

# Improving the Effectiveness of Law Enforcement and Justice Officers in Combating Violence against Women and Domestic Violence



## Training of Trainers Manual



**IMPROVING THE EFFECTIVENESS  
OF LAW ENFORCEMENT  
AND JUSTICE OFFICERS  
IN COMBATING VIOLENCE AGAINST  
WOMEN AND DOMESTIC VIOLENCE**

*Training of Trainers Manual*

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The opinions expressed in this work are the responsibility of the authors and do not necessarily reflect the official policy of the Council of Europe.



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## INTRODUCTION

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Since its formation in 1993 as a new republic and accession to the European Union in 2004, the Slovak Republic (Slovakia) has recognised violence against women as “*the most extreme violations of women’s human rights*”<sup>1</sup>. The government has also acknowledged that Slovakia lacks a co-ordinated national approach to violence prevention and victim protection and assistance. Slovakia has taken important preliminary steps to addressing gaps in current law and policy. For instance, in 2004, the government approved a National Strategy for the Prevention and Elimination of Violence against Women and in Families in order to improve the response to various forms of violence against women. The strategy was followed by a series of national action plans outlining definitive steps toward ending violence against women, the most recent of which is the National Action Plan for the Prevention and Elimination of Violence against Women for the years 2014- 2019. As the current Plan points out, despite important efforts over the past decade, Slovakia is still far from meeting international standards for an effective and co-ordinated set of actions for addressing violence against women.

Among planned actions are the development of more comprehensive laws, increasing the number and types of victim services; training of professionals working with women victims of violence and awareness-raising campaigns.

Slovakia has also signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). In preparation for ratifying the Istanbul Convention, Slovakia is undertaking measures to address the requirements and align its law and policy with the Convention, for instance, by enhancing service provision, drafting and amending laws, establishing a co-ordination mechanism and through education and training of professionals.

This training of trainers (ToT) manual complements such national efforts, with a specific focus on improving the capacity of the law enforcement and justice system professionals to respond to the needs of victims of violence, particularly of domestic violence. The manual is a tool for developing training programmes that can be used to sensitise professionals to the issues of violence against women and domestic violence and to expose them to good practices in their fields.

### ***Purpose and structure of the training of trainers manual***

The core aim of this ToT manual is to foster an understanding of a victim-centred approach and to provide trainees with the tools they need to adopt this approach in their work. According to the Istanbul Convention, a victim-centred approach is one that maintains a focus on the needs and concerns of victims as a priority and recognises that violence against

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<sup>1</sup> [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SVK/INT\\_CEDAW\\_ADR\\_SVK\\_17645\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SVK/INT_CEDAW_ADR_SVK_17645_E.pdf)

women and domestic violence must be addressed through specific, and gender-sensitive, measures. Police, prosecutors and judges play a central role in preventing and responding to violence against women. By adopting a victim-centred approach, fostering respect for victims and a non-judgemental attitude, these professionals will not only improve the effectiveness of their work, but they will also offer victims critical support in breaking free from violence. Victims will feel understood, believed, helped and supported, which is a way of empowering them as well as helping them to collaborate with law enforcement and diminishing their fear of reporting or asking for help.

This manual is developed to assist trainers to conduct training for police, prosecutors and judges, and it contains general information that trainers can adapt to a particular programme. It is recommended that trainers using this manual identify the educational requirements of a particular group of learners (e.g. will the course be an introduction to relevant legislation for new police recruits or a “refresher” for experienced prosecutors and judges) and then develop the appropriate modules that suit these specific needs, based on the material found here.

Part I introduces the concept of violence against women with special attention to domestic violence against women using the definition provided by the Istanbul Convention as a framework. This section also provides a context for violence from different perspectives: legal, sociological and psychological as well as criminological, as an understanding of these can assist trainers in better transmitting the content and methodology of the training.

Part II is divided into two sections. The first one is dedicated to the role of the police when dealing with cases of domestic violence, from the handling of the first call by the police dispatcher to the investigation stage. Attention is also given to the role of the police in preventing the escalation of violence (recidivism) and in assessing and managing risk. The second section addresses the roles of prosecutors and judges. The aim of this section is to increase judicial sector awareness of the power and opportunities they have to address cases of domestic violence by incorporating a victim-centred approach throughout their work, while ensuring that the rights of perpetrators are respected.

Part III covers training strategies addressed to the trainers. It also ensures that trainers are aware of their trainees’ and own needs, emotions and beliefs. Recommendations on how to make the most of a training session are also provided.

A set of hands-outs containing exercises and other practical tools for the training are included as appendices to this manual.

## PART I – REFLECTIONS ON VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

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### Section 1: Understanding Domestic Violence and Violence against Women

#### 1.1 Explanation and definition of violence against women and domestic violence

The following definitions are compatible with the definitions of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention, Article 3).

**Violence against women** (VAW) is considered a violation of human rights and a form of discrimination against women. It means all acts of gender-based violence that result or can result in, (or are likely to result in) physical, sexual, psychological or economic harm or suffering to women. Also threats of such actions are considered forms of violence and they include: coercion, deprivation of liberty, intimidation. Victims can be affected both in the public and private spheres.

**Gender-based violence** (GBV) is violence that is directed against a woman because she is a woman or that disproportionately affects women.

**Domestic violence** (DV) includes all acts of physical, sexual, psychological or economic violence that take place within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.

## Note to trainers: Terms used in this manual<sup>2</sup>

Note that in this manual, the term “**victim**” is used to refer to a person who is subject to domestic violence or violence against women. In many contexts, domestic violence experts prefer to use the term “survivor” to describe a person who has experienced violence because it is more empowering. However, in law enforcement and legal contexts, the term “victim” is used regularly to refer to the injured party (whether they have survived the violence or not). This manual, therefore, uses the term “victim.” The manual also refers to the “**petitioner**”- as the victim in the civil justice system (e.g. an applicant for a protection order).

When referring to the person who has committed violence, the general terms “**perpetrator**” or “**suspect**” (a person alleged to have committed violence) are used in this manual and when referring to the role of the police. In addition, “**perpetrator**” and/or “**defendant**” refer to the same person<sup>1</sup> when involved in criminal proceedings.

## 1.2 Forms of violence against women and the cycle of abuse and power

Violence against women and specifically domestic violence against women starts with coercive and controlling behaviours and attitudes that in most cases lead to physical violence. In abusive intimate or former intimate relationships, perpetrators use, or threaten to use, violence to coerce victims to comply with their wishes<sup>3</sup>. Domestic violence against women can include different acts of psychological, physical, sexual and/or economic violence. Articles 33 to 39 of the Istanbul Convention identify forms of violence which should be considered criminal offences:

- ✓ **Physical violence** refers to bodily harm suffered as a result of the application of immediate and unlawful physical force. It also includes violence resulting in the death of the victim.
- ✓ **Psychological violence** refers to any intentional conduct that seriously impairs another person’s psychological integrity through coercion or threats.
- ✓ **Stalking** is any form of direct and indirect control and surveillance of the victim, with or without physical contact. It usually takes place after the end of the relationship, but it can occur while the relationship is still on-going. It can, amongst

<sup>2</sup> In this manual, the authors at times refer to the victims as “she” or “her”. The use of female pronouns is not meant to suggest that women are the only victims of domestic violence. Instead, it reflects the fact that the majority of victims of this form of violence are female.

<sup>3</sup> Walker, L (1979). Women's Hall of Fame. Ed D. Colorado.

others, include threats and harassment, online or offline, following the person, spying causing the victim to fear for her or his safety.

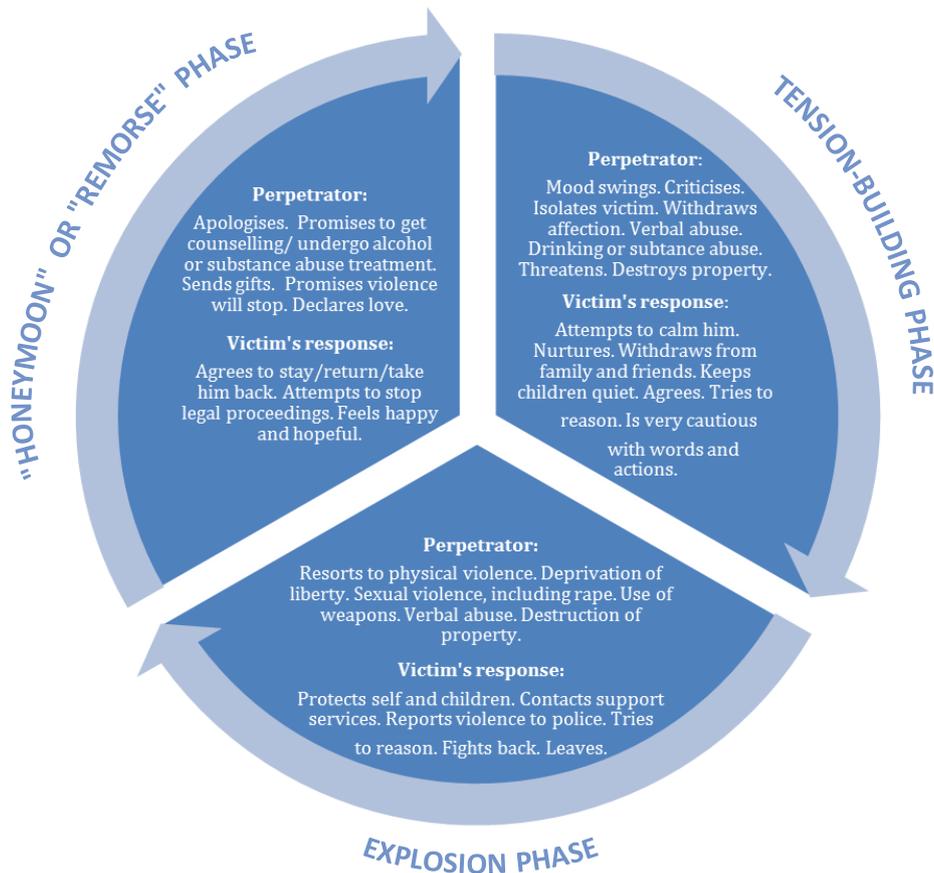
- ✓ **Sexual violence, including rape** covers all forms of sexual acts performed on another person without her freely given consent and which are carried out intentionally. It includes non-consensual vaginal, anal or oral penetration of a sexual nature with any bodily part or object; other non-consensual acts of sexual nature; causing another person to engage in non-consensual acts of sexual nature with a third person. Unwanted acts of sexual nature between spouses are also covered.
- ✓ **Forced marriage** refers to physical and psychological force exerted on a victim to involuntarily enter into marriage. Luring a person to go abroad with the purpose of forcing this person to enter into marriage is also covered under the Istanbul Convention.
- ✓ **Female genital mutilation** consists of performing, assisting to perform or inciting, coercing or procuring the cutting, stitching or removal of part or all of the female external genital organs for non-therapeutic reasons.
- ✓ **Forced abortion and forced sterilisation** refer to the termination of a pregnancy or terminating a woman or girl's capacity to naturally reproduce without her prior and informed consent.
- ✓ **Sexual harassment** refers to verbal, non-verbal or physical conduct with a sexual nature and unwanted by the victim. Article 40 of the Istanbul Convention gives States Parties the option to apply either criminal law or other sanctions (for instance, penalties under labour law).

Note that these forms of violence are also criminalised under Slovak law, a topic that is addressed in Section 2, Part E of this manual and as a handout.

## The cycle of violence

The cycle of violence (Figure 1) is an approach that can help law enforcement and justice officers to understand the dynamics of domestic violence when assisting the victim.

**Figure 1. The cycle of violence: an abusive and recurrent mechanism**



The length and evolution of each phase of the cycle of violence will vary from victim to victim depending on, for example:

- ✓ the nature and duration of the relationship;
- ✓ the victim's and perpetrator's socio-economic background;
- ✓ the type of abuse suffered by the victim;
- ✓ whether there are children or other people involved;
- ✓ whether there is substance and alcohol abuse;
- ✓ the help and support provided to the victim;
- ✓ the extent to which the victim is isolated.

As we can see in Figure 1, the stages and phases of the cycle of violence follow each other recurrently, until the cycle is broken by the woman herself or through some form of

intervention or outside help and support provided to the victim<sup>4</sup>. Some stages may overlap, while some may take place after days, months or years. An abusive relationship may also not go through the cycle at all. It is important to remember that not all victims will experience violence in the same way. Some will not get to the stage of physical violence and might never contact either the police or the judicial system. However, economic and emotional abuses are serious and invalidating and are considered a crime that needs to be investigated.

What is important to understand is that victims usually tend to contact the **police** or social services at the peak stage of the cycle, after a **physical or sexual attack** has taken place. They seek help when they feel and are in danger and look for immediate help. During the cycle of violence, the violent partner may swing between affectionate, apologetic and calm behaviour to periods of tension that grow into physical, sexual or psychological violence. The perpetrator holds the woman responsible for what he claims she made him do. He might threaten to take the children away, or threaten to use physical force or kill her if she tells anyone or does anything. This is when it is likely that the victim will return to the perpetrator, or withdraw the police report; and when victims are at their most vulnerable. The victim may even deny or minimise any violence at this point. At this stage, risk assessment and subsequent risk management and victim safety planning are of extreme importance, to understand the victim's needs. Victims can make choices based on realistic and concrete options and solutions to the violence they are experiencing. If these options are not present and supported, it is very difficult to break the cycle.

### ***Domestic violence: an issue of power and control***

There are many theories which attempt to explain the reason why men abuse their partners. The most recognised one, that is also supported by research (*inter alia*) and day-to-day practical experience, is that of **power and control**. This is based on the assumption that some men still hold strong misogynist concepts and think of their partners not as independent beings who can make decisions on their own and have their own lives. These men, of all ages, socio-economic status and nationalities do not accept that their partners can leave them, have friends or react to criticism, make their own choices and step out from the pre-set social norms of male and female roles. Violence is used as a powerful tool to keep women in their 'role' and conforming to these forms of sexism. When threatened and abused, women become scared, fear escalation, or even death, but are usually embarrassed to talk about it. They might also minimise and justify the violence since it is difficult to admit that their partner is abusive because this would also affect their self-esteem.

This theory is reflected in the well-known **'Wheel of power and control'**<sup>5</sup> shown in Figure 2. The wheel explains different forms of abuse and how these interact with each other and how power and control are related. This model helps explain the dynamics of abuse between partners.

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<sup>4</sup> Walker, L (1979). Women's Hall of Fame. Ed D. Colorado.

<sup>5</sup> The wheel of power and control was developed in the United States by the Domestic Abuse Intervention Project (DAIP). For more information visit: [www.theduluthmodel.org/training/wheels.html](http://www.theduluthmodel.org/training/wheels.html)

Figure 2. The wheel of power and control



### 1.3 Consequences and impact of domestic violence on women and on children

Victims of domestic violence and their children may face short and long-term consequences as a result of the abuse suffered. Domestic violence leads to physical, emotional/psychological damage, as well as loss of material property and reduced quality of life. The severity of the impact of domestic violence depends on personal (internal, e.g. prior history of abuse, lack of resiliency, low self-esteem, coping strategies) and social (external, e.g. presence of children, help received, social isolation, dangerousness of the perpetrator, access to services) circumstances. These factors will make it harder or easier for the victim to break the cycle of violence. Regardless of their role in the response and support mechanism, all professionals dealing with cases of domestic violence should be aware of the impact of different forms of gender-based violence, including domestic violence, on women and their children, so to avoid acting in an unprofessional and damaging way towards the victim (i.e. secondary victimisation<sup>6</sup>). Some of the devastating effects of domestic violence on victim's lives are explained below.

<sup>6</sup> A full explanation about the meaning of *secondary victimisation* and what the police and the judiciary should be aware of, can be found in section 1.D on 'Myths and stereotypes'.

### *Physical impact*

The physical harm resulting from violence can include any of the following: bruises and welts; lacerations and abrasions; abdominal or thoracic injuries; fractures and broken bones or teeth; sight and hearing damage; head injury; attempted strangulation; and back and neck injuries<sup>7</sup>. The consequences are not only related to direct blows or attacks. Ailments referred to as ‘functional disorders’ or ‘stress-related conditions’ are far more common. These include irritable bowel syndrome/ gastrointestinal symptoms, fibromyalgia, various chronic pain syndromes and exacerbation of asthma. In the World Health Organisation (WHO) multi-country study<sup>8</sup>, it emerged that abused women were twice more likely than non-abused women to report poor health and suffer from physical and mental health problems, regardless of when the abuse took place.

### *Psychological impact*

In addition to the above damages, psychological harm can have a devastating impact on a woman’s state of mind. Women can regain control of their lives and move on if helped, supported and believed. Dealing with the psychological consequences of violence is not only the responsibility of psychological professionals; law enforcement and judicial officers also need to understand the psychological and emotional impact of violence in order to better deal with these cases. Figure 3 outlines the range of consequences that domestic violence against women can have on a victim’s psychological well-being.

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<sup>7</sup> Heise L, Garcia Moreno C. Violence by intimate partners (2002). In: Krug EG et al., (eds). *World report on violence and health*. Geneva, World Health Organization. 87– 121.

<sup>8</sup> Garcia-Moreno C et al. (2005) *WHO multi-country study on women’s health and domestic violence against women: initial results on prevalence, health outcomes and women’s responses*. Geneva: World Health Organization.

**Figure 3. Psychological consequences of domestic violence against women <sup>9</sup>**



Victims' aggression towards others could also be a consequence of violence to bear in mind, especially towards children and other family members. Aggressive and violent behaviour is an indicator of exhaustion, feelings of powerlessness and of extreme fear and desperation. A well-trained professional, recognising the reasons for such behaviour, should not blame the victim, or doubt her credibility, but on the contrary, use extra caution and adopt a supportive attitude since aggression can make the victim more vulnerable and at heightened risk of re-victimisation.

Victim blaming, self-blaming and reduced credibility underlie the assumption that victims are responsible for the perpetrator's behaviour. However, the mechanism is quite different. It is the perpetrator who subjects the victim to psychological violence for months or even years, telling her that she is worthless, stupid, that she makes him react the way he does hitting, insulting or segregating her because it is her fault, she deserves it, she did not do or say what she was 'supposed to'.

In other cases, perpetrators simply deny any violent behaviour. They tell everyone the woman made it up because she is crazy, mentally unstable or because she wants to take advantage, for example, during a divorce, concerning child custody, or for financial matters. Perpetrators might even claim that she is inventing everything to justify another relationship.

<sup>9</sup> The pictures in the graphs are paintings by artist *Alberto Giuseppini* and represent three of the stages of the cycle of violence. The owner of the paintings has authorized reproduction in this manual.

In addition to the perpetrator, friends, family members, and even the police, prosecutors or judges tend to blame victims even if they might not be aware of doing so openly. For instance, when women report years of abuse after never having reported before or left the perpetrator, they might wonder why she continued to have a relationship with him, and might ask her, questions like: 'why didn't you leave', 'what did you do to him?', 'what did you tell him to make him so angry?!'.

Self-blaming in combination with victim blaming by others leads to loss of hope, and the victim's tendency to minimise and justify what has happened. Following the perpetrator's apologies, the victim might decide not to report, or to withdraw any reports/complaints that she has already made. Victims tend to deny or minimise any violence and contradict themselves and act ambiguously. For example, they might contact or even meet the perpetrator even if a protection order has been issued. Some victims leave the perpetrator but might then go back to live with him. This is the well-respected 'learned helplessness theory'<sup>10</sup>, where having tried to end the cycle of violence and having failed to do so, the victim comes to believe that it has all been in vain. She is now weaker, more isolated, frustrated and hopeless. Unfortunately, few law enforcement professionals know of or fully understand these mechanisms, and consequently they can underestimate these crimes. This is why, in any training the full dynamics of domestic abuse and violence between partners must to be taught and fully understood by trainees.

The impact of violence might lead to increased isolation with family and friends being unaware of what is happening. The perpetrator strives to convince them, as well as professionals, how unreliable his partner is, impugning her credibility.

If, because of the abuse, the woman also has to leave her job and limit contact with colleagues, this will increase the power and control the perpetrator has over the victim enhancing the risk of re-victimisation. It is a vicious cycle: the more the woman becomes powerless and isolated, the more the perpetrator feels strong and powerful. Fortunately, the cycle can be stopped and the police and the judicial system have a central role to play.

The consequences of violence might also constitute an obstacle for the woman to **end the relationship** and reduce her capacity to identify risk and protect herself and her children. Besides the physical and psychological impacts of violence, there are other key reasons why a woman might not '*just leave*': lack of alternatives, economic dependency, small children, joint custody, being a migrant, not speaking the language or knowing her legal rights in her country of residence, unemployment, and a lack of services where she resides. Any of these reasons can also be a consequence of violence, deepening the isolation, the fear and, at the same time, giving more power to the perpetrator.

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<sup>10</sup> Janoff-Bulman, R., & Brickman, P. (1982). *Expectations and what people learn from failure*. In N. T. Feather (Ed.), *Expectations and actions: Expectancy-value in Psychology*. Hillsdale, NJ, Erlbaum.

## *Impact on Children*

When we talk about the impact of domestic violence on children, we refer to the different forms of violence that affects them. The most common is that perpetrated by a man (usually the father of the child/children) over his partner (usually the mother of the child/children). However, in a domestic context, other forms of violence can take place that fall under the definition provided by the Istanbul Convention of 'domestic violence'.

Children can be exposed to violence against their siblings, against a grandparent or another person sharing the same residence. Multiple exposure to violence in addition to direct violence inflicted over the child is called 'poly-victimisation'<sup>11</sup>. When the abuse is committed by someone the child loves and trusts, the impact is not only short term (fear, anxiety, sleep and eating disorders, etc.) but it is more profound as it affects the capacity of the child to grow in a safe and protected environment and build positive and secure attachment bonds. The negative impact on children living in families affected by domestic violence has been demonstrated by many studies<sup>12</sup>. Children can be exposed directly (as primary victims) or indirectly (as secondary victims) to the violence. Even when children are not direct witnesses to all the episodes of violence, they are still exposed, aware and negatively affected by it.

In violence between partners, women victims of domestic violence tend to underestimate the consequences on their children, and believe their children are not aware of all the violence, claiming the attacks took place in the absence of children, while at school, asleep or simply in another room. This is often a defence/protection mechanism; she does not want to face what is actually happening nor acknowledge the damage that the abuse is causing not only to her but also to her offspring. For these children this is an additional burden, because they not only have a father who is abusive towards their mother (causing anxiety and a state of fear at home as well as danger), but they also might have a depressed and frustrated mother who will not be able to protect and nurture them as she should.

The extent and gravity of the consequences of domestic abuse in children also depend on age, on protective factors, on their own resiliency<sup>13</sup>, and whether the child is still living in the abusive context or not.

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<sup>11</sup> Finkelhor, D. Ormrod R. K., Turner H. (2007). Poly-victimization: A neglected component in child victimization, *Child Abuse and Neglect*, 31, 7-26.

<sup>12</sup> Among others: <http://www.apa.org/pubs/books/4317253.aspx>

<sup>13</sup> Resiliency is defined as any capacity to face the impact of negative events and restore the original condition.

Possible symptoms of exposure to domestic violence include:

- ✓ Anxiety and depression, withdrawing from peers;
- ✓ Sleeping disorders and nightmares or flashbacks;
- ✓ Frequent complaints of physical symptoms, such as stomach aches;
- ✓ Bed-wetting;
- ✓ Behaving in a childish way (symptoms of regression);
- ✓ Bullying, school victimisation, truancy;
- ✓ Low school performance;
- ✓ Lower sense of self-worth;
- ✓ Self-blaming for the violence;
- ✓ Development of an eating disorder.

When dealing with these cases, and when hearing children, the police and the judiciary, as well as social services, need to be aware of the devastating effects of domestic violence in order to better understand children's reactions in such situations and act according to their needs. It is important to bear in mind that the children themselves might be minimising, denying the violence, or having contradictory feelings.

When interviewed by police, children may not want to take sides, or may take sides in favour of the perpetrator. As mentioned, children may also deny that any violence has occurred or provide inaccurate information. They may even act out against the police and behave restlessly or aggressively out of fear of seeing the abusive parent go to jail, or their mother being killed. The perpetrator might have threatened that if they speak or take sides, he will harm their mother. These children need to be protected, particularly by those who have the power to do so.

Special precaution and expertise is required when dealing with children involved in domestic violence cases. In this regard, and in line with the Council of Europe Guidelines on Child-friendly Justice<sup>14</sup>, the Istanbul Convention requires States Parties to afford child victims and child witnesses special protection at all stages of investigations and judicial proceedings (Article 56). Children are much more vulnerable and more likely to be intimidated if they have to face the perpetrator in court. It is in this regard that the best interest of the child must be the guiding principle when children come in contact with the justice system as a result of domestic violence. Ideally, they should not be heard in court, but in a dedicated room and with the help of a child psychologist when necessary.

If the perpetrator is the father of the child, the police as well as the judicial system have to assess whether the child's testimony is necessary or will be reliable, since the child might perceive the testimony as a betrayal to that parent. In the event of the most extreme form of domestic violence, the partner's homicide, children may be sent to a foster home or orphanage, for example if the mother is murdered and the father is sent to jail or has committed suicide. This is a devastating consequence that is very much underestimated<sup>15</sup>. As stated before, any action and decision should be made in the best interest of the child.

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<sup>14</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016804b2cf3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3)

<sup>15</sup> Consult the European Union Project: [www.switch-off.eu](http://www.switch-off.eu)

## 1.4 Myths as obstacles to dealing with violence against women and domestic violence cases: challenging perceptions and stereotypes

### Key concepts

- ✓ Myths about domestic violence are incorrect thoughts that are not based on evidence but on preconceived ideas and stereotypes.
- ✓ Myths about domestic violence are indicators of poor training and a lack of professionalism.
- ✓ Myths negatively affect job performance and victim's satisfaction and will impede her collaboration with the criminal justice system.

There are many myths and stereotypes about the causes and consequences of domestic violence and violence against women in general which can have a serious negative impact on the assistance and protection provided to victims. The presence of these myths leads to *secondary victimisation*. These false conclusions, which are not based on evidence or research, are often reinforced by society and the media<sup>16</sup>. It is, therefore, important that professionals in regular contact with victims acknowledge the attitudes and perceptions they have on violence against women in order not to cause additional damage and suffering. In some instances, stereotypes and myths, even if confronted with conflicting and contradictory evidence, are hard to eliminate.

On the positive side, once individuals and especially professionals are aware of what these myths are, why they came about, and what they might imply, they can be addressed and eliminated or at least reduced. It is of high relevance to make sure that professionals dealing with cases of domestic violence are not influenced, when performing their jobs, by so called 'extra-legal' factors, stereotypes and pre-conceived ideas when making their choices and taking actions.<sup>17</sup>

Myths can also cause *secondary victimisation*. Secondary victimisation occurs when a victim rather than being treated with respect, confidentiality and professionalism, finds herself being seen as not credible or to be exaggerating. Secondary victimisation can take place when law enforcement or justice officers, as well as other professionals shift their role: instead of being supportive, objective and making the victim feel at ease and protected, they question her actions and doubt her credibility. Secondary victimisation can be avoided and prevented by addressing and learning about most common stereotypes and myths surrounding domestic violence and its dynamics.

<sup>16</sup> Baldry, A. C., Pagliaro, S. (2014) Helping Victims of Intimate Partner Violence: The Influence of Group Norms Among Lay People and the Police, *Psychology of Violence*, 4(3), 334-347.

<sup>17</sup> Baldry, A.C. (1996). Rape victims' risk of secondary victimization by police officers. *Issues in Criminology and Legal Psychology*, 25, 65-68.

In order to effectively tackle myths and stereotypes, a comprehensive training portfolio must be in place and be regularly delivered. There is no single training that will be effective if those called to take action to protect victims are not made accountable and if the relevant bodies do not monitor police and the judicial system regarding their errors that can also lead to secondary victimisation.

