineffectiveness of the whole system of private prosecution cases and the procedure of reconciliation provided by the active code. She filed a complaint against her violent husband but was persuaded by the police officers to withdraw it. Shortly afterwards she was wounded by her husband with a knife but reconciled with the defendant during the court trial. Because it was a private prosecution crime, the judge dropped the case. However, in 2014 Siranush's husband went on with his violent behavior and set their common house to fire.

In these circumstances, the State must be consistent and should intervene, when necessary. In the landmark case of *Opuz v Turkey*, the European Court of Human Rights (ECtHR) held in this regard:

*...despite the withdrawal of the victims' complaints, the legislative framework should have enabled the prosecuting authorities to continue with criminal investigations against H.O. on account of the seriousness of his behaviour and his constant threat to the applicant's physical integrity. The State had therefore failed to establish and apply effectively a system by which all forms of domestic violence could be punished and sufficient safeguards for the victims could be provided.*<sup>48</sup>

*Recommendation:* It is worth reiterating that the judgments of ECtHR have direct effect and can be applied regardless their implementation in the relevant acts. The newly amended Constitution highlights in Article 81 that for interpretation of the constitutional provisions on the main rights and freedoms, the practice of the bodies acting on the basis of international treaties ratified by RoA have to be taken into consideration. **Therefore, legal professionals can refer to ECtHR case-law and directly apply it in their practice.**

<sup>48</sup>*Opuz v Turkey*, 9 June 2009, Application no. 33401/02.

The Court in the mentioned case elaborated some areas for consideration in assessing when it is in the public interest for a prosecution to continue, even without the participation of the victim:

- How serious was the offence?
- Are the victim's injuries physical or psychological?
- Did the defendant use a weapon?
- Have any threats been made by the defendant since the attack?
- Did the defendant plan the attack?
- What was the effect (including psychological) on any children living in the household? What are the chances of the defendant offending again?
- Is there a continuing threat to the health and safety of the victim? Is there a continuing threat to the health and safety of anyone else involved?
- What is the current state of the victim's relationship with the defendant and the effect on that relationship of continuing with the prosecution against the victim's wishes? Has there been any other violence in the history of the relationship?
- Does the defendant have a criminal history, particularly in relation to any previous violence?<sup>49</sup>

**These criteria might be useful for the prosecutors when making decisions on *ex officio* prosecution of.**

The law does not properly regulate the procedure and conditions of reconciliation. Article 73 of the Criminal Code only highlights that a person who has committed a “not grave” offense (e.g. battery or light damage to health), can be exempted from criminal liability if he/she reconciles with the aggrieved and mitigates or compensates the inflicted damage in some other way. No other mechanisms are in place to regulate this procedure, to ensure fair compensation or at least to involve legal aid, should the victim need it. Most importantly, the law does not explicitly oblige law-enforcement bodies or the court to make sure that reconciliation is taking place with the free will of the victim. Neither does the law provide with any legal tools for it. Nevertheless, **there is a good practice in Kentron district's Prosecutor's office with regards to the described issue. On each reconciliation episode the prosecutor meets with both the victim and the perpetrator, asks questions and tries to make sure that the victims has not been threatened. If the prosecutor arrives with the conclusion that the victim was pushed to take part in the reconciliation procedure, he/she can prosecute the perpetrator for threatening the victim.**

There are some factors that can be considered when assessing whether the conciliation is based on the victim's free will:

- Whether there is a history of an abusive relationship;
- Whether there has been a recent separation;
- Whether there is a history of harassment;
- Whether there are divorce proceedings in progress;
- Whether the accused has a psychiatric history;
- Whether the accused has ever threatened the victim or the victim's children in any manner; • Whether there are serious financial difficulties facing the family unit;
- Whether the accused is employed;
- Whether the victim is financially dependent on the accused;
- Whether the accused has a related criminal record;
- Whether the accused has an alcohol or drug dependency;
- Why the victim is recanting;
- When and what circumstances was the recantation made;

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<sup>49</sup><http://www.icj.org/wp-content/uploads/2016/03/Universal-Womens-access-to-justice-Publications-Practitioners-Guide-Series-2016-ENG.pdf>, pp. 237-238.



