

Programmatic Cooperation Framework for  
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus



**BARRIERS, REMEDIES AND GOOD PRACTICES FOR  
WOMEN'S ACCESS TO JUSTICE  
IN FIVE EASTERN PARTNERSHIP COUNTRIES**

Prepared in the framework of the project

***Improving Women's Access to Justice in Five Eastern Partnership  
Countries***

This study was commissioned by the Gender Equality Unit, Equality Division, Directorate General of Democracy, Council of Europe, and is funded by the European Union and the Council of Europe. The information contained in this document is up to date as of summer 2016.

*The opinions expressed in this study are those of the authors and do not reflect the official position of the Council of Europe.*

*The reproduction of extracts from this document is authorised on condition that the source is properly cited.*

## Contents

<b>Introduction</b> .....	5
<b>National reports</b>	
<b>Armenia</b> prepared by Gayane Makaryan .....	9
<b>Azerbaijan</b> prepared by Parvana Bayramova.....	35
<b>Georgia</b> prepared by Babutsa Pataraiia .....	65
<b>Republic of Moldova</b> prepared by Doina Ioana Străisteanu .....	97
<b>Ukraine</b> prepared by Olena Uvarova .....	123



## Introduction

Important efforts have been made to strengthen gender equality standards both at the level of the Council of Europe and within its member states. Four major treaties provide the core Council of Europe gender equality standards. These are the ‘**foundational**’ treaties: the European Convention on Human Rights and the European Social Charter, and the two ‘**new generation**’ treaties, the Convention on Action against Trafficking in Human Beings<sup>1</sup>; and the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)<sup>2</sup>. A number of Recommendations of the Committee of Ministers on gender equality-related topics have been adopted since the 1970s.<sup>3</sup>

The first Council of Europe Gender Equality Strategy (2014-2017)<sup>4</sup> provides the strategic framework for the implementation of these standards to bring member states closer to *de facto* gender equality. One of the five objectives of the Council of Europe Gender Equality Strategy is to work with member states towards guaranteeing equal access of women to justice. The Strategy establishes that action in this area seeks to: analyse national and international frameworks to gather data and identify the obstacles women encounter in gaining access to the national courts and to international justice; identify, collect and disseminate existing remedies and good practices to facilitate women’s access to justice; and make recommendations to improve the situation.

The regional project ***Improving Women’s Access to Justice in Five Eastern Partnership countries*** (*Armenia, Azerbaijan, Georgia, Republic of Moldova and Ukraine*) contributes to the overall implementation of the Strategy and in particular the realisation of Objective 3 of the Strategy: Guaranteeing equal access of women to justice. The project is funded by the Council of Europe/European Union Eastern Partnership Programmatic Co-operation Framework (PCF) 2015 – 2017,<sup>5</sup> and implemented by the Council of Europe Gender Equality Unit.

The main objectives of the project are to:

1. Identify and support the removal of obstacles to women’s access to justice;
2. Strengthen the capacity of Eastern Partnership countries to design measures to ensure that the justice chain is gender-responsive, including through the training of legal professionals.

While knowledge has increased, there are still systematic gaps in data collection concerning different aspects of women’s access to justice. In order to fill such gaps with respect to the beneficiary countries of the project, the Gender Equality Unit of the Council of Europe commissioned five national studies to map the barriers, remedies and good practices for women’s access to justice in Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine. The objectives of each of these studies were to provide:

- a. an analysis of the main obstacles to women’s access to justice, both legal and procedural, as well as socio-economic and cultural;

---

<sup>1</sup> Entered into force on 1 February 2008.

<sup>2</sup> Entered into force on 1 August 2014.

<sup>3</sup> See brochure with the main Council of Europe standards on gender equality and women’s rights, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168058feef>

<sup>4</sup> Available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680590174>

<sup>5</sup> See: <http://pjp-eu.coe.int/en/web/eap-pcf/home?desktop=true>

- b. a set of recommendations for measures to improve women's access to justice in the respective country, including examples good practices, where they exist;
- c. background information for the subsequent organisation of training for legal professionals (judges, prosecutors, lawyers, and possibly law enforcement).

The studies were carried out by five independent national experts who were asked to answer the following questions:

- *What are the gender gaps in access to justice in your country?*
- *How responsive is the justice system to women's needs?*
- *What can be done to improve the gender responsiveness of the justice system?"*

All five studies are structured around a similar set of themes and issues. The first part of each study addresses **gender gaps in the access to justice**, by analysing the legislative and policy frameworks as well as the implementation practices and mechanisms that affect women's access to justice. Socio-economic and cultural barriers to women's access to justice are also discussed in this first part. The second part of each study examines the **gender responsiveness of the justice system** in the respective country. The following issues are addressed in all five studies: women's access to courts; whether sex-disaggregated data on court applicants is available; gender stereotypes among legal professionals, especially the judiciary; and the availability of gender equality training in the initial and further education of legal professionals. The third part of each study presents the **available remedies and good practices** and formulates a set of **recommendations**. When relevant, and to the extent possible in the scope of addressing these general themes and issues, attention has been paid to obstacles affecting women from disadvantaged groups, such as women in rural areas, disabled women, elderly women, women from ethnic minorities, women victims of violence, lesbian, bisexual and transwomen, and women held in detention/prison.

Research for the five studies was mostly desk-based and the national consultants sampled as extensively as possible the existing sources available in the country. In Armenia and Azerbaijan, the consultants conducted a limited number of interviews with lawyers and civil society advocates. In Georgia and the Republic of Moldova, the consultants also requested official data from a number of institutions. In Ukraine, the national consultant conducted a small survey among judges, based on a pre-defined questionnaire. The initial findings of the five studies were presented at the regional conference on Improving Women's Access to Justice in Five Eastern Partnership countries that took place on 5-6 November 2015, in Kvareli, Georgia. Feedback received from governmental officials, academic experts and civil society representatives at this conference was integrated in the studies. Furthermore, each consultant presented the findings of the country study to a national audience in the first months of 2016. Feedback from these validation meetings was also integrated in the final version of the studies.

The studies found that there are still significant gaps in women's access to justice, despite progress made especially in the adoption of laws and policies.

*With respect to legal and policy frameworks*, Eastern Partnership countries have made significant progress in passing legislation and adopting policies to advance gender equality. Guarantees of equality between women and men are included in the Constitutions of each participating country, including most recently the Constitution of Armenia. All five countries have specific laws on gender equality, with Azerbaijan having adopted one in 2006, Armenia in 2011, Georgia in 2010, the Republic of Moldova in 2006, and Ukraine in 2005. Special anti-discrimination laws have been adopted in Georgia (2014), the Republic of Moldova (2012) and Ukraine (2012). There is no separate anti-discrimination law in Azerbaijan. However, a special law on domestic violence was adopted in 2010. In addition, Georgia, the Republic of Moldova and Ukraine have all adopted specific legislation against domestic violence (in 2006, 2007 and 2001, respectively). Armenia is preparing anti-discrimination legislation. This country does not yet have a specific law to prevent and combat domestic violence but, based on information to date, a draft is currently under preparation.

Two of the beneficiary countries, Georgia and Ukraine, have signed the Istanbul Convention and based on information available, ratification of the treaty is imminent in both countries. The other three countries have not yet signed the Istanbul Convention.

Despite the significant legislative progress, legal obstacles to women's access to justice persist. Specific barriers include *de jure* discrimination of women, such as protective labour legislation that restricts women's access to certain professions and types of work, or gaps in the anti-discrimination legislative frameworks. The national studies offer ample examples of the discriminatory effects of protective labour legislation in each of the five countries. Further barriers have been observed in the area of labour law, such as limitations on fathers' access to parental leave or the unlawful dismissal of pregnant women.

*With respect to implementation practices and mechanisms*, the studies found that, while national laws uphold equality on the basis of sex, women rarely invoke these laws in court to protect their rights. The standards of proof and the legal mechanisms that are necessary to prove indirect discrimination are not well developed, while this is arguably the more prevalent manifestation of gender inequality. In all countries of the project, gaps in access to justice for women victims of gender-based violence persist, in particular: non-criminalisation of all forms of violence against women; severe under-reporting of crimes of violence against women; very few convictions of rape; scarce or no state funding for support services.

The five studies also reveal a number of common *socio-economic and cultural barriers to women's access to justice*. Firstly, women's economic dependence or economic inequality to men is a prominent obstacle, as it leads to women's lower access to resources, often needed for legal proceedings. In addition to women's lower employment rates and especially significantly lesser participation in the business sector, as either employees or entrepreneurs, there is a significant gender wage gap in all five countries. Secondly, patriarchal attitudes and beliefs persist about men's superiority to women and the naturalness of segregated gender roles that see women mainly as caregivers and men as breadwinners. The belief in men's superiority underpins the still-present practice of prenatal sex-selection that results in skewed sex ratios in favour of men and represents a severe violation of women's rights. The same gender-biased attitudes also underlie the high social tolerance or even justification of domestic violence in the five countries. Thirdly, among the socio-economic barriers, lack of access to information is a significant obstacle, especially among women from rural areas.

The five studies give ample evidence of the limited *gender responsiveness of the justice systems* in the five countries. The studies found that there is very limited use of international standards in judicial decisions. In some of the five countries, women are significantly under-represented in the judiciary. Gender stereotypes persist in the justice system and they are compounded by other stereotypes, linked to age, ethnicity, or social status. The five national studies provide illustrations of such stereotypes, particularly affecting women victims of gender-based violence.

The five national studies also present a number of **good practices**. In Armenia, an action plan to promote gender equality and gender balance in the judiciary was adopted by the judicial self-governance body (the Armenian Council of Court Chairpersons) in 2015. It includes measures such as the development of gender equality training materials and thematic training programmes. The equality bodies set up in Georgia and the Republic of Moldova offer potentially effective mechanisms to combat sex-based discrimination. Since 2013, the Public Defender's Office of Georgia has a specific Gender Equality Department that monitors the implementation of gender related legislation and policies and studies complaints and individual cases of sex and gender-based violations of human rights. It also conducts public awareness activities and training, collects data to monitor the effectiveness of protection mechanisms from violence against women and prepares annual reports on the topic. In Azerbaijan, the law takes into account the needs of rural women in respect of maternity leave. Women working in agriculture get more days of maternity leave: from 70 calendar days after birth, up until 110 calendar days in cases of multiple births. In the Republic of Moldova, the Equality Council set up as an independent body under the anti-discrimination law in 2013, examines individual complaints, including in cases of sex-based discrimination. It also analyses draft laws for compliance with anti-discrimination legislation and conducts awareness raising activities on discrimination issues. The Action Plan on Human Rights of Ukraine for 2015-2020 offers a good practice example of a human rights policy that contains ample provisions on gender equality closely matching priority areas of the Council of Europe Gender Equality Strategy. A number of civil society initiatives, such as the online Virtual Legal Aid Service for women, set up by the Women's Consortium of Ukraine, as well as the specialist support services provided by women's organisations to women victims of gender-based violence, show that civil society expertise is an important resource to improve women's access to justice.

Access to justice is central to the rule of law and integral to the enjoyment of human rights. It is also an essential precondition to social inclusion and a critical element of a well-functioning democracy. The requirement of equality, including gender equality, is at the centre of the scope, the exercise and the fulfilment of the right to justice. It is hoped that these five national studies will contribute to the further development of tools to improve women's access to justice. In particular, the information provided by the national studies will be used in the elaboration of a training manual for judges and prosecutors on *Ensuring Access to Justice for Women* to be used by the judicial training institutions in the five beneficiary countries of the project.

# **ARMENIA**

Report prepared by

Gayane Makaryan

## Contents

<b>I.</b>	<b>Summary</b> .....	11
<b>II.</b>	<b>Introduction</b> .....	11
<b>III.</b>	<b>Gender gaps in access to justice</b> .....	14
	A. National regulatory framework and policies .....	14
	B. Socio-economic and cultural barriers affecting women's access to justice ...	19
	C. Combating gender stereotypes .....	20
<b>IV.</b>	<b>Gender responsiveness of the justice system</b> .....	23
<b>V.</b>	<b>Remedies, good practices and recommendations</b> .....	25
	A. National good practices to promote equal access of women to justice .....	25
	B. Existing remedies to facilitate women's access to justice.....	26
	C. Recommendations to address the obstacles that prevent equal access to justice for women .....	29
	D. Mapping relevant actors in the field of women's access to justice .....	30
	<b>Bibliography</b> .....	31
	<b>Appendix: Questionnaire for civil society organisations</b> .....	33

## I. Summary

The present report has been prepared at the initiative of the Council of Europe within the framework of a regional project on “Improving women’s access to justice in five Eastern Partnership countries”. The report is based on a desk review that examined the existing national and international policy documents, strategies and working papers in the area of women’s access to justice in Armenia. It analyses the domestic regulatory framework and policies to identify the obstacles women encounter in gaining access to justice in Armenia. It reflects on gender gaps and presents prevalent challenges that derive from the limited implementation of the existing legislation. Furthermore, the paper focuses on a number of acute problems, such as: access to legal aid, gender stereotypes, socio-economic and cultural barriers affecting women’s access to justice, and discusses these barriers particularly in relation to domestic violence. Civil society organisations were also consulted by distributing a questionnaire (see Appendix). The report hopes to encourage various policy actors to initiate respective actions in the field of women’s access to justice, and to further facilitate such initiatives. This is a field of policy that is underdeveloped and many options and paths may still remain to be discovered.

## II. Introduction

Access to justice is an important component of a legal and democratic state. It implies the right to an effective remedy, the right to equal access to courts, the right to legal aid measures that improve access to courts and access to legal representation to ensure effective implementation of the law and practical enjoyment of rights by individuals. Access to justice “refers to the various elements leading to appropriate redress against the violation of a right”.<sup>6</sup> The requirement of equality, including gender equality, is at the centre of the meaning, the exercise and the fulfilment of the right to justice. Women’s rights and women’s full and effective access to justice are integral parts of the overall justice system, which should exclude any discriminatory activity.

A comprehensive definition of the right of access to justice for women is provided by General Recommendation 33 (2015) on Women’s Access to Justice of the UN Committee on the Elimination of Discrimination against Women (CEDAW), according to which the right of access to justice for women is essential to the realisation of all the rights protected under the CEDAW. It is a fundamental element of the rule of law and good governance, together with the independence, impartiality, integrity and credibility of the judiciary, the fight against impunity and corruption, and the equal participation of women in the judiciary and adequate law implementation mechanisms. The right to access to justice is multidimensional. It encompasses justiciability, availability, accessibility, good quality and accountability of justice systems, and provision of remedies for victims.<sup>7</sup>

Gender equality is a basic principle of human rights, and women’s rights are an inalienable, integral and indivisible part of universal human rights that is a requirement for the achievement of social justice, democracy and a prerequisite for economic development.<sup>8</sup> Four major treaties provide the core Council of Europe gender equality standards pertaining to equal access to justice for women. These are the ‘foundational’ treaties: the European Convention on Human Rights (ECHR) and the European Social Charter, and the two ‘new generation’ treaties: the Convention on Action against Trafficking in Human Beings (entered into force on 1 February 2008); and the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) (entered into force on 1 August 2014).