### *Myths and Truths about violence against women*

**Statement:** *Violence against women and especially domestic violence between partners is rare.*

**Answer:** **False.** According to the European Union Agency of Fundamental Rights (FRA) study in 2014<sup>18</sup>, in Slovakia, on average one in four women have been psychologically, sexually or psychologically abused by their current or former partner in their life. Half of these victims suffer from extreme forms of violence, including death, and are committed by partners or former partners. Victims, however, rarely report due to fear of retaliation, stigma, judgment, not knowing what to do and where to go, and out of hope that the perpetrator will change.

**Statement:** *Domestic violence and violence against women in general affects only poor or poorly educated women, or women from ethnic minorities and migrants.*

**Answer:** **False.** Domestic violence and violence against women affects women from all levels of society, whether rich or poor, educated/uneducated, regardless of migrant status, religion, sexual orientation and ethnicity. Perpetrators can also come from any background. Violence against women is also committed by professionals: professors, doctors, judges and even police officers. Though poverty and low education can influence the likelihood of violence occurring, any violent act is a deliberate choice regardless of individual or social circumstances.

**Statement:** *Violence between partners is a private matter.*

**Answer:** **False.** Most criminal codes acknowledge violence between two individuals as a crime and do not distinguish whether they are intimate or not. Some legislation considers the fact that it is private as an aggravating factor, and that it is a societal and community responsibility to prevent it and address it.

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<sup>18</sup> [http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14\\_sk.pdf](http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14_sk.pdf).

**Statement:** *Violence takes place in people who use drugs and alcohol.*

**Answer:** **False.** Drugs and alcohol can increase the risk and lower barriers of control in some violent people but they do not cause the violence. Abusive men are so regardless of being intoxicated or not. Drugs and alcohol can be considered risk factors and victims as well as perpetrator might refer to them to explain and justify the violence, but they are not the cause.

**Statement:** *Women as well as men are violent.*

**Answer** **False.** In domestic violence, the most frequent forms of abuse are those perpetrated by a male partner over his female partner (95% vs. 5%). Controversies about these figures are because women do use violence against their partner often as a reaction or defence to the abuse. Some might even get to the point of killing them. International surveys have shown that to better understand the presumed egalitarian proportion of violence between males and females, women should be asked about who started the fight and what happened. This does not preclude that any form of domestic violence needs to be addressed including men victims of violence, who might feel embarrassed and judged negatively.

**Statement:** *Even if acts of violence take place in a relationship, these are isolated episodes.*

**Answer:** **False.** Every single episode of violence needs to be properly investigated, and if necessary prosecuted, and those affected by it need to be offered help and support. However, domestic violence may constitute a pattern of on-going physical, psychological, sexual or economic violence (Article 3(b) of the Istanbul Convention). Domestic violence is characterised by a cycle of violence that consists of intimidating and degrading behaviour, threats, attacks, control, day after disempowering and lowering the self-esteem of the victim. Domestic violence is characterised by an increase in frequency and severity of actions putting the victim at higher risk. It is very unlikely that the perpetrator will stop since he does not believe or does not want to believe that his actions are wrong.

**Statement:** *Domestic violence is the result of a mental health problem; violent men are ill.*

**Answer:** **False.** Although mental health, psychiatric impairment or a personality disorder play a role in abuse and are considered risk factors, the majority of men who abuse or even kill their partner are mentally sane. They are aware of what they do; some of them might think their behaviour is 'normal' since for some of them it is normal to infra-humanise women, which means that they think women are inferior and do not have the same feelings as men do, and so

violence will not affect them<sup>19</sup>.

**Statement:** *Men who are violent have been abused as children.*

**Answer:** **False.** Being exposed as a child to domestic violence or being directly abused is a damaging experience which can have long lasting consequences. In eight cases out of ten, men who abuse were abused as children.<sup>20</sup> Being abused as a child, increases stress and the risk of repeating this behaviour. This is called intra-generational transmission of violence<sup>21</sup>. However, most children who live in abusive homes have strong resiliency or have a good relationship with at least the other parent or family member and will not become violent in future relationships. In this regard, it is important to protect these vulnerable children and remove them as soon as possible from a violent environment to reduce exposure to a negative model of behaviour and build up protection and affection with the non-abusive parent, if feasible.

**Statement:** *If women were truly abused and really wanted to leave, they would do so.*

**Answer:** **False.** Being subjected to domestic violence does not immediately result in the victim leaving the abusive partner, regardless of the severity, frequency and duration of the violence. There are social and individual factors that can prevent this immediate step. First, as the cycle of violence shows, violence is not constant. The abusive partner alternates between threats and attacks, and apologies and promises, keeping the victim in a constant state of tension and uncertainty and fear. Abusive partners can be loving and attentive and manage to be forgiven. This makes any plan of the woman wanting to leave vanish. If the victim has left the perpetrator she might even return. Unfortunately, this is only a tactic and as soon as the woman tries to free herself from any further control, the cycle of abuse will follow the same pattern, like in a spiral worsening each time. The woman is more threatened, and more depressed each time, alone, and feeling guilty, powerless and ashamed. Other people in the community might also be involved or be aware of the violence but rather than doing something, they increase the isolation even more. Often the victim does not leave the abusive partner due to a lack of alternatives, social and economic support, unemployment or housing. Women who are subjected to domestic violence and who do not leave should be asked if they are afraid about what could happen if they leave. Research shows that abusive men are more likely to kill their partners when the victim has ended or has tried to end a relationship or if she talked about a separation.

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<sup>19</sup> Baldry, A. C., Pagliaro S. & Pacilli. G (2014). She's not a Person, She's Just a Woman! Infra-humanization and Intimate Partner Violence. *Journal of Interpersonal Violence*, online-first, 1-16, DOI: 10.1177/0886260514540801

<sup>20</sup> Widom C.S. (1989), "Does violence beget violence? A critical examination of the literature", *Psychological Bulletin*, 106, 3-28.

<sup>21</sup> Widom C.S. (1989). "The cycle of violence", *Science*, 244, 160-166.

**Statement:** *When a man is violent it is because he cares about the woman, and women tend to like it and feel it is good for them when a man behaves in such a way.*

**Answer:** **False.** Violence is the opposite of love and respect. Conflict can happen in any couple, but conflict is different from violence.

**Statement:** *With time and patience, things will get better and the abuse will end.*

**Answer:** **False.** The violence does not end by itself, unless the perpetrator decides to do so, but this is rare. With time, the violence becomes more intense, more frequent, and more dangerous. The perpetrator feels invincible because no one is holding him accountable for his behaviour. The sooner the cycle of violence is stopped, the less the damage, consequences and the costs associated with it will be. Trying to mediate, to underestimate the seriousness of any violent act, even for acts that do not leave bruises, can be very dangerous. Violent men appear differently to the outside world than what they actually are; police officers and judges have to be aware and attentive.

**Statement:** *Violence is women's fault/ women provoke violence.*

**Answer:** **False.** No one deserves being abused or victimised. Even if there are cases in which women act in ways that men perceive as offensive or infringing their masculine honour, this cannot justify, or explain, violent acts. Most violent men, when caught using violence shift the responsibility to the victim, making it seem they could not avoid it. Common social norms also support this way of thinking, and according to the Just World Theory<sup>22</sup> "bad things happen to bad people", so we tend to blame those who suffer and are in pain.

**Statement:** *If men were really violent with their partner, they would always be so, instead they are really nice men, according to friends and colleagues.*

**Answer:** **False.** Men who use physical and psychological violence are perfectly aware of what they do, they are very clever in making sure to the outside world that the woman is making it up or exaggerating. They are like "chameleons" and change in an opportunistic and manipulative way. Not all perpetrators fall under this typology<sup>23</sup>, but it is a very common one. This capacity of changing behaviour and attitude is what these abusive men do with their partners to make them confused. By showing this double side, women hope that the nice and charming one is the correct and true one, minimising and underestimating the other one. This is very risky for the victim and increases their vulnerability.

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<sup>22</sup> Lerner (1980). *The Belief in a Just World: A Fundamental Delusion*. Plenum: New York.

<sup>23</sup> Holtzworth-Munroe A., Stuart G.L. (1994), "Typologies of male batterers: Three subtypes and the differences among them", *Psychological Bulletin*, 116, 476-487.

**Statement:** *There is no point in helping women because they go back to the perpetrator.*

**Answer:** **False.** Women victims of violence are not masochistic. If and when they return to their abuser it is because they have not been helped sufficiently and found it more difficult to undertake any actions and make decisions on their own, than to go on suffering in silence. If the police or the judiciary encounter a case where a woman has gone back to the perpetrator, they should not interpret this act as evidence that the abuser has really changed; such a case is very rare. Instead, they should ask what went wrong in protecting this victim. Therefore, instead of blaming her, they should work with her to identify what she really needs in terms of protection. No one enjoys a life full of violence, suffering, denigration, isolation and fear. It is the right of all people to have their rights respected. It is the responsibility of the state to ensure this without making any distinctions based on sex, gender, ethnicity or religion. It is in fact important to acknowledge that women victims might be more vulnerable

## EXERCISE

Exercise <sup>24</sup>	Aim	Time	Procedure
<b>What is true, what is a myth?</b>	Reflect about your own ideas and experiences about domestic violence	30 minutes with discussion	Address each of the statements and ask trainees whether they are true or not and provide explanations, comments based on answers. The aim is to reason about ideas participants might have that are not based on evidence.
<b>Myths to address and discuss</b>	<p><i>Violence against women and especially domestic violence between partners is rare.</i></p> <hr/> <p><i>Domestic violence and violence against women in general affects only poor or poorly educated women, or women from ethnic minorities and migrants.</i></p> <hr/> <p><i>Violence between partners is a private matter.</i></p> <hr/> <p><i>Violence takes place in people who use drugs and alcohol.</i></p> <hr/> <p><i>Women as well as men are violent.</i></p> <hr/> <p><i>Even if an act of violence takes place in a relationship, these are isolated episodes.</i></p> <hr/> <p><i>Domestic violence is the result of mental health problems; violent men are ill.</i></p> <hr/> <p><i>Men who are violent have been abused as children.</i></p> <hr/> <p><i>If women were truly abused and really wanted to leave they would do so.</i></p>		

<sup>24</sup> Refer to Hand-out 1 in the Appendices to facilitate this exercise.

**Myths to address and discuss**

*When a man is violent it is because he cares about the woman, and women tend to like it and feel it is good for them when a man behaves in such a way.*

*With time and patience, things will get better and the abuse will end.*

*Violence is women's fault/provocation.*

*If men were really violent with their partner, they would always be so, instead they are really nice men, according to friends and colleagues.*

*There is no point in helping women because they go back to the perpetrator.*

## 1.5 Risk and vulnerability factors

### Key concepts

- ✓ There is no one single cause for domestic violence between partners.
- ✓ Several static and dynamic risk factors play a role in influencing men's violent behaviour, increasing the likelihood of recidivism.
- ✓ Risk and vulnerability factors for law enforcement and the justice system useful to prevent recidivism.

Violence against women and specifically domestic violence cannot be explained by individual factors. It is not possible to explain which factors intervene in abusive behaviour in a current or former relationship. Research has shown however that if **several individual, relational, community and societal characteristics** and circumstances are in place, it is **more likely** that violence against women and in particular violence against a partner will take place or re-occur.

Based on the **socio-ecological model**<sup>25</sup> it is clear that there is not one single factor that explains violence but a combination of them. There are several ecological levels of risk

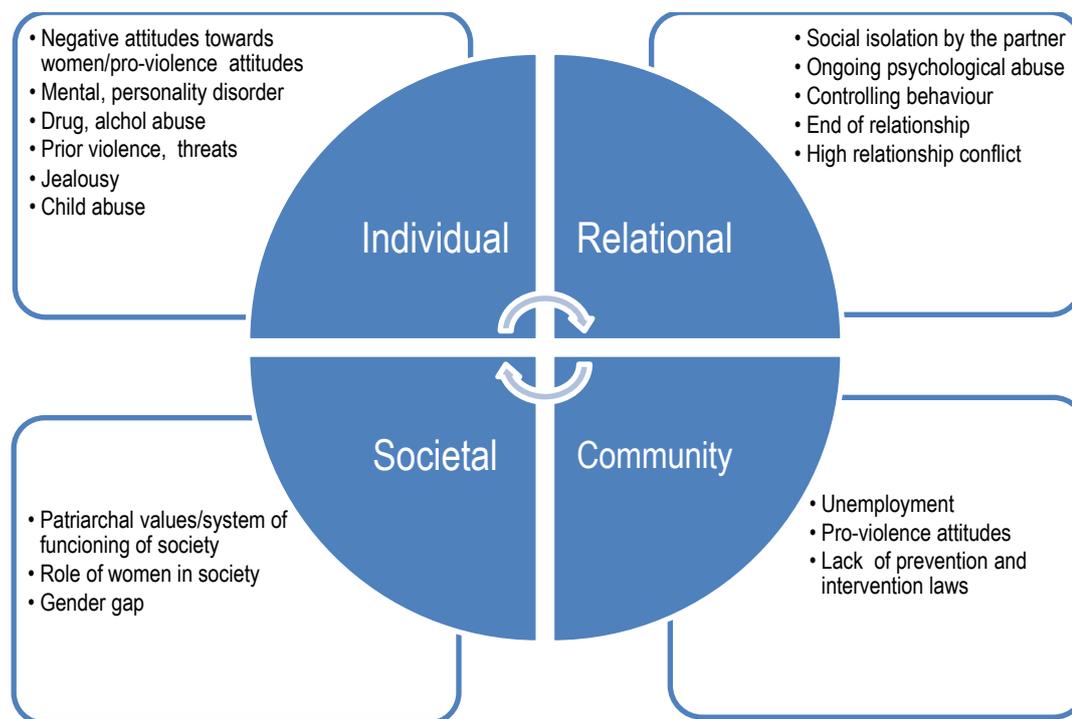
<sup>25</sup> Bronfenbrenner, U. (1986). Ecology of the family as a context for human development: Research perspectives. *Developmental Psychology*, 22(6), 723–742.

factors: the ontogenetic (individual), microsystem (relational), the mesosystem (community), and macrosystem (societal level) [see Figure 4].

A **risk factor** is a characteristic at any level (individual, relational, community or societal) whose presence increases the possibility of violence to occur or re-occur. Its absence does not exclude the risk but makes it is less likely. Using this approach in policing and in the criminal and civil justice system can help a broader understanding of the complexity of domestic violence to better handle these crimes.

Some risk factors are **static**, they do not change over time (e.g. child abuse, prior violence) others are **dynamic** (e.g. drug use, unemployment) and can change in time. On the other hand, there are **vulnerability** factors associated with the woman/victim and her personal and contextual situation. Vulnerability factors make it easier for the perpetrator to use violence. Risk factors do not explain why a man is violent nor can they predict what will happen in the future. They enable us to understand under which circumstances the man has been violent and whether a particular victim might be exposed to the risk of being re-victimized or even killed (lethal violence) [see Figure 4].

**Figure 4. Risk factors for domestic violence and its recidivism according to the socio-ecological framework<sup>26</sup>**



For more than two decades, this model has enabled experts to strategically assess the risk of recidivism and to implement risk management strategies and safety planning for victims. Law enforcement officers are among the ones most benefitting from this approach in order:

<sup>26</sup> <http://www.cdc.gov/violenceprevention/overview/social-ecologicalmodel.html>

- ✓ to assist in interpreting and reduce under-estimating of the severity of the risk;
- ✓ not to overlook warning signs;
- ✓ to increase victims' safety and multi-agency collaboration.

**Risk assessment and risk management** for police officers is addressed in more detail in Part II, Section 1 of this manual. Information and guidance about assessing risk and dangerousness specific to prosecutors and judges is provided in Part II, Section 2.

## 1.6 Prevalence and incidence rates of violence against women in Slovakia

A dedicated survey on violence against women with a sample of over 800 women was conducted in Slovakia in 2008<sup>27</sup>. Findings from the survey indicate that 21% of women have, in their lifetime, experienced some form or combined forms of violence from their current male partner, 6% of this violence was considered severe by respondents. Former partner violence occurred at higher rates, where approximately 28% of women experienced violence by former partners, with 12% of these forms of violence considered severe. In Slovakia according to the survey, 68% of women have experienced some form of violence by a male (excluding intimate partners) in their lifetime (see also WAVE report)<sup>28</sup>.

Although official national statistics<sup>29</sup> indicate that there has been a decline of rapes<sup>30</sup> from 4.3 to 1.7 out of 100,000 from 2003 till 2013, results from the 2014 survey<sup>31</sup> by the European Union Agency for Fundamental Rights (FRA) show another picture. Most victims of violence against women will never report, so their cases are not registered, failing to show the real situation that women in Slovakia face. Seven percent of interviewed women said that they have been the victim of some form of physical or sexual violence by their current partner during the past 12 months; 2% by their former partner. Results also showed that 5% of interviewed women stated that they were victims by a non-partner. From the age of 15, 12% of all women reported having been victimised (sexually or physically) by their current partner, 26% by their previous one, 22% from a non-partner and 34% suffered some form of violence (partner and non-partner). According to the 2014 FRA survey, since the age of 15, 22% women referred to unwanted hugging, touching and kissing, whereas 17% were victims of cyber (sexual) harassment.

Additional data for Slovakia emerged from the national survey<sup>32</sup> on violence against women conducted in 2008. As in most European countries, violence against women is not a rare

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<sup>27</sup> Hagemann-White, Prof. Dr. Carol. (2010). Protecting Women against Violence: Analytical Study of the Results of the Third Round of Monitoring the Implementation of Recommendation Rec (2002) 5 on the Protection of Women against Violence in Council of Europe Member States. [Directorate General of Human Rights and Legal Affairs]. Strasbourg. Pg. 56. Filadelfiová, Holubová et al., Institute for Labour and Family Research, 2008.

<sup>28</sup> <http://www.wave-network.org/sites/default/files/05%20SLOVAKIA%20END%20VERSION.pdf>

<sup>29</sup> UNODC Assaults, Kidnapping, Robbery, Sexual Offences, Sexual Rape, Total Sexual Violence, 2015.

<sup>30</sup> Defined here for these statistics as "Rape" means sexual intercourse without valid consent'.

<sup>31</sup> [http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14\\_sk.pdf](http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14_sk.pdf).

<sup>32</sup> Filadelfiová, Holubová et al., Institute for Labour and Family Research, 2008.

phenomenon. Of all interviewed women, 8% reported that in the previous 12 months they were “often or all the time”, and 24% were “sometimes” afraid of becoming a victim of violence. 31% per cent said that in the previous 12 months they “often or all the time” avoided places where they feared they would be attacked. Of all interviewed women, 32% said they knew someone among their friends and family who suffered from domestic violence and 28% knew them from their work place.

Slovakia is neither above nor below the prevalence rates reported in other countries. The average rate for the 28 European Union member states with regard to physical violence by a partner since the age of 15 is 20% (SK 22%), 7% for sexual violence (SK 8%), 6% for sexual violence by a non-partner since the age of 15 (SK 4%), 43% for psychological violence by a partner since the age of 15 (SK 48%), 4% for physical violence by a partner in the 12 months prior to the interview (SK 6%), and finally, 1% for sexual violence by a partner in the 12 months prior to the interview (SK 2%).

Even though violence against women is widespread, most cases do not come to the attention of the police, or other services. The police know about domestic violence incidents only 12 times out of 100<sup>33</sup>. With regard to non-partner violence the percentage rises only slightly (14%). Most cases go unknown and un-detected, so the police and eventually all the justice system in Slovakia will only come across a small percentage of cases. This is true also in other EU countries and other non-EU countries.

To increase the number of reports to the authorities, it is extremely important that the quality and effectiveness of the services provided by the police and the justice system is set as a priority. Attrition rates should be addressed and reduced.

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<sup>33</sup> The Advocates for Women’s Rights. Retrieved from : <http://www.stopvaw.org/slovakia>

## Section 2: International, regional and national legal framework for responding to violence against women

International and national law set forth the duties of law enforcement and justice sector actors to promote and protect the rights of victims and to prosecute perpetrators of violence. While police, prosecutors and judges work primarily within the domestic legal system, as agents of the state, they should also be aware of and uphold the international and regional human rights standards that apply to violence against women. Knowledge of human rights principles is also an important prerequisite to adopting a victim-centred approach. Because this manual is for professionals who have legal knowledge, this section provides only an overview of key documents. When designing a training, however, a module on the legal framework could be expanded or even condensed further to suit a particular group of trainees.

### 2.1 International, regional and national legal standards

For many years, violence against women, and more specifically domestic violence, was considered outside the realm of state responsibility because perpetrators are usually private persons – in many cases husbands, partners, brothers, fathers or sons – rather than actors working on behalf of the state. Since the 1990s, however, violence against women, including domestic violence, has received increasing attention by the international community and, subsequently, in international law. This surge in attention has resulted in the adoption of several crucial international and regional instruments on which the Istanbul Convention was drawn, including:

- ✓ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, and the decisions and recommendations adopted by the CEDAW Committee (especially General Recommendations No. 19 [1992] and No. 33 [2015] on violence against women and women’s access to justice, respectively);
- ✓ UN Declaration on the Elimination of Violence Against Women, 1993;
- ✓ Beijing Declaration and Platform for Action, 1995;
- ✓ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belem do Pará Convention), 1994;
- ✓ Council of Europe Recommendation Rec(2002)5 of the Committee of Ministers to Member States on the protection of women against violence, and
- ✓ Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2003.

These standards articulate the concept of **due diligence** in the context of violence against women. Under this standard, the public/private dichotomy that exists in international law cannot be used to justify state inaction. On the contrary, the state has an obligation to ensure that all human rights violations are treated as illegal acts, that they are investigated, and that perpetrators found guilty are punished and victims are compensated.

Within the broader due diligence standard, states must **ensure that women have access to justice** when their rights are violated. The right of access to justice is multidimensional, and it encompasses “justiciability, availability, accessibility, good-quality and accountability of justice systems and provision of remedies for victims.”<sup>34</sup> When speaking about cases of violence against women, the concept of “justice” includes both the criminal and civil justice systems.

These legal instruments have also been essential in bringing about a **change in attitudes**: from regarding violence against women – and especially domestic violence against women – as a private matter committed with widespread impunity, to treating the issue as a matter of public concern. Most importantly, this growing body of international and regional standards established the prohibition of violence against women in international human rights law by focusing on, and addressing, discrimination and violence against women, and protecting the human rights of women on an equal footing with those of men.

## Key messages

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- ✓ **Under international law, domestic violence is treated as:**
  - discrimination against women and a violation of women’s human rights;
  - torture in the private sphere;
  - a violation of the right to life/quality of life and the right to family life.
  
- ✓ **Individual rights at stake in the context of domestic violence:**
  - The right to life and personal integrity;
  - The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
  - The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
  - The right to liberty and security of person;
  - The right to due process/equal protection under the law;
  - The right to equality in the family; and
  - The right to the highest standard attainable of physical and mental health.

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<sup>34</sup> Committee on the Elimination of Discrimination against Women, General Recommendation on women’s access to justice, CEDAW/C/GC/33, 23 July 2015, para. 14.

## 2.2 The Istanbul Convention

The 2011 **Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence** (Istanbul Convention) is the most far-reaching development in the long line of instruments and standards at international and regional level (see Section 2.A) and provides the most condensed and detailed blueprint for action in this field.

The Istanbul Convention is a comprehensive and complex treaty<sup>35</sup>. It is, at the same time, a human rights treaty and a criminal law treaty, but it is also an instrument for promoting greater gender equality. The Istanbul Convention answers the basic question of “what are the minimum standards and measures state authorities need to implement in order to effectively respond to violence against women and domestic violence?”

### *What makes the Istanbul Convention so ground breaking?*

- ✓ It is the first treaty to provide a legally-binding definition of violence against women as a violation of human rights and a form of discrimination against women (Article 3).
- ✓ It's the first treaty to integrate the due diligence standard in the field of violence against women.
- ✓ It requires states to criminalise the various forms of violence against women, including physical, sexual and psychological violence, stalking, sexual harassment, female genital mutilation, forced marriage, forced abortion and forced sterilisation.

### *Core principles of the Istanbul Convention*

#### ❖ **The due diligence standard**

The Istanbul Convention requires that states act with *due diligence* to promote and protect individuals' rights and to ensure that all human rights violations are treated as illegal acts. Under this standard, law enforcement officers, prosecutors and judges are obligated to diligently prevent and investigate acts of violence, to punish violence under national law, and to provide reparations to victims (Article 5).

#### ❖ **Gender equality as crucial for the prevention of violence against women**

The measures articulated in the Istanbul Convention are firmly based on the premise that violence against women cannot be eradicated without investing in greater equality between women and men and that, in turn, only real equality between women and men and a change in power dynamics and attitudes can truly prevent violence against women. The key to combating violence against women is not merely crime control. It is making sure that women and men are equal, have the same rights and responsibilities, the same opportunities and that their contribution to society is equally valued and respected.

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<sup>35</sup> The Istanbul Convention is open to accession to non-member states of the Council of Europe.

Consequently, the Convention contains a number of provisions which aim at advancing the status of women in society *de jure* and *de facto*.

Prejudices, customs, traditions and other practices based on the inferiority of women or on stereotyped roles for women and men abound. Naturally, they influence gender interpersonal relationships but also how women are treated by public institutions including the police and the judicial system (see section 1.D). For this reason, the Istanbul Convention aims at changing attitudes and eliminating stereotypes not only at the level of individuals, but also at the level of institutions. It does so, for example, by placing the obligation on States Parties to conduct regular awareness-raising campaigns (Article 13), introduce teaching material at all levels of education (Article 14), regularly train all professionals in contact with victims including legal professionals and the police (Article 15), set up perpetrator programmes (Article 16), and involve the private sector and the media as partners in tackling violence (Article 17).

#### ❖ **The human rights, needs and safety of the victim come first**

The Istanbul Convention makes it clear that in order for victims to receive the most effective support possible, their rights, needs and safety must be placed at the forefront of all interventions. This means offering protection and support when women at risk need it most, treating them with respect and sensitivity, and empowering them to make informed decisions that best reflect their interests. This requirement is further reinforced by the prohibition to discriminate on any grounds when providing protection and support to victims (Article 4, paragraph 3).

Ensuring that victims' needs are met also implies taking into account the needs of women made vulnerable by particular circumstances (Articles 12, paragraph 3 and Article 18, paragraph 3). Vulnerable groups may include<sup>36</sup> pregnant women and women with young children, disabled women, including those with mental or cognitive impairment, women living in rural or remote areas, substance abusers, sex workers, women of national or ethnic minority background such as Roma women, migrants – including irregular migrants and refugees, lesbian, bisexual and trans-women.

The Istanbul Convention also requires states to protect the rights and take into consideration the interests of victims, including their special needs as witnesses, throughout investigative and judicial proceedings (Article 56). In order to fulfil obligations under the Istanbul Convention, states should adopt special measures address all types of barriers to justice, such as supplying information to victims about their rights and about legal procedures, providing support services and also by adopting new procedures and approaches that increase victims' safety during court processes.

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<sup>36</sup> This is not an exhaustive list of women made vulnerable by particular circumstances.

### ❖ **Domestic violence affects women disproportionately**

In line with the recognition of the structural and gendered nature of violence against women, the Istanbul Convention requires State parties to apply a gender lens when addressing domestic violence as the overwhelming majority of victims of domestic violence are women and girls. This does not mean that men do not experience domestic violence or that they do not need support. In fact, the provisions of the Istanbul Convention have been drafted in gender neutral language, which means that any of its provisions can be implemented with a view to supporting and protecting men and boys who experience any of the forms of violence covered by the Convention, with the exception of female genital mutilation and forced abortion (Article 2, paragraph 2).

### ❖ **Addressing the needs of children as victims and witnesses of violence against women (including domestic violence)**

While it is important to recognise that most victims of domestic violence are women, it is equally important to recognise that many of these women have children. In some cases, the violence is directed at both, women and children. In other cases, children are not targeted themselves but witness violence against their mothers (see section 1.C). For this reason, the Istanbul Convention includes several provisions that address this matter. It requires all measures of protection to take into account the relationship between victims, perpetrator, children and their wider social environment. The aim is to avoid a situation where victims and their needs are addressed in isolation or without acknowledging their social reality (Article 18, paragraph 3). The Istanbul Convention also calls for specialist support for children in such situations (Articles 22, 23 and 26) based on their needs.