- Whether the accused has used, or threatened to use a weapon against the victim and/or her children;
- Whether the accused has access to weapons.<sup>50</sup>

*F) Improving access to justice for the victims of domestic violence*

Many international agencies as well as local civil society have constantly introduced proposals of certain reforms to Armenian authorities in order to improve DV victims' access to justice in line with international law and international best practice. What can be done specifically by prosecutors in this respect apart from the suggestions articulated above?

- First of all, **it is necessary to exercise strict control over the initial stage of criminal proceedings** (this obligation of prosecutors is directly enshrined in Article 53§2 (1) of Criminal Procedure Code), particularly in terms of rejecting to initiate criminal proceedings upon the DV victims' complaints and mediation between the perpetrator and the victim.
- Further, **absence of due diligence in investigation of DV cases must not be tolerated**. These cases are seen as 'cases of low importance' by law-enforcement (probably since they are mostly offences of low or medium gravity) and they do not put much effort in investigating them unless the victim dies. The statistic shows that most of murdered women had multiply applied to police seeking protection and the tragedies could be prevented had the police shown due diligence.
- **Avoiding delays in GBV cases is highly important**. The victim is often more willing to cooperate immediately after the incident, rather than later, when the abuser may have reasserted control over the victim.<sup>51</sup> Besides, it would decrease the likelihood of additional, potentially more serious crimes.
- In addition, **prosecutors must not allow mild qualification of the crimes in the context of domestic violence**.
- It could be useful to avoid the dependence on solely the victim's statement. Instead **consider whether there is other supportive evidence independent from the victim**.
- **It is important to consider police officers' and medical professionals' in-court testimony** as they are either the first to respond to the crime or closely communicated to the victim and are likely to possess valuable information about the crime.

As regards judges, they are first of all expected to demonstrate gender sensitive approach in the courtroom instead of neutral attitude. Judges may consider the following changes into their day-to-day practice in order to improve access to justice for victims of domestic violence:

- **Prevent irrelevant discussions on women's sexual history and moral characteristics in the courtroom.** Gender stereotypes should not influence the objectiveness of the verdict, and judges should not see women's alleged or actual untruthfulness as a mitigating circumstance for their murder.
- **If the parties reach an agreement during the court trial, judges must be ascertained that it was due to the victim's free will, not because of threats and pressure.**
- It is worth reiterating that the **judges can apply to the Constitutional Court with regards to the provisions that might be contrary to women's constitutional rights.**
- **Judges should provide the victims with the possibility to testify remotely or via communication equipment when this is necessary to protect her privacy, safety and other human rights.**

<sup>50</sup> Preventing and Responding to Domestic Violence, Trainee's Manual for law enforcement and justice sectors in Vietnam, Hanoi 2011, p. 153.

<sup>51</sup> <http://www.endvawnow.org/en/articles/1017-incorporate-knowledge-of-gender-based-violence-into-policies-and-protocols.html>

- Additionally, **judges should aim for a fair and just decision based on the facts of the case, taking into account abuse from the husband and the safety of the woman.**
- Most importantly, **in order to improve victims' access to justice victims should trust the courts.** This is impossible if the sentences for DV are unjustifiably low and when perpetrators can count on impunity.

## **2.2. Access to justice of the victims of sexual violence**

Studies have discovered that violence against women is the most common but least punished crime in the world.<sup>52</sup> This finding is probably true also for Armenia. Gender-based violence is one of the most widespread forms of violence in the country. And among the most dangerous and latent forms of gender-based violence is sexual violence. However, there do not seem to be systematic and coherent responses on the part of legal professionals seeking to lower the level of sexual violence and its latency and bring perpetrators to justice. In addition, the relevant legal framework is not perfect as well.