---

<sup>6</sup> Parliamentary Assembly of the Council of Europe (PACE) Resolution 2054 (2015) “Equality and non-discrimination in the access to justice”: <http://assembly.coe.int/nw/xml/XRef/X2H-XrefViewPDF.asp?FileID=21753&lang=en>

<sup>7</sup> CEDAW General Recommendation 33 on Women’s Access to Justice:

[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_33\\_7767\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf).

<sup>8</sup> Recommendation of the Committee of Minister to member states on gender equality standards and mechanisms, CM/Rec2007(17), 21 November 2007, paragraph 1.

The Istanbul Convention includes numerous provisions aimed at facilitating the access of victims of violence to justice, in particular by requiring states parties: a) to provide adequate legal information (Article 19), b) to encourage reporting (Article 27), c) to provide victims with adequate civil remedies (Article 29), and d) compensation (Article 30), e) to criminalise or otherwise sanction a broad range of forms of violence against women (Articles 33-40), f) to ensure that investigations and judicial proceedings are carried out without undue delay (Article 49), g) that prosecutors can initiate and continue proceedings, even if the victim withdraws the complaint (Article 55), h) that evidence relating to the sexual history and conduct of the victim is permitted only when relevant and necessary (Article 54), i) that mandatory alternative dispute resolution processes or sentencing, including mediation and conciliation, are prohibited (Article 48), j) that victims are protected at all stages of investigations and judicial proceedings (Article 56) and k) that they have access to legal assistance and to free legal aid (Article 57). The Istanbul Convention is based on the “understanding that violence against women is a form of gender-based violence that is committed against women because they are women. It is the obligation of the state to fully address it in all its forms and to take measures to prevent violence against women, protect its victims and prosecute the perpetrators. Failure to do so would make it the responsibility of the state”.<sup>9</sup>

Armenia is a signatory to a number of international agreements related to the protection of women’s rights and the elimination of discrimination against women. However, the country has not ratified the Istanbul Convention yet. In the UN system, Armenia acceded in 1993 to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), which request the states parties to ensure equal rights of women and men to the enjoyment of all economic, social, cultural, civil and political rights (Article 3 of both Covenants). Armenia is also a party to the UN Convention on the Elimination of Discrimination against Women (CEDAW) and acceded to its Optional Protocol establishing an individual complaint mechanism in 2006. Furthermore, Armenia is a party to the International Convention on the Elimination of All Forms of Racial Discrimination, 1966; the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; the Convention on the Rights of Persons with Disabilities, 2006, etc.

The Council of Europe legal standards related to women’s rights and gender equality apply to Armenia since 2001. Article 14 of the ECHR provides that the enjoyment of rights and freedoms set forth in the Convention shall be secured without discrimination on the basis of sex. Armenia has also ratified Protocol 12 to the ECHR, which extends protection against discrimination to any right set forth in law. Further, the revised European Social Charter, to which Armenia acceded in 2004, recognises the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20), and also contains a non-discrimination provision in Article E. Additionally, the Council of Europe Convention on Action Against Trafficking in Human Beings refers to gender equality and gender mainstreaming when implementing measures under the Convention. Council of Europe standards in the field of women’s rights and gender equality are further developed in the Committee of Ministers Recommendations to member states, particularly Recommendation Rec(2007)17 on gender equality standards and mechanisms, and the Council of Europe Gender Equality Strategy (2014-2017).

At the national level, the Constitution of Armenia declares the Armenia to be a democratic state governed by the rule of law, one of the most important criteria of which is the existence of mechanisms that guarantee real protection of human rights and freedoms in practice, as well as real independence of the judiciary and equal access to justice for all categories of people. In this respect, exclusion of any form of discrimination against persons is of fundamental significance.

The previous Constitution of Armenia contained only one general norm related to prohibition of discrimination regardless of any ground, including sex with a purpose to ensure equality before the law and in practice.

---

<sup>9</sup> <http://www.conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>.

In the new Armenian Constitution adopted on 6 December 2015 by referendum, some new and important provisions have been added therein. Particularly, it contains a new norm on general equality before the law (Article 28). The newly adopted Article 29 forbids discrimination on any ground (including sex) and guarantees equality of rights between women and men. Article 86 stipulates that one of the goals of policy of Armenia in economic, social and cultural life is to ensure facilitation of *de facto* equality between women and men.<sup>10</sup>

Furthermore, the Armenian Government took a number of steps to carry out the recommendations provided by the CEDAW with regard to Armenia's combined third and fourth periodic reports, and further fifth and sixth periodic reports (submitted in March 2015) to implement a policy to improve the situation in the country with respect to gender equality. In 2010, the Armenian Government approved the Gender Policy Concept Paper, while on 20 May 2011 it adopted Decree No. 19 "On approving the "Strategic Programme of Gender Policy of the Republic of Armenia for 2011-2015", which entails gender mainstreaming of the Government's programmes and policies.<sup>11</sup> Activities included in the Gender Policy Strategic Programme are implemented in a number of directions: 1) Strategy for gender policy implementation in the management sector and at decision-making level; 2) social and economic area; 3) areas of healthcare; education; culture and public information; gender policy implementation based on sex in the area of prevention of violence and human trafficking.

In line with the mentioned Government Decree the standing commissions for the implementation of the Gender Policy Concept Paper and on gender equality were set up in all regions of the country. The commissions are governed by Deputy Regional Heads and are composed of employees of the Regional Governors' offices and of representatives of non-governmental organisations (NGOs).

In December 2012, the Armenian Government amended the Charter of the Women's Council affiliated to the Armenian Prime Minister and recommended that the Council be regarded as national mechanism for gender equality.<sup>12</sup> This Council, created by the Decree of the Prime Minister, is chaired by him and is comprised of deputy line ministers and deputy heads of agencies (Ministry of Justice, Ministry of Labour and Social Affairs, Police, Prosecution, etc.). According to the amendments of March 2015, the Council is a national mechanism that coordinates the process of ensuring equal possibilities for women and men in all spheres of public life. The main goal of the Council is to prevent violence against women; to implement programmes aimed at improving the prevention process, etc.

However, the Council is in a process of developing its work methods. Given the involvement of too many actors and its broad mandate, the Council is not fully functional yet and there is a risk that it could become ineffective.

In line with these developments, the concept of gender-based violence is hardly known to the public in Armenia. The adoption of the law on "Equal Rights and Equal Opportunities of Women and Men in Armenia" in May 2013 was followed by an aggressive campaign against the concept of "gender". The term "gender" was largely discussed and perceived in various contexts. There was a lack of specific measures for the implementation of the law. The Council of Europe Commissioner for Human Rights, in the report following his visit to Armenia, 5-9 October 2014, recalled the international obligations accepted by Armenia and welcomed the adoption of gender-related policies and the 2013 Law on Equal Rights and Equal Opportunities for Men and Women as steps in the right direction, which should be implemented in practice. The further important step is the ratification and signature of the Istanbul Convention.

---

<sup>10</sup> <http://www.parliament.am/parliament.php?id=constitution&lang=eng>

<sup>11</sup> At the time of writing, a new gender equality strategy had not been drafted.

<sup>12</sup> Alternative Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women in the Republic of Armenia in 2009-2012 // <http://www.un.am/up/file/CEDAW%20Alternative%20Report%202009-2012.pdf>.

Although domestic legislation, structures and some of the international instruments are in place in Armenia and the Government initiatives are praised, there is also criticism for its top-down and state-centred approach, which results in insufficient attention to the legal needs of women.

Eventually, it is important to establish gender-responsive structures with attention to the effectiveness and functional aspects of the mechanism rather than to its form alone.

### **III. Gender gaps in access to justice**

#### **A. National regulatory framework and policies**

##### *i. Anti-discrimination*

Based on the principle of equality enshrined in the Constitution of Armenia, women enjoy all the rights equally to men, enabling them to make an equal contribution to the economic, social and cultural spheres of the country. Meanwhile, there exists a perception that achieving actual equality is a task requiring considerable efforts both by state authorities and the civil society.

Although the Constitution and a number of legislative acts of Armenia, namely the Criminal Code, the Criminal Procedure Code, the Labour Code and the Family Code, stipulate legal norms prohibiting discrimination, they are often of episodic and a non-comprehensive nature. It is obvious that protection against discrimination is not simply a matter of listing the grounds of discrimination (gender, age, race, religion, belief, political or other views, etc.) and passing legislation, which declares that discrimination on those grounds is prohibited.

Despite the fact that discrimination is prohibited by Armenian legislation, at present, there is no comprehensive anti-discrimination law in Armenia to protect the rights of women, the elderly, persons with disabilities, ethnic, national and religious minorities, children and other people, and effective legal, comprehensive and clear mechanisms for preventing and combating discrimination are still lacking. Consequently, there are still cases of discrimination, and the Armenian Human Rights Defender<sup>13</sup> (Ombudsman) and various NGOs<sup>14</sup> receive complaints about this.

Challenges remain on defining discrimination and gender-based violence in the national legislation. The CEDAW in its concluding observations commends Armenia for adopting Article 14.1 that guarantees equality before the law.<sup>15</sup> The Committee also expresses its concern about:

- The lack of an explicit and comprehensive definition of discrimination against women and the lack of comprehensive legal provisions prohibiting discrimination against women (paragraph 12).
- The judiciary (law enforcement personnel in particular) is not sensitised to all forms of violence such as domestic violence (paragraph 23).

The Commissioner for Human Rights of the Council of Europe in his report observed that Armenia lacked a comprehensive anti-discrimination law (paragraph 103) and that the role of women was still associated with family support and child rearing (paragraph 105).

The working group on the Universal Periodic Review of the UN Human Rights Council held a review of Armenia in 2015. The report highlighted the lack of specific, comprehensive legislation to combat discrimination (paragraph 120).<sup>16</sup>

---

<sup>13</sup> [www.ombuds.am/reports](http://www.ombuds.am/reports)

<sup>14</sup> <http://www.stopvaw.org/armenia>

<sup>15</sup> CEDAW/C/ARM/CO/4/Rev.1 (2009)

<sup>16</sup> A/HRC/WG.6/21/L.8 (2015)

Some human rights organisations conclude that there is also a need for establishing a separate equality body, as an effective means for protecting rights of victims of discrimination<sup>17</sup> apart from elaboration of a comprehensive anti-discrimination legislation to provide for effective protection for underrepresented groups and minorities.

Based on recommendations of the UN Committee on Economic, Social and Cultural Rights,<sup>18</sup> the High Commissioner, as well as the National Action Plan on Human Rights adopted by Armenia in 2014 and other documents, a separate law on the fight against discrimination is currently being developed by the Ministry of Justice in consultation with NGOs. One of the main objectives of the Law is to ensure equality between women and men in all areas, provide legal protection against discrimination and support the formation of a civil society in this field. The law will be finalised in 2017 as an effective remedy for people who claim to be victims of discrimination.

## *ii. Domestic violence*

Violence against women is one of the pressing issues in Armenia. Yet, there is still a lack of consensus about the prevalence of domestic violence. Part of this can be attributed to the increasing, but still low level of reporting of incidents of violence in the family. While it may not seem publicly to be a prevalent problem in society, women experience many different forms of violence; psychological violence, physical violence, sexual violence and economic violence: 61.7% of the surveyed women reported that they had experienced “controlling” behaviour by their partner, 25% had been subjected to psychological violence, 8.9% had experienced physical violence by an intimate partner and 3.3% had experienced sexual violence by an intimate partner.<sup>19</sup> The survey by NGO Proactive Society shows that 59.6% of the surveyed women had been subjected to domestic violence.<sup>20</sup>

While domestic violence is seen as a private matter in Armenia and women, therefore, refrain from reporting these violations, in 2012, 2,026 cases of violence against women were registered, 625 of which were cases of domestic violence. During the same period, 190 cases of violence against minors were registered, 13 of which were cases of domestic violence. During 9 months in 2013, 1,449 cases of violence against women were registered, 432 of which were cases of domestic violence. During the same period, 199 cases of violence against minors were registered, 13 of which were cases of domestic violence.<sup>21</sup>

In 2013, 2054 cases of violence against women were recorded. Moreover, seven deaths as a result of domestic violence were reported in 2013, and the following year 12 cases were reported.<sup>22</sup> 17 cases of rape were reported in 2012 (only four in 2011); the conviction rate is unknown.<sup>23</sup>

Furthermore, the findings of the public opinion poll conducted by the Proactive Society NGO show that Armenian respondents believe that battery and infliction of bodily injuries are forms of domestic violence, while only 3.3% of the respondents perceive as such the strict control of financial resources of an adult family member, and 18.4% the strict control of the freedom of

---

<sup>17</sup> [http://www.un.am/up/file/UPR\\_Report\\_Armenia\\_Ombudsman\\_english.pdf](http://www.un.am/up/file/UPR_Report_Armenia_Ombudsman_english.pdf)

<sup>18</sup> 16 July 2014, UN Committee on Economic, Social and Cultural Rights, Concluding observations on the combined second and third periodic reports of Armenia

<sup>19</sup> Nationwide survey on domestic violence against women in Armenia. National statistical Service of the Republic of Armenia, UNFPA “Combating Gender-based violence in the South Caucasus” Project 2011, as quoted in CommDH(2015)2, paragraph 127

<sup>20</sup> Proactive Society NGO. “Domestic violence survey in the Republic of Armenia”, Yerevan 2011, as quoted in CommDH(2015)2, paragraph 128

<sup>21</sup> CEDAW: Consideration of reports submitted by states parties under Article 18 of the Convention, fifth and sixth periodic reports of states parties, March 2015: [www.uncedaw.org](http://www.uncedaw.org)

<sup>22</sup> CommDH(2015)2, paragraph 129

<sup>23</sup> OSAC. “Armenia Crime and Safety Report 2013”. Available at: <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=13747>

movement of an adult family member. In response to the question ‘In your opinion, what is the main reason for violence in Armenia?’, 54.9% cited social and economic hardships and unemployment, while 17% mentioned alcohol and drug abuse and 16.15% national mentality.<sup>24</sup>

It is worth mentioning that the Armenian Police focus on taking actions for preventing and combating cases of violence against women. In 2013, upon the Order of the Head of Police of Armenia, for the first time, a separate subdivision on “Department for the protection of rights of minors and combat against domestic violence” was established, which deals with issues of domestic violence. Each case involving domestic violence, as well as violence against women, is registered with the regional Police Division. It is then followed by data collection and a separate registration at the Information Centre of the Police of Armenia.