In line with the Council of Europe Guidelines on Child-friendly Justice, the Istanbul Convention requires State parties to afford child victims and child witnesses special protection at all stages of investigations and judicial proceedings (Article 56). The best interest of the child must be the guiding principle when children come in contact with the justice system as a result of violence against women, including domestic violence.

### ❖ **Co-ordinated and multi-agency approach**

Due to the complex nature of gender-based and domestic violence, no single agency or institution can successfully tackle such violence on its own and isolated policies are not sufficient in responding to such a complex and multi-faceted problem. Good practice examples show that results are enhanced when law enforcement authorities, the judiciary, victim support services, child protection agencies, non-governmental organisations and other relevant partners join forces to develop a comprehensive and co-ordinated response to combating gender-based violence.

The Convention addresses the need to co-ordinate measures and to implement them by way of effective co-operation among all relevant actors playing a role in preventing and combating violence against women and domestic violence (Article 7, paragraph 2). More specifically, the Convention requires that in providing support to victims and witnesses, State parties must provide for effective co-operation between all relevant state agencies,

including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities as well as non-governmental organisations and other relevant organisations and entities (Article 18, paragraph 2). It also recognises the work and expertise of non-governmental organisations in this field and asks States Parties to co-operate effectively with these organisations (Article 9).

### *Monitoring of the Istanbul Convention*

The Convention establishes a monitoring mechanism to assess how well its provisions are put into practice. This monitoring mechanism consists of two pillars: the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), an independent expert body, and the Committee of the Parties, a political body composed of official representatives of the States Parties to the Convention. Their findings and recommendations will help to ensure states' compliance with the Convention and guarantee its long-term effectiveness.

#### Further reading

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- ✓ More information and publications on the standards and measures included in the Istanbul Convention can be found using the following link: [www.coe.int/conventionviolence](http://www.coe.int/conventionviolence)
- ✓ The Slovakian version of the Convention is available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680462541>

## **2.3 Complaint mechanisms and jurisprudence on violence against women**

Parallel to the development of key legal instruments, international jurisprudence has played a major role in shaping and strengthening the international framework on violence against women, by addressing the right of women not to be subjected to such abuse. Here, jurisprudence refers to case law of international courts, such as the European Court of Human Rights (ECHR), as well as non-binding opinions of the CEDAW Committee (which has the power to receive and consider individual complaints and issue recommendations to the States Parties under the Optional Protocol to the convention).

Because there is a requirement that applicants exhaust national remedies, cases only reach international courts or other complaints mechanisms when these remedies have failed. Consequently, these cases provide concrete examples of the failure of the state to respect and protect the human rights of the victim- in other words, to meet the due diligence standard. Case law has also been important in revealing the need for co-ordinated and

comprehensive responses, confirming the state's responsibility to prevent and combat gender-based violence and suggesting the kinds of actions that states should take to effectively respond to violence against women.

### Note to trainers: Using case law in a training

Trainers may find it useful to include an overview, discussion, or Q & A session on international case law on violence against women during training sessions. Specific judgments (those concerning Slovakia, for example<sup>36</sup>) can also be used to develop case studies for use during role play or other exercises. The following are resources for case law:

ECHR factsheets on domestic violence and violence against women (regularly updated summaries of European case law):

- ✓ [http://www.echr.coe.int/Documents/FS\\_Domestic\\_violence\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Domestic_violence_ENG.pdf)
- ✓ [http://www.echr.coe.int/Documents/FS\\_Violence\\_Woman\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Violence_Woman_ENG.pdf)

ECHR judgements and decisions (full text): <http://hudoc.echr.coe.int/>

CEDAW jurisprudence (complaints reviewed under the Optional Protocol, some of which concern domestic violence):

<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>

## 2.4 Developments at the European Union level

To date, the European Union (EU) has not adopted any definition, legislation or strategy on violence against women in all its forms nor has it regulated the key substantive criminal law issues dealt with in the Istanbul Convention<sup>38</sup>. There have however been some important developments in the field of rights for victims of crime, cross-border application of protection orders (both civil and criminal), and other forms of cross-border co-operation covered in the scope of the Istanbul Convention:

- ✓ **Directive 2011/99/EU of 13 December 2011 on the European Protection Order**, allows victims of violence – notably those who have suffered domestic violence or stalking - to have any restraining, protection, and barring orders

<sup>37</sup> At the time of writing this manual, the ECHR has found violations of the European Convention on Human Rights in three cases brought against Slovakia concerning domestic violence: *Kontrovà v. Slovakia* (2007), *E.S. and Others v. Slovakia* (2009), and *Hajduová v. Slovakia* (2010).

<sup>38</sup> The Istanbul Convention provides for the signing and the ratification of the Convention also by the European Union. The EU can accede to it to the extent of its competences. The EU is currently examining this possibility.

issued in one EU member state to be quickly and easily recognisable across the EU through simple certification.

- ✓ **Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime**, establishes a series of rights, support and protection that a victim of crime - including gender-based violence - is entitled to receive before, during and for a period after criminal proceedings.

## 2.5 Overview of Slovak law and policy

The present manual focuses on internationally recognised good practices, and it is not within its scope to provide a detailed review of the Slovak legal and policy framework relevant to violence against women. Still, the most significant legislative and policy developments are noted here.

The Slovak **National Action Plan for the Prevention and Elimination of Violence against Women for 2014-2019** is the roadmap for the types of law enforcement and legal system reforms that are anticipated in the coming years. The Plan calls for such measures as adopting a stand-alone act on domestic violence in conformity with the Istanbul Convention, amending existing legal acts, establishing mandatory programmes for perpetrators of violence, creating specialised police teams, expanding legal services, and providing systematic training for professionals with responsibilities for rights protection (police, prosecutors, judiciary).

Progress in the area of legislation include the drafting of the first comprehensive law on prevention and elimination of gender-based and domestic violence, which was submitted for public discussion in 2015. When passed, there will be a need to educate a range of legal and non-legal professionals about any causes of action or remedies provided by the new law and how to effectively implement it.

Slovakia is also in the process of harmonising national legislation with the Istanbul Convention. Several amendments to criminal law and procedure have already been approved by the government and are expected to be adopted by the National Council. The amendments concern increasing the punishment for repeated acts of domestic violence by the same perpetrator and expanding the scope of protection orders.

During training sessions on Slovak law and policy, it is a good practice for the trainer to review the current status of the law that will apply to domestic violence and to ensure that both the criminal and civil justice systems are addressed during the training. While police and prosecutors will have greater engagement with the criminal justice system, proper communication and co-ordination requires an understanding of civil remedies as well. The following table lists key areas of the law that should be addressed in a comprehensive training module on the national legislative framework relevant to domestic violence. In addition, hand-out 14 is a list of the main articles of the Slovak Criminal Code that are

relevant to domestic violence, and trainers may use this as a starting point when reviewing applicable law.

Justice sector	Topics with relevance to domestic violence
<b>Constitutional law</b>	<ul style="list-style-type: none"> <li>✓ Equality between women and men; basic rights</li> </ul>
<b>Criminal law and procedure</b>	<ul style="list-style-type: none"> <li>✓ Crimes against life and health; premeditated murder; manslaughter; rape; sexual violence; physical violence, intentional injury; causing suicide, threats; stalking, holding a person hostage, kidnapping, deprivation or restrictions of personal freedom, etc.</li> <li>✓ (Pre)-trial measures that could be used to protect victims (e.g. evidentiary issues; request for closed trial; video testimony, etc.)</li> <li>✓ Sentencing/ probation</li> <li>✓ Imposition of supervision or attendance of a program for perpetrators (with or without a suspended sentence)</li> <li>✓ Parole review</li> <li>✓ Protection orders (prosecutor-initiated)</li> </ul>
<b>Civil law and procedure</b>	<ul style="list-style-type: none"> <li>✓ Protection orders</li> <li>✓ Eviction orders</li> <li>✓ Civil damages for personal injuries</li> </ul>
<b>Administrative law</b>	<ul style="list-style-type: none"> <li>✓ Act on the Police Force: issuing short-term eviction/protection orders</li> </ul>
<b>Family law</b>	<ul style="list-style-type: none"> <li>✓ Divorce hearings</li> <li>✓ Child custody/ visitation/ support orders</li> <li>✓ Child protection</li> </ul>
<b>Specific legal acts</b>	<ul style="list-style-type: none"> <li>✓ National Law on Domestic Violence (when enacted)</li> <li>✓ Act on the Provision of Legal Aid for People in Material Need</li> </ul>

## PART II – EFFECTIVE RESPONSES IN ADDRESSING DOMESTIC VIOLENCE

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### Section 1: The Role of the Police in Dealing with Domestic Violence between Partners.

Domestic violence between current or former partners is a *serious crime*. It involves women of all ages, cultures, education. It also has a ripple effect on personal relationships, psychological and physical health, job opportunities and social life. The police can contribute to ending the *cycle of violence* by *enforcing the law* and providing an effective deterrent for future violence.

Effective police intervention in dealing with these cases requires *special training* to understand the dynamics of abuse and to ensure the best response. The role of the police in dealing with violence between partners goes from *prevention to intervention*. As the present manual has been created for training law enforcement and justice officers on how to handle cases of domestic violence against women, it does not address the role that the police can have in addressing prevention of violence between partners through campaigns or general community and/or school intervention.

This part of the manual explains the different stages in which the police are involved when dealing with domestic violence, and enables the police officers to:

- ✓ understand what has happened;
- ✓ intervene to protect any person at risk;
- ✓ identify if a crime has been committed - and report it to the prosecutor's office;
- ✓ adopt immediate procedures to assess the risk of recidivism and identify what measures are legally available with regard to the prevention of escalation of violence, re-occurrence of crime or murder or suicide.

The different phases where the police is involved when dealing with domestic violence are:

- ✓ The first call: the police dispatcher;
- ✓ Intervention at the sight of the alleged crime/attack;
- ✓ Interview phase onsite or at the police station with the victim, suspect, children, and witnesses;
- ✓ Investigative phase for the collection of evidence and transfer of information to the public prosecutor's office.

## 1.1 The first call: the police dispatcher

### Key concepts

- ✓ Domestic violence cases should be treated as serious, life threatening crimes and be given high priority.
- ✓ The role of the police from the first call is vital for stopping domestic violence. Dispatcher officers should be sure they have a full picture of what has happened to protect the victim and the responding officers.
- ✓ The police dispatcher should pay attention to background noise, ask relevant and useful questions for immediate assessment of danger.

Calls to the Slovakian Police emergency number 158 for 'family disputes' are among the most frequent ones received. The police dispatcher answering these phone calls has an important role because it may be the first (and only) contact the victim or neighbours or other people at the scene of the abuse might have. The way these calls are handled can have enormous consequences for the safety of the victim and children (if any) and for any other people involved. What is said over the phone is recorded and can be used as evidence for prosecution and during a trial. The police dispatcher is also important in creating the best and most effective link between the victim (or the caller) and the police ensuring the safety for both.

The following **minimum steps** should be followed by the police dispatcher when receiving a domestic violence call.

- ✓ **Step 1: give priority** regardless of whether there is clear evidence that lives are in danger; a police car/motorbike and at least two officers should intervene.
- ✓ **Step 2: gather information.** The dispatcher should not ask the victim on the phone what she wants to do, press charges or not, but instead gather as quickly as possible **relevant information** by posing **clear and firm questions on:**
  - place of the emergency, address, apartment number, other information to find the location, contact number;
  - who is on the phone, name, age;
  - what happened;
  - presence of injured people. If so, call an ambulance at the same time if not already done so;
  - presence of children;
  - use or threats of use of fire arms or knives or any objects;
  - whether the perpetrator is under the effect of drugs or alcohol;

- whether the alleged perpetrator is still at that address. If not ask where he could be, if known;
  - whether the police have been called other times;
  - presence of a restraining/protection order issued by the court.
- ✓ **Step 3: find background information.** The police dispatcher should be able to find out information from the police files (usually in electronic format) and provide the intervening officers with information about any prior calls and interventions at same address, same victim/perpetrator, when and a brief summary of what happened (regardless of what the person says on the phone) and the recorded presence of fire arms.

And all through the process, the dispatchers should be aware that these calls are usually made by someone who is desperate, scared, emotionally confused, threatened even injured, or who tends to minimise the seriousness of the event also due to the presence of the alleged perpetrator nearby. The victim might not be able to speak openly or she might pretend she is calling a friend or a family member rather than an emergency number.

It is important to ask relevant questions where the victim, children or whoever is in danger can reply with just a yes/no answer, or by providing an answer on a scale from 1 to 5 asking the victims whether she needs the police to intervene and say a number where 1 is no, and 5 absolutely yes (see the hand-out). The dispatcher who is handling the phone call should try to calm the victim down but also communicate to her that someone is arriving at the given / provided address. The dispatcher officers should recommend the victim, if feasible, to wait at a neighbour's house or stay on the phone until the police arrive.

While on the phone, the dispatcher should be attentive and record any **background noises** such as shouts, screaming, crying, the sound of breaking objects etc. This is useful for assessing the level of immediate danger to be given to the responding officers. As mentioned earlier, such recordings might prove to be important evidence in a criminal trial.

## EXERCISE

Exercise	Aim	Time	Procedure
<b>A possible call</b>	Learn to understand what happens when confusing statements are provided on the 158 line; the best course of action for the dispatcher police officer; what to communicate to the victim; what information to gather for the police intervening needs	30 min for each case: 10 min role playing 20 min group discussion and discussion for final recommendations	This is a case study with an optional role-playing exercise. Distribute the case and ask a group of participants to perform the roles. The other participants observe. Following role-playing the group discusses: right and wrong questions, how to look for clues to understand what is going on, what to ask the respondent, how to act when in an emergency or when children are involved and identify risk, things to say
<b>Case 1</b>	<p><i>A female voice is calling 158, stating that there is a family fight going at the following address: Bratislava, Pribinova 8.</i></p> <p><i>Because some people speak in general terms, the dispatcher police officer has to determine what the caller means by “family fight.” In some cases, the caller might provide more information, if not it is up to the police officer to ask explicitly what is going on. If the caller says that a woman at the scene is screaming, upon further probing, she might add that the woman, for instance, is screaming about ‘stabbing’ or ‘shooting’. The responding officers should also have this detailed information for the intervening police officers’ safety, since several different scenarios and possible consequences exist. Through detailed questioning, the dispatcher can save lives of citizens but also of colleagues.</i></p>		

**Case 2**

*A phone calls emergency police number saying she is being beaten up by her husband.*

*The alleged victim may be speaking in general terms. It is the dispatcher's responsibility and role to determine what the caller really means. The expression "being beaten up" can reflect different levels of risks: How is she being beaten? While the general conclusion is that when the word "beaten" is used it means physically beaten. However, this may not be true. A person can be beaten with an object, such as a chair, a glass, a potentially lethal object or not.*

*Sometimes, a person will not accurately state the problem. What the victim may be trying to say that she is being assaulted with a knife. The police dispatcher must constantly keep in mind that the person who is calling may be in a highly emotional state and may not be able to describe what is actually happening. A skilled dispatcher, however, should determine the nature of the problem and inform the responding officers so that they can be prepared and prevent loss of lives or escalation of violence.*

**Case 3**

*A woman calls stating that her husband is threatening her but the voice is not clear and there are noises in the background.*

*The police dispatcher needs to determine: how the husband is threatening her. Is he threatening her with a weapon? If so, ask what type of weapon? Where is the weapon? Are there other people in the room? Are there children? Has the husband been drinking or taking drugs? Tell the victim to take prevention measures until the responding officers arrive at the provided address.*

**Case 4**

*A young boy calls the police screaming that daddy is hurting mommy.*

*A skilled dispatcher is needed to handle these situations. The dispatcher must be able to methodically and patiently attempt to gather detailed information from the child without adding stress or asking difficult questions. The child might be witnessing a violent episode. The dispatcher needs to understand who is involved, if there are firearms, knives, if there is somewhere the child can go safely. The dispatcher first needs to make sure that he or she has obtained the needed relevant information. The dispatcher should recommend that if possible the child should go to someone where he/she can be protected bearing in mind that the child might not want to leave his/her mother and wants to try to 'protect' her.*

**Case 5**

*A child calls crying, reporting that her daddy is killing her mommy.*

*The role of the dispatcher here is vital to save lives. The dispatcher has to be quick but patient at the same time. He or she has to gather all relevant information in a very brief amount of time from a young child who is apparently witnessing a dramatic event: her father is “killing” her mother. The child is seeing and hearing the two people she loves and depends on in a life threatening struggle, potentially with blood, broken objects and the father with a gun or a knife or other lethal object.*

*The dispatcher has to be able to ascertain from the child: what is happening (what is “killing”), is a weapon involved? Is the father drunk? Have both parents been drinking? Has her mother been injured? Is the mother saying something? Where does the child live? Is there someone next door the child can go to?*

**Concluding points**

***Have the trainees, divided into small groups, come up with some general rules (see check-list and processing card in the hand-out in the next session).***

## 1.2 Interviewing techniques with victims (women, children) and perpetrators

### Key concepts

- ✓ The officers' conduct during the interview will determine the victim's willingness to cooperate. Watch out for fearful victims minimising or denying need for the police.
- ✓ Victims' interviews require special techniques in order to gather relevant information without losing sight of the safety of the victim and making sure she trusts the police. Avoid secondary victimisation with leading or judgmental questions. No irony, ambiguous or indirect questions.
- ✓ When at the site of the offence, separate the parties. Listen to the victim in a quiet and safe place in the house. Never use the kitchen. Allow the victim some time, if there is no threat of life or immediate need to go to the hospital.
- ✓ When interviewing children, reassure them about their safety and the safety of the ones they love. Children are susceptible to leading questions to please the officer. Make sure the children know what happened and that what will happen next does not depend on them.

### 1.2.1 General considerations when interacting with victims and perpetrators

The Istanbul Convention gives special attention to the role and responsibility of the police in all stages of involvement. According to Article 50 the police has to “respond promptly and appropriately by offering adequate and immediate protection to victims” and also, by promptly and appropriately providing “preventive operational measures and the collection of evidence”.

Practical and useful examples of what this means for the police are the following:

- ✓ having the right to enter the place where a person at risk is present;
- ✓ treating and giving advice to victims in an appropriate manner;
- ✓ hearing victims without delay by specially trained, and where appropriate female, staff in premises that are designed to establish a relationship of trust between the victim and the law enforcement personnel; and “provide for an adequate number of female law enforcement officers, including at high levels of responsibility”.

Overall, police officers should have a **reassuring** approach in handling these cases but also one that reflects the understanding of the severity of the offence and the impact on other

people. Irrelevant, intimidating and ironic questions should be avoided as these may lead to the victim feeling frustrated, disbelieved or scared and as a result will be less collaborative.

These very general rules to avoid secondary victimisation are of relevance for officers intervening at the site of the abuse and at the police station. Also for officers in charge of investigations, gathering evidence and interacting with the judiciary system and who might have direct contact with the victim.

As previously explained the police play an important role in answering emergency phone calls and asking precise and useful questions and engaging in a dialogue which can be helpful for increasing the safety of the victim and any children living with her.

How the officer conducts the interview will determine the victim's willingness to co-operate (or not) with the police. If she feels safe and believed, it is more likely that she will trust the police and provide more extensive and useful information for the investigation. Effective investigations will allow the police to perform better, be more satisfied with their interventions and have an increased chance of saving lives and reducing further violence towards victims and their children.

Violence should never be mediated, so when dealing with these cases, the police should not justify the violence or minimise its seriousness. Perpetrators should never find allies in the police, especially male officers. This does not suggest that the police collude with the perpetrator, but even a gesture or absence of intervention after a possible crime has been detected, might give the perpetrator more power. Knowing about the cycle of violence, the impact, the consequences of violence, the victim's reactions and her fears and needs will enhance the capacity of the police to handle these complex crimes.

There are several scenarios where the police might be misled by the victims' behaviour. This is the case when the woman behaves 'hysterically', or minimises or denies what happened. The victim may say to the police that everything is fine and might even try to interfere with the police's work to prevent the perpetrator from being arrested or banned from the house. The police should assess the situation and act to protect any vulnerable victim of violence who in certain situations may not be capable of understanding and assessing the risks.

The law allows the police to intervene at the scene of the crime to issue a barring order upon decision of the Public Prosecutor, based on the assessment of what has happened and the level of risk. This implies that the perpetrator has to leave the house. Article 52 of the Istanbul Convention (Emergency barring orders) specifies/explains that competent authorities should have the power to remove a perpetrator of domestic violence from the residence "in situations of immediate danger and that priority shall be given to the safety of victims or persons at risk". It is crucial that the immediate risk of escalation or recurrence of violence is prevented, which is the aim of this provision.

### 1.2.2 At the scene of the incident/crime

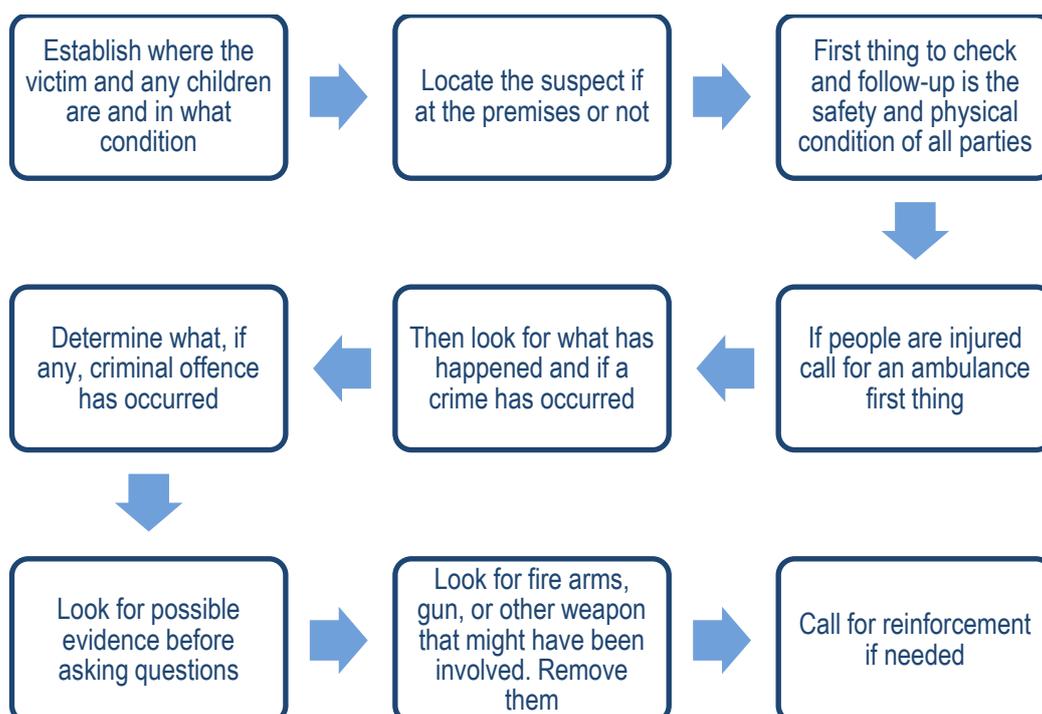
The response of the police at the scene of domestic violence lays the foundations for the criminal case and can have a huge impact on the victim's safety. Applying a victim-centred approach is likely to increase the safety of the victim and it is a clear message for the perpetrator that his behaviour is not acceptable. A prompt intervention is not only recommended but required by the Istanbul Convention (Article 52).

There should always be two officers arriving at the scene of the incident/crime. They should have been informed in advance about what has happened and how dangerous the situation is. However, domestic violence calls to the police bring along a certain degree of unpredictable outcomes. Even if the call has been classified or identified as 'low' risk by the dispatcher officers, either because there were no elements of high risk, or the risk was not well ascertained, it can happen that the risk is high and it was hidden, and the risk of serious violence might still prevail.

Fortunately, over half of 'family disputes' do not imply serious violence nor do they pose a lethality risk, but even these 'lower' level of risks deserve the best and most effective police response by well trained and prepared officers, also to prevent their escalation. This is why it is important that all police officers entering the police force have within their basic training, modules related to domestic violence.

Agreeing on specific procedures and steps to follow minimises the risk of further violence and ensures the safety of the victim. The agreed steps should cover all stages of intervention, starting, as described in the previous section, with the emergency phone call.

*Figure 5. Steps to take at the scene*



As soon as the officers arrive at the address provided, they should find out who is present and whether there are injured people who need immediate medical assistance. When entering the premises where the incident has taken place, it is not sufficient to ask who is present but the police need to check the premises themselves. If both the victim and the perpetrator are present, the first thing to do is to separate them and interview them individually. The female police officer talks to the alleged victim and the male officer to the alleged perpetrator, if present. It could be that, for safety reasons, the police has to modify the scene of the crime (by moving objects or pushing obstructing furniture).

The officers should then pay attention to the conditions of the apartment/house or other premises where the incident took place, trying to gather evidence of what happened. This requires first searching for guns or other weapons, and if present, removing them immediately. In some circumstances, if more people are involved, or a high risk situation has been ascertained, it is advisable to call for reinforcement. The interviews should take place only after the high-risk situation has been cleared and victims are safe.

### **1.2.3 Conducting victim interviews and avoiding secondary victimisation**

The next figure summarises the steps that the police will take to conduct a useful and respectful interview with the victim. These standards reflect the principles of Article 15.1 of the Istanbul Convention that requires member states to provide training to professionals on the needs and rights of the victims in order to avoid secondary victimisation.

**Figure 6. Asking questions and gathering evidence**



When conducting an interview with victims, open-ended questions are most useful to obtain relevant and reliable information for any future investigation. They enable talking to gather information without influencing the parties and without putting pressure on them. It is recommended not to interfere with the victim's flow of thoughts and only once the victim stops or does not know how to continue, then it is advisable to make more specific close-ended questions.

#### The following questions can be asked:

- Please tell me what happened.
- Has anything like that happened before? Has this person (your partner) hit you before? Since when?
- How were you hit? With a hand? Open or closed hand?
- With an object? Which object? Please, show it to me.
- In which part of your body where you hit? Do you mind showing it to me? Can I take a photograph?
- Can you show me on the diagram (show a 'body shape' image) which part of the body was hurt?
- Shall we get medical help for that? Did you visit an emergency room before?
- Were you threatened in some way? What were you told? Can you repeat the words for me?
- Are there any weapons in the house (beside knives)? Were they used? Can you show me where they are?

#### Some questions to avoid in the interview:

- ⊗ What did you say to make him so angry?
- ⊗ What did you do to make him react in this way?
- ⊗ *[Questions that are ambiguous or rhetorical]:* are you ok? Is everything fine? People tend to confirm, when asked these questions, even if they are in shock or in a state. It is preferable to ask specific questions, which help the victim to focus her attention on any part of her body which is harmed and act accordingly. This will result in increasing willingness of the victim to collaborate.

#### Strategies that the police can use for a good interview:

- Police officers should adopt a calm direct tone of voice and way of talking.
- When a victim or a suspect is angry or shouting, the officers should ask her/him to calm down and reduce their tone of voice. It is a peaceful way to force the person to calm down, as otherwise he/she will not be able to understand what the police say.
- Repeat questions and statements as many times as needed until it is clear what needs to be understood.
- Call people (the victim) by her name, this will help her focus and pay attention to what is being asked or said.
- Make sure different and contradictory messages are not sent out by the officer. The body language can convey feelings of irritation, disbelief about what is heard or a judgmental attitude.
- Questions should be informative and non-accusatory.

- Because the motives that led to the attack are not relevant, since violence should never be committed, victims should not be asked about what went wrong in the relationship.
- It is not up to the police to decide what happened and why, but to find out if a crime has been committed and act accordingly.