In particular, the Criminal Code criminalises rape, which can be regarded as a gender specific *corpus delicti* considering that only women can be victims of that crime, and accordingly only men can be the subjects. Although the Criminal Code does not explicitly prohibit spousal or intimate partner rape, the mentioned article and others on sexual violence do not contain any exception for marital violence. Therefore, those articles can theoretically be applied in those cases. The main problem with definition of rape with regard to women's access to justice is that the absence of consent is not mentioned as an element of rape. Thus, Article 138 defines rape as follows: "Sexual intercourse of a man with a woman against her will, using violence against the latter or some other person, with threat thereof, or taking advantage of the woman's helpless situation". This formulation presupposes that whenever the victim is not in a helpless situation, she must actively resist or express her unwillingness. However, the recent international developments in this sphere, including the European Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention), highlight absence of expressed will instead of expressed unwillingness on the part of the victim. In other words, an action can be regarded as rape not only when the victim explicitly shows her unwillingness to have a sexual intercourse with the offender, but also when she does not express will to have one.<sup>53</sup>

Turning to the Criminal Procedure Code, it must be stressed at the outset, that the code does not prescribe as a default rule that hearings on sexual violence must be held *in camera*. Should certain conditions be satisfied, in exceptional circumstances upon motion or by own initiative the court may issue a decision on holding *in camera* trial. In any case, the introductory and concluding parts of the judgment must be published which enables those interested to identify the victims. Although the injured party can bring a motion asking that her/his name be masked, the law does not explicitly highlight that opportunity and granting the motion again completely depends on the judge. Practically speaking, the courts grant these motions mostly due to security reasons. The victims of sexual violence are often reluctant to initiate criminal proceedings given the shame and stigmatisation that those crimes cause. For instance, according to the findings of the public opinion poll conducted by Proactive Society, for 21.9% of victims of latent crimes, the reason for not reporting was being embarrassed of the incident and its publicity. Obviously, the vast majority of these crimes were of sexual nature. It seems a good idea in the light of effective access to justice for GBV victims, that those kinds of cases be examined *in camera* as a default rule, unless, due to special circumstances, the court decides otherwise.

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<sup>52</sup> UNFPA survey, *supra* n. 30 , p. 17, 2007 International Women's Day Fact Sheet on Violence Against Women. International Women's Day 2007. "Take action to end impunity for violence against women and girls." Available at: <http://www.un.org/events/women/iwd/2007/factsfigures.shtml>

<sup>53</sup> For further elaboration see the General Part of this manual.



**Recommendation: In the absence of such a strict rule in the law, it is very important that judges take into consideration the above presented arguments and hold closed hearings in all cases on sexual violence unless there are exceptional circumstances.**

There are vicious practices concerning crimes against one's sexual security and sexual freedom both at the pre-trial stage of the proceedings and court trial. In particular, rape victims who applied to NGOs expressed concern that investigators kept asking irrelevant questions about their sexual life. Moreover, apart from the investigator dealing with their cases, other investigators (all of them-men) could intervene and ask questions. **In this regard, prosecutors can give instructions to the investigators as to how to question vulnerable victims and witnesses in order to ensure respect for their dignity.**<sup>54</sup>

*Recommendation:* First of all, it is important to ensure confidentiality of the interrogation. Secondly, the investigators should not ask questions on the victim's virginity or her past sexual life that are not relevant for the case, Finally, they should not comment on victims' clothes or appearances or make inappropriate jokes. The same suggestions are relevant for the prosecutorial questionings during court hearings. It is very important to treat female victims sensitively. More women will likely report the violence to the authorities if they know they will be treated with respect and dignity.

The same can be said about the courtroom management. In many cases, judges do not prohibit and often ask themselves inappropriate questions resulting in blaming the victim. There are not sufficient safeguards in the law or practical skills on the part of judges to protect women's privacy and dignity during the court hearing.

In fact, 'blaming the victim' is quite common among law-enforcement agencies. One of those examples was brought into public by independent journalistic investigation.<sup>55</sup> In the mentioned case, 3 investigators dropped the case on rape of Hasmik (the name is changed) on the grounds that the victim provoked the sexual act herself, and hence the incident did not contain elements of crime. This decision was overruled by the first instance court of Kentron and Nork-Marash districts and was reiterated again by the investigative body. The decision of the court revealed that the investigation was not objective, and that one of the investigators violated victim's rights in several episodes. Instead of being prosecuted, that investigator was promoted. The second investigator was friends with the suspect. Nevertheless, the decision of investigator on dropping the case was supported by the General Prosecutor's Office which submitted an appeal against the first instance court's decision and won.