Although data on domestic violence is not available publicly from police statistics, there is information about conviction rates for some of the crimes that disproportionately affect women. The Armenian official statistical data for the period of 2010-2014, (particularly rape) and the quantitative data of persons convicted is presented below:

**Table 1. Number of recorded crimes, 2010-2014**

2010	2011	2012	2013	2014	
68	89	75	73	81	Premeditated homicide and homicide
167	170	170	186	216	Premeditated serious injury
15	15	19	19	22	Rape and attempted rape
107	106	63	73	69	Robbery
249	238	247	184	220	Larceny
1 524	1 525	1 139	1 222	1 046	Drug-related crimes
373	481	189	185	200	Hooliganism
883	953	960	1050	847	Road accidents
182	195	183	196	181	- of which were mortal

**Table 2. Convicted offenders disaggregated by sex, 2010-2014**

2010	2011	2012	2013	2014	Number of convictions
4 402	3 940	3 727	3 481	2 944	Total
4 174	3 722	3 516	3 242	2 783	of which were male
228	218	211	239	161	of which were female

<sup>24</sup> “Domestic violence survey in the Republic of Armenia”, Yerevan, 2011, <http://www.osce.org/yerevan/88229?download=true>

The data characterises the state of criminality, including the most dangerous and most frequently committed crimes compiled by the Police and by the Armenian Government. There is information on persons who committed crimes, their sex, age and social status description. The information of the Ministry of Justice of Armenia presents data on the number of convicted in general. However, there is no officially reported disaggregated data on number of cases brought by women.

Due to institutional, legal and structural barriers, criminal cases may be instigated and, as a result, criminal proceedings and prosecution are possible only if a victim has submitted a complaint (Article 183 of the Criminal Procedure Code). However, due to pressure from family and society, women often withdraw their complaint. For a woman it is considered “shameful” to speak out on the violence against her since it “would endanger family unity and stability”.<sup>25</sup> It is not uncommon that the police discourage women from filing a complaint.<sup>26</sup> Moreover, victims of sexual violence have, for example, been denied medical care. In this regard, the Chief of Police also acknowledges the need to change the police mentality. As a consequence there *is a low level of reporting*. Due to women’s socio-economic position and the authorities’ denial of domestic violence, women are sometimes forced to stay with an abusive or controlling partner.

For the domestic violence cases in Armenia which are not being effectively identified, investigated, prosecuted and punished,<sup>27</sup> the Council of Europe Commissioner for Human Rights urges the authorities to remedy these shortcomings by ratifying the Istanbul Convention. According to the Istanbul Convention, violence against women<sup>28</sup> “is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life” (Article 3, paragraph a).

The Istanbul Convention provides that domestic violence “shall mean all acts of physical, sexual, psychological or economic violence that occur 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” (Article 3, paragraph b).

The CEDAW Committee recommends that the state party responds adequately to the problem by: (a) Adopting legislation without delay to explicitly prohibit domestic violence, defining it as a specific offence; (b) Providing additional shelters for victims of domestic violence; (c) Conducting awareness-raising activities on domestic violence for law enforcement officials such as police officers, prosecutors and judges, as well as for social workers, teachers and the general public.

Armenia has been working on a domestic violence law for several years. In 2012-2013 the Ministry of Labour and Social Affairs of Armenia implemented the Programme on “Improving the quality of service rendered to women became victims of domestic violence in Armenia”. Research has been conducted making it possible to establish the types, distribution, quality, efficiency and accessibility of services rendered to women became victims of domestic violence. The research resulted in the singling out of a number of institutional, psychological and financial issues based on which a law on domestic violence was drafted. The draft law was submitted to the government by a task force of government and non-governmental representatives. It was

---

<sup>25</sup> CommDH(2015)2, paragraph 124

<sup>26</sup> UN OHCHR, paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21

<sup>27</sup> Report of the Commissioner for Human Rights of the Council of Europe, following his visit to Armenia, 5-9 October 2014:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2790589&SecMode=1&DocId=2243332&Usage=2>

<sup>28</sup> The Preamble of the Convention on violence against women recognises that “violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women”.

returned by the government for further co-ordination and revision in line with the penal code, which is due to be reformed overall in 2016.

Currently, the Armenian Ministry of Justice is drafting a new law on domestic violence, which is to be finalised and approved by the end of 2016 as per the commitment of the EU-Armenia Budget support programme. However, it should be noted that there is a gap between the timing of the adoption of the law on domestic violence and the ratification of the Istanbul Convention, which is still uncertain. The logic of the draft law on domestic violence would have to be in line with the Istanbul Convention, otherwise there is a risk of redrafting the law in order to harmonise it with the Istanbul Convention, once it is ratified.

### *iii. Access to legal aid*

Access to legal aid is not an isolated legal policy, but a function of the overall legal, social and cultural paradigms present in Armenia. It is largely dependent on state interventions. In 1993, Armenia acceded to *International Covenant on Civil and Political Rights* (ICCPR) without making any declarations or reservations with regard to the ICCPR and recognised the competence of the Human Rights Committee (Article 41). By this first step, the country was internationally committed to the development of legal aid as one of the important concepts for access to justice. According to the Armenian Constitution and the Criminal Procedure Code, everyone has the right to receive legal aid. Suspects and accused persons have the right to retain lawyers of their own choosing. The body conducting criminal proceedings is responsible for ensuring that the suspect or the accused receives legal aid, and to provide it free of charge if the financial situation of the persons concerned necessitates this. For this purpose, the Public Defender's Office was established in 2006 as a part of the Chamber of Advocates to 'provide legal aid to socially vulnerable categories'.

While the creation of this system is undoubtedly a positive and necessary step, the imperfection of national regulatory framework, among other concerns,<sup>29</sup> hampers effective protection of women's rights. Particularly, there are gaps and shortcomings in the existing Armenian law on advocacy, which does not possess an article on the provision of free legal aid to victims of domestic violence.

Article 57 of the Istanbul Convention provides that "Parties shall provide for the right to legal assistance and to free legal aid for victims under the conditions provided by their internal law"<sup>30</sup>. Furthermore the **Explanatory Report to the Convention**,<sup>31</sup> **Recommendation (2002) 5 on Protection of Women against Violence of the Committee of Ministers**<sup>32</sup> as well as the

---

<sup>29</sup> The heavy workload, insufficient number of public defenders and low salaries are considered to be major issues, which are not conducive to the delivery of quality legal aid, in particular in regions.

<sup>30</sup> Parties have made no reservations or declarations to Article 57 of the Convention.

<http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>

<sup>31</sup> Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence.

294. In the immediate aftermath of violence many victims of violence against women and domestic violence may be forced to leave all their belongings or jobs behind on a moment's notice. Judicial and administrative procedures are often highly complex and victims need the assistance of legal counsel to be able to assert their rights satisfactorily. In these cases, it might be difficult for victims to effectively access legal remedies because of the high costs which can be involved in seeking justice. For this reason the drafters believed it essential to place an obligation on Parties to provide for the right to legal assistance and to free legal aid for victims under the conditions provided by their internal law. This provision is inspired by Article 15, paragraph 2, of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No.197).

295. Article 57 does not give the victim an automatic right to free legal aid. It is for each Party to decide the requirements for obtaining such aid.

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a>

<sup>32</sup> Committee of Ministers Recommendation (2002) 5 on Protection of Women against Violence

23. "Member states should ensure that victims, without any discrimination, receive immediate and comprehensive assistance provided by a co-ordinated, multidisciplinary and professional effort, whether or not they lodge a complaint, including medical and forensic medical examination and treatment, together with post-traumatic psychological and social support as well as legal assistance; this should be provided on a confidential basis, free of charge and be available around the clock; <https://wcd.coe.int/ViewDoc.jsp?id=280915>

**Recommendation of the Parliamentary Assembly of the Council of Europe 1582 (2002) on Domestic Violence against Women**<sup>33</sup> encourage the country to provide free legal assistance to victims of domestic violence.

While Armenia has not yet ratified the Istanbul Convention, the National Human Rights Action Plan foresees further assessment regarding the possibility to ratify it.

The lack of legal guarantees and the existence of gender-blind legal provisions hinder women's access to justice in the country. Therefore improvement is needed in the national regulatory framework in line with provisions of (i) training of public defenders, (ii) paralegal assistance, and (iii) rights awareness, as prerequisites for access to justice.

## **B. Socio-economic and cultural barriers affecting women's access to justice**

The international community has extensively emphasised the importance of ensuring socio-economic and cultural equality among women and men. The CEDAW Convention has a number of provisions that are specifically dedicated to social, economic and cultural aspects (Article 13 is regulating the issue of economic and social benefits for women). These rules are reflected and further developed by the Committee<sup>34</sup> aiming to ensure effective implementation of the Convention in the states.

Women represent over half of the Armenian population<sup>35</sup> and it is essential that they face no impediments and discrimination in the course of their contribution to the economic, social, cultural and public life of the country.

Equal rights of women and men to operate in all the sectors of the Armenian economy are enshrined in the legislation of Armenia. However, socio-economic challenges, such as: low income of women, vast unemployment amongst women, limited entrepreneurial activities by women, inadequate participation of women in the process of social and economic development both in rural areas and urban communities, etc. hinder empowerment process for women in the country.

An International Labour Organization (ILO) survey on young women and men in the Armenian labour force shows that already at a very young age women's choices are confined to certain sectors such as education, whereas young men enjoy a wider array of options in terms of possible jobs, including manual labour. This results in unemployment rates for young girls of 36.6%, 12 percentage points above the rate for males. Young women are therefore not only much less likely than young men to get employed, they are also much more prone to disappearing from the labour force, either out of discouragement or because they have to tend to family responsibilities. In addition, the survey demonstrates a marked gender pay gap: on average female employees are paid one third less than the amount earned by male employees, despite the higher levels of education attained by girls, which should normally result in better opportunities and higher salaries.<sup>36</sup>

---

<sup>33</sup> Parliamentary Assembly Recommendation 1582 (2002) on Domestic Violence against Women

7. [...]Therefore the Assembly calls on the member states of the Council of Europe: Measures to be taken regarding victims of domestic violence to provide victims of domestic violence with free legal advice and assistance before taking legal action; <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17055&lang=en>

<sup>34</sup> <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>.

<sup>35</sup> According to the data provided by the National Statistical Service of Armenia, 1,573,582 women and 1,443,497 men form the resident population of the country as of 1 January 2014.

<sup>36</sup> "Strengthening Women's political participation in the Republic of Armenia: Existing Efforts, Challenges and Opportunities", Centre for Gender and Leadership Studies – Yerevan State University – 2015.

The horizontal and vertical segregation that women face in Armenia deprive them of managerial positions and prevent them from developing their careers. They are predominantly active in service such as retail trade, education, health care and social services. Women workforce in Armenia is mainly in education with 80.9%, in health and social services at 83.4%, in households at 71%, and in hotels and restaurants with 64.9% of the sector's total employment. Women's unemployment reaches 18%, compared to 14% for men, and the gender pay gap is 34.4%.<sup>37</sup>

When other opportunities fail, women resort to migration,<sup>38</sup> which can have different forms. In Armenia the number of households headed by females may be a consequence of the large number of women who emigrate. Surveys conducted by the Armenian Department of Migration and Refugees and the National Statistics Service have illustrated that about one-third of those who leave the country are labour migrants. The migration is driven by social-economic causes, the lack of any prospects to find professional employment, the low level of income, and scepticism about the future. About two-thirds of them are women. Furthermore, women constitute 53% of those who leave for permanent residence.

Women's economic empowerment is of paramount importance for achieving gender equality and access to justice for making progress on the sustainable development goals. Armenia has one of the highest levels (among Eastern Partnership countries) of women participating in the labour force. However, over the recent years, most of the credit programmes targeted at the provision of economic assistance to women in Armenia have not had sufficiently concessional terms, and, therefore, do not facilitate the economic advancement of women. In some of the schemes, the lending interest rates are so high that women cannot develop their business and, in the best case, hardly cover the subsistence of the family. Therefore, the Armenian Government needs to integrate gender equality in sectoral strategies and action plans by making women's economic empowerment as a priority in gender equality policy-making processes.

The Council of Europe Commissioner for Human Rights recommends 'integrating a gender component into budgeting and planning processes', as well as recognising and implementing the right to equal pay for work of equal value; taking measures to encourage employment of men and women with family responsibilities and supporting employment of women and their involvement in business activities.

Funding of women's access to justice programmes must be driven by a holistic approach to access to justice that addresses physical, psychological and wide socio-economic consequences of violations. This implies combating gender stereotypes to facilitate access to justice in the country.

### **C. Combating gender stereotypes**

All people, regardless of their gender, social position, education or ethnicity should have equal access to justice. It is important to note that this principle of equality enshrined in both domestic and international legal texts, should be implemented by having sound awareness-raising measures. Particularly, issues on gender equality and the role of women should be a priority policy for Armenia as a real guarantee to ensure women's effective access to justice.

---

<sup>37</sup> ILOSTAT database (data of 2013)

<sup>38</sup> "Women in Power and Decision-making in the eastern partnership countries" report, 2015

In this context, mass media has a crucial role to play in shaping the awareness of the public, women in particular. The Beijing Conference,<sup>39</sup> as well as the Council of Europe Gender Equality Commission, has recommended some actions to the member states on promoting a positive image of women in the media. However, the women's issues covered by the mass media, have no sufficient reporting on the prevailing problems, the real difficulties faced by women, and the obstacles to women's fully-fledged participation in social life. Moreover, the contribution of women to social, political, and cultural life is not properly covered. The negative impact of gender stereotyped TV content, film, soap operas, and various shows, are full of images offending the dignity of women, often condone violence as a way of addressing conflicts within the family and society, and are conducive to the devaluation of women.