#### **1.2.4 Victim's ambivalent attitudes and behaviour when interacting with the police**

Police officers should be aware that the victim might not act in a logical way when they arrive at the location of the abuse and she may do or say things that are incoherent and contradictory. The victim might be in denial, minimising, saying that they had the TV on with a lot of people shouting, or that she fell and that is why she is bleeding or that objects are broken because she was cleaning. This could also be due to embarrassment, fear, or underestimation of the severity of what has happened. The victim might blame herself and feel isolated. These reactions and conditions are plausible and should not interfere with the duty of the police and what they have to do.

In any of these circumstances, **the police officers could:**

- Reassure the victim but without promising something they cannot fulfil and explain what will happen and what the victim can do.
- Avoid asking the same question if he or she sees the victim might be in shock, terrorised and be unable to say or do anything .
- Reassure the victim that it is not her fault and that many women experience violence between partners.

Still, even with well-prepared officers, you might find that **some victims are not cooperative**. This is also due to lack of faith in the criminal justice system, confusion about what will happen afterwards, and what might happen to the children, if any. The victim might not be able to know what she can do and how, since there are many obstacles to taking the decision of 'just leaving'. Women victims of abuse simply want the abuse to stop and any other decision might seem impossible to reach or very difficult to follow.

The officers cannot solve the whole problem, but their role is very important at this stage. In order to encourage and give strength to the victim, **the officer might:**

- Explain to the victim that what has happened is a crime and that she should not underestimate it.
- Provide the victim with telephone numbers and reference to services and counselling for victims.
- Underline that she cannot solve the problem on her own and that she needs help and support .
- Explain to the victim that it is not her responsibility to change the man and his behaviour. It is for him to change.
- Explain to the victim that in most cases the violence takes place over and over again and it gets worse and that the perpetrator will not just stop.

### 1.2.5 Actions to take towards the suspect (if present in the house)

The profile of perpetrators can vary, from low socio-economic class to high class, poor or rich. The address where the officers intervene could be from very poor area of the country, to a very rich neighbourhood. The officer should not be influenced by any of these elements and act according to the law. Some perpetrators might be very angry and shout because they entered the house without permission. Others might be very accommodating and charming, trying to persuade the officers that everything is fine, or to minimise the incident (see Figure 2.3)

To avoid being manipulated by the suspect and be able to do their job properly, the police should:

- Allow the suspect to give his side of the story without accusing him. This will only make him more defensive and in denial.
- Not make any statement or provide nonverbal signals which imply agreement with what he is saying.
- Report his version of the story even if clearly absurd.
- Inform the perpetrator about his rights according to the legislation if he is being arrested or if he is going to receive a barring order.
- If the suspect has left the apartment, ask the victim if they know where he went, any addresses, location where she thinks he might have gone.

*Figure 7. Steps and procedures towards the suspect*



### 1.2.6 Interviewing children

If children are present in the house, it is recommended that a psychologist carries out the interview. If this is not possible, the police officers can still ask the children questions to gather relevant information from them. Children themselves might feel like talking and being actively involved, and feel useful. They might also want to protect their mother, or other people in the house, or even an animal. The Istanbul Convention recognises that all professionals (including the police) will have to take special care and caution when dealing

with children who are living in domestic abusive families. This implies taking the best interest of the children into account first.

As discussed in section 1.C, there are cases where children will minimise what happened, or forgive and try to prevent the perpetrator (their father) to go to prison. Their father may have even threatened them that they will bear the consequences of his incarceration. When interviewing children, the **police should bear in mind** the following:

- Interview the children in a safe and quiet room.
- Speak to the child at eye level, by either bending down or sitting down, one next to each other.
- Explain to the child why they are there; avoiding making judgmental statements about the father and what has happened, but not minimising or saying they just came for a visit.
- Be friendly yet underline what they are there for. Children might very likely be relieved that the police have arrived to protect them and their mother, and in most cases children know exactly what has been going on. Children might have witnessed many other incidents in the past.
- Ask questions in a non-leading way, trying to gather information about what happened and also if it happened in the past.

### 1.3 At the police station

For a victim, reporting against her partner is a difficult choice to make. Reporting against the man she loved and towards whom she still has feelings, and for whom she feels sorry, who might be the father of her children can be very devastating, shameful and embarrassing, sad and confusing. Victims simply want the perpetrator to stop and would like the police to ask him to. Victims are not seeking imprisonment or revenge. Therefore, at the police station victims might provide a partial story.

Informing the authorities could also be dangerous because calling the police or going to the police station **might result in further acts of violence** or segregation or kidnapping of the woman or of the children if safety measures (risk management) are not taken at the same time. These are common risks women victims of violence are confronted with.

If the victim is interviewed at the police station, she might not feel at ease. On the other hand, when the victim is interviewed by the officers at home it might have been after a peak of violence and explosion which is not a representative situation of what usually happens or how the woman usually feels. At home, the woman might be too afraid to speak. The police should interview the victim in a hospital or in a shelter or wherever the victim prefers. It would be preferable to let the victim decide.

At the police station, it is very important that there are specialised officers who can deal with the victims in a sensitive manner and gather all the information needed for the file. The police should check whether she has previously made a complaint, whether the police ever

intervened at her house and if there is a recorded history of recidivism. As indicated by the Istanbul Convention whenever possible a female police officer should be present to make the woman feel more comfortable.

The following tips could be useful to provide an effective and respectful **victim-centred interview** at the police station:

- Choose an appropriate comfortable location for the victim;*
- Provide refreshment;*
- Allow time for questions, to express emotions and enough time for her to gather her thoughts;*
- Ask victims if they want them to call a friend or a relative;*
- Make sure that it is a good moment for the victim to provide her statement.*

Make sure the following **problems** are avoided and if take place addressed effectively:

- Prevent other officers coming in and out of the room or other activities taking place in the room;*
- No interruptions with phone calls or other tasks;*
- Avoid the victim having to repeat her statement to different officers.*

#### **1.4 Investigation, gathering information and reporting to the prosecution officers**

The last stage of the police activity in domestic violence cases is that of gathering the information and sending the whole report to the prosecutor's office.

The same considerations and principles that were presented in connection with the other stages of police work are also applicable at this stage and therefore not repeated here.

This stage implies gathering proof and any elements to support the investigation of the alleged crime and actions. This includes any background information related to: prior violent attacks, presence of weapons, witnesses (friends, relatives, co-workers, neighbours, children living in the house), presence of restraining/protection or warning order, prior access to the emergency services. Some of this information can also be retrieved from police records; others will have to be gathered from interviews.

## 1.5 Risk assessment and risk management

### 1.5.1 Definition and aims of risk assessment

When dealing with domestic violence cases, risk assessment aims at identifying and evaluating possible risks of recidivism of future violence, escalation of violence or even lethal violence, that is, the probability that a violent action occurs again in the future. The theoretical assumption behind risk assessment is that violent behaviours (e.g. domestic violence) are a set of physical and psychological and sexual violent acts against another person in an intimate relationship that are likely to be recurrent in time<sup>39</sup>. Assessing risk not only involves the police: effective and co-ordinated multi-agency work is needed to avoid misinterpretation of factors and underestimation of risk. Risk assessment, as stated in the Istanbul Convention, should be undertaken together with other agencies in order to effectively assess and devise a plan to manage the safety needs a particular victim requires on a case-by-case basis, according to standardised procedures. This activity requires co-ordination and co-operation between agencies and services; the police should share the information (within the legal framework applicable) and make sure that each party is in charge of specific risk factors. After sharing information, they should all agree on the steps to undertake for safety management.

The Istanbul Convention (Article 51) explicitly refers to the obligation of the relevant authorities to conduct 'risk assessment and risk management': "Parties shall take the necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence\_is carried out by all relevant authorities in order to manage the risk\_and if necessary to provide co-ordinated safety and support". This risk assessment should systematically take into account the possession or access to firearms by perpetrators of acts of violence covered in the Convention.

The Istanbul Convention does not specify which risk assessment methods should be used, but it stresses what risk assessment is for: to have a shared 'language' that enables all parties involved in dealing with a case of domestic violence to have a similar understanding of which are the most problematic aspects of the case and that need to be addressed to increase the safety of the woman and reduce the risk of reoffending and eventually of murder.

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<sup>39</sup> Baldry, A. C. & Winkel, F. W. (2008). *Assessing risk of spousal assault. An international approach to reduce domestic violence and prevent recidivism*. Nova Science Publisher, US.

### 1.5.2 The risk assessment approach for the prevention of recurrence of violence

Risk assessment is an approach that allows different professionals, including the police, to intervene as early as possible and as effectively as possible to prevent:

- ✓ Reoccurrence of violence between partners / former partners
- ✓ Escalation of violence within partners / former partners;
- ✓ Murder of the partner.

Risk assessment is not a procedure that allows for future prediction. However, it provides a systematic approach to understand what possible future outcomes can emerge in cases of violence between partners. They are very well established as methods and useful because they allow decisions to be made about risk management and safety planning in a more systematic and structured/scientific way. This reduces the probability that police officers, who may have little experience in dealing with such cases or have preconceived ideas about them, miss critical elements that should be addressed as soon as possible.

To perform risk assessment, there are several widely used and validated methods. Some of the most widely used (Ontario, Danger Assessment, Dash<sup>40</sup>) provide a score related to the level of risk and its threshold. Others (among which the most used one is the SARA and its reduced version, the B-SAFER) are referred to as guidelines instruments. The SARA (Spousal Assault Risk Assessment<sup>41</sup>) is based on 20 risk factors. Subsequently, a 10 item version was developed for the police in Sweden (B-SAFER)<sup>42</sup> and used in other countries (i.e. Greece, the Czech Republic, Italy). The SARA-S version used in Italy<sup>43</sup> consists of a total of 10 risk factors related to the perpetrator plus an additional 5 'vulnerability' factors related to the victim (see below).

The guideline instruments include a list of risk factors related to the perpetrator, the victim and the characteristics of the relationship on which basis the police officer has to provide an outcome of level of risk (low, medium or high, or even extreme/lethal). With this structured approach, everyone involved in making the assessment of risk looks at the same risk factors and translates them into a level of risk. To be able to apply them correctly, however, a thorough training is required.

The advantage of using a "cut-off" score tool is that of minimising discretion when assessing risk. The disadvantages of such approach is that it considers the risk of recidivism based on the quantity of risk factors (scoring the presence of 10 risks implies more risk than when

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<sup>40</sup> Nicholls, T., Pritchards, M., Reeves, K. & Hilterman, E. (2013). Risk Assessment in Intimate Partner Violence: A Systematic Review of Contemporary Approaches, *Partner Abuse*, 4, 76-168.

<sup>41</sup> Kropp, R. & Hart, S. (2000). The Spousal Assault Risk Assessment (SARA) Guide: Reliability and Validity in Adult Male Offenders, *Law and Human Behavior*, 20(1), 101-118.

<sup>42</sup> Kropp, P. R., Hart, S. D., (2004). *The Development of the Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER): A Tool for Criminal Justice Professionals*. Family Violence Initiative / Department of Justice Canada.

<sup>43</sup> Baldry A. C. (2016). *Dai maltrattamenti all'omicidio. La valutazione del rischio di recidiva e dell'uxoricidio*. (From domestic violence to uxoricide. Risk assessment) Milano: Franco Angeli, 6<sup>th</sup> edition.

there are 8 risk factors, for example) when in fact risks can vary. Sometimes, a case might score positively on only a few risk factors but these might be so critical that they alone are clearly increasing the total level of risk assessed. The qualitative aspect of risk should be looked at and especially in relation to how a concrete person acts and thinks. Risk factors are dynamic and change over time; risk assessment is therefore a dynamic procedure that should take this dynamism into account (see Hand-outs).

### Good practice note

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The SARA-S version used in Italy consists of a total of ten risk factors related to the perpetrator and five “vulnerability” factors related to the victim.

#### Risk factors:

- ✓ Prior physical or sexual violence;
- ✓ Use of threats;
- ✓ Escalation of violence;
- ✓ Breaching orders;
- ✓ Attitudes supporting violence against women;
- ✓ Prior criminal records;
- ✓ Break-ups in the relationship;
- ✓ Financial, work related problems;
- ✓ Drug and alcohol abuse;
- ✓ Mental health problems.

#### Vulnerability factors:

- ✓ Ambivalent attitude towards the perpetrator;
- ✓ Extreme terror towards the perpetrator;
- ✓ Lack of services, support;
- ✓ Children in common, working in the same place, reduced mobility, social isolation;
- ✓ Mental or physical disability.

Risk assessment can be of high relevance for the police according to the Slovakian legislation with regard to applying the protection order procedure for expelling the suspect from the premises. This is introduced by the Act on Police Corps (Law No. 171/1993 Coll.)

According to the Act, § 27a, a police officer is entitled to expel the perpetrator from the apartment or house, where the close person has their residence, and to ban him from entering the apartment or house and its immediate surroundings during a 48-hour period. He or she provides the victim and the perpetrator with the written certificate confirming the ban from the shared household. The 48-hour period is interrupted during Saturdays, Sundays and public holidays. The period starts passing again on the next working day. Filing

a motion in court for imposing a preliminary measure (under § 76 (1) g) of the Code of Civil Procedure) during the existence of the ban from the shared household automatically extends the ban until the court's ruling on this motion becomes enforceable.

### 1.5.3 Risk management and protection

It is important that risk assessment instruments are country specific. They should be validated depending on the specific cultural context and supported by research.

The police should not rely on any risk assessment instruments to predict behaviour because no risk assessment tool predicts the future. The strongest predictor of future violence is past violence, but it is not sufficient to ensure the safety of the potential victim. Domestic violence is a much more complex phenomenon than a set of risk factors and criminal behaviour. It has to do with male and female relationships, with **coercive control**, etc. Therefore, when talking about risk management and protection the police need to have three main goals:

- 1) Ensure that the measures available by law are applied and that the perpetrator is less likely to be able to re-offend because his freedom is limited and access to the victims' surroundings is banned. This implies that the 48-hour 'barring order' that the police can adopt is used with no hesitation, if there is evidence of violence.
- 2) Risk management can be effective in reducing recidivism, if the police have consistent behaviour and attitudes in dealing with domestic violence cases. Comments, underestimation, justification should be avoided. They will only give more power to the perpetrator, and an increased sense of frustration, loneliness, and powerlessness to the victim.
- 3) Any intervention with the perpetrator can be lasting in terms of reducing the risk of recidivism or even of escalation of violence if the victim is assisted by an experienced dedicated service, which will help her to identify possible options and undertake the best one in terms of increased safety and increased control of her own life.
- 4) If such programmes are available, referring a perpetrator to a violence prevention programme can be effective in reducing risk. The police could mention to the perpetrator that if a criminal case takes place, the judge could order them to undertake such a treatment programme, with a suspended prison sentence, or could invite them to undertake the programme. Further information about programmes for perpetrators is presented in Section. 2, Part D, viii of this manual.

## Note for trainers: Questions to stimulate discussion

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- ✓ What is a safety plan activated by the police in the interest of the victim and in her protection?
- ✓ What is a safety plan taking into consideration also the protection of any children, relatives, or friends at risk?
- ✓ How this should work in a cost/effective manner?

Women often 'just want the abuse to end'; they do not want the man to be removed from his house or to go to prison. She does not want to see her partner shamed socially or financially damaged, and the victim herself might want to protect her image and wealth. The fears a victim will face after the police intervenes are multiple, and also in relation to her decision to move to a shelter or having to report to the police. **Safety is not just a question of protecting the woman from the risk of re-assault.** Safety is a question of being free of living a life with good physical and mental health and having the opportunity to make choices and not fear for one's life.

### 1.5.4 Monitoring and policing

Even after protective actions are taken by the police and/or by the civil or criminal court, or social or victims' services, the role of the police does not end. Not all perpetrators, once banned, will stop using violence. The fact that the perpetrator is in prison, or a protection order is issued, does not mean that the risk of violence has ended. **Risk is dynamic**, and needs constant monitoring.

Often there are situations where the woman does not feel threatened, abused or stalked by the perpetrator and thus wrongly assumes that the behaviour of the perpetrator has changed. As a result, she might want to remove the protection order to allow the perpetrator to go to work, to return to the shared residence and to see his children.

Evidence shows however that permanent changes in the behavioural patterns of the perpetrators are not easily achieved. The perpetrator needs to commit to and invest in a long-term change path and rebuild his masculine identity without resorting to violence. This implies that the police need to be well-trained in order to observe any behaviour which might increase the current risk, pre-empt the violence and take measures to ensure the safety and protection of the victim.

## EXERCISE

Exercise:	Aim	Time	Procedure
<b>Case study Risk assessment</b>	Increase skills on risk assessment	10 minutes for introducing the case. 20 min: detailed risk assessment. 10 min to discuss management strategies and safety planning and role of the police	This is a case study with a video and a written case involved. You need to prepare a case or use the examples provided here in the manual. Make sure the cases are presented in such a way that all the required information is available. Have the trainees split into small groups and fill in a 'risk assessment' form and a 'risk-planning' form.  Use examples from previous exercises, or new ones presented here
<b>Case 1</b>	<p><i>Fatima is estranged from her husband Ruskin but he keeps harassing her. One day Ruskin comes to Fatima's house and assaults her in front of their two children, saying he will kill her if she doesn't come back to him.</i></p> <p><i>When he arrives at the house, the two start having a fight about the right of access to the children and sounds of broken objects attract the attention of neighbours who call the police, also after hearing a woman screaming. When the police arrive, she tells them about the verbal abuse, the fight and the broken glass. Yet, she refuses to say if it is the first time, if he has a gun, if he has threatened her or her two kids, or even tell the police what happened in the past, for fear that Ruskin will find out and hurt her again.</i></p> <p><i>How should the police act in this case?</i></p> <p><i>What risk assessment procedure is advisable? What level of risk would be ascertained?</i></p>		
<b>Concluding points:</b>	<p><i>Have the trainees, divided into small groups, come up with some general points regarding risk assessment and when questions should be asked and by whom, and what problems intervening officers could face and what limits they may have in doing a risk assessment. Have trainees also discuss limits of risk assessments and how to engage victims in doing a risk assessment.</i></p>		

## 1.6 Protecting privacy and confidentiality and dealing with domestic violence. Police accountability and oversight

### Key concepts

- ✓ Privacy and confidentiality means not revealing personal information of cases followed and respecting the victim's will.
- ✓ Police officers have specific roles which should be a priority over privacy when lives are in danger.
- ✓ Police officers not conforming to their role have to be held responsible and actions should be taken against them. This is even more important in cases of domestic violence in a police officer's relationship.

### 1.6.1 Privacy and confidentiality

Privacy and confidentiality are key issues when the police are dealing with cases of domestic violence and they are exposed to the private lives of the persons concerned. It is the duty of the police to gather many confidential personal details in order to conduct a thorough investigation and ensure that the prosecutor has enough evidence for a criminal case. It might include personal details, records, photographs and reports relating to all the victims, witnesses and perpetrators, involved in such cases. This information shall be kept confidential, unless the performance of duty or justice requirements strictly require otherwise.

Because of the danger attached to such cases, all safeguards available in the criminal justice process will have to be put in place to protect the privacy of women victimised and more stringent measures to protect any children involved.

Confidentiality throughout the procedure is required and includes:

- ✓ Avoiding going into the private life of the victim, unless related to the event or alleged crime and only in what is strictly necessary.
- ✓ Collecting evidence and information that are only directly related to the investigation.
- ✓ Ensuring that victims' name, addresses and other identifying information of victims and other witnesses are not released to the media without the informed consent of the victim.
- ✓ Ensuring that the hospital provides visits and examinations in a safe and private setting and are conducted by women medical personnel.
- ✓ Making sure that any evidence from medical examinations is collected for forensic evidence.
- ✓ Ensuring that any documentation or police reports will be viewed only by justice officials/law enforcement directly involved in the case.

## 1.6.2 Police accountability and oversight

As a part of the criminal justice system, police are held accountable for their actions and decisions in the community in which they work. This is of particular relevance for cases of domestic violence. Article 5 of the Istanbul Convention establishes that member states have an obligation to ensure that their authorities, officials, agents, institutions or other actors acting on its behalf **refrain from acts of violence against women**. This obligation of due diligence of the state is extended to acts committed by non-state actors.

This implies that in identifying the responsibility of an perpetrator the same rules apply if the perpetrator is part of the state (including police officers). Police officers can be involved in domestic violence like any other men. A victim of domestic violence whose perpetrator is a police officer might be more vulnerable because they are afraid of not being believed, or fear that an abusive police officer will be protected by his colleagues. Police officers might have manipulative skills and know how to commit a crime without leaving evidence, such as hitting women without leaving bruises or sending written threats with untraceable email accounts or mobile phones. These attitudes and behaviours are negative because they contribute to increasing the feeling of mistrust towards the police, even more so if a police officer is directly involved in the homicide of one's partner or case of domestic violence.

Due diligence also implies that the state has to take action when a crime has been committed. Failing to do this, will make both the individual as well as the state responsible. It is an obligation of means, not of results. It requires that the state, via its representatives, do everything necessary to protect their citizens. If a police officer fails to comply with his duty to protect the victims, in this case women victims of violence, they can be held responsible.

The concept of **police accountability** is essential to the concept of modern, democratic policing where due diligence by the state is essential and required. Police officers are expected to apply the law, and to act according to their role and power and to use the legislation at their disposal with professionalism and not at their own discretion. If they fail to act according to their responsibility they should and could be held accountable.

In the police service, an **oversight system** should be in place.

It is also important to make sure that police officers are aware of the police oversight polices and their zero tolerance towards these crimes. Police should be informed that any 'colluding' attitudes, any minimising or judgmental behaviour will be followed up and that if a 'wrongful' act is detected the police force will deal with such cases and, if needed, take actions.

In other countries, police are accountable to ombudsmen and/or human rights commissions, ad hoc parliamentary inquiries, court-appointed monitors and independent complaint authorities, as well as to an increasingly sophisticated set of internal oversight mechanisms. For instance, in South Africa, the United Kingdom, as well as in the US permanent national agencies have the capacity to conduct independent investigations on varying actions from police killings to civilian complaints of discourtesy.

## Section 2: The Role of Prosecutors and Judges in Preventing and Combating Domestic Violence

Justice sector actors, prosecutors, judges and the personnel who support them, play a powerful role in combating violence against women and removing barriers to justice. International research on attrition rates in cases of violence between partners reveals that a very small percentage of violent acts are ever reported to police (generally, fewer than 20% of victims report). Progressing further along the justice chain, less than 7% of all incidents result in the perpetrator being charged, and no more than 5% of cases result in a conviction.<sup>44</sup> All three groups of justice sectors actors (police, prosecutors and judges) are implicated at critical points of attrition. For example, a complaint of domestic violence may not advance through the justice system if the police do not judge that a crime has occurred and do not make an arrest or if the prosecutor decides to discontinue a case. Attrition can also occur closer to the final stages of the process, if the victim withdraws the complaint or there is a dismissal or acquittal in court due to evidentiary weaknesses or procedural errors.

The Istanbul Convention requires protection measures to be applied during the investigation and judicial proceedings (Articles 18, 56), which means that police, prosecutors and judges should not only ensure that they are working in a co-ordinated and complimentary fashion, but also that at each stage of the chain of justice, the specific needs of victims are a central concern.

Effective justice systems share several characteristics:

- ✓ they prioritise victim safety;
- ✓ they hold perpetrators accountable;
- ✓ they use approaches that empower victims and do not re-victimise them (victims should be informed, should feel their decisions are respected and their voices are heard);
- ✓ the constituent agencies work together in a co-ordinated and integrated manner.<sup>45</sup>

In order to improve the effectiveness of the justice system as a whole so that it responds effectively to domestic violence, it is usually necessary to reform the procedures and transform the organizational cultures of the police, prosecutors offices and courts themselves. While all judicial actors must conform to the standards set forth in the Istanbul Convention, prosecutors and judges have unique roles in dealing with domestic violence, as outlined below.

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<sup>44</sup> UNODC, *Handbook on effective prosecution responses to violence against women and girls*, 2014, p. 28, citing the 2008 International Violence Against Women Survey.

<sup>45</sup> UNODC, *Handbook on effective prosecution responses to violence against women and girls*, 2014, p. 28, citing the 2008 International Violence Against Women Survey.

### Prosecutors:

- ✓ As state authorities, they ensure that domestic violence cases are treated with the same seriousness as other crimes and are not diminished as “private matters.”
- ✓ They conduct the rigorous investigation and case-building that acts of violence against women require.
- ✓ They provide leadership and expertise to other justice professionals, such as police, lawyers, and probation staff.
- ✓ They promote respect for the rule of law.
- ✓ Through their actions, they send powerful messages that can deter perpetrators and can mitigate the shame and stigma that victims encounter.

### Judges:

- ✓ As adjudicators, they interpret and apply the law impartially, which means imposing fair and commensurate sentences for acts of violence against women.
- ✓ They challenge the stereotypes and bias that are present in society and uphold principles of non-discrimination.
- ✓ Through their judgements, courts send messages to the community that domestic violence will not be tolerated.
- ✓ As figures of authority, judges can provide leadership on improving the function of the justice system and creating a safe environment for victims and witnesses.

As there is overlap in their professional responsibilities, prosecutors and judges are often trained in joint sessions. But because their roles are also distinct, it can be effective to work with them individually on how to improve their response to domestic violence cases. This section of the manual consists of a general sub-section with information and techniques that both prosecutors and judges should apply when dealing with domestic violence cases from the investigation stage through to conviction and sentencing. The next two sub-sections contain information relevant to criminal and civil cases presented separately.

## 2.1 How the dynamics of domestic violence impact legal proceedings

Domestic violence cases can be some of the most challenging that practitioners encounter because in many ways they do not conform to “typical” legal cases. Prosecutors and judges often find that dealing with domestic violence in the legal system is both confusing and frustrating. Not only do the victim and perpetrator know each other intimately, their lives are usually intertwined, due to shared housing and responsibilities for their children. The dynamics of domestic violence, as outlined in Part 1 of this manual, have specific consequences for how a case is prosecuted, tried and adjudicated in court. Prosecutors and judges must have a sound understanding of how the specific characteristics of domestic violence will impact their work.

The following checklists review the key points of which prosecutors and judges should be aware. They also provide suggestions for appropriate responses. The recommendations are

practical examples of the kinds of measures that form a victim-centred approach and that should be adopted at all stages of judicial interaction with victims and perpetrators. Later sections of this manual expand on more specific techniques to ensure a victim-centred approach.

### **Checklist- *What should practitioners know about victims and their behaviour?***

The domestic violence cases that enter the legal system are rarely first-time incidents; they are usually severe acts of violence or part of a pattern of violence that has occurred over a long period.

- ✓ Victims generally turn to the justice system as a last resort when violence is the most severe and they feel most at risk, and also when all other options have failed.
- ✓ Many victims have had previous, and often unsatisfactory, interactions with law enforcement and justice officers.
- ✓ Victims may be fearful of re-victimisation or have little trust in the legal system to ensure their safety, or the safety of other family members, or to provide them with the kind of remedy they are seeking.
- ✓ Victims will often have experienced severe trauma.
- ✓ A victim may be in shock.
- ✓ Victims may fear retaliation by the perpetrator, may be economically dependent, and may also feel shame and worry that they will be blamed for the violence.
- ✓ Victims are also resilient and have usually managed to adopt survival tactics that can often be misunderstood or critiqued by justice sector professionals and the larger community (such as staying with the perpetrator).

During legal proceedings, victims of domestic violence may not behave like victims of other violent crimes.

- ✓ Very often when victims are being interviewed or in court, they show clearly that they are frightened and upset. They may cry or otherwise behave as a victim is “expected” to act.
- ✓ However, sometimes victims are hostile, angry, not co-operative, or appear unreliable. They withdraw complaints, fail to take necessary steps (e.g. to obtain a forensic medical certificate or attend meetings), change their testimony or minimise the perpetrator’s acts of violence.
- ✓ Other victims behave differently; they report the violence and are more active in criminal cases or pursuing divorce.