Nevertheless, there is a good practice example of dealing with rape cases by the courts. Thus, two police officers were accused with rape of a sex worker and brought to the Armavir first instance court in 2012. During the trial the victim recanted her testimony and said that she agreed to have sex with the defendants by herself. However, the court considered her new testimony as untrustworthy and suspected pressure from the police officers. Eventually, the court found the defendants guilty. **This is a good example for all judges of eliminating impunity for sexual crimes and ensuring justice for the victims.**

<sup>54</sup> See more detailed on treating the victims of sexual violence in Annex 1.

<sup>55</sup> <http://hetq.am/arm/news/55090/brnabarutyan-gortsov-tuzhoxoy-dimum-e-em-despannerin-hayastani-iravapahneric-huysy-ktrelov.html>

**Recommendation: Improving access to justice of the victims of sexual violence**

When dealing with cases on sexual crimes, it is important for prosecutors and judges:

- to take necessary measures in order to prevent secondary victimisation.
- Exclude attempts to justify violence with previous agreements to engage in sexual contact.
- To request or provide evidence on the victim's consent rather than on the victim's physical resistance. The lack of resistance does not necessarily mean absence of rape, whilst lack of consent does. The latter should be seen as a decisive criterion.
- Eliminate prejudices against sex workers. In many cases involving sex workers, the consent for sexual acts, even those of a violent nature, is taken for granted. The stereotype that sex workers should accept sexual violence compromises justice.

### **3. BARRIERS TO EQUAL ACCESS OF WOMEN TO JUSTICE IN THE CONTEXT OF CIVIL PROCEEDINGS**

#### 3.1. Women's access to justice in divorce proceedings

Women, especially those subjected to domestic violence, are extremely vulnerable when it comes to divorce. To begin with, if the marriage is not registered, the woman cannot claim half of the property obtained by her husband during *de facto* marriage which she would be granted in registered marriage. Furthermore, quite often Armenian young couples live with the husband's parents in their house in which case neither the woman, nor her children have any rights over that property.

As regards alimony, even if the former husband is obliged by the court to pay it, it does not necessarily mean that the woman and her children will actually receive it. The problem is that many men register their property on their parents or other relatives, and hide their income from the Tax Service. As a result, getting alimony from them is practically impossible. This problem is very widespread and needs an effective solution. Also, many women complain that even though they won the custody suits in the court, they still do not live with their children due to not diligent and indifferent attitude of bailiffs' agency. In such cases bailiffs who fail to properly execute the court decisions can even be prosecuted which would facilitate the prevention of that vicious practice.

The situation with maternal rights after separation is also highly worrisome. In particular, when husbands or partners of women force them to move from the house, problems arise with visiting the children. Most of all, in those cases men do not allow women to see their children. The Family Code or Civil Procedure Code do not provide for any mechanism other than the court's final decision allowing mothers to exercise their maternal rights. However, the court trial may take forever. For instance, in case of A. Gabrielyan she did not see her child for 1 year (when she was forced to leave, the child was 7 months). The first instance court of Shengavit district kept postponing the hearings, *i.a.* on the basis of the judge's vacation. There is *prima facie* maladministration of justice in cases of child custody. Apart from it, the Committees on Custody and Trusteeship do not have authority under law for intervening and suggesting provisional solutions to child-related conflicts until court judgments.

In addition, it is noteworthy that the courts do not take into consideration the violent behavior of fathers in child custody cases unless there is a final court decision on violent acts. Besides, the expectations from women with regard to child-care are higher than those from men. Therefore, courts are stricter with

women in child custody cases. For instance, women can be deprived of parental rights for actions (for example, not paying alimony, or alcoholism, etc.) that men constantly do with no consequences.

*Recommendation:* It is obvious, that the role of judges in child-custody related cases is to ensure that the matter is dealt with as soon as possible for the best interest of the child. Likewise, the history of domestic violence needs to be taken into consideration when making decisions on custody. **Judges should get rid of the stereotype that the child should maintain contact with his/her father, regardless of the father's violent behavior.** The Istanbul Convention, for instance (Article 31), provides that when making decisions on custody, the DV episodes must be taken into consideration and the safety of victims of violence, including children, in the context of custody rights, must be ensured. Therefore, judges should give a serious thought to a question whether an abusive husband can be a good father.