In various commercials, women are often presented as either commodities or supplements to commodities; despite that, arts and the mass media ought to shape positive ideals of women and men and overcome negative stereotypes. TV stations, in particular, have much to do in this respect; they should not neglect these concerns and emphasise the peculiarities of and differences between women and men. NGOs have also reflected on family abuse and gender issue in TV programmes in their various reports and studies.<sup>40</sup>

The analysis of media demonstrates that most journalists, including those who promote the image of successful women, do not have sufficient knowledge to be active actors in advocacy of the state gender policies and of the gender equality ideology. Serious flaws still exist in training and professional development of journalists in Armenia. Gender education for journalists is provided only in several universities either as elective courses or in master degree's studies. The journalists' lack of solid knowledge and firm convictions was revealed most clearly during the campaign that was launched on social networks in September 2013 against the Armenian law on the provision of equal rights and equal opportunities for women and men adopted in May 2013. Deliberately distorting the state policy aimed at attaining gender equality in the society and presenting the gender ideology as "the policies aimed against the traditional national values and at destroying the Armenian family", a group of individuals demanded that the law be abolished. The methods used within the framework of the anti-gender campaign that targeted the law are essentially gross violations of the Armenian law on the provision of equal rights and equal opportunities for women and men that explicitly prohibits dissemination of information that discredits the idea of gender equality. In the course of the counter-propaganda the campaigners, however, deny the existence of gender stereotypes, discrimination and violence against women and attack women's rights.

Even though the reproduction of gender stereotypes via media, culture and education is, according to the law, a manifestation of indirect discrimination, the legislation does not provide real levers to combat the propaganda of discriminatory practices in print media and, especially, in social networks. The campaign that sought to affect the public opinion in favour of traditional patriarchal views of the role and place of women was carried on during the parliamentary, presidential and local elections that were held in the country. Over that period numerous manifestations of sexism towards women were registered. However, they did not trigger a proper reaction from the public at large, relevant law-enforcement entities, political parties or NGOs.<sup>41</sup>

---

<sup>39</sup> [http://www.un.am/up/file/Status%20of%20Women\\_NAP\\_2004-2010\\_eng.pdf](http://www.un.am/up/file/Status%20of%20Women_NAP_2004-2010_eng.pdf)

<sup>40</sup> "Masculinity and gender violence in Armenian TV programmes",.: <http://www.ysu.am/files/Reserch%20paper%2003.09.2014..pdf>

<sup>41</sup> See, for example, the Alternative Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women in the Republic of Armenia in 2009-2012, Yerevan 2014.

Despite the fact, that the law emphasises the necessity to develop and promote the culture of gender equality, to disseminate via media the materials advocating the idea of gender equality and protecting the society from the propaganda against gender equality, it turns out that the media community on the whole was not prepared to put forward counter arguments based on the gender policy of the state and explain the goals and objectives of that policy. The misinterpretation of the notion of “gender” in the society created associations with homosexuality and other forms of transgender reflections. Therefore, it was proposed to avoid using the notion of “gender” in official documentation and other forms of official communication.<sup>42</sup>

While the National Gender Policy indicates several strategic steps to ensure better protection against any unlawful activities, it still faces a number of challenges, such as: (i) insufficient and ineffective participation of the mass media in raising awareness on women’s issues; (ii) ineffective operation of the mass media and cultural institutions towards shaping appropriate role models of women and men; and (iii) unhindered dissemination of information insulting the dignity of women.

Regardless that institutionalisation of gender education is designated as a priority of the country’s gender policies; the process is still challenging and unfolding slowly. The process of raising gender awareness among the public at large is absent and has yet to be systematised. Imparting gender knowledge and shaping civic responsibility of school and university students have not yet become mandatory in the education system.

It is, therefore, highly recommended to also ensure that the education system - for both girls and boys - is free from the stereotypes of gender roles and promotes gender sensitive behaviours, such as: (i) developing the programmes for boys and men to increase their knowledge about women’s human rights and gender equality; (ii) developing the programmes for girls and women to increase their self-esteem; (iii) monitoring of the impact of customs and traditions on the women’s situation in all spheres of life; and (iv) eliminating traditional harmful practices and gender stereotypes.

While the reproduction of stereotypes is an indirect form of discrimination, the national legislation does not provide levers to combat the propaganda of discriminatory practices in either print media or TV broadcasting. One of the cases covered by media is the *Nalbandyan v. Armenia* judgment of the European Court of Human Rights against Armenia.<sup>43</sup> This multi-layer case illustrates that it is not only important to improve national regulatory framework, but also strengthen self-regulatory mechanisms and codes of conduct to condemn and combat the practices by setting clear standards and provide progress monitoring. Meanwhile, internal codes of ethics and conduct need to be in place. The media, and other relevant actors, need to follow careful reporting and appropriate programming and everyday practice in their work.

Eventually, the lack of legal guarantees and the existence of unequal or gender-blind legal provisions hinder women’s access to justice. Furthermore, women’s ability to access justice mechanisms, such as courts, legal aid and policy programmes, are limited due to economic (lack of money), social and psychological (stigma, restrictions on mobility, time constraints) and educational (limited education, limited access to information and social networks) factors, among others.

---

<sup>42</sup> See, for example, <http://www.equalpowerlastingpeace.org/2013/09/11/armenian-government-removes-gender-from-law/>.

<sup>43</sup> The case concerned Mrs Narine Nalbandyan and Mr Bagrat Nalbandyan, as well as their daughter Ms Arevik Nalbandyan. These persons were tortured and ill-treated severely by police authorities. According to these persons, the purpose of their torturing was to force them to accept charges on murdering Ms Arevik Nalbandyan’s classmate. This case was broadcasted by the Police TV programme and a special article was published in the Police newspaper, called “02”, while it was in the stage of investigation in breach of the principle of presumption of innocence. Because of these publications the Nalbandyan family and their minor children experienced problems both in Vardenis town and in the secondary school. Particularly, according to Ms Narine Nalbandyan and her children, they had to change their place of residence and the secondary school because of these publications. The judgment became final on 30 June 2015 and the country had to pay to the applicants 72,100 Euros.

#### IV. Gender responsiveness of the justice system

The socio-economic factors are closely linked to institutional ones. Poor access to information regarding their rights make women easy victims and unable to stand up for their rights.

Despite various efforts to strengthen women's position and the recent progress Armenia makes to ensure gender equality, the country remains a male-dominated one. According to the Global Gender Gap report of 2014, Armenia has dropped to 103rd place out of 142 (as compared to 84th place out of 135 in 2011).<sup>44</sup> Although women and men have the same formal rights and legal status, women remain marginalised and underrepresented in society, economy and politics.

The share of women in *politics and political institutions* remains low in Armenia. Women make up only 10.69% of the representatives in Parliament,<sup>45</sup> significantly below the global target of 30% threshold also set out in the Strategic Action Plan on Gender Policy.<sup>46</sup> For the 2012 elections, the national legislation required that 20% of candidates on political party lists were women. This was an increase from the 2007 obligation, which required that 15% of candidates be women. Despite this required 5% increase in the number of women candidates, the actual percentage of women candidates increased by less than 1%, rising from 22.6% in 2007 to 22.9% in 2012. The level of women's representation in the executive branch is also low. According to 2015 data, three out of 18 ministers are women, and women account for seven of 60 deputy ministers. At the state and local level, there are no women governors (out of 10 provinces) and only one deputy governor. Out of 21 city mayors, none are women, and of the 51 deputy mayors, only one is a woman.<sup>47</sup>

Gender gaps and inequalities continue to persist especially in the regions. Women comprise about 52% of the population and around 58% of those with higher education; however, as of today the level of women's representation and meaningful participation in governance and decision-making is low: 11% of the MPs (14 out of 131), 11% of the ministers (2 out of 18), less than 10% of deputy ministers (5 out of 65), no women among the 10 governors. Gender imbalance is even more obvious at local level, in city mayors' offices and the Local Self Governance (LSG) bodies: there is no woman among 48 city mayors and, on average, females constitute about 0.5% of the city council members; in their turn, only 2.5% of the village community heads and 7.4% of rural council members are women.<sup>48</sup>

The types of ministries attributed to women assign them to socio-cultural roles that they traditionally play in society. The political culture is generally perceived in a negative way and the political arena is commonly seen as the reserve of a limited number of people – be they women or men – who must accept practices that women may not want to partake in. As a consequence, women often prefer civil activism to politics. As per the research,<sup>49</sup> which included surveys conducted by the *Yerevan State University Centre for Gender and Leadership Studies* about women and politics reflects the obstacles facing women who want to access political positions and exercise political power, it is concluded that patriarchal, social and cultural system of values are at the core of the issue. Men are sceptical about women's ability to run for office or to effectively take decisions and govern predominantly male staff.

---

<sup>44</sup> *Global Gender Gap Report*. World Economic Forum, 2014

<sup>45</sup> "Armenia", at <http://www.ipu.org/parline-e/reports/2013>

<sup>46</sup> "Women's Political Participation in the 2012 Parliamentary Elections in the Republic of Armenia"

<sup>47</sup> "2013 Civil Society Monitoring Country Report," Preliminary Draft

<sup>48</sup> "Armenia", at [http://www.ipu.org/parline-e/reports/2013\\_A.htm](http://www.ipu.org/parline-e/reports/2013_A.htm).

<sup>49</sup> Strengthening Women's political participation in the Republic of Armenia: Existing Efforts, Challenges and Opportunities, Centre for Gender and Leadership Studies. USAID report, Yerevan State University. 2015

Analyses show<sup>50</sup> that in line with patriarchal/traditional family values hampering adequate representation in political life, the next highest concerns are: a) insufficient social demand for better women's activity in politics from the wider public; b) scarce financial security and independence of women; c) lack of interest to participate in public decision-making from the majority of Armenian women themselves.

The traditional family values have largely excluded women from the rule of law agenda at both the conceptual and practical levels. Therefore, there is a need to consolidate the efforts of government, NGOs and the international community in strengthening women's political participation in Armenia and develop gender sensitive educational programmes in schools and special training in government and municipal structures.

### *Gender balance in the judiciary*

Equal representation of both sexes on the bench – as well as in administrative functions – can have an impact on the gender-responsiveness of courts. Women judges bring forward women's experiences and also spearhead initiatives on gender in the judiciary.

The *judiciary's* decisions influence the public and legal discourses, thus impacting on society at all levels. Therefore, it is crucial that women are equally represented there. In Armenia they only represent 19%. In 2003, women judges who were selected through exams, interviews and presidential approval were at 24%.<sup>51</sup> However, the court tribunals and chambers are headed by men.

Pursuant to data of 2012, by the average annual calculation, 47 out of 214 judges were women. As of 27 November 2013, 45 out of 213 judges were women, 14 of which were holding offices in the Courts of General Jurisdiction in *marzes*. Three out of 13 members of the Council of Justice of Armenia are women.

Another institutional barrier to justice for women, linked to the judicial system as a 'male' sphere, is that the personnel may not be properly trained to deal with gender sensitive situations, not to mention that the victims are often in the position of further jeopardising their lives by testifying in court about the abuse against them. This means that in the court, the prosecutors, judges or the police officers may not treat the victims with due consideration of the trauma women experience.

In Armenia, some judges and law enforcement personnel are trained by international organisations on gender equality issues occasionally. Yet there is no synchronised and cumulative data on women's access to justice to ensure the reliability of data, facilitate analysis by decisions makers in all branches of government (the executive, legislature and courts), ensure transparency and encourage academia and civil society to participate more actively in the development of a better justice system, more effective and adapted to the changing needs of Armenian society.

However, according to the Strategic Programme of Legal and Judicial reforms in Armenia in 2012-2016, a training process is mandatory for consistent improvement of specialised knowledge in the specific sphere for judges and law enforcement personnel, regulated by the Law on the Justice Academy.

---

<sup>50</sup> Strengthening Women's political participation in the Republic of Armenia: Existing Efforts, Challenges and Opportunities, Centre for Gender and Leadership Studies. USAID report, Yerevan State University. 2015

<sup>51</sup> "Women in power and decision-making in the Eastern Partnership countries":

<http://capacity4dev.ec.europa.eu/higstep/document/women-power-and-decision-making-eastern-partnership-study-report>

## V. Remedies, good practices and recommendations

### A. National good practices to promote equal access of women to justice

At the national level, positive developments can be mentioned in relation to the education system. A module on gender equality is expected to be introduced in the educational system.<sup>52</sup>

In this context, the government decision on approving the new Concept Paper of Armenia on Legal Education (adopted in August 2015) is a very important development. This concept is intended to improve the legal education system and to reform the legal profession development process. This strategy is particularly important as it introduces a multi-level system of expected reforms: (i) in pre-school organisations; (ii) in secondary and high schools; (iii) in the system of higher legal education. There is also a specific chapter dedicated to the work with mass media. Thus, this document has vital importance for fostering and disseminating legal knowledge among the members of Armenian society. According to the concept, the Government has designated the Ministry of Justice and the Ministry of Education and Science to develop a specific action plan deriving from the concept. However, this document does not contain specific provisions relating to legal education and legal knowledge of women. It does not have provisions related to women's education and their future employment. Therefore, it would be important to reflect activities related to women's status and their rights in the above mentioned specific action plan. These provisions and their real implementation could serve as important safeguards for ensuring women's effective access to justice.

In 2014, the Armenian Council of Court Chairpersons has drafted and approved new action plan for the period of 2015-2017 aimed at promoting gender equality and gender balance within the judiciary of Armenia. Public events stemming from this action plan, namely seminars, were organised for students of the Department of Law, Yerevan State University, where female Judges shared their successful experience and encouraged female students to trust in their abilities and to strive for a successful career and to become a judge.

Within the scope of the Gender Policy Strategic Action Plan for 2011-2015 in Armenia, steps were taken towards laying the educational and methodological groundwork for teaching the basic knowledge of gender, as well as introducing criteria for gender expertise of academic literature. Thematic topics on gender issues were included in the module of training courses for teachers engaged in teaching at elementary schools. Topics on gender issues were included in the fourth grade textbook "Me and the Environment". A teacher's manual "Teaching Tolerance" was elaborated, in which topics on gender issues were also introduced. Thematic units on fundamental rights, gender equality, tolerance and civil society were incorporated in the syllabus of Social Studies.

As mentioned previously, the Armenian Police has set up a separate subdivision, the "Department for the protection of rights of minors and fight against domestic violence", which deals with issues of domestic violence. This Department is the first of its kind among the member states of the Commonwealth of Independent States (CIS). The Department studies, analyses and registers cases of violence against children and women as well as domestic violence, and supports victims of violence.

There are other structures in Armenia, mainly NGOs that support the survivors of domestic violence, protect them and support their reintegration into society. Amnesty International reports that a few domestic violence hotlines, centres and shelters opened in the last few years, only to be closed down several months later because of lack of funding. However, some NGOs record good practices in the country.<sup>53</sup> The Women's Support Centre (WSC) for example, provides a safe environment for victims of domestic violence, where they can get legal, social and medical

---

<sup>52</sup> CommDH(2015)2, paragraph 107.