### **Checklist- *What should practitioners do?***

- ✓ Exercise patience and understanding of what the victim has experienced.
- ✓ Express compassion and sympathy to the victim while maintaining impartiality (e.g. judges can be sympathetic to the difficulties of procedural delays for the victim without commenting on the merits of a case).
- ✓ Do not expect victims to behave in a specific manner, and do not make any assumptions or decisions about the merits of the case based on the victim’s

behaviour (i.e., unco-operative witnesses can wrongly be viewed as not credible and wasting the time and resources of the justice system. In contrast, other victims may be seen as “too eager,” and prosecutors or judges can wrongly assume they are taking advantage of the law to obtain some benefit for themselves). Remember that victims express their emotions in different ways and be careful not to rely on stereotypes about a victim’s behaviour.

- ✓ Do, however, make decisions about how to minimise risk to the victim, and enhance safety, based on the victim’s behaviour, what she says and the findings of risk assessments.
- ✓ Do use special tactics to minimise re-victimisation and victims’ feelings of distrust and censure.
- ✓ Demonstrate to the victim that her wishes are being considered.
- ✓ Make contingency plans to use alternative strategies that do not require victim co-operation to hold the perpetrator accountable.

### **Checklist- *What should practitioners know about perpetrators and their behaviour?***

- ✓ Perpetrators of domestic violence attempt to exercise power and control over their partners, and such behaviours typically escalate once a case enters the legal system. This is part of the cycle of violence (see part I.B).
- ✓ Perpetrators often have a “dual personality.” They appear affable and calm in public but are abusive in private. Judges with experience hearing domestic violence cases note that perpetrators often behave in a very engaging and reasonable manner in the courtroom, and they do not present as angry or violent.
- ✓ Perpetrators typically try to minimise or deny the violence, to blame the victim and to manipulate or intimidate the victim further, using tactics of power and control.
- ✓ Perpetrators may use such abusive and controlling behaviours in the courtroom (e.g. staring or glaring at the victim, appealing to the victim’s emotions, delaying proceedings, etc.).

### **Checklist- *What should practitioners do?***

- ✓ Consider the safety of the victim, her children and/or other family members, throughout legal proceedings.
- ✓ Do not make judgements about the case based on the perpetrator’s behaviour in the courtroom but rely on the evidence presented.
- ✓ Be aware of ways that perpetrators try to manipulate the court system and be prepared to respond.
- ✓ In criminal cases, send a clear message that neither the perpetrator nor the victim has control over the legal process and that it is the state’s responsibility to prosecute crimes of domestic violence.
- ✓ Ensure that adjudication is effective and prompt, and try to avoid or at least minimise procedural delays.

Both judges and prosecutors need to be proactive when dealing with domestic violence. It can also be useful for justice sector professionals to reconsider how they evaluate “success” in domestic violence cases. Typically, convictions are important outcomes for prosecutors and judges. A more useful measure when dealing with domestic violence, however, could be the extent to which victims feel that the justice system has been responsive to their needs, in terms of safety, support, and information, regardless of whether the perpetrator is convicted.

## EXERCISE

Exercise	Aim	Time	Procedure
<b><i>Voicing Frustration and Venting Negative Feelings</i></b>	Trainees have the opportunity to constructively express their frustrations in dealing with domestic violence cases before the training proceeds.	15-20 minutes	A brief group discussion. Trainer chooses one of the variations, below.
<b>Variation 1</b>	<i>The trainer presents a difficult scenario (e.g., after extensive investigation and case preparation, the victim testifies in court in a way that contradicts the police report). Ask trainees to react and pose questions like: “Is this typical?”, “What would you do?”, “Why do you think this happens?” Trainer guides a brief discussion, referencing the dynamics of domestic violence from Part 1 of this manual.</i>		
<b>Variation 2</b>	<i>Ask trainees to introduce themselves by stating two things they would like to learn from the training and two things that frustrate them in their current practice. Trainer guides a brief discussion, referencing the dynamics of domestic violence.</i>		
<b>Concluding points:</b>	<b><i>Trainers demonstrate their understanding of the difficulties practitioners encounter in domestic violence cases and assure trainees that during the rest of the training they will learn tactics to minimise frustration and increase effectiveness. Trainers should acknowledge participants’ feelings of frustration but not reinforce negative attitudes toward victims. Trainers should be attentive to anyone citing stereotypes about domestic violence and dispel myths immediately when they arise.</i></b>		

## 2.2 Prosecutor and police co-operation

As first responders to incidents of domestic violence, the police play a vital role in initiating criminal proceedings, conducting investigations and securing evidence. Prosecutors not only rely on the work carried out by the police, they also have responsibility to oversee police action and inaction. Close co-operation, consultation and co-ordination between police and prosecutors is vital for the effective disposition of domestic violence cases. Effective co-operation between the police and prosecutors is based on common goals about the investigation, the use of joint guidelines about types of evidence (especially corroborating evidence) and also following agreed protocols for action. Prosecutors should maintain open communication with the police and engage in consultation early in the investigative process to ensure that there is mutual understanding, and that newly arising information about the case is communicated effectively (e.g. if assessment reveals an increased risk or if the perpetrator violates a protection order or is re-arrested).

It is not uncommon in domestic violence cases for police and prosecutors to disagree over how a case should be charged or managed. In addition, prosecutors may find weaknesses in the police response to domestic violence (e.g. not complying with criminal due process requirements or ineffective collection of evidence) and send cases back for further investigation or drop the charges. Unfortunately, if there is a particularly adversarial relationship between law enforcement and the office of the prosecutor, prosecutors may focus to a greater extent on identifying police errors than on increasing justice for victims of domestic violence. Instead, within their supervisory authority, prosecutors should engage constructively with police investigators to provide advice and instructions and to build their capacity. Specifically, prosecutors should provide guidance to police investigators on the information that should be included in a comprehensive domestic violence report in order to meet the requirements of the prosecutor's office. Joint trainings, as well as the development of common strategies, protocols or memoranda, are also effective.

### Good practice note

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In 2006, the Belgian Minister of Justice and the Board of Prosecutors General on criminal policy with respect to violence in couples issued a joint circular that sets forth guidelines for criminal policy on domestic violence. The circular standardises a system for identifying and registering domestic violence cases that both police and prosecutors use. In addition, the circular outlines the responsibilities of law enforcement and the judiciary and serves as a reference tool for both institutions. The circular is part of a multi-disciplinary approach and so it is not limited to criminal measures. It also incorporates a victim-centred approach throughout.<sup>45</sup>

## 2.3 Judicial bias and stereotyping

Prosecutors and judges, and indeed all judicial actors, are subject to the same preconceptions and stereotypes as the larger society. We all make decisions based on stereotypes and expectations. However, this practice is especially problematic if it concerns the law because the legal system is meant to treat victims of domestic violence and violence against women with impartiality.

The specific problem of judicial stereotyping has received increasing attention because it represents a “pernicious barrier to justice, particularly for women victims and survivors of violence.”<sup>47</sup> While police and prosecutors can also be influenced by bias, stereotyping by judges has a particularly detrimental effect because “their unique position of power means they can give stereotypes the full weight and authority of the law.”<sup>48</sup>

Good practices to eliminate stereotyping include exposing legal professionals to evidence about violence against women, such as the information contained in section 1.D of this manual on myths and realities about domestic violence; highlighting the harms of judicial stereotyping; and improving judicial capacity to recognise and address bias through education and training.

Addressing judicial stereotyping in a training should be approached with sensitivity because there is a risk that participants could feel accused of wrong-doing, and they may become defensive. A recommended approach is to provide evidence of judicial bias from legal practice (e.g. from the case law of Slovakia, other jurisdictions or of the European Court of Human Rights or recommendations of the CEDAW Committee) that can be discussed among professionals, as well as practical examples of actions judges have taken to challenge such stereotypes.<sup>49</sup> Furthermore, the overall guidance provided in this manual will aid in instilling a victim-centred approach, which should replace reliance on preconceptions and myths with good practices.

## 2.4 Techniques to ensure a victim-centred approach

This section of the manual elaborates on essential tactics and principles that prosecutors and judges should incorporate into their work routine when dealing with domestic violence, whether in criminal or civil cases. These techniques not only ensure a victim-centred approach but will also increase the effectiveness of prosecution and adjudication.

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<sup>46</sup> Council of Europe Gender Equality Commission. 2015. *Compilation of good practices to reduce existing obstacles and facilitate women’s access to justice*. Strasbourg, pp. 24-26.

<sup>47</sup> Simone Cusack. 2014. *Eliminating Judicial Stereotyping. Equal access to justice for women in gender-based violence cases*. Office of the High Commissioner for Human Rights. p. ii.

<sup>48</sup> *Ibid.* p. 3.

<sup>49</sup> The publication cited above (*Eliminating Judicial Stereotyping. Equal access to justice for women in gender-based violence cases*) is a useful resource for further information about the impact of judicial stereotyping and strategies for eliminating bias in cases concerning gender-based violence.

### 2.4.1 How to communicate with victims to avoid secondary victimisation

During all interactions, victims should be treated with courtesy, respect, sympathy and sensitivity to the fact that they have experienced abuse. Very often victims are required to describe incidents of abuse a number of times before finally appearing in court, and this process can cause them renewed trauma, embarrassment or frustration; they may also forget details over time. Justice sector actors should exercise patience and give the victim time to tell her story in her own words. It may be necessary to remind her that she is not being blamed for the violence and explain why her participation in interviews and as a witness are critical elements of a legal case. Prosecutors and judges may also find it useful to speak to the victim about the dynamics of domestic violence, especially the fact that violence often escalates in severity, in order to help her to understand the seriousness of the situation and that the legal system is there to stop such violence from continuing.

#### **Prosecutors:**

The prosecutor will meet the victim/witness during pre-trial interviews, and these meetings are important for case building as they enable him/her to make better-informed decisions about how to proceed with the case. This is a critical opportunity to build trust, to explain the prosecution process to the victim and to describe how her views, needs and concerns will be given consideration. At the same time, the prosecutor must be clear about his/her role on behalf of the state and give the victim realistic expectations about the possible legal outcomes.

Before an interview, prosecutors should consider the following ways to prepare for the meeting, how to interact with the victim, and the kind of information to provide:

#### *Prepare the setting of the interview:*

- Chose a location for the meeting that is safe, private and comfortable for the victim/witness. Locations where the victim could come into contact with the perpetrator, such as a police station, should be avoided.
- Make arrangements for the victim's comfort; provide tissues, drinking water, pillows, etc.
- If possible, make arrangements for any children that may accompany the victim.
- Consider allowing the victim to be accompanied to meetings by an advocate or support person (a staff member from a support organization that specializes in domestic violence, a family member, friend).
- Consider making recordings of the interview with the victim (audio and visual if possible), not only because it could be potential evidence of the victim's psychological state but also to reduce the need for additional interviews.

#### *When interacting with the victim:*

- Listen carefully to the victim. Use open-ended questions, asking the victim to give explanations in her own words.

- Ask questions clearly and in a non-judgemental or accusatory manner.
- Do not use technical legal language.
- Do not express frustration or annoyance if the victim has difficulty recalling facts or providing clear answers. Keep in mind both what you say and what you communicate through body language.
- Pay attention to signs of trauma, anxiety or stress and offer reassurance when needed.
- Be prepared to discuss safety and support services (see section iii. below).

***Essential information to provide:***

- Explain the victim's role in the legal process, including the stages of a criminal trial, the timing, what she will be expected to do as a witness, and whether any special procedures will be used (e.g., video testimony, expert witnesses).
- Explain the role of the prosecutor during the criminal proceeding, including how she or he will inform the victim about the status of the case, about sentencing, possible appeals and parole hearings. Remember that the prosecutor and victim have common goals- to end the violence- and be sure to emphasize this point.
- Explain the victim's rights and options (see section ii. below)
- Explain the role of defence counsel and the kinds of questions that the victim may be asked at trial. Solicit information that can help the prosecution prepare to respond to defence arguments.
- *Note* that while the prosecutor should *not* discuss the evidence of the case with the victim, when meeting with the victim close to trial, it is a good practice to review the victim's statement with her in order to refresh her memory.

### **Good practice note**

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The Crown Prosecution Service (CPS) of the United Kingdom provides victims/witnesses of domestic violence with a leaflet describing what they can expect from their meeting with a prosecutor:

(<http://www.cps.gov.uk/publications/prosecution/witnesseng.html>)

The CPS also has a 10 point pledge that lists the commitments prosecutors make to domestic violence victims and members of victims' families:

([http://www.cps.gov.uk/publications/prosecution/prosecutor\\_pledge.html](http://www.cps.gov.uk/publications/prosecution/prosecutor_pledge.html))

## Judges:

Judges' interactions with victims are generally limited to witness testimony in court (during pre-trial hearings or at trial). Judges may question witnesses, and they also have the power to control the type of questioning that is posed. All judges should keep in mind that the victim/witness may have had earlier interactions in court (for example at the indictment, bail hearing or in concurrent civil cases) and so should be prepared to clearly explain the legal process that is happening at that moment, the possible outcomes, and the consequences for the victim.

Before a meeting (either pre-trial, a hearing or in the courtroom), judges should consider the following ways to prepare, how to interact with the victim, and the kind of information to provide.

### *Ensuring safety and effectiveness in the courtroom:*

- Routinely evaluate the safety procedures that are in place in the courtroom (including security features, training of bailiffs, and the capacity of all court staff to respond appropriately to domestic violence cases).
- Be prepared to ask the victim about safety and support services (see section iii. below).
- Inquire about concurrent cases and take steps, if possible, to co-ordinate case procedures (especially between criminal and civil cases).

### *When interacting with the victim:*

- Listen carefully to the victim. Also, be proactive in asking about specific details. A victim can act complacent in the courtroom, or accept responsibility for violence, even when she does not agree.
- Do not ask unjustly intrusive, embarrassing, or overly repetitive questions.

### *Demeanour in the courtroom:*

- Do not express frustration or annoyance if the victim appears to be not co-operative. Keep in mind both what you say and what you communicate thorough body language.
- Be sensitive to the language you use and what it conveys to victims and perpetrators, especially when making rulings.<sup>50</sup>
- Ensure that statements made from the bench and courtroom demeanour (non-verbal communication) demonstrate that the court takes domestic violence cases seriously.

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<sup>50</sup> In all jurisdictions, there are cases when some judges make disparaging comments to victims in court (e.g. "What's wrong with you?", "So many women lie about violence - why should I believe you?", "Do not waste time if you are not prepared to cooperate."). Others may make statements that inadvertently show support for perpetrators and disempower victims. (e.g. during a civil hearing, a judge may state "these people need to learn to get along for the sake of the children." This phrase tells the perpetrator that he is justified in exercising control over his wife. It suggests to the victim that the court does not understand that she is unable to negotiate with her husband).

### *Essential information to provide:*

- Explain the victim's rights and options (see section ii. below).
- Explain the purpose of the particular hearing and the process.
- When concluding, inquire about whether the victim would like an escort to ensure safety when leaving the court.

### **2.4.2 Informing the victim of her rights**

Victims of domestic violence have the same rights as any other victim of crime (as well as civil rights), but because of the specific nature of domestic violence crimes, they may also benefit from specialized support services. Justice sector actors should keep in mind that a domestic violence victim may not have received any professional advice or information about the law or about the kinds of legal services that are available to them, and should, therefore, be prepared to provide relevant information about her rights, remedies and how to access legal assistance.

It is not recommended merely to read a list of rights to the victim. It is more effective to have a conversation with the victim about the relevant criminal processes, her obligations and her rights, which would allow her to ask questions. Such a conversation could also take place at the pre-trial stage or during a hearing in court.

In some countries, the judiciary takes a proactive approach to providing information to women about their rights and the role of the legal system and has developed outreach materials in video or in written form. In addition, women's advocacy organizations often prepare and distribute "know your rights" brochures or leaflets. It is especially effective if prosecutors and judges collaborate with non-governmental organisations (NGOs) on developing outreach materials. Prosecutors and judges can offer guidance on the legal information that should be included, and the women's organizations will know how best to communicate with their target audience. Prosecutors and judges should also co-ordinate with such organizations to make these materials available to victims that come to their offices or the court. It is particularly effective to both explain her rights to the victim in person and to provide written material that the victim can consult later.

Information about the victims' rights includes the following:

- The right to make a claim for compensation for damage (in criminal cases).
- The right to make proposals concerning the evidence.
- The right to view records and become familiar with them (which can include making proposals for further investigation).
- The right to be heard in preliminary hearings, the main hearing and to make a concluding speech.
- The right to refuse to testify as a witness if the accused is a direct relative, spouse or partner.<sup>51</sup>

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<sup>51</sup> The Slovak Criminal Procedure Code specifies precisely to which family members this provision applies.

- The right to remain silent if the witness would incriminate herself or a direct relative, spouse or partner (as above).
- The right to apply for a (civil) protection order for herself and/or family members.
- The right to legal assistance in civil cases, provided the victim meets the eligibility requirements.
- The right to request review of police action (or inaction) or of the decision not to prosecute.
- The right to request from the prosecutor information about the release of the accused/convicted person from custody or escape from custody.

### **2.4.3 Inter-agency co-operation and referrals to support services**

Victims usually require more than legal advice. Providing psychological support, medical services and temporary housing, for example, will not only increase their safety but will also improve outcomes in legal proceedings. The Istanbul Convention requires that measures to prevent and combat violence against women not only be comprehensive but also co-ordinated between all relevant state authorities and the civil society sector (Article 7). Roles within a co-ordinated response are generally outlined in multi-agency memoranda of understanding and protocols. Judges and prosecutors should be actively involved in outlining such models for co-operation. Trainings on substantive provisions of the law on domestic violence should also be used as opportunities to build judicial capacity to develop and participate in co-ordinated response mechanisms. Even in the absence of a formalized co-ordination mechanism, justice sector actors must be familiar with the policies, roles and responsibilities of other agencies and how to interact with them.

One of the most important ways that justice sector professionals can improve co-ordination is to make referrals to non-justice sector support services provided by local organizations (either government agencies or NGOs that are specialized in violence against women, such as crisis centres and shelters). Prosecutors should not assume that police will have already informed victims about the resources available in the community. Judges, who have less direct contact with victims, can nevertheless also arrange to make informational brochures from local service providers available in the court building (ideally, in a safe location, such as women's toilets).

In addition to referrals, justice sector actors should develop independent relationships with victim assistance organizations in the community. For example, information sharing between prosecutors, judges and professionals that provide services to victims of domestic violence (case workers, social workers, NGO/ crisis centre advocates, etc.) is an essential component of safety planning and addressing the risk of repeated violence (both topics are addressed in more detail in section iv. below). Depending on the rules of the jurisdiction, judges and prosecutors may also be able to participate in many forms of community outreach and education in order to increase public confidence in the legal system and promote a zero tolerance stance towards violence.

## Note to trainers: Including victim support organizations

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Trainers should consider inviting a representative from a local women's support organization/crisis centre with expertise in violence against women to give a mini-presentation and/or Q&A session within the training. They can present information specifically about the legal services they offer (e.g. legal advice, assistance with document preparation, accompaniment to court, etc.) and explain the other resources that are available to victims. They can also present information from their clients about women's experiences with the justice system and where they encountered problems. It is also useful to invite women's organizations to be present outside of the training sessions so that they can network with participants informally. At minimum, trainers should co-ordinate with such organizations to select materials about their services that can be distributed during the training.

### 2.4.4 Planning for victim safety

One of the reasons victims appear to not be co-operative in legal proceedings is fear of retaliation by the perpetrator. Although reporting and testifying against the perpetrator may be viewed as steps towards ending the relationship, these are also acts that "dramatically [increase] the victim's risk of serious injury or death at the hands of her intimate partner. Studies show that women who are separating from their partners are at a much higher risk of domestic violence. Other studies show that those who leave their perpetrators are as or more likely to be re-abused as those who remain with them."<sup>52</sup> Violence typically escalates in both frequency and severity after separation. All justice sector professionals, which also includes staff in prosecutor's offices, court clerks, bailiffs, the probation service etc., should be aware of the heightened security considerations in both criminal cases and civil cases, especially in divorce proceedings. Judges play an important role here. They can participate in developing training programs for court personnel that have contact with victims, about such topics as the dynamics of domestic violence, good practices for processing domestic violence cases and ensuring courthouse safety and techniques for deescalating danger. They may also mandate that relevant staff attend such training sessions.

Attention to victim safety is at the heart of all domestic violence interventions. There are two facets of ensuring victim safety: working with the victim to develop a personal safety plan and undertaking risk assessments. (Article 51, Istanbul Convention)<sup>53</sup>. In many instances, victims are assisted by a support worker, advocate or legal counsel to develop a detailed and personalised safety plan. Where victim services are underdeveloped or

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<sup>52</sup> UNODC, Handbook on Effective Prosecution Responses to Violence Against Women and Girls, 2014, New York, 43.

<sup>53</sup> See Council of Europe. 2011. Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence. paras. 260-263.

difficult to access, however, this may not occur. Prosecutors and judges have an independent obligation to protect high-risk victims, and this means that they should also be involved in supporting the victim to devise a safety plan and providing the required support.<sup>54</sup> Risk assessment should be done jointly with the police and using a common approach. The purpose of using the same assessment criteria is to come to a uniform decision about risk and to outline the actions that need to be taken by different parties. In this regard, both prosecutors and judicial officers should communicate with the police after they have performed a risk assessment to share information and indicate how it is relevant to any change in or increase in risk and how the risk should be managed. It is not uncommon for prosecutors or judicial officers to ineffectively interact with the police, and this leads to discordance in views and decision-making that can compromise a victim's safety. When risk assessments are properly co-ordinated, however, the procedure can be lifesaving.

Therefore, judicial officers should not make any assumptions about safety planning. It is recommended to ask victims explicitly whether they have developed a strategy to protect themselves, their children and/or other dependents and family members. Prosecutors should be prepared to offer information and assist the victim to make a personalized safety plan and make referrals to specialised organizations that can provide additional support in this process. It is helpful to use a checklist or leaflet with the victim to talk about potential risks and plans for how she can manage them. Prosecutors should also be sure to discuss the perpetrator's possible reaction to criminal prosecution and help identify alternatives with the victim to decrease her risk (e.g. planning for safe places to stay away from the perpetrator). It is also important that the prosecutor discuss with the victim the best way to contact her to minimise risk.

Courts that are sensitive to the needs of domestic violence victims support them in safety planning, through referrals to advocates and legal services or even by offering a room in the courthouse where local service providers can meet clients without danger. Judges can also ask the victim probing questions or for clarifications in order to make a decision about her safety. *Note:* judges should *not* solicit detailed information about safety planning from victims in open court or when the perpetrator is present, but they can verify with the prosecutor or counsel that such a plan is in place.

In addition, prosecutors and judges can take steps themselves to enhance a victim's safety. For instance, in the pre-trial stage, prosecutors should discuss risk with the victim/witness and answer questions about the conditions of the perpetrator's release. Making a motion for a (criminal) protection order and requesting that the court keep certain information confidential (such as the victim's address and phone number) are means to enhance victim safety.

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<sup>54</sup> Ibid.

## Good practice note

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A good practice adopted by judges in the United States is to require parents to file a “safety focused parenting plan” that describes how they will share responsibilities and manage visitation after divorce or separation when there is a history of domestic violence. Courts provide instructions and templates with questions for assessing safety.

### 2.4.5 Assessing risk, dangerous behaviour and lethality

Risk assessment refers to the process of determining the level of risk for escalated violence and managing the risk to the victim. Whereas safety planning is a process that victims undertake to create a personalised plan, risk assessment is an informational tool that the criminal justice system uses to help identify particularly dangerous perpetrators that need close supervision. Police usually conduct initial risk assessments. But, due to the nature of domestic violence, as explained in this manual, risk is dynamic and its intensity can change quickly (e.g. after an perpetrator has been charged; if he is released from pre-trial detention; if the victim initiates a divorce, etc.). Therefore, all practitioners should ensure they have an up-to-date risk assessment and have the tools to correctly interpret them.

Risk assessments can serve several purposes. For example, prosecutors would use a risk assessment primarily to determine the level of monitoring and intervention by the justice system that the domestic violence incident requires. Risk assessments also help the criminal justice system to determine criminal charges, to inform the conditions of bail and release (such as the requirement to attend a perpetrator program), to make recommendations about plea bargains or sentencing and to develop supervision strategies linked to probation and parole. They also provide vital information in protection order hearings and family law cases. It is important to note that risk assessments are not the same as lethality assessments. Risk assessments look for signs of an increased likelihood that the perpetrator will be violent again. Lethality assessments evaluate the specific risk for death or homicide. Prosecutors and judges need to be aware of these differences and be able to apply both types of assessments.

## Good practice note

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For prosecutors in particular, a risk assessment is a tool to engage in a discussion with the victim about risks and dangers that may present themselves during the criminal process. The assessment should not be viewed merely as completing a checklist or collecting facts, but rather as a means to learn more about the context in which the particular abuse occurred in order to protect the victim and strengthen the case.

There are many risk assessment methods, and the majority consist of checklists of markers for risk (sometimes referred to as “red flags”). Note that it is very important that all practitioners who work with victims of domestic violence use a common checklist of risk factors. Each specific agency, however, may want to format the risk assessment methodology in such a way that it corresponds to their work environment (e.g. for police, a simple card for a rapid risk assessment may be useful. Judges should, however, take a more in-depth look at risk factors). It is a good practice to convene multi-agency meetings to conduct and discuss risk assessments because such assessments require multiple sources of information.

The key factors that appear in most risk assessments pertain to information about the perpetrator and can be grouped in the following categories:

- ✓ Prior victimisation and factors related to the history of abusive behaviour (to the victim, children, family members, pets)
- ✓ Escalation in frequency and/or severity of violence
- ✓ Perpetrator’s possession of or access to weapons (especially firearms)
- ✓ Perpetrator’s alcohol or drug abuse
- ✓ Perpetrator’s antisocial behaviours and attitudes (especially possessive behaviour and excessive jealousy)
- ✓ Prior criminal history
- ✓ Stability of perpetrator’s relationships (and status of current relationship)
- ✓ Stability of perpetrator’s employment
- ✓ Perpetrators’ mental health history (including suicidal and homicidal ideation)
- ✓ History of childhood abuse
- ✓ Perpetrator’s motivation for treatment
- ✓ Perpetrator’s attitudes toward women

The existence of risk factors indicates an elevated risk for serious injury or lethality, but the absence of such factors should not be taken as evidence of the absence of risk. Practitioners who use risk assessments must be careful not to rely exclusively on the scores or the “science” of the method. They should always listen carefully to victims as well. Research conducted in the United States has shown that a victim’s perception that she is at risk of harm is “a reasonably accurate predictor of repeated re-assault ... and improves the prediction of risk factors and instruments.”<sup>55</sup>

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<sup>55</sup> E. Gondolf, and A. Heckert, *Determinants of Women’s Perceptions of Risk in Battering Relationships*, 18 *Violence & Victims* 371 (2003); quoted on <http://www.bwjp.org/our-work/topics/risk-assessment.html>.

## Good practice note

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It is a good practice to train law enforcement and justice sector officers on risk assessment in a dedicated training so that they fully understand the methodology, learn how to administer the assessment (e.g. both through victim interviews and also gathering information from other sources), how to weigh the risk factors and also the limitations of the assessment. Even though such training may be conducted with only one professional group, the development of the training content requires a co-operative and co-ordinated approach that includes other professionals. In this way, the multi-agency approach to risk assessment is ensured.