In addition, according to the jurisprudence of ECtHR, the failure to duly present and hear the views of the child undermines the procedural fairness of the decision-making process. This also has to be taken into account.<sup>56</sup>

In divorce proceedings it is very widespread among judges to mediate between the parties, and especially to persuade women to 'keep the family'. One of the lawyers told about a case, where a rich businessman's wife filed a divorce case because in her words she had been socially isolated all the time. During the hearing her husband was publicly announcing that she belonged to him anyway, and that no court could separate them. During the break the judge told the woman: "Why do you not appreciate your husband's love? Be smart, do not break the family". After a while, the woman returned to her husband.

*Recommendation:* **In this context, it must be borne in mind that the calling of judges is to exercise justice, be an impartial arbitrator between the parties and evaluate the evidence objectively. It is not up to them to mediate between the parties and persuade them to drop the case, especially in the face of potential domestic violence.**

### 3.2. Women's access to justice in the context of labor rights

As was discussed above, economic empowerment and economic independence of women have significant role in improving their access to justice. However, cultural and economic backgrounds to accomplish those goals are not strong. Women stay at home to take care of children because the salaries that they can claim cannot cover child-care expenses. 63.9% of unemployed in Armenia are women.<sup>57</sup>

In this context, ensuring equal opportunities for women and men in labor market is highly important. Unfortunately, the situation with women's labor rights in Armenia is far from being satisfactory.

Discriminatory practices in recruitment process are well-known. Job announcements are vivid illustration of women's role in labor market. The vast majority of announcements for secretaries, assistants, receptionists and similar jobs require young and good-looking women. Many announcements, for example for security personnel, require explicitly men. This type of discrimination is quite widespread. Women are seen as good supportive personnel, workers that are punctual and diligent, but lack analytical and leadership skills to occupy managerial positions.<sup>58</sup> In many cases, directors are reluctant to appoint women in leading positions, promote them or spend resources on increasing their qualification because they are concerned that women will get married, have children and take maternal leave.

This assumption is simply a stereotype. There are a number of successful businesses run by intelligent, hardworking and ambitious women. Some of them (for instance, Faina Harutyunyan running Faina

<sup>56</sup>*N.TS. AND OTHERS v. GEORGIA*, Application no. 71776/12, 02.02.2016.

<sup>57</sup>Round table, supra n. 9.

<sup>58</sup>From the interview with the Head of Gender Studies and Leadership of YSU, Gohar Shahbazyan, 08.06.2016.

Design, NarineIsahakyan, the Director of theEducational Centre Inchuik, AlinMasrlyan, the owner of the famous shop Aleppo and others) were granted the Prime Minister’s prize of The Best Woman Entrepreneur in 2015.

Armenia has one of the worst indexes of gender pay gap in Eastern Europe and Central Asia. One cannot find the reason for this substantial inequality in the law. Article 3 of RoA Labor Code highlights equality of the rights and opportunities of workers as a principle of labor legislation. The reason of substantial inequality is deeply-rooted in the stereotypes and traditional roles of women and men.

Sociological studies show that women in majority of cases do not mind to accomplish tasks that are not officially theirs, not even being paid for additional job, whereas men do. In addition, quite often a woman occupying a lower position than a man carries out exactly the same kind of duties without being paid equally.

There is no well-established case-law on gender discrimination in Armenia. Lack of anti-discrimination law means that one is always obliged to prove how, for instance, discriminatory job announcements directly affect his/her rights which is quite difficult to do if one does not want to apply for that job but simply is insulted by discrimination.