<sup>53</sup> Bern Conference, Compilation of good practices to reduce existing obstacles and facilitate women's access to justice Good Practices (Armenia)

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680597b12>

assistance if needed. The “Society without violence” NGO provides legal consultancy, trainings and other activities in support of victims of domestic violence and tackling issues of domestic violence in the country. The latter handled a number of cases of domestic violence by providing advocates to the victims, psychological support to the victim’s family, as well as raising awareness on these cases, etc. Furthermore, while the authorities have failed to provide support to women victims of violence, the Women’s Support Group meetings have empowered at least some of the victims.<sup>54</sup>

While NGOs work in providing support and assistance to the victims of domestic violence is welcome in raising public awareness about women’s rights and advocating for systemic changes, it is the state’s obligations to provide protection against domestic violence. In this regard, the Council of Europe Commissioner for Human Rights urges the Armenian authorities to provide support to shelters for victims of domestic violence and in implementing the measures foreseen in the Action Plan to Combat Gender-Based Violence.

## **B. Existing remedies to facilitate women’s access to justice**

There are a number of remedies to facilitate women’s access to justice in Armenia.

Training of legal professionals is an important measure for improving women’s access to justice. The Academy of Justice, established within the [framework of 2012-2016 strategic programme of legal and judicial reforms approved by the Armenian President](#),<sup>55</sup> provides initial training and continuous training of the staff of judicial and prosecutorial systems to the Academy. A separate [law regulating the activities of the Academy of Justice](#)<sup>56</sup> was ratified taking effect on 1 January, 2014.

Another training institution is the School of Advocates which provides a professional education and a qualification examination of the attendees of the School, as well as organises professional trainings for advocates, etc.

However, both the Armenian Justice Academy and the School of Advocates currently lack gender equality programmes in their training curricula. Although the Academy of Justice has integrated some topics related to women’s rights, e.g. the training course for prosecutors on criminalistics with a special emphasis on examination of vulnerable victims and witnesses, there are neither specialised courses nor comprehensive guidelines for judges, prosecutors and investigators on women’s access to justice and gender equality in general.

Therefore, it is recommended that authorities pay special attention to gender mainstreaming in mandatory courses for judges and law enforcement professionals, in line with the national gender equality strategy. Furthermore, the upcoming legislative amendments in the area of domestic violence, anti-discrimination and expected ratification of the Istanbul Convention provide sound grounds to amend the Academy’s curricula. It is also important to secure gender balance among the judges.

As an extrajudicial institution, the adoption of the Law of the “Human Rights Defender” in 2003 *de facto* confirmed the establishment of the national institution for human rights in the country. The Human Rights Defender is an autonomous and independent official, who according to the Armenian Constitution and laws, carries out the protection of human rights and fundamental freedoms violated by state authorities, local self-government bodies and their officials. The Armenian Human Rights Defender was awarded status A in 2006, which means that its status complies with the Paris Principles.

---

<sup>54</sup> Council of Europe. *Compilation of Good Practices. Legal Aid for Women. Armenia* 2015.

<sup>55</sup> <http://www.arlis.am/documentview.aspx?docID=87218>

<sup>56</sup> <http://www.arlis.am/documentview.aspx?docid=83564>

In 2008, the Office of the Human Rights Defender (HRDO) was designated as a National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

As an NPM, HRDO carries out monitoring activities of criminal execution entities including those for women and children, i.e. “Abovian” criminal execution entity. Furthermore, the HRDO may also monitor open court processes to register human rights infringements during court hearings. Making use of these crucial capacities, HRDO took up new initiative to be involved in prevention and protection of domestic violence in the country. This will enable the HRDO to possess reliable data and provide analyses with recommendations for further improvements of the justice system in the country.

In this respect, however, it is important to strengthen the capacity of HRDO by implementing its capacities effectively and efficiently to provide policy recommendations at the national level.

The Police Department takes several measures to better address the problem of violence against women, including domestic violence. Collecting statistics on violence against women, including complaints filed and court referrals are important steps. They also instituted training for police on responding to domestic violence cases and have undertaken significant public education efforts including offering programmes in schools throughout the country. The new unit established within the police deals specifically with violence against women and children. As a result, there has been an increase in reporting and court referrals, but it should be noted that more public education is needed. In addition, there are ongoing efforts to increase the number of women in the police force particularly by attracting larger numbers of women to the Police Academy.

As noted by the Commissioner for Human Rights of the Council of Europe, men should play a greater role when combating violence and discrimination against women. Men against Violence against Women (MAVAW) Network, initiated by the NGO WRS, is a positive step in this direction. Although the civil society’s contribution is cherished, it is ultimately the state’s obligation to fulfil its commitments to human rights and gender equality. As the UN Working Group on the issue of Discrimination against Women in Law and in Practice conclude: “[N]o effective implementation of equality guarantees for women can be sustained without the genuine empowerment of women in all fields”.<sup>57</sup>

Furthermore, the Council of Court Chairpersons of Armenia has drafted and approved its main activities for the period of 2015-2017 aimed at promoting gender equality and gender balance within the judiciary of Armenia. Development of an action plan for gender equality in the judiciary was commenced.

In June 2015, key legislative amendments to the Criminal Code were passed by the parliament (these amendments are already in force). One of the basic goals of these amendments was to ensure better protection of women against violence, as well as to combat violence against women more effectively and efficiently. Particularly, according to the Criminal Code prior to 2015, severe physical or mental suffering, including against women was considered a private prosecution case under Article 119 of the Code. This meant that criminal prosecution could be initiated only in cases when victims submit relevant claims to law-enforcement bodies. Moreover, if the victim of this type of violence expressed a wish to enter into a friendly settlement with the alleged perpetrator, then the criminal case would be dismissed. In other words, criminal prosecution in such cases was totally dependent on victim’s complaint. According to the new amendments to the Criminal Code of Armenia, similar cases shall not solely depend on a victim’s complaint or will; now they are considered as public prosecution cases. The prosecutors should conduct the prosecution regardless of whether or not the victim

---

<sup>57</sup> A/HRC/20/28 (2012), paragraph 14

wants this prosecution to be started. Consequently, these new amendments are to secure access to justice including violence against women in the country.<sup>58</sup>

Another important advancement is the acknowledgment of the fact that the quality of democracy depends on women's civic and political participation. This is stipulated in the Law of Armenia "On Public Service" that was adopted in 2012.<sup>59</sup> Armenia has sought to remedy the under-representation of women in politics and in the labour market with gender quotas and a national plan for gender equality in the labour market.<sup>60</sup>

Another important initiative is the Budget Support Programme carried out jointly with the EU Delegation in Armenia. The aim of the project is to support the implementation of the Presidential Decree on Legal and Judicial Reforms in the Republic of Armenia for 2012-2016. One of the sub-conditions of the report is dedicated to promoting the participation of women in the judicial system. Particularly, it requires an action plan/list of measures to promote gender balance among candidate judges be approved by the designated judicial self-governance body, such as the Armenian Council of Justice and the Armenian Supreme Judicial Council as per the new Constitution.

Based on this condition, the Armenian Council of Court Chairpersons has drafted and approved the following main activities for the period of 2015-2017 aimed at promoting gender equality and gender balance within the judiciary of Armenia:

- monitoring with the aim of revealing the current approaches and opinions concerning the gender equality in the judicial system among various social groups;
- establishment of a working group with the aim of summarising the results of monitoring, as well as analysis of the international experience and development of training materials and thematic training programmes, stemming from the monitoring;
- organisation of a summer school, the curriculum of which will also include the coverage of the two previous events;
- initiating collaboration with the Academy of Justice, Chamber of Advocates of Armenia/School of Advocates, Higher Education Institutions, NGOs and international organisations with the aim of achieving the goals of the Action Plan;
- meetings with high school students (class visits, discussion, role-play, etc.);
- workshops (discussion, roundtable, training, etc.) with the involvement of the state and non-state bodies and organisations;
- regular publication of the comprehensive information on the activities implemented.

It can be concluded that, with the support of national and international organisations, an institutional framework to foster access to justice for women has emerged in Armenia. However, there needs to be a comprehensive approach to justice and the rule of law in the country. It should encompass the entire justice chain, including police, lawyers, prosecutors, judges and prison officers, without making any reservations to the socio-economic, political and cultural barriers in the system.

---

<sup>58</sup> These amendments were passed mostly based on the case law of the ECHR that aims to protect women against violence and to prevent domestic violence. Particularly, the landmark case *Opuz v. Turkey* was taken as a basic ground for this amendment. The latter is a domestic violence case against a woman and concerned the failure of the Turkish judicial system to provide adequate response to serious domestic violence. See the landmark case: *Opuz v. Turkey*, Application No. 33401/02, 9 June 2009.

<sup>59</sup> A/HRC/WG.6/21/L.8 (2015), paragraph 12

<sup>60</sup> ECE/AC.28/2014/4

### **C. Recommendations to address the obstacles that prevent equal access to justice for women**

- i. It is recommended to sign and ratify the Istanbul Convention earlier than it is envisaged by the EU-Armenia Budget Support Programme, i.e. end-2017, because the draft Law on Domestic Violence is to be adopted by the end of 2016 and thus needs to be aligned with the Istanbul Convention.
- ii. It is recommended to: (a) urgently make the draft law on domestic violence publicly available for discussion with and consideration by the public at large before the law is adopted; (b) when drafting the Law on Domestic Violence, it should be aligned with the Istanbul Convention.
- iii. The draft law on anti-discrimination should follow recommendations provided by international organisations as state commitments.
- iv. In light of the upcoming changes in the national regulatory framework in the area of anti-discrimination, domestic violence, as well as feasible ratification of the Istanbul Convention:
  - It is recommended that judges, police officers, prosecutors are trained on gender equality, including the concept of 'gender'. This will contribute to the elimination of negative approaches to the notion of gender. Justice and law enforcement officers need to be trained on how to handle cases involving women or women victims of violence on a regular basis to help ensure proper application of the laws and principles concerning the rights of women.
  - Special mandatory courses/training for prosecutors, judges and investigators are to be prepared and included in the curricula of the Armenian Justice Academy. The training materials should be based on European and international standards on fighting against discrimination, domestic violence, protecting women's rights, cover the national legislation, and more specifically, the relative aspects of the respective Codes. Particularly, specific aspects of the right to private life, judicial and prosecutorial ethics, aspects in criminalistics, criminology and victimology, judicial expertise, family law, media, etc. should be taken into due account. As to the judicial practice and procedure, the case law of ECHR and Recommendation No. 33 of the Committee on the Elimination of Discrimination against Women, case law shall be incorporated in the training materials.
  - It is recommended to invest in courses which would involve women for judges, prosecutors and investigators on crime investigation. Especially, it should refer to those violence cases where women are victims. Particularly, it is necessary to develop a discrimination-free thinking among judges, prosecutors and investigators. They should have skills on all methods that can provide an opportunity to carry out effective investigation of cases where women are victims to avoid from the danger of re-victimisation.
- v. It is necessary to develop guidelines on women's rights protection, especially in the justice system, and women's access to justice. The guidelines should encompass the best practices of international experience of modern jurisprudence.
- vi. It is recommended that the School of Advocates encompasses gender sensitisation courses, understanding the applicability of international law and standards, knowledge of CEDAW and understanding state obligations in implementing the principles in CEDAW.

- vii. It is recommended to further strengthen the capacities of the OHRD to increase its monitoring activities and expand its work to the regions to better prevent violence and protect women's rights; to complete its tasks as a national preventive mechanism particularly in course monitoring visits to criminal executive entities including those for women and children.
- viii. Further Recommendations to improve gender policy and promote gender equality:
  - Set tangible implementation mechanisms to monitor and follow the Gender Strategic Action Plans.
  - Follow the recommendations of the international human rights bodies to co-ordinate and manage the Strategic Gender Policy Action Plans.
  - Introduce a mandatory course into high schools and universities, to break stereotypes and especially prevent violence against women.
  - Contribute to the formulation of gender policies of media outlets.
  - Provide resources and programmes for the strengthening of women's media literacy in designing, accessing and managing information and content in media technologies.
  - Support the activities of centres for gender studies both state and affiliated with NGOs (e.g. Coalition to Stop Violence Against Women) aimed to disseminate gender knowledge and to raise public awareness.
  - Synchronised and cumulative data concerning women's access to justice should be established and published periodically. In this regard, the first and most important step is for all justice and law enforcement institutions – courts, police – to collect sex-disaggregated data. This would help ensure the reliability of data, facilitate analysis by decision makers in all branches of government (the executive, legislature and courts), ensure transparency and encourage academia and civil society to participate more actively in the development of a better justice system, more effective and adapted to the changing needs of Armenian society.
  - Hold the media accountable in their role to address gender imbalances.
  - Promote measures aimed at increasing women's political participation.
  - Prioritise gender equality programmes in state budgeting.