## EXERCISE

Exercise	Aim	Time	Procedure
<b>Practice Assessing Risk and Danger</b>	Improve learners' awareness of risk by asking them to identify "red flags" for danger in a hypothetical case. Trainees learn the accepted criteria for risk assessment.	60 minutes (with 15 minutes for large group discussion)	Work with case history; small and large group discussion
<p><b>Instructions</b>     <i>Divide the participants into small groups, give them a case history (See Handout 7 as a sample) and ask them to discuss the following questions:</i></p> <ul style="list-style-type: none"> <li>✓ <i>How dangerous do I think the perpetrator is?</i></li> <li>✓ <i>Who could be in danger?</i></li> <li>✓ <i>Which criteria do I use to assess danger and what is the rationale?</i></li> <li>✓ <i>What other information do I want to know about the perpetrator?</i></li> </ul> <p><i>Allow the groups to discuss their answers then reconvene as a large group. Ask a reporter from each group to summarize their conclusions. Pay particular attention to what they consider criteria for assessing danger and record the answers on a flip chart.</i></p> <p><i>Give participants Handout 2 (Quick Risk Factors Checklist) and ask them to compare the criteria with their own lists. Discuss any criteria they missed. In concluding, ask the participants to recall the facts and identify specific opportunities where risk assessment could be conducted.</i></p>			
<p><b>Resources</b>     Flip chart/white board; Handouts 7 and 2</p>			
<p><b>Concluding points:</b>     <b><i>It is recommended<sup>56</sup> that a real-life case history be used that involves very serious bodily harm or homicide. It is important that trainees learn that accurate risk assessment is critical and can be a matter of life or death. At the end of the exercise, the trainer should provide information about how the case ended following the trainer's notes provided on Handout 7.</i></b></p>			

<sup>56</sup> This exercise has been adapted from one contained in a WAVE (Women Against Violence Europe) publication, *Training Programme on Combating Violence against Women, Sensitisation and Training of Professionals on Violence against Women* (2000), available at [http://fileservers.wave-network.org/trainingmanuals/Training\\_of\\_Professionals\\_2000.pdf](http://fileservers.wave-network.org/trainingmanuals/Training_of_Professionals_2000.pdf)

## 2.4.6 Effective case management

Delays in prosecuting cases of domestic violence increase the time that victims are exposed to risk- both of retaliatory violence and pressure to drop the case or not to co-operate with authorities. Justice sector actors should, therefore, handle such cases **effectively** and as **promptly** as possible without compromising victim safety. When delays occur, the victim should be informed.

To improve case management, it is a good practice for prosecutors to **clearly identify and flag all cases** falling within the legal definition of domestic violence. Some cases may be referred by police, but others could arise from a complaint submitted directly to the prosecutor's office. Case identification can be done simply by using special coloured files or special labels. The flagging process ensures that the case will be handled correctly, and it also facilitates record-keeping and case monitoring. Prosecutors also need adequate time and resources for case preparation and correctly identifying such cases will help them to prioritise their work.

### Good practice note

Many jurisdictions have developed fast track procedures to identify domestic violence cases and prioritize them in court dockets. In some countries, specialized courts or dedicated dockets deal specifically with such cases (criminal, civil or a combination) or manage hearings on protection orders related to domestic violence. These initiatives are usually part of a multi-agency co-ordinated response.

For example, in Germany a model has been created for court-based assistance to domestic violence victims. After an act of violence has been committed, the police pass an investigative report to a court assistance office. The office then co-ordinates separate meetings with the victim and perpetrator and reports to the public prosecutor with recommendations for judicial intervention (in addition to referring the victims to services and assisting in safety planning).<sup>57</sup> In El Salvador, government agencies, the justice sector and civil society jointly deal with violence against women through integrated victim assistance centres (which are located in offices of the attorney general, forensic units and specialized police units). Multi-disciplinary teams work in the victim assistance centres and offer support throughout the legal proceedings. The centres also ensure that the justice institutions co-ordinate their work.<sup>58</sup>

<sup>57</sup> *Compilation of good practices to reduce existing obstacles and facilitate women's access to justice.* 77-78.

<sup>58</sup> Elisabeth Duban. 2014. *Equal Rights, Equal Justice. A Toolkit for Addressing Gender-Based Violence Through Rule of Law Projects.* USAID: Washington, DC. 62-63.

### 2.4.7 Managing the courtroom environment

Courtroom management refers to measures that enhance victim safety and are sensitive to the specific characteristics of domestic violence cases. The courtroom procedure and the environment itself should be considered. The Istanbul Convention (Article 56) outlines the measures of protection that must be afforded to the victim at all stages of investigation and judicial proceedings. Concerning interactions in the court room, the convention highlights the importance of allowing the victim to be heard (and, if necessary, providing interpreters to facilitate this) and ensuring that contact between the victim and perpetrator is avoided (including allowing the victim to testify without the presence of the perpetrator). It is also important the court personnel have training in de-escalation techniques.

In terms of legal procedure, both prosecutors and judges should ensure that victims are shielded from harassment and intimidation in the courtroom, which can take the form of offers of evidence that is discriminatory, harmful or embarrassing (for example, questioning the victim about sexual conduct or about prior drug or alcohol abuse). Prosecutors can make pre-trial motions to exclude specific evidence and protect the victim's privacy and dignity. The prosecutor should also discuss with the victim whether there is any information known to the perpetrator that a defence attorney could use improperly against the victim/witness in court and prepare for this possibility. During trials, both prosecutors and judges should oppose questioning that is unjustly intrusive, overly repetitive or aggressive. Likewise, questioning of the victim/witness that reinforces stereotypes should be stopped through an objection by the prosecutor or ruling by the judge. Prosecutors should be attentive to signs that the victim/witness is becoming upset or overwhelmed during questioning and request a short break.

In addition to allowing the witness short breaks if she becomes distressed, other measures that facilitate a victim's testimony at trial include: admitting pre-recorded video testimony as evidence, not allowing an unrepresented defendant to question the victim, and removing unnecessary persons (including the alleged perpetrator) from the courtroom while the victim is testifying.

In order to set a serious tone in the courtroom, judges and court staff should pay particular attention to how they conduct themselves and the overall atmosphere. Measures, such as the following, help to convey seriousness and reduce danger:

- ✓ Ensure that the victim and perpetrator, or parties to a protection order hearing, wait in separate areas before a trial or hearing. If separate waiting rooms are not possible, ensure the parties are kept in separate locations.
- ✓ Provide childcare facilities at court if possible and, at minimum, a separate waiting area for children.
- ✓ Ensure that adequate court security is present before hearings to stop contact between parties and to provide an escort to the victim, if needed.
- ✓ Use measures, such as detectors, to search for weapons.
- ✓ Permit the victim/witness to have someone accompany her in court for support (a family member, friend, advocate).

- ✓ Train court personnel (such as clerks, bailiffs and security officers) in the dynamics of domestic violence and to recognise and respond to signs of danger.
- ✓ In the courtroom, seat the parties in such a way that the perpetrator cannot make eye contact or intimidate the victim.
- ✓ Control courtroom behaviour and prevent the perpetrator from using tactics to manipulate the victim or disrupt the proceedings (e.g. interrupting victim testimony, accusing the victim, pleading with the victim, making emotional appeals, etc.).
- ✓ If the judge notices the perpetrator using such tactics, s/he should state it for the record and advise the perpetrator to stop the behaviour or risk contempt of court.
- ✓ Make clear to all parties that emotional outbursts and facial or body expressions (such as sighing, eye rolling, etc.) will not be tolerated. If such behaviour occurs, stop the proceedings to warn the party that they will be removed from the courtroom; remove the party if they continue.
- ✓ After a hearing, use a time delay when dismissing the parties- stagger their departures, allowing the victim and her family to leave 15-20 minutes before the perpetrator.
- ✓ Consider providing the victim with a security escort in high risk cases.

In addition to safety considerations, judges should keep in mind that their demeanour is critical to setting the tone for the legal process. They provide leadership to all court staff and set an example to the parties to a legal action about how they will be expected to behave. When judges are calm, authoritative and maintain order and control in the courtroom (e.g. disallowing outbursts, addressing disruptions efficiently, controlling who enters and leaves the courtroom, speaking with authority, etc.), they demonstrate that the state takes domestic violence cases seriously.

## EXERCISE

Exercise	Aim	Time	Procedure
<b><i>Planning for Safety</i></b>	Trainees learn to identify steps they can take to increase victim safety as well as how to talk to victims about safety and make appropriate referrals.	45 minutes (or 30 minutes for group work and 15 minutes for large group reporting)	Small and large group discussion
<p><b>Instructions</b> <i>Divide participants into small groups and give them a short scenario (one for prosecutors and one for judges. See Hand-out 8, Planning for Safety Exercise). Instruct the trainees to read the scenario and to consider the steps they will take to address various aspects of victim/witness safety, using the template in the hand-out. If they think of additional measures that do not fit in the template, they should note them.</i></p> <p><i>The trainer can decide whether the small groups will convene in the last 15 minutes to share their “answers.” The usefulness of a group discussion will depend on the similarity of the responses and if the trainer determines they will benefit from hearing different approaches.</i></p>			
<p><b>Resources</b> Flip chart/white board; hand-out of scenarios for prosecutors and judges, chart on safety considerations (Handout 8).</p>			
<p><b>Concluding points:</b> <i>Trainers should make clear that the task is not to assess risk of further violence but to focus on their own actions, as prosecutors or judges, and what they will communicate to the victim so that she can plan for her safety. Trainees are not expected to be able to create a full safety plan with the victim, but they should be able to ask probing questions that will help her and to make referrals to support organizations.</i></p>			

## 2.4.8 Perpetrator programmes

As a measure to prevent violence from reoccurring, the Istanbul Convention requires member states to set up or support programmes that teach perpetrators to adopt non-violent behaviour in their interpersonal relationships (Article 16). The safety and support of the victim must be central to any perpetrator programmes, and ideally such programmes will be conducted in close co-operation with victim support services. Perpetrators can be ordered to attend a particular programme as a condition of probation or incarceration, at the time of sentencing, or in cases concerning family law as part of custody or visitation arrangements. In Slovakia judges can order a perpetrator to attend such a programme as a condition of sentencing in criminal cases. The perpetrator would receive a suspended prison sentence for a probationary period and be under supervision.

There are many models for perpetrator programmes, but evaluation of the elements that are included in good practice examples of such programs has been limited. However, studies do indicate some of the key considerations that prosecutors and judges should be aware of when recommending or ordering perpetrators to attend a particular programme.

Very often victims do not want the perpetrator to be convicted or jailed but, instead, would prefer rehabilitation. While rehabilitation of the perpetrator is a critical component of preventing further violence, the court should not order the perpetrator to attend a programme as an alternative to criminal sentencing. Attending a particular **programme should be part of the conviction or civil order and should not be an alternative to legal sanctions.**

**Anger management programmes and relationship counselling are not appropriate** for domestic violence cases. They do not address the serious nature of the violence itself or the dynamics of power and control that underpin domestic violence. Where such programmes have been studied, they have been found ineffective in preventing court mandated perpetrators from re-abusing or committing new offenses after completion of the programme.<sup>59</sup> Perpetrator programmes can use varied therapeutic, educational and cognitive approaches.

However, **alcohol or drug abuse treatment** programmes are correlated with a reduction in the risk of repeated violence, but such treatment should be incorporated into, or parallel with, programmes on domestic violence. Referrals to programmes on substance abuse or to improve parenting skills, for example, may be appropriate in individual cases and should be considered additional to programmes aimed at perpetrators of domestic violence.

Programs for perpetrators should include **risk assessment**, risk management for the length of the programme, and measures for **ensuring victim safety**, for example by providing reports with recommendations to the agency that referred the perpetrator to the programme (for instance, the court or parole officer) and by cooperating with victim support services.

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<sup>59</sup> See UNODC, *Handbook on Effective Prosecution Responses to Violence Against Women and Girls*, 2014, 125.

When recommending or ordering a perpetrator to a programme, it is the responsibility of the court to make sure that the **programme is certified** and meets several criteria:<sup>60</sup>

- ✓ It is adequately funded.
- ✓ Longer programmes are generally more effective than shorter ones.
- ✓ Staff is trained in order to ensure timely monitoring and immediate enforcement.
- ✓ It is accredited with a victim support organization and provides feedback from the victim about whether the violence is continuing.
- ✓ It is committed to working within a framework that addresses domestic violence as a form of violence against women (e.g. not anger management, as noted above).
- ✓ It is committed not to engage in mediation or couples/relationship counselling.
- ✓ It prioritizes the safety of victims.
- ✓ It meets the needs of the particular perpetrator.

Remember that completion of the programme does not guarantee the safety of the victim or others. The court should require that perpetrators demonstrate reformed behaviour for a specific period of time after the programme.<sup>61</sup> The justice system should monitor the perpetrator's progress and compliance with conditions of sentencing. Such monitoring requires not only tracking any violations (such as re-arrest) but also close co-ordination with victim support services. If a risk assessment has determined that there is a particularly high risk of repeated abuse, prosecutors and courts should consider other measures that can supplement perpetrator programmes and ensure victim safety.

## 2.5 The criminal justice response

The following section offers technical advice on how to effectively prosecute and adjudicate criminal cases of domestic violence. All of the basic approaches that are outlined in the preceding section are applicable here, but they will not be repeated in this section. Trainers should modify this section to include more precise information about and examples from Slovak criminal law and procedure. The following can be considered an expanded checklist that roughly follows the phases of a criminal prosecution.

### 2.5.1 Developing a prosecution strategy and case building

Prosecuting domestic violence cases requires special approaches at each stage of the criminal justice process- from developing a strategy to post-conviction monitoring. These cases also require the prosecutor to take a proactive approach to evidence gathering and constructing the case.

Delays in domestic violence cases, from the time of reporting an incident to the indictment, are common, which can mean that some evidence may be lost. A critical first step, therefore, is for the prosecutor to consult with the police as early as possible to discuss

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<sup>60</sup> UN Women, UNFPA, UNDP, UNODC, *Justice Sector's Response to Violence against Women and Girls*, Background paper for Global Technical Consultation on essential policing and justice sector services to respond to violence against women and girls, 2014, 45.

<sup>61</sup> American Bar Association Commission on Domestic Violence. Judicial Checklist.

tactics for thorough evidence-gathering and investigation. This is also the time to review the results of a risk assessment with the police and to make a determination about the safety of the victim and her family. **The prosecutor must prioritise those cases that demonstrate the greatest risk of harm.** The police can also provide background information, for instance about the history of violence, whether any protection orders have been issued, the status of the relationship, etc.

At the pre-charge phase, it is a good practice for the prosecutor to ensure that the case is properly identified and flagged as domestic violence (see section vi above.) and to develop a plan of action (this can be a checklist of key information needed, the source, status and date). It is also important to review the facts of the case against all the offenses that constitute domestic violence under Slovak legislation- remembering that this can include physical, sexual, psychological and economic violence. With a clear understanding of the elements of the crime that must be proven at trial, prosecutors can also work with police to gather the best evidence during the investigation phase and ensure that they follow proper criminal procedure.

When making the charge, the prosecutor relies on preliminary evidence, such as a detailed police report. The prosecutor can also exercise discretion in deciding to prosecute, or which charges to bring, if the case has a public interest value and could serve as a deterrent for other crimes. Note that **a victim's request to drop charges should not be used to justify inaction** if there is sufficient evidence to suggest that a crime occurred. In fact, in jurisdictions with pro-prosecution policies, informing the victim and the perpetrator that the state has a duty to make the charge, that the investigation cannot be stopped by the victim and that it is not dependent on her co-operation, can help decrease the risk of retaliation against the victim.

### 2.5.2 Considerations during investigation and evidence collection

The victim's testimony is a crucial piece of evidence, however prosecutors should always keep in mind that it is the state's responsibility to gather enough evidence to convict the perpetrator of domestic violence and not the victim's. The Istanbul Convention highlights this point by establishing that investigations and prosecutions must not depend wholly on a report or complaint filed by a victim. Proceedings should continue even if the victim withdraws the statement or complaint (*ex parte* and *ex officio* proceedings).<sup>62</sup> The guiding tactics for interviews with victims outlined above aim at increasing the likelihood that a victim will co-operate in the criminal process, and prosecutors should strive to establish good rapport and a trusting relationship with the victim through early contact.

At the same time, prosecutors must also have the knowledge and skills necessary to proceed without the victim's testimony, which requires an evidence-based prosecution. Such cases should be constructed on corroborating evidence, such as physical evidence, medical experts and the testimony of expert witnesses. Prosecutors should be pro-active in

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<sup>62</sup> Article 55 of the Istanbul Convention.

exploring possible forms of corroborating evidence, and a checklist can also be a useful tool here. Some common types of **evidence** to consider include the following:

- ✓ Police officer's statement
- ✓ Neighbours' statements or other witness accounts (friend, child, etc.)
- ✓ Emergency call/ 158 call recording
- ✓ CCTV recordings
- ✓ Photographs of the injury and scene (including photographs of property damage)
- ✓ Medical history/reports (including history of emergency treatment)
- ✓ Forensic medical certificate from the incident
- ✓ History of previous incidents (e.g. criminal record of the perpetrator; exclusion/protection orders; administrative penalties)
- ✓ Previous reports on domestic violence that were not pursued
- ✓ Letters or notes from the perpetrator
- ✓ Bad character evidence about the perpetrator

### Good practice note

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In the US state of Minnesota, prosecutors have been reviewing recordings of telephone calls made by perpetrators to victims from jail. In these calls, some perpetrators apologise for the violence, whereas others threaten the victim or try to convince her to change her testimony. Because all phone calls from jail are already recorded, prosecutors only have to request and review calls from perpetrators when developing the case. Prosecutors point out that the calls are evidence of intimidation that can be used in criminal cases, and they are also violations of no-contact orders.<sup>62</sup>

At this point in the criminal process, some prosecutors focus on identifying procedural flaws or weaknesses in the police investigation, which then become justifications for dismissing a case. Prosecutors should understand that weak investigation may be a result of lack of police capacity or knowledge or could stem from stereotypes and myths held by the police about violence against women. Such difficulties in evidence collection should not lead to dismissals but should be addressed by the prosecutor through rigorous investigation and case-building, as outlined above.

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<sup>63</sup> For more information, see Sasha Anderson, *Calls from jail shed light on intimate crime*, MPR News, 2 March 2011, <http://www.mprnews.org/story/2011/03/02/domestic-violence-jail-phone-calls>.

## EXERCISE

Exercise	Aim	Time	Procedure
<b>Reviewing Evidence and Charges</b>	Trainees consider possible charges in a DV case and what forms of evidence are necessary. They learn to develop alternative strategies, and forms of proof, depending on changing circumstances in the case.	60 minutes (with 15 minutes for large group reporting)	Small and large group discussion
<p><b>Instructions</b> <i>Divide participants into small groups of prosecutors and judges (not mixed) and give them a case study (See Hand-out 9, Case History: Maria and Igor/ Reviewing Evidence and Charges) with the following instructions: Prosecutors, you have received this case file from the police with a summary of a domestic violence incident. Judges, you have received this case file from the prosecutor with a summary of a domestic violence incident. Instruct the trainees to read the scenario and to consider the following questions:</i></p> <ul style="list-style-type: none"> <li>✓ <i>What charges should be brought? What factors did you consider in making your decision?</i></li> <li>✓ <i>Review the evidence in the case and assess its strength.</i></li> <li>✓ <i>What further evidence would you like to see in the case file?</i></li> <li>✓ <i>Who should be listed as witnesses?</i></li> </ul> <p><i>At intervals during the discussion, the trainer introduces additional information contained in three scenarios (see Hand-out 9, part 2) and asks the participants if they would re-consider any of their answers. In the last 15 minutes, the participants convene as a large group and discuss their answers.</i></p>			
<p><b>Resources</b> Hand-out of case study and scenarios 1-3 distributed separately.</p>			
<p><b>Concluding points:</b> <i>The trainer should assess when it is appropriate to give the scenarios, depending on how the group discussion is going, but be sure to distribute all three scenarios.</i></p>			

### 2.5.3 Pre-trial considerations

The pre-trial period represents a heightened risk for domestic violence victims, especially when perpetrators are not in custody nor supervised before the trial.

Therefore, the findings of a **risk and lethality assessment** are critically important during hearings to determine whether the perpetrator will be released or remanded while awaiting trial. Both prosecutors and judges need to understand the factors included in the assessment/s and give them appropriate consideration when setting bail and conditions for release. Prosecutors should be prepared to argue for pre-trial incarceration if there is evidence that the alleged perpetrator may threaten the victim or otherwise influence the investigation or commit further violent acts. If no risk assessment has been conducted, the judge will be required to conduct one.

In many jurisdictions, prosecutors request and courts impose *sua sponte*, **restraining orders** between the perpetrator and victim during the defendant's initial appearance or arraignment. The order limits contact broadly, including in-person contact, telephone calls, e-mails, and other forms of electronic communication than can be considered harassment. Such orders are an important tool to improve victim safety, and short-term orders can give the victim time to file for a civil protection order.

In reviewing the **indictment**, the court should carefully review the charges and be mindful of the dynamics of domestic violence. Judges should be alert and carefully avoid poor practices such as the following: the charge takes into account justifications for violence and is lowered (e.g. "the wife started an argument..."); the file contains information about a victim's request to withdraw from the case, about reconciliation between the parties or a request from the prosecutor to discontinue the case. If the case requires further investigation, the judge should ensure that the case is returned to the prosecutor with adequate explanations of the reasoning, rather than being dismissed.

During the pre-trial period (or at the beginning of a trial), the prosecutor may use a motion to request that the judge rule certain evidence inadmissible. Using **motions in limine** prevents information that could be intimidating or humiliating to the victim from being introduced in court. This practice is particularly effective in cases with elements of rape or sexual violence but can also be applied to any domestic violence case to limit unnecessary evidence related to the victim's sexual history.<sup>64</sup> By controlling the admission of damaging evidence, a victim is more likely to co-operate in the prosecution, and the defendant's control over her is reduced. Depending on the outcome of a risk assessment, the prosecutor may also file a **motion to confiscate any firearms** from the perpetrator.

At this time, the prosecutors may become aware that the victim is reluctant to co-operate or will recant at trial. She might explicitly state that she will not testify at trial, may request that charges be dropped, might appear ambivalent about the legal process or may appear fearful and under stress. At this point, the prosecutor should give careful consideration of the option to issue a **subpoena** to compel the victim/witness to testify. On one hand, a

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<sup>64</sup> Article 54 of the Istanbul Convention.

subpoena can be useful because it protects the victim from pressure from the alleged perpetrator when she is not making the decision to testify. The subpoena process sends a message to the perpetrator that it is the court that controls the process and not the victim. Practice also shows that many victims will testify when required to do so and feel relief when the decision to give evidence is not in their hands.<sup>65</sup>

On the other hand, if it appears very likely that the victim will not comply with the subpoena, forcing her to do so is strongly discouraged. The consequences for a victim of non-compliance are very serious and so should be explained to her. Justice sector professionals should use discretion and their best judgement when deciding whether it would advance justice in a domestic violence case to find the victim in contempt for failing to appear in court if she does not comply with a subpoena.

A better alternative at the pre-trial stage might be for the prosecutor to prepare the victim's testimony in another form that conforms to the evidentiary rules of a particular jurisdiction (a previous written statement, transcript or video testimony may be admissible, for example).

Although prosecutors may view civil matters as outside their purview, they should inquire about any **concurrent civil proceedings** and alert the court about any civil protection orders. Courts should take into account civil orders and make sure there are no conflicts. For example, bail should not be granted without reference to any protection orders between the defendant and victim. In addition, some information from family cases could be useful to the criminal prosecution. Co-ordination and communication, or joint case management, between civil and criminal courts is essential.

#### 2.5.4 Trial considerations

As discussed, the prosecutor must be prepared for the eventuality that the victim will not be co-operative or will not testify at trial. A distinction should be made between **victims who are reluctant to testify** and **those who refuse**. Prosecutors should not assume that the victim will refuse to testify; building trust and careful planning for her safety will enhance the likelihood that she will co-operate, even if reluctant at first.

Still, if at trial a victim appears reluctant to give evidence, judicial authorities should assess the reasons in order to determine the best course of action (is it out of fear of the perpetrator? due to feelings of shame? denial? the desire not to relive the incident? or lack of trust in the criminal justice system?). Prosecutors and courts should be prepared to sensitively question the victim on these matters (see section II.D above).

After questioning, the court might consider continuing the case for a brief time in order to allow the victim to speak with an advocate or another representative of an organisation that provides support for domestic violence victims.

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<sup>65</sup> Janet Carter, Candace Heisler and Nancy K.D. Lemon. 1991. *Domestic Violence: The Crucial Role of Judges in Domestic Violence Cases. A National Model for Judicial Education*. Family Violence Prevention Fund. 105.

Additionally, myths about domestic violence are widespread, in the justice system and in society at large, and such misconceptions “lead to a focus on the behaviour of the victim rather than the behaviour of the defendant.”<sup>66</sup> During trials and hearings, victims often behave in a way that is counterintuitive to what is expected. For example, the victim may argue or act aggressively during court proceedings, may state her love for the perpetrator or may deny the violence. There is a risk that the judge (or panel of judges) will take her “confusing” behaviour as a lack of credibility. Defence counsel might try to exploit common myths about domestic violence to cast doubt on the victim’s testimony. It is important to remember that the victim is not on trial, and it is the role of the prosecutor and judge to ensure that such evidence is not permitted. The prosecutor may also find it useful to request the court to allow **expert witness testimony** to explain the victim’s reaction to trauma, to counteract stereotypes or even to explain some forensic evidence. Professional staff of organisations that provide support for domestic violence victims, such as crisis centres, can testify in court, or submit a written expert opinion.

Judges should be equally mindful of the tactics that perpetrators use to manipulate the justice system and how they might appear in court (e.g. the defendant may minimise the violence, lie, externalize the responsibility by blaming alcohol or drug abuse, stress, or the victim herself). The court must maintain focus on the behaviour of the defendant at the time of the incident rather than the surrounding circumstances. As noted in section 2.D.vii above, perpetrators also attempt to exercise control over the victim even in court, and it is critical that the judge manages courtroom safety.

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<sup>66</sup> Praxis International, *The Blueprint for Safety, Appendix 5C, Training Memo- Use of Expert Witnesses in Domestic Violence Cases*, [http://praxisinternational.org/bp\\_materials.aspx#SupplementalMaterials](http://praxisinternational.org/bp_materials.aspx#SupplementalMaterials).

## EXERCISE

Exercise	Aim	Time	Procedure
<b>Dealing with the Reluctant Witness</b>	Trainees practice responding to different scenarios in which the witness is not co-operative by using other forms of proof and questioning.	60 minutes (with 15 minutes for large group reporting)	Small and large group discussion
<p><b>Instructions</b>     <i>Use the case study from above (Hand-out 9, Case History: Maria and Igor/ Reviewing Evidence and Charges) and instruct participants that the case has come to trial. Divide the participants into small groups (not mixed). Instruct the trainees to recall the case history and consider how they would prepare for the victim's testimony and what facts and information should be highlighted in her statement.</i></p> <p><i>After a few minutes of free discussion, the trainer introduces three scenarios at intervals (Hand-out 10. Dealing with the Reluctant Witness in Court) and asks the participants to address the questions that are provided with each one. In the last 15 minutes, the participants convene as a large group and discuss their answers, what difficulties they encountered in making decisions/rulings.</i></p> <p><i>After the exercise, distribute Hand-out 11: Checklist of Questions for the Victim/Witness in Court as a resource.</i></p>			
<p><b>Resources</b>     Hand-out of case study; hand-outs of scenarios 1-3 distributed separately.</p>			
<p><b>Concluding points:</b>     <i>The trainer may want to consider allowing extra time to discuss the checklist of questions for the reluctant witness. In an additional exercise, participants could practice using the questions in a role play scenario, ideally using volunteers or actors to play the witness.</i></p>			

### 2.5.5 Sentencing considerations

Sentences in domestic violence cases should reflect the severity of the crime and the serious nature of violence committed in inter-personal relationships.<sup>67</sup> Proportionate, uniform and consistent sentencing is important because it sends a clear message that domestic violence will not be tolerated. This may deter other perpetrators.

The primary goals of sentencing in domestic violence cases is to stop the violence, protect the victim and other family members, hold the perpetrator accountable for his actions and to serve as a general deterrent. The **rehabilitation of the perpetrator is a secondary consideration**.

Additionally, the Istanbul Convention **prohibits** the imposition of **mandatory dispute resolution** processes, such as mediation and conciliation, during criminal sentencing<sup>68</sup> due to the high risk that such processes will re-victimise the women who has experienced violence.