**Recommendation:** In such cases, **judges are encouraged to examine those suits in the context of insult** (if the plaintiff asks for it of course) and demonstrate gender-sensitive approach to those suits. In addition, the widespread discriminatory practices that damage women’s rights and legitimate interests can be prevented *inter alia* by **prosecuting the perpetrators under Article 143 of the Criminal Code for breaching the equality of humans and citizens.**

#### 4. PRACTICAL TOOLS

##### **Problem question 1.**

Mr. A.G. is accused with infliction of grave damage to his wife’s health. In the course of the investigation he explained that his wife S.D. was cheating on him. He always suspected that she lacked morals but when he found proof of his suspicions (saw an sms on his wife’s phone from her boyfriend) he got extremely angry and could no longer control himself. It was in the night when he saw the message and woke up the victim. They started to dispute and moved to the kitchen where Mr A.G. took a knife and wounded the victim 12 times. S.D.’s two minor daughters came to the kitchen in the middle of the fight and told A.G. that they were going to call the police. After he wounded the victim, A.G. escaped.

In the pre-trial stage of the proceedings a forensic examination was carried out according to which the defendant was not in a state of insanity while wounding his wife. However, the second examination appointed by the investigator, showed otherwise. Eventually, according to the third forensic examination conducted during the court proceedings, the possibility that the defendant was in a state of insanity at the moment of the criminal episode, was high.

*Question 1. Questioning of the victim by the prosecutor during the trial.*

*Question 2. What is the qualification of this crime?*

*Question 3. What arguments should the prosecutor highlight for the qualification of the crime and what arguments should the judge base his/her judgment on?*

*Question 4. What punishment should the prosecutor request and what punishment should the judge appoint (with relevant substantiation) ?*

##### **Problem Question 2.**

K. Z., a 14 years old woman of Yazidi origin is married to Mr M.O. The marriage was of religious nature and was not legally registered. In a year, K. Z. went to a hospital seeking medical help with pregnancy. The hospital informed the law-enforcement agencies about it. Shortly, criminal proceedings were

initiated against M.O. under Article 141 of RoA Criminal Code. In the course of investigation Yazidi activists were organising demonstrations in front of the General Prosecutor's Office demanding to close the proceedings and respect their national traditions.

At the court hearing the prosecutor requested that Article 70 of the Criminal Code, namely conditional release, be applied in this case. The prosecutor mentioned, as supportive arguments, that early marriages are widespread in Yazidi community and are part of their national identity. Besides, the prosecutor underlined that application of conditional release was common for that type of cases. In addition, the victim requested to stop prosecution against the defendant since he was the breadwinner of the family and without him their family would experience an economic collapse.

*Question 1.* How would you act in a capacity of the judge?

*Question 2.* In your opinion, which decision of the judge would violate any of the principles of Criminal Code and International Human Rights Law?

### **Problem Question 3.**

S.B., a former sex worker, filed a complaint of rape. She argued that the suspect, D.N., was a police officer that had once fined her for providing sex services. He ran into her in the night and offered to spend time together, but S.B. refused as she decided to start a new life and was no longer working in that sphere. D.N. did not take her words seriously, thought that she was playing some kind of game and raped her. Shortly S.B. stopped the resistance. Afterwards he gave S.B. money.

The investigator dealing with her case told her: "What do you want from the man if he gave you your money? You should have got used to it. Do you expect to be treated like a queen after all?". Eventually, the investigator refused to initiate criminal proceedings on the grounds of D.N.'s explanation that he believed that S.B. did not mind to have a sexual intercourse with him since he knew she was a sex worker. He thought that her unwillingness was like a game, and he was not realizing that he was raping her, especially because she stopped resistance shortly. Otherwise he would never use force.

S.B. challenged the investigator's decision to the prosecutor.

*For prosecutors: What would you do in a capacity of the prosecutor examining the complaint? What arguments would you rely on?*

*For judges it continues:* The prosecutor apologised for the way S.B. was treated by the investigator but upheld his decision. The reasoning was the absence of fault on the part of D.N. and absence of evidence of S.B.'s resistance. He agreed with the investigator that D.N. could have a reasonable assumption that S.B. actually was not against that sexual act considering that she used to provide sex services and did not actively resist. The prosecutor's decision was challenged and is now examined by the court.

*Question 1.* The judge is questioning the victim and the court to rule on whether the criminal proceedings should be initiated.

*Question 2.* How would you act in a capacity of the judge? What arguments would you consider?