#### **D. Mapping of relevant actors in the field of women's access to justice**

- Ministry of Justice of Armenia
- Armenian Justice Academy
- Armenian Judicial Department
- Armenian Prosecutor's office
- Armenian police
- Armenian investigation authorities
- Armenian Human Rights Defender's Office
- Local NGOs and international community
- International and national independent experts

## Bibliography

Armenian Association of Women with University Education (2014), *Alternative Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women in the Republic of Armenia in 2009-2012*, available at:  
<http://www.un.am/up/file/CEDAW%20Alternative%20Report%202009-2012.pdf>

CEDAW (2015), *Consideration of reports submitted by states parties under Article 18 of the Convention, Fifth and sixth periodic reports of states parties, Armenia*, submitted 11 March 2015, CEDAW/C/ARM/5-6

CEDAW (2015), *General Recommendation 33 on Women's Access to Justice*, available at:  
[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_33\\_7767\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf)

Centre for Gender and Leadership Studies (2015), *Strengthening Women's Political Participation in the Republic of Armenia: Existing Efforts, Challenges and Opportunities*, Yerevan State University

Council of Europe Commissioner for Human Rights (2014), *Report following his visit to Armenia, 5-9 October 2014*, available at:  
<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2790589&SecMode=1&DocId=2243332&Usage=2>

Council of Europe (2002), *Recommendation Rec(2002)5 of the Committee of Ministers on the Protection of Women against Violence*

Council of Europe, 2007, Recommendation Rec(2007)17 of the Committee of Ministers to member states on gender equality standards and mechanisms

Council of Europe (2011), *Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence*, available at:  
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016800d383a>

Council of Europe Gender Equality Commission (2015), *“Compilation of good practices to reduce existing obstacles and facilitate women's access to justice”*, available at:  
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090001680597b12>

Ghaplanyan, I. and Melikyan, A. (2015), *Strengthening Women's Political Participation in the Republic of Armenia: Existing Efforts, Challenges and Opportunities*, Centre for Gender and Leadership Studies, Yerevan State University, available at:  
<http://www.y-su.am/files/Anna%20Melikyan%20and%20Irina%20Ghaplanyan.pdf>

Goris Women's Development "Resource Center" Foundation, Society Without Violence, Democracy Today, Women's Resource Center, Peace Dialogue, Women's Rights Centre, and Armenian Young Women's Association (2013), *Armenia Civil Society Monitoring Country Report on Implementation of United Nations Security Council Resolution 1325 “Women, Peace and Security”*

Human Rights Council Working Group on the Universal Periodic Review (2015), *Draft Report of the Working Group on the Universal Periodic Review on Armenia*, A/HRC/WG.6/21/L.8 (2015) ILOSTAT database, Country profile “Armenia”, available at:  
[http://www.ilo.org/ilostat/faces/home/statisticaldata/ContryProfileId?\\_afLoop=1066327670073434#!%40%40%3F\\_afLoop%3D1066327670073434%26\\_adf.ctrl-state%3D1dkno6do3y\\_154](http://www.ilo.org/ilostat/faces/home/statisticaldata/ContryProfileId?_afLoop=1066327670073434#!%40%40%3F_afLoop%3D1066327670073434%26_adf.ctrl-state%3D1dkno6do3y_154)

KANTOR Management Consultants Consortium (2015), *“Women in Power and Decision-making in the Eastern Partnership Countries”*, European Institute for Gender Equality (EIGE), available at:

[http://eige.europa.eu/sites/default/files/documents/gender\\_equality\\_and\\_decision\\_making\\_in\\_eap\\_countries\\_2015\\_-\\_report\\_and\\_annex\\_one\\_file.pdf](http://eige.europa.eu/sites/default/files/documents/gender_equality_and_decision_making_in_eap_countries_2015_-_report_and_annex_one_file.pdf)

Kojoyan, A. and Gevorgyan, A. (2014), *“Masculinity and gender violence in Armenian TV programmes”*, Centre for Gender and Leadership Studies, available at:

<http://www.ysu.am/files/Reserch%20paper%2003.09.2014..pdf>

National Statistical Service of the Republic of Armenia (2011), *“Nationwide survey on domestic violence against women in Armenia”*, UNFPA “Combating Gender-based violence in the South Caucasus” Project

OSAC (2013), *“Armenia Crime and Safety Report 2013”*. Available at:

<https://www.osac.gov/pages/ContentReportDetails.aspx?cid=13747>

Parliamentary Assembly of the Council of Europe (PACE) (2015), *Resolution 2054 “Equality and non-discrimination in the access to justice”*, available at:

<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21753&lang=en>

Proactive Society (2011), *“Domestic violence survey in the Republic of Armenia”*, Yerevan, available at: <http://www.osce.org/yerevan/88229?download=true>

UN Committee on Economic, Social and Cultural Rights (2014), *Concluding observations on the combined second and third periodic reports of Armenia* (16 July), E/C.12/ARM/CO/2-3

World Economic Forum (2014), *Global Gender Gap Report*, available at:

<http://reports.weforum.org/global-gender-gap-report-2014/>

Websites:

[www.ombuds.am/reports](http://www.ombuds.am/reports)

<http://www.stopvaw.org/armenia>

<http://www.ipu.org/wmn-e/classif.htm>

## APPENDIX

### Council of Europe Study on barriers, remedies and good practices for women's access to justice in Armenia

#### Questionnaire for civil society organisations

**ORGANISATION:**

**TARGET GROUP:**

**PLEASE PROVIDE A BRIEF ANSWER TO THE FOLLOWING QUESTIONS (MAX 3 PAGES):**

1. What type of legal assistance do you provide to women and on what issues? [If you have data on the number of clients you assist, and the breakdown according to the issues and type of assistance provided, please share with us.]
2. While assisting your clients, how do you interact with the judiciary/courts in Armenia? (Do you represent clients in court? Do you monitor court hearings? Do you provide *amici curiae*? Other ways?)
3. As a result of this interaction, how would you describe the attitude of judges towards women victims of gender-based violence, whether domestic violence, sexual violence or other forms? Can you give specific examples to illustrate the attitude of judges towards women victims of gender-based violence? Can you share with us the details of one or two particular cases that you consider relevant for our study on barriers, remedies and good practices for women's access to justice in Armenia?
4. Can you give us some examples of court decisions or attitude of judges in other areas in which women may face obstacles (divorce, child custody)?
5. We would be grateful if you can provide us with an example of good practice for women's access to justice, either from the work of your own organisation or from another source.
6. Do you think that Armenia needs a special law on gender equality?
7. Is there a need to establish a specialised institution on gender issues? If yes, what are the responsibilities you think should be proposed to this institution?



## **AZERBAIJAN**

Report prepared by  
Parvana Bayramova

## Contents

<b>I.</b>	<b>Introduction</b> .....	37
<b>II.</b>	<b>Gender gaps in access to justice</b> .....	38
A.	Obstacles to women’s access to justice in national Legal and policy frameworks .....	38
B.	Analysis of practices and mechanisms for the implementation of laws .....	49
C.	Socio-economic and cultural barriers to women’s access to justice .....	52
<b>III.</b>	<b>Gender responsiveness of the justice system</b> .....	56
A.	Gender bias, gender stereotypes, poor services and hostile attitudes among legal professionals and the police .....	56
B.	Existing gender training for judges and lawyers .....	57
C.	Extent to which women’s rights and gender equality issues have been introduced in the education of legal professionals .....	58
<b>IV.</b>	<b>Remedies, good practices and recommendations</b> .....	58
A.	Existing remedies to facilitate women’s access to justice .....	58
B.	National good practices to promote equal access of women to justice .....	60
C.	Measures to address the obstacles that prevent equal access to justice for women .....	60
D.	Measures to address the research and data needs and gaps in the field of women’s equal access to justice .....	62
E.	Relevant actors in the field of women’s access to justice that the project could/should engage with .....	62
	<b>Bibliography</b> .....	63

## I. Introduction

Since regaining independence in 1991, Azerbaijan has become a state party to a range of international human rights treaties including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of Persons with Disabilities, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Azerbaijan has also ratified regional treaties including the European Convention on Human Rights (ECHR) and the European Social Charter (revised). Azerbaijan has not yet signed or ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). The Constitution of the Republic of Azerbaijan<sup>61</sup> (the Constitution) stipulates that international treaties are also an integral part of Azerbaijan's domestic legislative system.<sup>62</sup> International treaties, to which Azerbaijan is a party, have priority over the national normative legal acts (with the exception of the Constitution and acts adopted by referendum) if a conflict arises between them.<sup>63</sup>

Respect and protection of human rights reflected in the above mentioned international agreements cannot be guaranteed without the availability of access to justice, which is an integral element of the rule of law. Especially women's access to justice is one of the keys to the realisation of human rights and freedoms and provision of equality and non-discrimination on the grounds of sex and gender. Today, it is possible and important to guarantee women's access to justice through implementation of the requirements of international human rights system around the globe.

This study is based on the understanding that access to justice is central to the rule of law and integral to the enjoyment of basic human rights. It is also an essential precondition to social inclusion and a critical element of a well-functioning democracy. Access to justice can be construed as the ability of people, including people from disadvantaged groups, to seek and obtain a remedy through institutions of justice, and in conformity with human rights standards. The requirement of equality, including **gender equality**, is at the centre of the meaning, the exercise and the fulfilment of the right to justice.

The Constitution provides for the right for equality and prohibits the restriction of rights and freedoms on the ground of gender, among others. It is important to note that the Law of the Republic of Azerbaijan on Gender Equality<sup>64</sup> was adopted in 2006 and it provides definitions of the concepts of gender equality and non-discrimination. The Law on Gender Equality defines gender equality as "equality of rights between women and men, equal opportunities to exercise their rights and equal social status."<sup>65</sup> Under the term "equal opportunities" the Law understands "equal conditions and provisions created for men and women to exercise human rights."<sup>66</sup> According to the Law on Gender Equality, gender discrimination is "sexual harassment, any distinction, exclusion or privilege restricting or denying to exercise rights on the ground of sex."<sup>67</sup> The principle of equality and non-discrimination is reflected in several other laws, including the Criminal Code and the Labour Code, although there is no separate anti-discrimination law in the country.

---

<sup>61</sup> The Constitution of Azerbaijan, 12 November 1995.

<sup>62</sup> Article 148, the Constitution

<sup>63</sup> Article 151, *Ibid.*

<sup>64</sup> The Law of Azerbaijan on Gender Equality, 10 October 2006, No. 150-IIIQ.

<sup>65</sup> Article 2.0.2, Law on Gender Equality

<sup>66</sup> Article 2.0.3, *Ibid.*

<sup>67</sup> Article 2.0.4, *Ibid.*

It is also important to note that on 6 February 2009, the President of Azerbaijan signed a Decree on approval of the State Programme on the Development of Justice System in Azerbaijan for 2009-2013. One of the main objectives of the State Programme was to improve access of citizens to judicial authorities and courts. 20 regional legal advisory service centres have been established with the aim of sensitising the low-income population about their rights, especially women, raising their awareness and enhancing their access to free legal aid services under the Judicial Modernisation project implemented jointly by the Ministry of Justice and the World Bank.<sup>68</sup> There has been no follow up to this programme yet.

Azerbaijani legislation stipulates that “justice in the Republic of Azerbaijan is administered on the basic principle of equality of everyone before law and court, irrespective of [...] sex [...]”<sup>69</sup>. It is important to note that Azerbaijan has achieved some progress during the last five years in undertaking legislative reforms regarding the rights of women:

- The adoption of the Law on Prevention of Domestic Violence (2010);
- Amendments to the Criminal Code criminalising trafficking in human beings, including a provision on forced and child marriages (2011);
- Amendment to the Family Code setting the minimum age of marriage at 18 for both women and men (2011);
- Adding a new section on Implementation of cases on long-term protection order for victims of domestic violence to the Code on Civil Procedures (2011).

The main objective of this study is to map the main obstacles for women’s access to justice in Azerbaijan, as well as remedies and good practices existing in the country. We will try to define gender gaps existing in legislation, policies and practices, which limit women’s access to justice in Azerbaijan. The national legal and policy framework in the different fields of law, including constitutional law, criminal law, and labour law will be analysed with the aim to identify the obstacles to women’s access to justice in Azerbaijan.

## **II. Gender gaps in access to justice**

### **A. Obstacles to women’s access to justice in national legal and policy frameworks**

In this subsection the national legal and policy framework is analysed with the aim to identify the main obstacles to women’s access to justice in Azerbaijan.

#### **i. Possible discriminatory laws and practices**

The relevant fields of law are investigated under a set of pre-established questions to define discriminatory laws and practice in regards of women. These questions have been compiled by the author on the basis of international and European gender equality standards.

#### ***Constitutional law***

The Constitution provides for equality of all people with respect to the law and law court and states that men and women possess equal rights and freedoms. The Constitution imposes a duty on state bodies and institutions to guarantee equal rights of men and women.<sup>70</sup> It is important that the Constitution contains the anti-discrimination clause binding any person, organisation or enterprise, which means that the Constitution covers combating discrimination against women in the public and private spheres.<sup>71</sup>

---

<sup>68</sup> Consideration of reports submitted by states parties under Article 18 of the Convention. Fifth periodic report of states parties. Azerbaijan (11 March 2013). CEDAW/C/AZE/5

<sup>69</sup> Article 7, Law of the Republic of Azerbaijan on Courts and Judges.

<sup>70</sup> Article 25 (V), the Constitution: “Everyone shall be guaranteed equal rights in any proceedings before state authorities and bearers of public authority that decide upon his/her rights and duties.”

<sup>71</sup> Article 25(IV), the Constitution: “No one may be harmed, granted advantages or privileges, or refused to be granted advantages or privileges on the grounds laid down in paragraph III of the present article.”

*Does the Constitution encompass direct and indirect discrimination? Whether such a prohibition of discrimination is contained in special legislation?*

The Constitution guarantees the equality of rights and freedoms to everyone irrespective of gender among others and prohibits restricted rights and freedoms of persons on the ground of sex. As previously mentioned, the Law on Gender Equality provides the definition of gender discrimination and defines it as “sexual harassment, any distinction, exclusion or privilege curtailing or denying the exercise of rights on the grounds of sex.”

Article 1 of the CEDAW Convention on definition of “discrimination against women”<sup>72</sup> covers both direct and indirect discrimination and states that not only acts which have purpose of discrimination, but also acts which effect discrimination constitute discrimination against women. The CEDAW Committee differentiates between direct and indirect discrimination in its General Recommendation No 28, paragraph 16: “The States parties shall ensure that there is neither direct nor indirect discrimination against women. Direct discrimination against women constitutes different treatment explicitly based on grounds of sex and gender differences. Indirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral in so far as it relates to men and women, but has a discriminatory effect in practice on women, because pre-existing inequalities are not addressed by the apparently neutral measure.” Thus, the definition of gender discrimination in the Law on Gender Equality does not cover both direct and indirect discrimination and does not fully comply with international requirements in this field. In its fifth periodic report to the CEDAW Committee, the Azerbaijani government refers to Article 12 of the Constitution providing that all international agreements and Conventions that Azerbaijan has ratified are considered to be part of its domestic legislation. Therefore, in the case of any discrepancy between the definition of “discrimination against women” as contained in the Law on Gender Equality, the definition in Article 1 of the CEDAW Convention will be given superiority.<sup>73</sup> The report also indicates that “there is regular and ongoing training organised by the Academy of Justice under the auspices of the Minister of Justice (MOJ) of the Republic of Azerbaijan for all justice and law enforcement and court officials including judges, lawyers, notaries and the Prosecutor’s office. The training programmes cover all the articles of the Convention and more particularly, the importance of giving a broad interpretation to the definition of ‘gender-based discrimination’ in line with Article 1 of the Convention.”<sup>74</sup> However, it would be useful to amend the Law on Gender Equality to bring the definition of ‘discrimination against women’ into compliance with international law and to make the real meaning of this notion clear for judges, lawyers, state officials, as well as potential victims and representatives of civil society. From approximately 10 interviews conducted with lawyers for this Study and attendance of previous awareness-raising trainings for lawyers, it can be said that lawyers in Azerbaijan are not sufficiently aware of the meaning of direct and indirect discrimination; as far as we know there is also no court decision or judgment, where the definition of ‘discrimination against women’ was provided as including direct and indirect discrimination.