The following are important considerations for domestic violence sentencing:<sup>69</sup>

#### Preparing a sentencing recommendation:

- ✓ Prosecutors have a duty to ensure that the court has proper information for sentencing and also to provide advice and recommendations, which could include information about mitigating or aggravating factors or a victim impact statement. When making **recommendations**, the prosecutor should consider offering information about the results of a risk assessment. The prosecutor should also be prepared to challenge any arguments made by the defence counsel for mitigation that are misleading or untrue or which disparage the victim's character.
- ✓ The prosecutor should prepare the victim for a sentencing hearing and explain her options for providing input. There are various ways that the victim can convey information about the impact of violence on her life and that of other family members: appearing in court and making a statement, through a letter to the judge, submitting a written victim impact statement, or having family members or friends address the court. Whichever form it takes, a **victim impact statement** should describe her desires and opinion of the sentencing of the perpetrator, the effect of the crime on herself, children or other family members (including the extent of physical and emotional injury), and any concerns or additional information she believes are relevant to the sentencing (e.g. to dispute facts in the record). Victim impact statements can be useful tools to "re-focus a judge's attention on the harm caused to the victim and to the community at the time of sentencing [and having] the opportunity to express herself might assist in the victim's recovery."<sup>70</sup>

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<sup>67</sup> Article 45 of the Istanbul Convention.

<sup>68</sup> Article 48 of the Istanbul Convention.

<sup>69</sup> See UNODC, *Handbook on Effective Prosecution Responses to Violence Against Women and Girls*, 2014, 123-124.

<sup>70</sup> *Ibid.* 123.

## Sentencing:

- ✓ More **intrusive sentences** (such as incarceration, electronic monitoring, or conditioned probation) have been shown to reduce re-arrest for domestic violence over less intrusive sentences such as fines and suspended sentences without probation.
- ✓ Consider the **entire criminal record** as well as the **defendant's history of abusive behaviour**. Research suggests that criminality not related to domestic violence is also a predictor for risk of re-abuse. Also, note that a defendant's criminal history differs from a history of abuse, since the actual number of violent acts he committed may be greater than those reflected in the criminal record. Both types of history should be consulted.
- ✓ Review the **history of prior court contacts**, particularly other pending civil/family cases or protection orders.
- ✓ Take into account **failure to appear** in court. Prosecutors should consider perpetrators who miss court appearances as a higher risk for re-abuse.
- ✓ Exercise caution when recommending **conditional discharge for "first" perpetrators**. Research suggests that a significant number of "first time" perpetrators who are given conditional release, re-abuse and violate the terms of the release.
- ✓ If the defendant has been convicted of sexual violence, consider **registration as a sex perpetrator**, subject to the specific procedures of the jurisdiction.
- ✓ Consider the **negative impact of fines on the victim**.<sup>71</sup> Imposing fines on a convicted perpetrator may interfere with their obligation to pay child support to the victim.
- ✓ Consider the following **aggravating circumstances** in determining an appropriate sentence: the offense was committed against a former or current spouse, repeated offenses, the victim was particularly vulnerable, the offense was committed against or in the presence of a child, extreme levels of violence were used, use or threats to use weapons, severe physical or psychological harm to the victim, previous convictions.<sup>72</sup>

Judges, and prosecutors, may use this checklist to ensure that the following information is available at the time of sentencing:

- ✓ The facts of the case
- ✓ Information about the defendant's criminal history
- ✓ Victim impact and input
- ✓ A history of abusive behaviour
- ✓ Where appropriate, drug, alcohol and/or mental health evaluations
- ✓ A history of prior court contacts with the family
- ✓ Information about children or other family members in the home who may be affected by the abuse.

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<sup>71</sup> Article 48(2) of the Istanbul Convention.

<sup>72</sup> Article 46 of the Istanbul Convention.

For a number of reasons, a criminal trial may not end in a conviction. As part of the duty to ensure protection of the victim, the prosecutor should plan for the possibility that the case will end in an **acquittal**. During preliminary meetings with the victim, the prosecutor should provide clear information about the potential outcomes of a trial and the implications of a conviction or an acquittal. The prosecutor should also have a plan in place for the victim's protection and to prevent further offenses (such as stalking or harassing) **after the trial and sentencing**. Such actions could include a request for a post-conviction or post-acquittal protection order and a plan for how to deal with any violations of the order.

## 2.6 The civil justice response

Many victims of domestic violence do not wish to see their partner or spouse imprisoned, and so they prefer to use civil law to end the relationship or to end the violence. Considerations about victim security and empowerment are as critical in civil cases as they are in the criminal system. Judges, in particular, must be able to identify signs of domestic violence in a case history (a divorce, alimony or child custody case may not refer to abuse explicitly) and to make rulings that will ensure the safety of the victim, her children and/or other family members.

Justice sector actors in civil and criminal cases that involve domestic violence should coordinate as much as possible. When victims are involved in both justice systems, integrated approaches, or ideally joint case management, are crucial to victim safety and child protection.

### Good practice note

When it adopted legislation on gender-based violence (the Organic Act on Integrated Protection Measures against Gender Violence), Spain also established a system of specialised Gender Violence Courts, which have combined jurisdiction and hear both criminal and civil cases, generally aspects of family law. The system streamlines the process when victims request civil measures, such as child support or custody determinations, in parallel with criminal cases. The overall aim of the courts is to provide victims with immediate, complete and effective protection. Under the Spanish law, law enforcement and the judiciary are part of a multi-disciplinary response, and the courts operate in co-ordination with a psycho-social team (psychologist and social worker) and a Victim Assistance Officer.<sup>72</sup>

<sup>72</sup> Elisabeth Duban. 2009. *Bringing Security Home: Combating Violence Against Women in the OSCE Region. A Compilation of Good Practices*. OSCE Secretariat, Office of the Secretary General, Gender Section: Vienna. 100-101, 110.

### 2.6.1 Protection order hearings

The primary purpose of a civil protection order (e.g., barring the perpetrator from entering the shared home, ordering the perpetrator to pay alimony or to hand over children to the custodial parent) is to protect individuals from harm. In situations of immediate danger, emergency orders are the most effective way to guarantee victim safety by mandating that the perpetrator maintains physical distance from the victim for a certain period of time.<sup>74</sup> Protection orders are critical measures that permit women to stay in their homes (rather than live in shelters) with a sense of security. These short-term measures give victims much needed time, free from stress, to make decisions about their future lives. Protection orders, when effectively enforced, can also serve a preventive role. The protection orders also hold the perpetrator accountable for his behaviour and create consequences if he continues to be abusive in violation of the order.

Practice shows that for many victims, a temporary protection order is enough to either influence the perpetrator or allow her to leave the relationship, without further legal measures needed. Because many victims who want to apply for protection orders are not prepared to press criminal charges against the perpetrator, the Istanbul Convention requires that member states make protection orders available to victims regardless of whether they have initiated other legal proceedings.<sup>75</sup> At the time of writing this manual, Slovak law requires the victim seeking a civil protection order to also commence legal proceedings on the merits (which can be a criminal or civil action, for example filing for divorce).

Lastly, when applying for a protection order, victims gain a sense of empowerment and self-determination. Courts must recognise that for many this step may be the first time the victim has asked for assistance and began a process to leave the abuse.

While maintaining neutrality in protection order hearings, the judge must nevertheless be especially attentive to the dangerous nature of domestic violence and, if abuse is proven, exercise authority to protect the victim. The following points summarize good practices that the court should follow:<sup>76</sup>

- ✓ Ensure the courtroom is a **safe environment**. This includes taking the measures described in the preceding sections on security, courtroom management and training for all court personnel on domestic violence.
- ✓ Ensure that the legal process is **accessible to victims**. Most victims apply for protection orders through a *pro se* motion/petition and are not represented by counsel. It is not uncommon for victims to encounter difficulties completing the required documents or collecting evidence. The court can play a role to ensure access by informing petitioners about legal assistance services when they appear in court; by

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<sup>74</sup> Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence. para. 264.

<sup>75</sup> Article 53, Istanbul Convention and Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence. para. 273.

<sup>76</sup> See also, Article 53 of the Istanbul Convention.

explaining the legal procedure and required evidence clearly; by encouraging attorneys and victim advocates to work with domestic violence victims; and by developing informational materials to explain the civil protection order process as a public resource (leaflets, videos).

- ✓ **Listen to the victim** carefully. Inquire about the relief she is seeking. Take time to clearly explain the available relief, what the order includes and the process for modifying, extending, or vacating the order if the petitioner should wish to do so at a later stage. Ensure that the victim has understood the information.
- ✓ Ensure that the **record is clear and complete**. As noted above, a victim may appear complacent and even accept responsibility for violence. The judge must obtain specific and accurate information, and this might require dismissing the perpetrator from the courtroom to reduce intimidation or fear.
- ✓ To be effective, protection orders must be **comprehensive**. The judge should prioritize the safety of the victim and provide all necessary relief.
- ✓ Pay particular attention to **child custody, visitation and support** in the order and consider the use of standardized fill-in forms to specify visitation provisions.
- ✓ Issue orders on an **ex parte basis** on request when domestic violence has occurred or is threatened. Notify the perpetrator as soon as possible about the issuance of the order and the opportunity to attend a full hearing on the matter.
- ✓ To be effective, protection orders must also be **enforced**. The court should develop and monitor a clear policy about protection order violations (e.g. follow-up hearings, pro-arrest policies for violators, incremental sanctions, criminal penalties).

Prosecutors also play a role in ensuring the effectiveness of civil protection orders. Typically, the prosecutor would become involved when the order has failed to stop the abuse. All violations of protection orders should be treated with a heightened awareness of safety. The perpetrator should be held criminally accountable for violating the order. In addition, this can be a particularly traumatic time for the victim who may well have lost trust in the legal system which failed to protect her. Prosecutors should interact sensitively with the victim to ensure her involvement in a criminal case and to thoroughly assess the dangerousness of the situation.

### 2.6.2 Addressing domestic violence in family law cases

Family law cases that include domestic violence can pose difficulties for the legal system, in part, because the history of violence is often not known to the court or even the parties' attorneys. In fact, studies suggest that a large number of divorce cases that appear contentious (e.g. they cannot be settled without going to trial), are actually cases in which there is a history of domestic violence.<sup>77</sup>

When a judge is unaware of a history of domestic violence, he or she can inadvertently increase the danger to the victim and her children by ordering mediation or alternative

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<sup>77</sup> In 2011, the U.S. Department of Justice funded a study of child custody evaluators' beliefs about domestic abuse allegations in divorce cases. See also, Daniel G. Saunders. 2007. *Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors, and Safety Concerns*, accessible from: <http://www.vawnet.org>

dispute resolution. The Istanbul Convention requires that State parties prohibit mandatory alternative dispute resolution processes in *criminal* sentencing, recalling many of the reasons why such alternative remedies are often inappropriate in civil processes. “Victims of such violence can never enter the alternative dispute resolution processes on a level equal to that of the perpetrator. It is in the nature of such offences that such victims are invariably left with a feeling of shame, helplessness and vulnerability, while the perpetrator exudes a sense of power and dominance.”<sup>78</sup> Therefore, before recommending any form of mediation in family law cases, especially if the legal process will be suspended for the interim period, the court must use a process to screen for coercive and controlling behaviours in order to detect domestic violence. Court personnel should receive training on how to conduct screenings, and ensure that confidentiality is maintained, before recommending mediation or counselling.

Courts also fail to detect or document domestic violence in child custody and visitation proceedings. If judges have not received training on domestic violence, they may not recognise that it is the perpetrator’s tactic to seek custody/visitation of the children as a way to maintain access to and control over the victim or to punish her for leaving him.

Judges hearing family law cases who are not familiar with the dynamics of domestic violence might make decisions based on commonly-held myths, such as “violence ends once the couple separates,” “women make false allegations of domestic violence for their personal gain in divorce settlements” or “children need their fathers (despite a history of domestic violence).”

The Istanbul Convention requires courts to consider the history of domestic violence in child custody and visitation determinations and recommends that the perpetrator’s parental rights be withdrawn as an alternative sanction if the best interests of the child and safety of the victim cannot be guaranteed in another way.<sup>79</sup> Although it is not in the scope of this manual to provide a detailed review of the effects of domestic violence on children, or how best to make determinations on child support, custody or visitation when domestic violence has occurred, a few good practice points relevant to family law cases are listed below.

- ✓ Ensure the courtroom is a **safe environment**, using security measures mentioned in this manual.
- ✓ Adopt **fast-track and simplified procedures** for family law cases that involve domestic violence.
- ✓ **Do not refer any cases to mediation**, alternative dispute resolution, parenting education, or couples therapy if there is a significant history of domestic violence.
- ✓ Be aware that there may be an **unequal balance of power between parties**, and this requires a more careful review of agreements concerning children, finances and/or property before they are approved by the court.

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<sup>78</sup> Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence. para. 252.

<sup>79</sup> Articles 31 and 45 of the Istanbul Convention.

- ✓ **Custody evaluations** must be conducted by experts who have been trained in the dynamics of domestic violence and who, at least, have knowledge of the following: the effect of domestic violence on adult and child safety; how the use of violence by the perpetrator negatively reflects on his parental fitness; and when to limit the perpetrator's access to his child/children.
- ✓ Do not assume that joint custody is in the best interest of the children. **Sole custody** should be awarded to the non-abusive parent at least until the perpetrator demonstrates that the children will be safe (which could require completing a court-ordered programme).
- ✓ In making rulings on child **visitation or exchange**, explicitly articulate the date, time, location, etc. Do not order conditions that are "reasonable" or "agreeable" to the parties, since police and courts will not be able to enforce the ruling.
- ✓ Consider ordering **supervised visitation**, which can be done through a visitation centre or an intermediary not involved in perpetrating the violence, or in a location away from the victim.
- ✓ Begin with **short, limited and supervised visits** to the perpetrator, and increase time pending compliance with the order.
- ✓ Order **no use of alcohol or drugs** prior to or during visitation.

### Note to trainers: Encouraging trainees to take further action

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In concluding the training, trainers can consider initiating a discussion with prosecutors and judges about what more they can do in their professional capacity to improve how the legal system deals with domestic violence cases, by citing examples, such as those provided above. Such a discussion might be an appropriate conclusion to a training. Time permitting, trainers can give trainees samples of guidance created by prosecutors and judges in other countries for review and to prompt a discussion about the possibility of developing similar materials in Slovakia. (See Hand-outs 12 and 13).

## PART III – PREPARING FOR A TRAINING

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### Section 1: Tips and Methodological Guidance: the Trainers' Toolbox

In addition to general techniques for adult education, trainers using this manual might find it useful to review the following recommendations specific to working with law enforcement and justice sector actors.

- ✓ **Use varied and participatory approaches.** When training professionals in groups it is effective to give them many opportunities to work out solutions for themselves (in small groups is preferable), instead of telling them the correct process. Trainers should guide the work by suggesting issues to consider and best practices. Trainees should be provided with checklists and guides in forms that they can easily apply to their work after the training.
- ✓ **Use peer-to-peer teaching.** Law enforcement and justice sector actors respond well to training by peers. Even if it is not possible for trainers from the same professional background to run the full program, peers that can model good practices could be invited to give mini-presentations. If trainers represent different fields, they can still work to create an atmosphere that acknowledges the difficulties of dealing with domestic violence cases.
- ✓ **Create realistic case studies.** Exercises should be concrete and tailored to the work experience of the particular trainees. It is best to avoid long presentations of abstract information and preferable to use mini lectures interspersed with work on realistic case studies. When drafting case studies, trainers can work with case files and with victim advocates from crisis centres or shelters to create sample materials that conform as closely as possible to local practice.
- ✓ **Anticipate and address challenges and disruptions during the training.** Ideally, trainees will voluntarily and with interest attend the training. However, it is possible that some learners will challenge the trainers or be oppositional during the training. Some commonly-raised issues include the following:

*✍ Men are also victims of domestic violence so why we are talking about women all the time?*

**RESPONSE:** This is a true statement but global statistics, as well as data from Slovakia, indicate that in the vast majority of cases (8 out of 10) men are perpetrators of domestic violence and women are victims. This is the reason the training is focused on violence against women, which is a specific form of gender-based violence.

*✍ There are problems in the laws on domestic violence and when those weaknesses are addressed, the system will be improved.*

**RESPONSE:** It is not possible to legislate for every situation, and no country has found the “perfect law” to address domestic violence. Practitioners must work diligently and creatively with the laws on the books to protect victims and ensure access to justice. Additionally, the trainees themselves are experts and are, therefore, in a position to participate in legal reform processes to improve legislation.

*✍ We don't have time/ we are busy/ we have more serious crimes to deal with.*

**RESPONSE:** This is a myth that domestic violence is a private or family matter that only impacts the people involved and is therefore not as “serious” as other crimes. Although domestic violence usually takes place in the private sphere, it is one of the most damaging crimes in terms of impact on the victim, her children and her family, and for society as a whole (in terms of financial losses due to lower work capacity and expenditures related to the provision of services through law enforcement and legal systems, healthcare, social services, etc.). When not addressed effectively, domestic violence can have a high recidivism rate. Preventing violence against women is also more cost effective than responding to violence once it has escalated. The law enforcement and judicial systems play a key role in prevention and should make responding to domestic violence a priority.

*✍ The problem is that group X is not doing their job properly.*

**RESPONSE:** This kind of statement refers to the tendency of each group to shift responsibility for breakdowns in the system to another professional group (i.e. police say prosecutors underestimate risk. Prosecutors say police investigation is inadequate). The trainer should emphasize that no single group bears responsibility for the functioning of the system but that these kinds of frustrations emphasize the necessity of co-operation and co-ordination. The purpose of the training is to improve the response at each stage of the justice chain.

- ✓ **Recognise diversity.** Trainer and trainees should keep in mind that victims of domestic violence are not a homogenous group. While there are common reactions to and consequences of domestic violence, other factors and characteristics of individual victims also play a role. For example, women from ethnic minority groups (Roma women, for example), elderly women, women who have mental health issues or learning difficulties, or women with physical disabilities all have distinct vulnerabilities and all would require a special response from the law enforcement and justice systems (e.g. provision of translation and interpretation, the use of specially-trained advocates, modifications in the courtroom, etc.). From time to time, encourage participants to consider the types of additional measures of protection that could be used to ensure the safety of victims who are particularly vulnerable.

## Section 2: Dealing with Emotions and Personal Experiences of Violence

Any person working around a case of domestic violence, even if experienced, will face a multitude of emotions and feelings:

- Anger
- Sadness
- Frustration
- Detachment
- Fear

And they might have different reactions when dealing with these cases, such as:

- Judgments about how the victim behaved
- Considerations about the roles of the victim and perpetrator
- Own considerations based on prior professional and personal experience and training

Because all of these cases deal with situations which are not rare or uncommon, it is important that the trainers themselves are aware of what they personally think about these cases, whether they themselves have pre-conceived ideas and imagine how these might interfere during the training, consciously or unconsciously.

Law enforcement and legal officers, before being professionals, are all human beings. In the section of this manual on stereotypes and myths we addressed some misconceptions that should also be reviewed by both the trainers and with the trainees, even before starting the actual training.

This brings up another sensitive topic which is an individual's own history of violence either *witnessed* at home, or *perpetrated* or *directly experienced* as victims.

Among all trainees (and trainers) there might be some victims or former victims as well as perpetrators. Even if this might not be overtly known and revealed for obvious reasons, it is important to know that **domestic violence can involve anyone**. If during the training, or during breaks, or afterwards, the trainers notice someone who is emotionally touched by what has been said, or she/he leaves the training room suddenly, interrupts the training constantly by posing unneeded and judgmental comments, or is extremely over-reactive, or, more explicitly, cries or says things like 'these women all deserve what they get', these might all be signs that something is happening or has happened in the life of these people.

What is best to do in these cases? It is not wise to ignore or pretend nothing has happened. So it is important that during the first available moment, a break, lunch time, or at the end of the day, the trainer approaches this person and with a calm and empathic approach asks him or her to share his or her concerns to make sure that everything is fine. It is possible to ask this person whether she/he is fine to continue with the training or would rather have a

break. If on-going abuse is revealed, make sure the trainee/victim receives enough information, and support if not already supported and monitored by someone else.

It would be advisable to introduce this aspect explicitly at the beginning of the training, mentioning that the topics that will be addressed during the training might currently or in the past affect some of the present trainees. Domestic abuse affects one in four women, so it is likely that in a training room there are victims of domestic violence. It is important to say that is perfectly fine to feel emotions about the cases discussed and the topics addressed, and that if needed, support can be provided.

## PART IV – APPENDICES

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### Hand-outs

1. List of Myths on Domestic Violence.
2. Quick Risk Factors Checklist.
3. Quick Vulnerability Factors Checklist.
4. Processing Card for Intervening Officers at the Scene of the Assault.
5. Interview Format / Outline for Vulnerable Victims.
6. Risk Assessment Format for the Police.
7. Case History: Hana and Michal/ Practice Assessing Risk and Danger Exercise.
8. Planning for Safety Exercise and Template.
9. Case History: Maria and Igor/ Reviewing Evidence and Charges (2 parts).
10. Dealing with the Reluctant Witness in Court Exercise.
11. Checklist of Questions for the Victim/Witness in Court.
12. Sample Aide Memoire for Prosecutors on Charging in Domestic Violence Cases.
13. Sample Contents of a Judicial Benchbook on Domestic Violence.
14. List of Slovak Laws Relevant to Violence Against Women and Domestic Violence.

## Handout 1: List of Myths on Domestic Violence

<i>Fiction</i>	<b>Fact</b>
<i>Domestic violence is a private problem, and no one should intrude in family matters.</i>	Some acts of violence are criminal, whether they occur within a relationship or not. The belief that domestic violence is a private affair condemns victims to remain under their aggressors' control and makes it more difficult for others to intervene, which perpetuates the violence. Domestic violence is a serious problem in our society.
<i>Domestic crimes are rare—otherwise we would hear more about them.</i>	National and international prevalence rates show the opposite. According to the World Health Organization, one out of four women in Europe and one in two women and girls around the world are victim of some forms of domestic abuse.
<i>Women bring it upon themselves, driving their partners to violence.</i>	No one likes violence. Some victims might precipitate the violence by reacting or not submitting to the dominance and control of the perpetrator, or might even have attitudes which are disturbing for a partner. However, responding to the victim's attitudes or behaviours with violence is not only a mistake, but it constitutes a crime.
<i>Women who are victims of violence like it, or else they wouldn't stay.</i>	Women stay with their partners for a variety of reasons. They may think they can change the men they love and believe their promises to change. Some women feel guilty about breaking up the family or are afraid of threats; others are lacking the social or economic resources to survive on their own.
<i>There is no point helping abused women; they'll just go back to their partners.</i>	Women who endure an on-going cycle of violence can often become ambivalent about their situation, unable to decide whether to stay or go. They may leave to see if they can survive on their own or return to see if things can change. This gradual process enables some victims to eventually resolve their dilemmas and break the cycle of violence, whereas for others, it may be more difficult.

<b>Fiction</b>	<b>Fact</b>
<i>Men who are violent at home are violent in all of their relationships.</i>	Men who abuse their partners are not necessarily violent in situations with friends or colleagues. Often the families and friends of these men don't want to believe that they engage in such behaviour, since they can be charming and pleasant in other environments.
<i>If men seek help to resolve their issues with violence, everything will go back to normal and the couple will get along fine.</i>	Therapy will address the problem of violence, but it's not a miracle cure. The consequences and injuries suffered by victims of domestic violence won't go away on their own. It's important for victims to find their own ways to heal their physical, emotional and mental wounds.
<i>Men who abuse their partners fit a certain profile: they're physically imposing and talk loudly.</i>	Men who are violent towards their partners are regular "Joos". They come from all backgrounds: they can be well-educated professionals or barely literate and unemployed. There is no typical profile.
<i>Domestic violence is an illness.</i>	Violence isn't an illness. It's a behaviour chosen by perpetrators to dominate and control others. Men are aware of what they're doing and they're doing it for a reason: to be in control of everything and make all the decisions.
<i>Men aren't the only ones responsible for their violent behaviour.</i>	Men are entirely responsible for their violent behaviour. But they'll try to blame their partners so that their partners won't leave them or turn them in.
<i>Once men seek therapy, their problems with violence are over.</i>	Therapy is a step in the right direction. Violent partners can change to the extent they truly want to and make sustained efforts to do so. However, years of work could be required to change violent tendencies that have gone on for months or years.

<b>Fiction</b>	<b>Fact</b>
<i>Violence is women's fault/women provoke violence</i>	No one deserves being abused or victimised. Even if there are cases where some women act in ways that men perceive as offensive or infringing on their masculine honour, this cannot justify, nor explain violent acts. Most violent men, when caught using violence, shift the responsibility to the victim, making it seem as if they could not avoid it. The social norms people hold also go in this direction, and according to the Just World Theory bad things happen to bad people, so we tend to blame those who suffer and are in pain.
<i>There is no point in helping women because they go back to the perpetrator</i>	Women victims of violence are not masochistic. If and when they return to their perpetrator, it is because they have not been helped sufficiently and found it more difficult to undertake any action and make decisions on their own, than to go on suffering in silence. If the police or the judiciary encounter a case where a woman has gone back to the perpetrator, considering as very difficult the possibility that he really changed, they should rather ask "what went on" in protecting this victim, and therefore instead of blaming her, identify what needs to be done and what she really needs. No one enjoys a life full of violence, suffering, denigration, isolation and fear. It is the right of human beings to fulfil their rights. It is the responsibility of the State to insure that all persons enjoy their human rights without any distinction, based, for instance, on ethnicity, gender or religion.
<i>If men were really violent with their partner, they would always be so, instead they are really nice men, according to friends, colleagues</i>	Because men who use physical and psychological violence are perfectly aware of what they do, they are very clever in making sure to the outside world that is the woman is making it up. They are like 'chameleons' and change in an opportunistic and manipulative way. Not all intimate partner perpetrators follow under this typology but it is a very common one. This capacity of changing behaviour and attitude is what these abusive men do to confuse their partners. By showing this 'double side' women hope that is the nice and charming one which is the correct and true one, minimising and underestimating the other one. This is very risky for women and increases their vulnerability.

## Handout 2: Quick Risk Factors Checklist

### List of risk factors related to the perpetrator

There is **no single cause** of family violence, but **a number of risk factors** – characteristics that increase the likelihood of re-assault – that can be identified.

### ***Risk factors related to the perpetrator include:***

- A history of previous assaults against the victim or others, suicide and homicide attempts or threats;
- Prior arrests or criminal records;
- Use of weapons;
- Instability of employment and income;
- Gambling;
- Drug and alcohol misuse;
- Violence towards pets;
- Misogynist attitudes towards women;
- Jealousy, a sense of entitlement or possessiveness, lack of empathy and remorse;
- Childhood abuse, exposure to violence during childhood and other adverse childhood experiences such as neglect;
- Instability of relationships;
- Separation.

### Handout 3: Quick Vulnerability Factors Checklist

***Vulnerability factors related to the victim:***

- Escalating use of violence;
- Victim's suicide attempts;
- Depression, personality disorder, low self-esteem;
- Self-blaming;
- Abuse of alcohol or drugs;
- Terror and extreme fear of the perpetrator;
- Minimisation of the violence and risk;
- Economic dependency;
- Scarce social support, isolation;
- Lack of services;
- Immigrant status;
- Small children;
- Prior history of violence in own family.

## Handout 4: Processing Card for Intervening Officers at the Scene of the Assault

### *Processing card information for police:*

- Gather information about prior assaults;
- Gather information about the presence of guns or other firearms;
- Establish where the victim and any children are and in what conditions;
- Locate the suspect, whether at the premises or not;
- The first thing to check and follow-up is the safety and physical condition of all parties;
- Then look for what has happened and if a crime has occurred;
- Determine what, if any, criminal offences have occurred;
- Look for possible evidence before asking people questions;
- Look for any firearms, guns, or other weapons that might have been involved and remove them;
- If people are injured, call immediately for an ambulance;
- Call for reinforcement if needed.