### **Problem question 4.**

Mrs. V.H. files a case against her husband Mr. G.H. for a battery. She underlines that he had been abusing her for years but she did not want to report about the violence because of their kids. In the course of the investigation (G.H. was accused with Article 118 of CC) the accused kept threatening the victim. The investigator warned him and mentioned about it in the protocol. After some time, the victim dropped the case.

In several months the victim reports about another episode of abuse. Criminal proceedings were initiated under Article 117 of CC this time for infliction of light damage to one's health. The accused kept threatening the victim and attempted to take the kids away from her. The investigator reported

about this to the prosecutor who instructed him to call G.H. to order. Eventually, the victim drops the case for the second time. The investigator eliminates the proceedings since the offence prescribed under Article 117 was a private prosecution case.

*Question: Your actions as a prosecutor.*

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6. [http://www.un.am/up/file/Gender-Concept-Paper\\_Engl\\_2010.pdf](http://www.un.am/up/file/Gender-Concept-Paper_Engl_2010.pdf)
7. [http://www.un.am/up/file/2011-2015\\_Gender%20Policy\\_NAP-Eng.pdf](http://www.un.am/up/file/2011-2015_Gender%20Policy_NAP-Eng.pdf)
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9. [http://www.gov.am/u\\_files/file/kananc-xorh/Ynddem%20brnutyan%202011-2015%20programm\(1\).pdf](http://www.gov.am/u_files/file/kananc-xorh/Ynddem%20brnutyan%202011-2015%20programm(1).pdf)
10. <http://www.icj.org/wp-content/uploads/2016/03/Universal-Womens-accesss-to-justice-Publications-Practitioners-Guide-Series-2016-ENG.pdf>
11. <http://www.endvawnow.org/en/articles/1017-incorporate-knowledge-of-gender-based-violence-into-policies-and-protocols.html>

## ANNEX 1 - RECOMMENDATIONS

### **Recommendations for the prosecutor’s office: Preparing a case file on domestic violence<sup>59</sup>**

To prepare a thorough case file on domestic violence for the court’s evaluation, it is recommended that prosecutors include the following information (in addition to mandatory information taken during the initial questioning of a suspect and in accordance with the Criminal Procedure Code).

- Duration of the relationship between the perpetrator and the victim, and the existence of a history of abuse/violence.
- Isolation. Does the victim have family or friends? Does she live with the perpetrator’s family or alone? Does she have access to public transport?
- Location where the violence takes place. Is it an urban or a rural area? Does the victim have any possibility – given the area where the violence takes place – to report it to the police, a social work centre, a doctor or friends?
- Does the victim have access to money (e.g. does she have her own source of income)?
- Does the suspect have access to or possess weapons?
- Use of alcohol/drugs by the suspect.
- In case of injuries inflicted on the victim, did she see a doctor and does she have any photographs and/or medical documents? If she has medical documents, the prosecutor is encouraged to include them in the case file and conduct an assessment of bodily and/or mental injuries detailed in the documents if domestic violence took place in the past; if the offence is “recent”, an expert examination of the victim is recommended.
- Written statements of questioned witnesses who may have evidence about the specific offence of domestic violence.
- Official records from a social work centre. These centres may be in a position to offer detailed information about the potential history of domestic violence, repeated violence, placing the victim in a safe house, etc., given their possible involvement in the case.
- Victim’s previous visits to a family doctor. Family doctors may be in a position to know the history of a victim’s injuries, which may point to ongoing violence and abuse.

### **Recommendations for investigators in cases of sexual abuse<sup>60</sup>**

- Treat the victim with special sensitivity when interviewing her/him, and pay due regard to her/his privacy;
- calmly approach the victims and recognise the impact of trauma and how this may affect their behaviour (people react differently to trauma, e.g. a lack of emotion or the presence of emotion is not an indicator of the legitimacy of an assault);
- of possible, ask the victim whether she/he wants a psychologist to attend the interview, in order to support the victim;
- ask the victim to describe the sexual assault and specify as many details as possible;

<sup>59</sup>Judicial Benchbook: Considerations for Domestic Violence Case Evaluation in Bosnia and Herzegovina, Sarajevo 2014.