---

Article 25(III): “The State shall guarantee the equality of rights and freedoms to everyone, irrespective of race, nationality, religion, language, sex, origin, financial position, occupation, political convictions, membership in political parties, trade unions and other public organisations. It shall be prohibited to restrict rights and freedoms of human beings and citizen on the grounds of race, nationality, religion, language, sex, origin, financial position, occupation, political convictions, membership in political parties, trade unions and other public organisations.”

<sup>72</sup> Article 1, CEDAW Convention: “For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

<sup>73</sup> Consideration of reports submitted by states parties under Article 18 of the Convention. Fifth periodic report of states parties. Azerbaijan (11 March 2013). CEDAW/C/AZE/5. Paragraph 4.

<sup>74</sup> Ibid. paragraph 5.

*Does the Constitution guarantee substantive equality between men and women?*

The Constitution stipulates equality of everybody in front of law and courts. It also provides for equal rights and liberties for men and women. The relevant provision covers formal equality not stipulating equal opportunities for women and men, which is important for achieving real equality. However, the Law on Gender Equality defines gender equality as legal equality of women and men and equal opportunities for realisation of these rights and their equal social status in the society. It makes it possible to say that Azerbaijani legislation guarantees real equality through giving men and women equal rights and opportunities. However, despite the fact that the equality of men and women is affirmed in the Constitution and in other legal texts - including the Law on Gender Equality - there is still considerable *de facto* gender inequality in the political, economic, and social spheres.<sup>75</sup>

### ***Labour law***

Azerbaijan is a party to the International Covenant on Economic, Social and Cultural Rights and the European Social Charter (revised). In 2010, Azerbaijan ratified the International Labour Organization Conventions No. 156 on Workers with Family Responsibilities and No. 183 on Maternity Protection (revised).<sup>76</sup>

*Has the legislation removed the prohibition for women to work in particular fields of employment or at particular hours? Are there restrictions on women's choice of employment?*

The Labour Code of Azerbaijan<sup>77</sup> (Labour Code) prohibits the employment of women workers in labour intensive jobs, in hazardous work places, and also in underground tunnels, mines, and other underground works.<sup>78</sup> The Cabinet of Ministers of Azerbaijan issued Decree No 170 in 1999, which sets out 39 areas of employment in which women are not permitted to work. These include: metal processing; construction and repair work; mining; drilling; oil and gas extraction; work in power plants; manufacture and repair of aircraft; shipbuilding; chemical production; furniture making; cement making; and, the manufacture of glass products. The Labour Code also prohibits the employment of women as workers for lifting or carrying heavy items from one place to another, beyond the limits specified in the legislation.<sup>79</sup> Although even some Azerbaijani lawyers and NGOs refer to these provisions as benefits for women provided in law, they constitute discrimination against women through not allowing them to decide independently about their own employment.

*Are restrictions regarding duties at work for pregnant women or women having children under 3 years old in compliance with international norms?*

The Labour Code prohibits calling women workers who are pregnant or have children under 3 years of age to work on night shift, on overtime, or weekends, or on a holiday - considered as non-business day or other days, or sending them on job-related travel.<sup>80</sup> Article 8 of the European Social Charter (revised) stipulates that parties must undertake to prohibit the

---

<sup>75</sup> Report of the Special Rapporteur on Violence against Women, its causes and consequences, Rashida Manjoo. Addendum, Mission to Azerbaijan. 25 April 2014., paragraph 27.

<sup>76</sup> Law No 1004-IIIQ

<sup>77</sup> Labour Code of the Republic of Azerbaijan was approved with the Law of the Republic of Azerbaijan on Approval, Entry into Force and Related Legal Regulation Issues of the Labour Code of the Republic of Azerbaijan No 618-IQ, 1 February 1999.

<sup>78</sup> Article 242, Labour Code

<sup>79</sup> According to Article 241(2) of the Labour Code "work duties of women workers can include manual lifting and carrying of only the heavy objects which their weight is within the limits specified below:

a) along with performing other duties, lifting by hand and carrying to another place of objects which their total weight is no more than 15 kilogrammes;

b) lifting to a height of more than one and a half-metre of an object which its weight is no more than 10 kilogrammes;

c) lifting by hand and carrying to another place of objects which their total weight is no more than 10 kilogrammes during the entire workday (work shift)

d) carrying of objects by carts or other vehicles which their lifting would require more than 15 kilogrammes of power."

<sup>80</sup> Article 242, Labour Code

employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women. The relevant provision of the Labour Code does not fully comply with the relevant requirement of the European Social Charter (revised). The Labour Code prohibits such conditions of work such as working on weekends or holidays, or being sent on business trips which are not exclusively dangerous, unhealthy or of an arduous nature for all pregnancies. This prohibition reflects cultural stereotypes on women as main responsible person for child-raising; restricts the free choice of work for pregnant women and women with children under 3 years old; and consequently makes women less advantageous employees than men.

*Are there any discriminatory (direct and/or indirect) provisions in the regulation on maternity, paternity and parental leave?*

According to the law, women shall be granted pregnancy and maternity leave of 126 days, starting 70 calendar days prior to childbirth and ending 56 calendar days after childbirth. In the event of abnormal or multiple births, women shall be granted 70 days leave after childbirth. The Law takes into account the needs of rural women and defines more days of maternity leave after childbirth for women working in agriculture sphere. It is 70 calendar days after birth in normal childbirth; 86 calendar days for difficult births and 110 calendar days in multiple births.<sup>81</sup> According to the Labour Code, employment contracts of pregnant women and women with children under the age of 3, as well as single fathers raising a child under the age of 3 may not be terminated.<sup>82</sup>

A parent, who is directly caring for a child until she/he is 3 years old, shall be eligible for partially paid social leave<sup>83</sup> in the amount determined by legislation. An employee caring for a child may use partially paid social leave completely or in part, at his/her discretion.<sup>84</sup>

The Labour Code defines additional leave for women with children. Regardless of the amount of base and additional leave time, working women with two children under the age of 14 shall be eligible for two additional calendar days of leave; while women with three or more children of this age or with a child with restricted health condition shall be eligible for 5 additional calendar days of leave. The law provides 14 calendar days unpaid leave for men whose wives are on maternity leave. The Law defines 14 calendar days unpaid leave for women or single fathers with children under the age of 16,<sup>85</sup> which are granted in addition to the regular paid leave. Furthermore, the Labour Code provides such benefits for women as breaks for feeding/nursing a child, and payment of her wages for the time spent on medical examinations of her child.

Azerbaijani legislation provides positive conditions and opportunities for mothers, while fathers do not enjoy the same opportunities. Fathers may benefit from all these labour-related benefits, only if they raise the children as single parents for a particular reason (if the mother of the children has died, or has been deprived of her motherhood rights, or has to be away for therapy in medical institutions, or has to spend time in jail).<sup>86</sup> Fathers are eligible for the same additional leave if they raise their children without mothers.<sup>87</sup>

---

<sup>81</sup> Article 125, Labour Code

<sup>82</sup> Article 79, Labour Code

<sup>83</sup> The Labour Code differentiates the leaves as academic leaves, labour leaves and social leaves depending on their reason.

<sup>84</sup> Article 127, Labour Code

<sup>85</sup> Article 130, Labour Code

<sup>86</sup> Articles 244-246, Labour Code

<sup>87</sup> Article 117, Labour Code

By being afforded only to women and being ensured for men only on condition that they raise their children alone, these conditions and opportunities perpetuate the cultural stereotype that mainly women are responsible for raising children. The Council of Europe recommends that the governments of member states take action, within the framework of a general policy promoting equal opportunities and equal treatment, to enable women and men, without discrimination, to better reconcile their working and family lives. The Committee of Ministers Recommendation on Reconciling Work and Family Life seeks paternity leave for fathers of newly born children and states that “both the father and the mother should have the right to take parental leave during a period to be determined by the national authorities without losing either their employment or any related rights provided for in social protection or employment regulations. The possibility should exist for such parental leave to be taken part-time and to be shared between parents.”<sup>88</sup> Article 27 of the European Social Charter (revised) provides for the right of workers with family responsibilities to equal opportunities and equal treatment. Azerbaijani legislation does not fully comply with the relevant international standards in this field.

It shall be also noted that the abovementioned provisions defining paid leave and additional leave only for women can result in indirect discrimination against women in the labour market. All expenses for paid leave, additional leave and other related benefits shall be covered by the employer, which makes it more advantageous for employers to hire men than women. It is one of the problems faced by women, especially potential mothers in recruitment process.<sup>89</sup> Long leaves have negative influence on women, not least because of the lengthy interruption of their career and education.

The Law on Gender Equality states that “compensations, privileges and fringe benefits for women specified by the Labour Code shall not be considered as discrimination”.<sup>90</sup>

*Is there compulsory paternity leave in legislation?*

No.

*Does the legislation provide for the equal retirement age for men and women?*

The Law of Azerbaijan on Labour Pensions (Law on Labour Pensions) defines different ages for men and women for old age work pensions. Men attaining the age of 63 and women the age of 57 (the age limit was raised by 6 months with effect from 1 January 2016) with at least 12 years of social insurance recorded, shall have the right to an old age work pension. The imposition of a different age of retirement for women constitutes discrimination against women and prevents them from equal access to income, promotion and many associated benefits such as superannuation. Compliance with international standards requires ensuring that women are treated on an equal basis with men and therefore also requires legislation to ensure equal retirement ages for men and women.

---

<sup>88</sup> Recommendation No. R(96)5 of the Committee of Ministers to Member States on Reconciling Work and Family Life. Council of Europe, 1996.

<sup>89</sup> [http://femida.az/news.php?id=960#.VWXqp8\\_tmko](http://femida.az/news.php?id=960#.VWXqp8_tmko)

<sup>90</sup> Article 3.2.1, Law on Gender Equality

## **Family Law**

*Do women face any difficulty in divorce cases?*

According to the Family Code of the Republic of Azerbaijan<sup>91</sup> (the Family Code), divorce is possible through administrative procedure or judicially. In case of mutual consent of spouses to dissolve the marriage, when they do not have common minor children, divorce is executed in the appropriate body of the executive power (body of the state registration of the acts of civil status of the MoJ of Azerbaijan).<sup>92</sup> The disputes about division of common property of the spouses, payment of funds for maintaining a disabled spouse who is unable to work, as well as disputes arising between the parties, if one of the parties is adjudged to be disabled, or imprisoned for a period not less than three years, or about children - are considered judicially.<sup>93</sup> Dissolution of marriage is executed judicially if spouses have common minor children.<sup>94</sup>

The possibility to divorce through administrative procedure in case of mutual consent does not guarantee the rights of a woman. Common minor children as one of the requirements for dissolution of marriage by the court may constitute discrimination against women without a child. Existence of a child in a family is considered as one of the most important elements of the family in Azerbaijani society. Infertility is always seen as a fault of woman and a woman without child has inferior status, especially in rural areas. Infertility is one of the main reasons leading to divorce by external interferences (older family members, such as a mother-in-law) in Azerbaijani society.<sup>95</sup> The possibility of divorce through administrative procedure creates a context in which women without children may be forced to 'agree' to mutual consent; and divorce through administrative procedure results in violation of women's rights (such as property rights, maintenance). The Law shall take it into account and make divorce possible only through judicial proceedings.

Family Code of the Republic of Azerbaijan states that spouses must support each other financially.<sup>96</sup> According to the Family Code in case of refusal and absence of agreement between the spouses about the payment of alimony, the right to bring to court the party who has the necessary funds, in order to demand alimony, belongs to:

- disabled persons who need financial aid of a spouse;
- a wife in the period of pregnancy and during three years from the birth of common children;
- an indigent spouse, who takes care of a common disabled child, until the child is 18 years old;
- an indigent spouse, who takes care of a common disabled child of the I group.<sup>97</sup>

---

<sup>91</sup> The Family Code was approved with the Law of the Republic of Azerbaijan on Approval, Entry into Force and Related Legal Regulation Issues of the Family Code of the Republic of Azerbaijan of 28 December 1999, No 779-IQ.

<sup>92</sup> Article 17, Family Code

<sup>93</sup> Article 18, Family Code

<sup>94</sup> Article 19.1, Family Code

According to Article 17.2. Dissolving a marriage due to the application of one of the spouses regardless of their having common minor children is executed in the appropriate body of the executive power (body of the state registration of the acts of civil status of MoJ of Azerbaijan), if another spouse:

17.2.1. is judicially adjudged to be untraceable;

17.2.2. is judicially adjudged to be disabled;

17.2.3. is convicted for committing a crime for imprisonment for a period not less than three years.

<sup>95</sup> Alternative report to the CEDAW Committee. Counterpart International. p. 56.

<sup>96</sup> Article 84.1, Family Code.

<sup>97</sup> Article 84.2, Ibid.

This provision restricts women's rights, especially their access to justice. The spouses shall be able to appeal without any restriction in absence of support from the other side, if they need it. The list of reasons for applying for maintenance for a woman is also limited;<sup>98</sup> and discriminates against women without children.

*Does the law safeguard the rights of girls and women in unregistered marriages and their children and provide for their access to justice?*

It is important that in 2011 the minimum legal marriage age for both women and men was set at 18 years. However, child/early marriages are still one of the big problems in Azerbaijani society. Child/early marriages are realised through religious marriages ("kabin") and at dissolution of such marriages girls/women and children born of such marriages have no legal protection. The legislation shall safeguard the rights of girls and women in unregistered marriages and their children. The legislation shall also prohibit conducting religious marriages without prior formal registration.

In spite of criminal responsibility being defined for early marriages in the Criminal Code of the Republic of Azerbaijan<sup>99</sup> (the Criminal Code), this provision is not implemented in practice. The number of criminal cases of child/early marriages is not available. The Family Code does not safeguard the rights of women in unregistered marriages.

### ***Criminal law***

*Have such forms of violence against women as domestic violence, stalking, marital rape been criminalised?*

No. Non-criminalisation, specifically of such forms of violence as domestic violence, stalking, and marital rape restricts women's access to justice. There is no specific offence of domestic violence in the criminal law legislation, even if in General Recommendation 19(24)(r), the Committee states that CEDAW obligates States Parties to make laws against family violence and abuse. In the Declaration on the Elimination of Violence against Women issued by the General Assembly of the United Nations in 1993, violence against women encompasses acts that result in, or are likely to result in, physical, sexual or psychological harm or suffering to women, including coercion and other deprivations of liberty. Whilst common assault offences, typically present in most Penal Codes could be used in some limited circumstances, they do not incorporate the complexity of domestic violence. Therefore, to fully comply with United Nations standards, domestic violence offences should be incorporated into criminal law legislation. Paragraph 124(b) of the Beijing Platform for Action recommends that governments ensure that the legislation effectively protects women from violence and prosecutes offenders.