## Handout 5: Interview Format / Outline for Vulnerable Victims

- Interview the victim and suspect separately;
- Ask the victim if there is a history of abuse;
- If children are present and not in obvious emotional distress, interview them separately if over six years old;
- If needed, call child protection units;
- Distinguish who has done what to whom;
- In writing, document any mental and emotional state and wording used;
- Note down the physical condition of both parties;
- Note down the behaviour and the attitude of the suspect;
- Note any torn clothing on both the victim and the suspect;
- Note any stain on walls and damaged or broken objects such as broken mobile phone, broken plates, and glasses, upturn chairs etc.;
- When the victim is a woman, note if she has any smeared makeup or stains on her clothes;
- If animals are in the house, look to see what their behaviour is;
- Note the location of injuries on the victim on a pre-prepared body chart;
- Note any behaviour that is unusual (excessively calm, anxious to have the police leave, suspect staring at the victim, being too close);
- Note any evidence of substances present, such as chemicals or alcohol;
- Get close to the parties and smell for any alcohol;
- Inform the victim about what she can do next;
- Inform the victim about what the police are going to do next;
- Provide the victims with information about shelters (do not infringe victims' safety by doing this in front of the suspect, but make sure she has a safe place where she can keep this information).

## Handout 6: Risk Assessment Format for the Police

### *General outline for risk assessment:*

Different formats can be developed and used. This is a general scheme, with the basic information. Use this as a general checklist to look into more details for each case.

- The history of previous assaults by the perpetrator; same victims or different victims;
- Threats of homicide or suicide;
- Drug and alcohol misuse;
- Mental health issues or personality disorders certified;
- Recent separation;
- Instability of employment or income;
- Availability of weapons;
- Obsession or possessiveness about partner, misogynist attitude;
- Disregard/contempt for authority, violation of court orders;
- Childhood abuse or violence in family of origin;
- Children exposed to violence;
- Violence against animals/pets.

## Handout 7: Practice Assessing Risk and Danger

### Case history: Hana and Michal

Michal and Hana married in 2001 and have two daughters. Throughout the relationship Michal demonstrated erratic and emotionally abusive behaviour towards Hana and the children. For example, he broke the girls' toys and used harsh discipline, and he physically and sexually abused Hana. He also often drove aggressively and was confrontational with other drivers. After losing his job in 2011, Michal began to abuse alcohol. In March 2011, he threatened to commit suicide in front of his family but was persuaded to seek psychiatric treatment at the hospital.

Hana initiated divorce proceedings soon after Michal returned from the hospital, but ultimately did not pursue a divorce because her daughters told her that their father "said he would die" if she left him. Instead, Hana and the girls went to stay with her mother for several months.

Deciding to give the marriage another chance, Hana and the girls returned to the family home. Michal's behaviour became more abusive and he began to force Hana to beg, or to perform sexual favours, before he gave her money for household necessities. In 2012, Michal filed for divorce. On several occasions, he told Hana that he intended to tell the court that she was a bad mother and to seek sole custody of the children.

Michal moved out of the family home, but he would often drive by Hana's work to harass her. Furthermore, on two occasions Hana returned home to find broken windows and notes from Michal accusing her of neglecting the girls. Hana called the police and reported the damage. One evening Michal entered the house. He and Hana had a heated argument about the fact that Hana had begun dating another man. Michal pushed Hana into the wall and punched her several times on the back. The police, responding to a call from the neighbour, came to the scene and spoke with Michal. Michal told them he no longer lived with Hana and agreed to leave.

The next day, Hana asked the prosecutor to initiate a criminal investigation against Michal. She applied to the district court for a protection order, which was granted on the basis of Michal's abusive behaviour and Hana's fear that he would be violent again. Later, in the divorce hearing, the court granted Hana sole custody of the girls and allowed Michal to have a pre-arranged visit one evening a week and weekend visits with the girls "when deemed reasonable by both parties".

A week later, Michal called Hana and told her he wanted to collect the girls from school that afternoon. Hana refused since they had previously agreed that he would have visitation on a different day. When Hana went to the school, she learned that the girls had already been picked up by their father.

Hana called the police and explained that she did not know where her daughters were, that she had a protection order against Michal and that he had not yet returned the children. Hana told the police she did not think Michal would harm the girls, but she was not sure. The police advised Hana to address the matter in divorce court since the father had visitation rights and "at least you know the children are with their father".

**TRAINER NOTES:**

After reviewing the case history above, divide the trainees into small groups and ask them to discuss the following questions:

- How dangerous do I think the perpetrator is?
- Who could be in danger?
- Which criteria do I use to assess danger and what is the rationale?
- What other information do I want to know about the perpetrator?

Allow the trainees to brainstorm and work independently in groups before reconvening and discussing their conclusions. Then distribute Hand-out 2 to compare their findings.

Some of the “red flags” that trainees should identify from the above scenario include:

- ✓ Michal’s history of violent and controlling behaviour with his family members, including stalking behaviour;
- ✓ The fact that the violence began to increase in severity;
- ✓ Michal’s erratic behaviour in public, including property damage to the house;
- ✓ Michal’s abuse of alcohol;
- ✓ Michal’s expression of suicidal thoughts;
- ✓ Michal’s expressions of jealousy and threats to Hana concerning custody of the children;
- ✓ Michal’s continued use of violence against Hana after the separation;
- ✓ The fact that Hana sought a protection order and expressed fear of Michal;
- ✓ The young age of the children.

Trainees may focus attention on the failings of the police to take Hana’s concerns seriously in this scenario. Trainers should guide the discussion so that trainees also identify opportunities that the prosecutor or judge may have had to intervene and how they could have acted differently. For example:

- ✓ What steps could the prosecutor have taken in terms of co-ordination and information exchange?
- ✓ Did the judge in the divorce proceedings take into consideration the existence of a prior protection order?
- ✓ How could the judge have written the visitation order differently to offer greater protection to Hana and the children?
- ✓ How could overall co-ordination between the police, prosecutor’s office and the court have been improved, especially in terms of information sharing?

At the end of the exercise, the trainer may choose to take time to give some background information on this case history. The facts are based on those from a US case that occurred in 1999. The facts have been modified and the time period condensed for the purpose of the training. In the real case, after being refused visitation, the perpetrator abducted his children and murdered them the same day. The case was eventually brought before the Inter-American Commission on Human Rights alleging a failure of the authorities to

exercise due diligence. In 2011, the Commission found that the state had failed to exercise due diligence to protect the children from domestic violence. Providing this information is intended to demonstrate to trainees the very high risk that is inherent in many domestic violence cases.

## Handout 8: Planning for Safety

### Instructions for Prosecutors

Read the following scenario:

You have a meeting/interview scheduled with Ms M. Kováč today. You have reviewed the police report in the case file which contains the following information: a week ago, the police responded to an emergency call at the home of Mr and Ms Kováč. They issued an exclusion order against Mr R. Kováč after finding evidence that he had been violent towards his wife. The couple's three-year old son was home at the time and witnessed the violence. The police recorded that Ms Kováč had visible cuts and bruises on her face and arms, furniture had been pushed over and the bedroom door was broken. When they interviewed her, Ms Kováč said that she was frightened of Mr Kováč because his behaviour that night was "much more aggressive than usual". A copy of a medical report from the local hospital is included in the file that states "Ms Kováč presented with bruising on her face and arms, a split lip and a sprained wrist".

Make a plan for how you will address safety issues in your meeting with Ms Kováč.

Use the template below to consider measures you can take in the areas listed. If you think of additional actions you can take, list those as well.

.....

### Instructions for Judges

Read the following scenario:

You are a district court judge and will be presiding over a hearing on a temporary order barring Mr R. Kováč from the home he shares with petitioner Ms M. Kováč. You have received a case file with the following information: two weeks previously, the police arrived at the home to find Ms Kováč with visible cuts and bruises on her face and arms, furniture that had been pushed over and a broken door. The police issued an exclusion order against Mr Kováč, and the petitioner is now seeking a temporary order while she files for divorce. In her petition, Ms Kováč states that she has a three-year old son who witnessed the violence and she is afraid that her husband will hurt him. A copy of a medical report from the local hospital is included in the file that states "Ms Kováč presented with bruising on her face and arms, a split lip and a sprained wrist".

Make a plan for how you will address safety issues in the protection order hearing brought by Ms Kováč.

Use the template below to consider measures you can take in the areas listed. If you think of additional actions you can take, list those as well.

### Planning for Safety Template

<p><b>The physical environment</b> (the meeting space/ interview room or the courtroom)</p>	
<p><b>Approaches to use when speaking to the victim</b></p>	
<p><b>Questions to ask the victim to elicit information about safety</b></p>	
<p><b>Resources and information to give to the victim about how to remain safe</b></p>	
<p><b>Next steps</b> (For prosecutors- what actions will they prioritise in the investigation or pre-trial phase? For judges- what legal issues and actions will they consider?)</p>	

## Handout 9: Reviewing Evidence and Charges

### Case history: Maria and Igor<sup>80</sup>

Igor Petráš and Maria Adamčová have known each other for seven years. They have lived together for the past four years, as they do now. They are not married and have one child together; a six-year old girl, Zuzana.

On November 8, the police responded to a call from Ms H. saying that she heard a child crying in the hallway, and found that it was the daughter of her neighbour. The girl told Ms H. that her parents were fighting. During the call with Ms H, the police dispatcher could hear a child crying in the background.

When they arrived at the scene, the police patrol found the door to Igor and Maria's apartment open. Igor was visible, sitting on a couch, but the police could not see Maria. When the police entered, Igor approached and they smelled alcohol on his breath. He asked the police what was wrong and said, "my girlfriend came home acting crazy and yelling at me. We just got a little too loud, but everything's fine". One of the police officers checked the apartment and found Maria sitting on the floor in the kitchen. She looked distraught and her blouse was torn. She was bleeding from her forehead, and there was a heavy glass ashtray on the floor. The police officer asked how she was, and Maria answered, "I really thought he was trying to kill us. But I guess I'm ok now". The officer explained that they received a report of a disturbance in the flat and they were there to check on the safety of the residents.

One police officer took a statement from Maria. She said she had come home later than usual because her work schedule had changed the previous week. When she arrived, she saw that Igor was angry and that he had drunk several bottles of beer. Igor accused her of spending too much time with her friends and lying about being at work. He was verbally abusive to Maria, swearing, and telling her, "you'd better stop messing around, you bitch". She went in the kitchen to prepare dinner and Igor followed her yelling, "I'm still talking to you". Maria said Igor entered the kitchen and threw something at her that hit her in the head. When she fell, he started kicking her in the back and stomach. She remembers hearing Zuzana crying nearby but said she must have blacked out for a few minutes.

A second police officer took Igor to the patrol car to question him. While walking downstairs, Igor said spontaneously, "I barely touched her". Once at the car, he said, "she deserved it. I'm working hard all day and she's doing nothing. She doesn't even have dinner ready on time".

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<sup>80</sup> This exercise uses some source material from exercises created by the Family Violence Prevention Fund (*Domestic Violence: The Crucial Role of Judges in Criminal Court Cases, A National Model for Judicial Education*, 1991) and the UN Office on Drugs and Crime (*Training for Law Enforcement and Justice Sectors on Dealing with Cases of Domestic Violence*, 2<sup>nd</sup> Edition, 2011).

## Handout 9: Reviewing Evidence and Charges, part 2

### Scenario 1

You have requested the police to collect more information, particularly about any history of abuse. According to the police report, Maria Adamčová said that two months ago, Igor came home very late after a night out with friends. He woke her by climbing on top of her in bed. He began to pull off her nightgown, and she said she did not want to have sex with him. Igor punched her in the face, called her a whore and accused her of sleeping with other men. He had very rough sex with her, which left her upset, sore and with bruises on her face. Maria said she did not tell anyone about the incident because it was embarrassing for her. She also said that this was not the only time he had used insulting language with her or been physically violent. However, she was unclear about when the other incidents had taken place.

### Scenario 2

There is a medical report in the file from November 8 which indicates that Maria's injuries included bruising on her back and stomach, a black eye and a cut over her forehead which required ten stitches to close. Because she complained of dizziness, Maria was kept under observation at the hospital for several hours. The report states that the victim has some permanent loss of hearing to her right ear, consistent with earlier trauma. The medical examination was conducted on the night of the incident. Maria was unable to return to work for four days.

### Scenario 3

While the prosecutor is reviewing this case, the victim, Maria Adamčová, sends a letter stating: "Please drop the charges against Igor Petráš. He is very sorry for everything and has not been drunk since November 8. We can handle this ourselves, and there is no reason to waste everyone's time. The whole argument just got out of hand. I'm not worried about him anymore because he is not drinking".

## Handout 10: Dealing with the Reluctant Witness in Court

Note: This exercise follows on from the earlier exercise on reviewing evidence and charges. Use Handout 9. Case History: Maria and Igor.<sup>81</sup>

### Case of People vs. Igor Petráš

#### ➤ Scenario 1

The prosecution calls the victim to testify under oath. Contrary to the written statement, she gave to the police, she now states that on November 8 she fell in the kitchen and hurt her head. She states that she was angry with Igor and therefore she lied to the police. She testifies that she loves Igor and does not want to cause him any trouble. She says that he is a good father to Zuzana. Maria also indicates that although she works, they depend financially on Igor's income.

#### Questions for Prosecutors

- ✓ Which items of evidence can you offer as proof?  
Make a list, considering physical evidence, eyewitness testimony, etc.
- ✓ Evaluate the strength of each of these items of evidence. Are any problematic?
- ✓ Would you question the victim about changing her testimony?
- ✓ If so, what questions would you ask?
- ✓ Would you consider any special measures to support the victim in testifying? What special measures could be used?

#### Questions for Judges

- ✓ Would you consider dismissing the case?
- ✓ What factors would you consider in making your decision?
- ✓ What objectives are you seeking to achieve by your decision to either dismiss or continue?
- ✓ Would you question the victim about changing her testimony?
- ✓ If so, what questions would you ask?
- ✓ Who would you have present in the courtroom?
- ✓ Would you permit the prosecutor to prove any facts with an offer of evidence?
- ✓ Which items would you admit into evidence? For what purpose?
- ✓ Would you consider any special measures to support the victim in testifying? What special measures could be used?

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<sup>81</sup> This exercise uses some source material from exercises created by the Family Violence Prevention Fund (*Domestic Violence: The Crucial Role of Judges in Criminal Court Cases, A National Model for Judicial Education*, 1991) and the UN Office on Drugs and Crime (*Training for Law Enforcement and Justice Sectors on Dealing with Cases of Domestic Violence*, 2<sup>nd</sup> Edition, 2011).

➤ **Scenario 2**

Maria Adamčová, the victim, does not appear at the trial. The defence counsel asks that the case to be dismissed.

**Questions for Prosecutors**

- ✓ What would you do? What are your options?
- ✓ Would you object to dismissal? What arguments would you make against dismissal?

**Questions for Judges**

- ✓ How would you rule? Would you dismiss the case?
- ✓ What factors would you consider in making your decision?
- ✓ What objectives are you seeking to achieve by your decision to either dismiss or continue?
- ✓ What additional information would you want to have before you?

➤ **Scenario 3**

The prosecution calls the victim. She testifies, under oath, that on November 8, she came home late from work. She says she was short tempered and started an argument with Igor. She says she slipped in the kitchen and fell, hitting her head against a table, causing the injuries she sustained. She says Igor did not touch her and that she made up the story about him beating her because she was angry. She admits making her statement to the police.

**Questions for Prosecutors**

- Assume you have already offered the medical report and police report into evidence. What other evidence might be useful here?
- Would you call an expert witness to testify? If so, what issues would you want the expert testimony to address?

**Questions for Judges**

Assume that the prosecution has already offered the medical report and police report into evidence and now asks to call an expert on domestic violence to testify.

- Would you permit an expert to testify?
- What factors would you consider in making your decision?
- What objective(s) are you seeking to achieve by your decision?
- If you allowed an expert to testify, would you limit the testimony? To what areas?

## Handout 11: Checklist of Questions for the Victim/Witness in Court

The following checklist<sup>82</sup> is a tool to assist the court to determine the reasons a victim/witness is reluctant or refuses to testify in court as well as whether the victim has been coerced or intimidated by the defendant into requesting that charges be dropped. In most cases, the prosecutor will ask the victim these questions, but the court should also establish a process to obtain this information.

- Begin with neutral questions to determine if the victim will actually refuse to testify (e.g. How are you? Do you feel comfortable today? etc.). If necessary, use the following questions:
- Why do you feel reluctant (or refuse) to testify?
- When did you become reluctant (or decide to refuse) to testify?
- Were you living with the defendant when the incident happened?
- Are you currently living with the defendant?
- (If not living with the defendant) Does the defendant know where you are living now?
- Are you financially dependent on the defendant?
- Do you and the defendant have children together?
- Have you discussed the case with the defendant?
- Has the defendant made any promises of change to you if you do not testify?
- Is that promise to do something, the reason that you do not wish to proceed/or testify today?

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<sup>82</sup> This handout is adapted from materials developed by the Family Violence Prevention Fund (United States), *Domestic Violence: The Crucial Role of Judges in Criminal Court Cases, A National Model for Judicial Education* (1991), and also used by Violence Against Women Europe (WAVE) in training.

- Has the defendant or anyone else threatened you, your children or your family and told you not to testify?
  
- Are there any other reasons you are afraid of the defendant?
  
- Are you aware that a civil protection order can be issued which requires the defendant to stay away from you and have no contact with you and your family?
  
- Are you aware that if the case is prosecuted, the defendant can be required to [*describe remedies available in particular jurisdiction*- i.e. pay damages; stay away from you and your family; attend a programme for perpetrators, etc.]?
  
- (About alleged or visible injuries) How did you receive the injuries (refer to police reports, medical reports, photos, injuries still visible in court, etc.)?
  
- Have you talked about your desire not to testify with the prosecutor or any service providing agency, such as a specialist domestic violence support organisation/ a women's NGO, crisis centre or shelter?
  
- If not, would you be willing to talk to them or to an advocate (NGO) or lawyer?
  
- Would you like to have a court officer escort you from the building when you leave today?

## Handout 12: Sample Aide Memoire for Prosecutors on Charging in Domestic Violence Cases

The following sample aide memoire is a modified and simplified version of a policy developed and adopted by the United Kingdom Crown Prosecution Service to provide prosecutors with consistent charging advice in domestic violence cases.<sup>83</sup>

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### Points to Consider

#### ➤ Building a robust case

(1) Ensure that you understand the context in which the domestic violence has taken place and consider all the dynamics within the relationship between the victim and aggressor. Avoid relying on stereotypes or assumptions.

(2) Actively build a case. Make sure you are satisfied that all available evidence has been gathered, including all information that either undermines or supports the prosecution's case.

(3) Do not assume that a victim giving evidence in court is the only way to prove the matter. Instead, consider if there is other material that supports the prosecution case but is independent of the victim's statement or corroborates the victim.

(4) Each case must be considered on its merits, but you should also routinely ask yourself the following questions:

- ✓ Is the victim's account corroborated by any other evidence?
- ✓ What other evidence can we rely upon apart from the victim's account?  
[include a checklist of forms of corroborating evidence that are admissible in Slovakia]
- ✓ Is there a history of previous incidents?
- ✓ Are there any civil protection orders in place?
- ✓ Has the defendant breached any criminal or civil orders in the past?
- ✓ Do you intend to rely upon expert evidence? If yes, have you fully briefed the expert?
- ✓ Have you carefully considered whether children can or should give evidence?

(5) Make sure that you consider all available charges and record full reasons for your decisions concerning each charge.

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<sup>83</sup> The complete aide memoire can be accessed, as Annex B to *Domestic Abuse Guidelines for Prosecutors*, from the following link:  
[http://www.cps.gov.uk/legal/d\\_to\\_g/domestic\\_abuse\\_guidelines\\_for\\_prosecutors/#a91](http://www.cps.gov.uk/legal/d_to_g/domestic_abuse_guidelines_for_prosecutors/#a91).

(6) Remember that the safety of the victim and any children or other dependents is critical. Careful decisions should be made concerning the suspect's conditions of bail when not in custody. Bail or pre-trial release conditions that do not restrict the victim and children, should be imposed to prevent further offending and intimidation of the victim.

(7) Determine whether there are any concurrent or imminent family law proceedings involving the victim and/or accused. Also, find out whether any social services organisation has been alerted to the violence or been involved with the family.

(8) Make sure you are aware of available civil remedies and how they might affect criminal proceedings.

(9) Try to prevent unnecessary delay and take decisions in a timely manner. Remember to balance the need to expedite the case with the need for proper investigation.

### ➤ Evidence by and about the defendant

(10) Do not focus solely on the behaviour of the victim. Instead, find out details about the defendant's previous misconduct, if any, at the earliest opportunity so you can assess whether this evidence could be used as part of your case. Ask the following questions:

- ✓ Does the defendant have any related previous convictions or acquittals?
- ✓ What was the defendant's conduct and demeanour like when arrested?
- ✓ Has the defendant made any admissions?
- ✓ Are there any previous domestic violence reports that may not have been pursued in court?

(11) Explore the credibility of the defendant's account as part of the charging consultation. Ask the following questions:

- ✓ How plausible is the defendant's account?
- ✓ Are there any contradictions in the defendant's account?

### ➤ Victim participation and support

(12) Consider the nature of the victim's evidence:

- ✓ What does the victim say happened?
- ✓ Would a pre-trial witness interview be appropriate and useful to test the evidence (not to ascertain whether the victim will attend court)?

(13) Make sure that the victim's statement includes information about whether she supports the prosecution. If the victim indicates that she wishes to withdraw the complaint or her support for the prosecution, ask yourself:

- ✓ Is there any reason to believe that the victim might have been pressured, threatened or frightened into retracting?

- ✓ Has the victim previously retracted a complaint or failed to give evidence in proceedings? If so, why? What was the nature of the previous allegation?
- ✓ Has a risk assessment been conducted by the police or any other agency? Is the risk assessment available, for example in the case file?
- ✓ If the victim refuses to proceed, have you considered alternative actions?
- ✓ What would be the effect of proceeding or not proceeding with the case without the victim?

(14) Previous retractions are common in domestic violence cases, and they do not necessarily indicate that a victim cannot be relied upon to give evidence. If appropriate, try to obtain an explanation from the victim of previous retractions.

(15) Do all you can to support the victim through the criminal justice process to encourage them to participate in the prosecution and to give their best evidence.

- ✓ Have you determined with the victim what support she needs through the prosecution process? Has this information been included in the case file?
- ✓ Have you considered all measures to address safety and especially the safety of high-risk victims (e.g. appropriate bail conditions; any actions to prevent further offences such as stalking or harassing; applications for protection orders if there is a conviction or acquittal; prosecution actions if there is a breach of any protection orders)? Have you consulted the police and any domestic violence support organisations about the views and needs of the victim concerning safety measures?
- ✓ Has the victim been referred to or been in contact with a service providing agency, such as a specialist domestic violence support organisation/ a women's NGO, crisis centre or shelter?
- ✓ How would the victim feel if forced to face the defendant during trial?
- ✓ Has a victim impact statement been taken? Is it up-to-date?

## Handout 13: Sample Contents of a Judicial Benchbook on Domestic Violence

The following is an example of the components usually included in a domestic violence benchbook or good practice guide. A benchbook can cover several areas of law or be limited (e.g. on issuing civil protection orders or conducting risk assessments). An actual benchbook must also include the relevant criminal and civil law provisions. To be effective, a benchbook should include necessary theoretical information but focus on practical tools (checklists, FAQs, charts, scripts) and sample forms that judges can use in their daily work.

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### DOMESTIC VIOLENCE BENCHBOOK FOR [JURISDICTION]

#### 1. Definition of Domestic Violence

Legal definitions as well as psychological and behavioural power and control dynamics.

#### 2. Types of Domestic Violence/ Types of Abuse and Abusive Tactics

Charts of forms of domestic violence (physical, psychological, sexual, economic etc.) cross-referenced to relevant criminal code articles.

#### 3. Causes of Domestic Violence

Overview of prevailing theories.

Note that domestic violence is correlated with but *not* caused by alcohol or drug abuse, mental illness or stress (therefore treatment for these issues is not a substitute for legal sanctions).

#### 4. Victim Behaviour and Responses

Shock, trauma, minimisation, survival tactics, denial, isolation.

Obstacles to leaving the perpetrator, financial dependence, fear for children.

#### 5. Perpetrator Personality Traits

Dependency/jealousy, entitlement and controlling over women, “dual” personality, refusal to accept responsibility, denying violence, blaming the victim.

#### 6. Abusive Behaviours in the Courtroom

Staring and intimidation, delaying court proceedings, bringing family members to court, claiming to love victim, etc.

Checklist for screening for domestic violence.

#### 7. Impact of Domestic Violence on Children

Consider emotional, physical, psychological and developmental impacts.

#### 8. Custody and Visitation Determinations

Safety concerns, abusive tactics.

Sample parental safety plan; sample completed visitation order form.

### **9. Risk and Lethality Assessment**

Checklists, sample assessment tools.

### **10. Courtroom Safety and Management**

Waiting areas, training for court officers, seating arrangements, etc.

### **11. Orders for Protection**

Modification, contents, enforcement. Protocol, checklist or sample script to use in hearings. FAQs about how to manage hearings, especially *ex parte*. Sample completed protection order form.

### **12. Victim Reluctance and lack of Co-operation in Criminal Cases**

Victim's survival tactics, perpetrator's manipulation.

Checklist of ways to encourage co-operation.

### **13. Judicial Information**

Goals of the judicial process, ethical considerations, judges' roles and responsibilities.

## **Handout 14: List of Slovak Laws Relevant to Violence Against Women and Domestic Violence**

### **Criminal Code of the Slovak Republic**

#### ***Chapter One: Offences against life and limb***

First degree murder §144  
 Second degree murder §145  
 Killing §147 -148  
 Homicide §149  
 Illegal abortion §150 -152  
 Participating in suicide §154  
 Bodily harm §155 -157

#### ***Chapter Two: Offences against freedom and against human dignity***

##### ***Part One: Offences against freedom***

Trafficking in human beings §179  
 Deprivation of personal freedom §182  
 Restriction of personal freedom §183  
 Restricting the freedom of residence §184  
 Taking a hostage §185  
 Kidnapping for ransom §186  
 Abduction to a foreign Country §187  
 Extortion §189  
 Gross coercion §190  
 Duress §192  
 Restricting the freedom of worship §193  
 Forcible entry into dwelling §194  
 Breach of mailing secrets §196

##### ***Part Two: Offences against human dignity***

Rape §199  
 Sexual violence §200  
 Sexual abuse §200-201

#### ***Chapter Three: Offences against family and youth***

Neglect of compulsory maintenance §207  
 Battering a close person or a person entrusted into one's care §208  
 Kidnapping §209-210

#### ***Chapter Nine: Offences against other rights and freedoms***

Serious threats §360  
 Serious harassment (stalking) §360a  
 Disorderly conduct §364

Procuring and soliciting prostitution (pimping activities) §367

Defamation §373

Note that the following criminal law provisions can be applied to the act of female genital mutilation (FGM):

Bodily harm §123

Bodily harm §155 -157

Battering a close person or a person entrusted into one's care §208

### **Civil and Other Legal Provisions**

**Civil Code (Act No. 40/1964 Coll.)** concerns court-ordered exclusions of the perpetrator from the apartment or house. (§§146, 705a and 712a, section 8)

**Civil Procedure Code (Law No. 99 /1963 Coll.)** regulates preliminary ruling (interim measure) issued by the court ordering the perpetrator not to enter the apartment or house or to contact the victim or person who is at risk. (§76)

**Act on Police Corps (Law No. 171/1993 Coll.)** gives police the authority to expel a perpetrator from the apartment or house and to ban the perpetrator from entering the apartment or house for a 48 hour period. (§27a). A motion filed under § 76 (1) (g) of the Code of Civil Procedure will automatically extend the period of the ban.

**Family Act, Article 17** states that a forced marriage is not valid.

**Antidiscrimination Act, Article 2a** defines sexual harassment as “verbal, non-verbal or physical conduct of a sexual nature whose intention or consequence is or may be a violation of a person’s dignity and which creates an intimidating, degrading, disrespectful, hostile or offensive environment.”





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