<sup>60</sup>Practice Guide: Domestic Violence. Addendum to the Judicial Benchbook: Considerations for Domestic Violence Case Evaluation in Bosnia and Herzegovina, Sarajevo, 2016.



- document all information obtained from the victim (use the victim's exact words and place those words in quotations; do not sanitise or "clean-up" the language used by the victim);
- document the victim's fear and record all reactions of the victim aimed at defending herself/himself or escaping;
- ask the victims if they told anyone about the sexual assault, e.g. a close person who could confirm the victim's statement;
- collect medical evidence of the victim's physical injuries;
- document physical evidence;
- take photographs of the victim's visible injuries;
- obtain a statement from the suspect.

**ANNEX II –AGENDA FOR TRAINING**  
**Programmatic Cooperation Framework for**  
**Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**



**Project**  
**“Improving Women’s Access to Justice in the Six Eastern Partnership Countries”**



**TRAINING SEMINAR**  
**“ENSURING EQUAL ACCESS OF WOMEN TO JUSTICE THROUGH**  
**THE PRACTICE OF JUDGES AND PROSECUTORS”**  
**for judges and prosecutors**  
**17-18 June 2017**

**AGENDA**  
**Aghveran, Armenia**  
*Co-organised by the ACADEMY OF JUSTICE OF THE REPUBLIC OF ARMENIA with the*  
*COUNCIL OF EUROPE*

## **DAY I 17 June 2017**

9:00-9:15	<b>Registration of the participants</b>
9:15-9:45	<b>Opening</b> by Council of Europe and the Academy of Justice of Armenia: introduction of the trainers, training manual and the objectives of the training
9:45-10:30	<b>Ice-breaker:</b> introduction of the trainees and their expectations from the training
10:30-11:15	<b>Introduction:</b> the current state of gender equality and main obstacles to women's access to justice in Armenia, mapping the issues to be discussed during the training
11:15-11:30	<b>Coffee break</b>
11:30-12:00	<b>Council of Europe Convention on Combating and Preventing Violence against Women and Domestic Violence:</b> Istanbul Convention as a Standard on Women's Access to Justice
12:00-13:00	<b>Judicial gender stereotyping</b> and the case-law of the European Court of Human Rights
13:00-14:00	<b>Lunch</b>
14:00-15:00	<b>Access to justice of victims of domestic violence:</b> main challenges for domestic violence victims to access to justice, common shortcomings in the judicial system and how to address them, video by "Coalition to stop violence against women".
15:00-15:30	<b>Group exercise:</b> case study and discussion
15:30-15:45	<b>Coffee break</b>
15:45-16:30	<b>Analysis of judicial gender stereotyping</b> in sexual violence cases from the perspective of a litigating lawyer
16:30-17:00	<b>Group exercise:</b> case study and discussions
15:45-17:00	<b>Women's access to justice in civil proceedings</b> and group exercise

**DAY II 18 June 2017**

- 10:00-11:00 Workshop on improving women's access to justice Part I  
Recommendations and case study **for judges: early marriage and access to justice, gender-sensitive interpretation of relevant legislation when dealing with gender-based violence cases, court management, group exercise based on cases of national courts' practice and ECtHR case-law**
- 10:00-11:00 Workshop on improving women's access to justice Part I  
Recommendations and case study **for prosecutors: recommendations on dealing with sexual violence cases, preventing double-victimization, case study and group exercise**

**Coffee break**

- Workshop on improving women's access to justice Part II  
Recommendations and case study **for judges: judicial gender stereotyping, psychological aspect of dealing with sexual violence victims, group exercise**
- 11:15-12:15 Workshop on improving women's access to justice Part II  
Recommendations and case study **for prosecutors: private prosecution cases and access to justice, questioning of gender-based violence victims, recommendations based on best practices, case study and group exercise**

**Lunch**

- 13:15-14:15 Workshop on improving women's access to justice Part III  
Recommendations and case study **for judges: dealing with sexual violence cases, preventing double-victimization, case study and group exercise**
- Workshop on improving women's access to justice Part III  
Recommendations and case study **for prosecutors: judicial gender stereotyping, psychological aspect of dealing with sexual violence victims, group exercise**
- 14:15-14:45 **Concluding remarks and feedback**