---

<sup>98</sup> Article 85 of the Family Code: "85.1. The right to demand the alimony after divorce from a former spouse, who has necessary funds for it, belongs to:

85.1.1. a former wife in the period of pregnancy and during three years from the birth of common children;

85.1.2. an indigent former spouse, who takes care of a common invalid child until the child is 18 years old or of a common child with inborn disability of 1 group;

85.1.3. a former indigent disabled spouse, who became disabled before divorce or in the one year following the moment of divorce;

85.1.4. an indigent spouse, achieved the age of pension not later than five years from the moment of divorce, if spouses were married for a long time;

85.2. The amount and order of paying the alimony to a former spouse after divorce can be determined by the agreement between the former spouses."

<sup>99</sup> The Criminal Code was approved with the Law of Azerbaijan on Approval, Entry into Force and Related Legal Regulation Issues of the Criminal Code of Azerbaijan of 14 July 2000, No 907-IQ.

It should be noted that the Criminal Code includes several crimes such as deliberate murder (Article 120), causing someone to commit a suicide (Article 125), deliberate causing of serious harm to health (Article 126), deliberate causing of less serious harm to health (Article 128); torture (Article 133), threat to murder or causing of serious harm to health (Article 134); rape (Article 149); violent actions of sexual nature (Article 150). Many domestic violence crimes would fall under them. However, we think that it would be more effective for prevention of domestic violence to include it as a specific crime or as an aggravating circumstance to any other crimes into the Criminal Code.

*Is the definition of rape in compliance with international standards?*

The Criminal Code defines rape as “sexual relations with application of violence or with threat of its application to the victim either to other persons, or with use of a helpless condition of the victim.”<sup>100</sup> This definition does not comply fully with international standards, as it is based on the use of force, rather than lack of consent. Consent is a defence to a charge of rape and other sexual assault offences. Women may submit to intercourse because of threats, coercion or intimidation, blackmail including threats of harm to a third party (such as a child, sibling or mother). A statutory definition of consent in the criminal law legislation affords greater protection to women by specifically determining the range of circumstances, which may induce an unwilling consent and it also designates the standards of acceptable sexual conduct. The definition of consent should specifically include the variety of situations where a woman may submit due to threats or coercion or may not be able to express consent. The definition should outline that such situations do not constitute consent. It should also be non-exhaustive allowing discretion for the court to determine the facts of the particular case before making a finding that the woman consented.<sup>101</sup> The definition of rape shall be amended in the Criminal Code.

*Are there provisions on forced pregnancy and forced abortion in the Criminal Code?*

Male-preference and sex selective abortions are common problems affecting women in Azerbaijan. Women, especially in rural areas, are subject to forced pregnancy with the aim of giving birth to a boy and forced abortion as a result of knowing that a girl would be born. Patriarchal attitudes and stereotypes about male-preference also affect the high level of sex-selective abortions. NGOs working on the protection of women’s rights report that “cases when husbands, the husbands’ parents or other relatives force the women to have an abortion and get rid of the girl are fairly common.”<sup>102</sup> One woman who suffered from the prejudice, a 34-year-old mother of a son and a daughter said: “My husband forced me to go for an abortion six times before I gave birth to a son. Each time I was pregnant, when the time came to find out the sex of the child, I was so scared. Every time I had to go through this hell and I could not explain to my husband what a torture it is to have an abortion, especially so many times.”<sup>103</sup>

The Law does not have any specific provisions for victims of such situations. The Criminal Code has a provision on forced pregnancy, but only in the context of crimes against peace and security of humanity.<sup>104</sup> The relevant provision of the Criminal Code on illegal abortion does not cover forced abortion.

---

<sup>100</sup> Article 149.1, Criminal Code.

<sup>101</sup> Jivan, V. and Forster, C. Translating CEDAW into law. CEDAW Legislative Compliance in the Cook Islands. UNDP, UNIFEM, 2008. p. 16.

<sup>102</sup> <http://www.infosud.org/Azerbaijan-Abortions-of-females-on,7204>

<sup>103</sup> Ibid.

<sup>104</sup> Article 108-1 of the Criminal Code on Forced Pregnancy: “Illegal imprisonment of a woman, for forced pregnancy with a view to change ethnic structure of this or another population or accompanying another gross infringements of international law – shall be punished by imprisonment for the term from ten up to fifteen years or life imprisonment.”

The Parliamentary Assembly of the Council of Europe in its Recommendation 1799 (2011) on Prenatal sex selection draws attention to skewed sex ratios at birth in a number of member states, including Azerbaijan. The Parliamentary Assembly in its Resolution 1829 (2011) on Prenatal sex selection recalling the Council of Europe Istanbul Convention expresses the belief that the social and family pressure placed on women not to pursue their pregnancy because of the sex of the embryo/foetus is to be considered as a form of psychological violence and that the practice of forced abortions is to be criminalised.<sup>105</sup> The Parliamentary Assembly calls on the member states to introduce legislation with a view to prohibiting sex selection in the context of assisted reproduction technologies and legal abortion, except when it is justified to avoid a serious hereditary disease.<sup>106</sup> There is no provision in the legislation or mechanisms of implementation, which would allow women in such situations to apply for justice.<sup>107</sup>

## ii. Negative impact of gender-neutral legislation

According to the Code of Criminal Procedures of the Republic of Azerbaijan<sup>108</sup> (Code of Criminal Procedures), “proof shall consist in the procurement, verification and assessment of evidence in order to establish facts of importance for the lawful, thorough and equitable determination of the criminal charge. The prosecutor shall be responsible for proving the grounds for the criminal responsibility of the accused and whether or not he/she is guilty.”<sup>109</sup> This gender-neutral provision restricts women’s access to justice in cases of sexual violence and discrimination. In practice, one of the reasons why women do not apply to the courts in cases of sexual harassment, violence or other forms of discrimination is the difficulty of proving that the offence took place. The Council of the European Union in its Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex states that “member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.”<sup>110</sup> Even if Azerbaijan is not a member of the European Union, the requirement that the burden of proof shall be on the respondent party in cases of violence and discrimination has achieved the level of customary norm. There are often no witnesses to sexual offences and this requirement discriminates against sexual assault victims as it implies that women may lie about sexual assaults. Similar requirements are not made of victims of other offences such as common assault and there is no reason why victims in trials of sexual offences should be viewed as a particularly unreliable class of witness and/or that the word of a woman is inherently worth less than the one of an accused man. Therefore, in order to provide effective complaints procedures and remedies for victims of sexual assault the legislation shall remove the burden of proof from the applicant in cases related to discrimination and violence against women. The Criminal Procedure Code shall include an exception regarding cases of violence against women and discrimination.

---

<sup>105</sup> Paragraph 5.

<sup>106</sup> Ibid. paragraph 8.7.

<sup>107</sup> The Draft Law on Protection of Reproductive Health and Family Planning prohibits sex selective abortions, with the exception of when there is a possibility of high risk of genetic disorders because of the sex. The Law is pending approval by the Milli Majlis (the National Parliament) of Azerbaijan.

<sup>108</sup> Code of Criminal Procedures was approved with the Law of Azerbaijan on Approval, Entry Force and Related Legal Regulation Issues of the Code of the Criminal Procedures of Azerbaijan of 14 July 2000, No. 907-IQ

<sup>109</sup> Article 138, Code of Criminal Procedures

<sup>110</sup> Article 4, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31997L0080&from=EN>

### iii. Shortcomings of the special laws aimed at equality between women and men or the protection of women

#### *The Law on Prevention of Domestic Violence*

The adoption of the Law of Azerbaijan on Prevention of Domestic Violence (the Law) in 2010 is one of the progressive steps taken for achieving the necessary level of protection of women's rights and prevention of violence and discrimination against women. Adoption of this law was welcomed by international organisations and international treaty bodies. However, there are several shortcomings in the Law and its implementation. The shortcomings can be summarised as follows:

- According to the Law, "If there are any data on committed or prepared crimes in a complaint on domestic violence, this kind of complaint shall be considered in the manner prescribed by the criminal procedure law".<sup>111</sup> However, the Criminal Code clearly states that "the laws providing the criminal liability and providing punishment of the person who committed a crime shall be subject to application only after inclusion in the present Code".<sup>112</sup> Domestic violence has not yet been included into the Criminal Code as a specific crime. It is relevant here to note that the Criminal Procedural Code has no specific provisions to address the particular needs and rights of women victims of domestic violence.

- The Law states that if the case of domestic violence is not criminal, the complaints will only be investigated with the consent of the victim or her/his legal representative.<sup>113</sup> Incompatibility existing between the Law and the Criminal Code mentioned above makes this provision unclear. The Law does not differentiate as to which acts of domestic violence should be subject to criminal prosecution and which should be addressed through administrative procedures.

- The Law clearly mentions the state's duty to "assist in normalisation of relations between parties and resumption of family affairs".<sup>114</sup> This provision can be interpreted as privileging mediation and reconciliation over the protection of women's human rights.<sup>115</sup> Practice shows that it is the main policy of the state bodies, including the State Committee on Family, Women and Children Affairs (SCFWCA) to achieve mediation and reconciliation in domestic violence cases. Even judges, while considering the related cases, refer to this provision. For example, the OSCE's Trial Monitoring Team reported that in one case, the judge repeatedly asked that the victim say the word "reconcile" for the court record, despite the victim's apparent reluctance to do so. Such expression of formal consent could be used as the basis to terminate the proceeding.<sup>116</sup>

- The Law provides for the possibility of issuing a 'warning' to the perpetrator not to use violence in the future.<sup>117</sup> However, there is some confusion on whether this warning could be issued together with a short-term protection order, if it could be used as evidence during a trial, or if it is a prerequisite to obtain a protection order. In practice, this lack of clarity reportedly results in law enforcement personnel not taking appropriate action.<sup>118</sup>

---

<sup>111</sup> Article 5.1, Law on Prevention of Domestic Violence

<sup>112</sup> Article 1.3, Criminal Code

<sup>113</sup> Article 6.3, Law on Domestic Violence

<sup>114</sup> Article 7.4, Law on Domestic Violence

<sup>115</sup> Report of the Special Rapporteur on Violence against Women, its causes and consequences, Rashida Manjoo. Addendum, Mission to Azerbaijan. 25 April 2014., paragraph 64.

<sup>116</sup> Domestic Violence Cases in the Justice System of Azerbaijan. Rule of Law and Human Rights Unit. OSCE Office in Baku, 2013 (OSCE report), p. 20.

<sup>117</sup> Article 11, Law on Domestic Violence

<sup>118</sup> Ibid. paragraph 65.

## *Vulnerable groups*

Azerbaijani legislation does not specifically enumerate lesbian, gay, bisexual and transgender (LGBT) individuals among the grounds for non-discrimination. Intolerance based on sexual orientation and gender identity remains a problem of society and it is still a taboo topic in Azerbaijan. There was no easily identifiable data collected on some important human rights dimensions of public health, including participation in policy making, implementation and review, as well as limited data on particular vulnerable population groups, such as sex workers, street children, people with disabilities, and lesbian, gay, bisexual and transgender persons.

### **iv. Access to legal aid**

Qualified and effective legal aid is one of the main guarantees of access to justice. Expensive legal services and lack of access to free legal aid are among the main obstacles that women may face to bring violations of their rights to justice. Insufficient economic means is one of the barriers for women's access to justice as they cannot afford to pay for qualified legal assistance and free legal aid is often not a high standard in most cases. Results of surveys with victims, focus groups and expert interviews conducted by NGOs confirm that extremely expensive legal services of lawyers, which very few women can afford, are one of the barriers to justice in Azerbaijan.<sup>119</sup>

Article 61 of the Constitution stipulates everyone's right to receive qualified legal assistance. In cases envisaged by law, legal assistance shall be provided free of charge, at the expense of the state. According to Article 20 of the Law on advocates and advocate activities, the accused person and everybody who has not sufficient funds to be represented in the court has the right to be represented by advocates funded by the government. In practice, free state legal aid is usually provided in cases where involvement of a legal counsel is mandatory.

The Law on Free Legal Aid was drafted, but its adoption is still pending.

There is no mechanism for receiving free legal aid in civil cases. According to Azerbaijani legislation, the lawyer responsible for providing free legal services shall be appointed by the first instance court. However, to submit an application to the first instance court on provision of free legal aid, plaintiffs need a lawyer to help drafting the application to the court. The Law on Advocates and Advocacy and the Civil Procedural Code do not foresee any legal mechanism on provision of free legal aid before the appeal court and the first instance court for low-income part of the population.

During her 2014 mission to Azerbaijan, the UN Special Rapporteur on violence against women received complaints about the poor quality of legal representation that is available from the state legal aid services. This results in perceptions of a lack of justice, especially for the women interviewed in prison. The hiring of private lawyers by some women leads to the conclusion that women from precarious socio-economic backgrounds are less likely to have their rights properly defended because of their dependence on poor quality legal aid lawyers.<sup>120</sup>

The limited number of advocates in rural areas is one of the reasons for women's limited access to justice in regions, especially in remote villages. Vulnerable groups, such as women, migrants and children faced with problems, can rarely get full access to justice even in cases where domestic legislation exists.<sup>121</sup> The CEDAW Committee recommends that legal aid continue to be made available to all victims of violence, including through the establishment of legal aid clinics, especially in rural areas.

---

<sup>119</sup> Women access to justice in Azerbaijan, Report. Gender Association "Symmetry" partnership project with Karat Coalition due to support of OXFAM Novib. 2011, p. 3.

<sup>120</sup> Report of the Special Rapporteur on Violence against Women, its causes and consequences, Rashida Manjoo. Addendum, Mission to Azerbaijan. 25 April 2014, Paragraph 32

<sup>121</sup> Women access to justice in Azerbaijan, Report. Gender Association "Symmetry" partnership project with Karat Coalition due to support of OXFAM Novib. 2011, p. 17

## B. Analysis of practices and mechanisms for the implementation of laws

### *Domestic Violence cases*

In Azerbaijan, major challenges are reflected in the discrepancy between the legal framework and its implementation, and the reality of widespread gender stereotyping. The UN Special Rapporteur notes that the right of access to justice and to justice itself, for women, is seriously compromised due to a range of factors. The first challenge lies in the significant underreporting of cases of violence against women to the police. Numerous stakeholders explained that victims are very often reluctant to report, due, *inter alia*, to the fact that violence against women has been normalised, and even sometimes accepted, by the women themselves but also due to the responses of authorities, who promote notions of family unity, shame and stigma. These factors prevent women from breaking the silence around violence. The authorities, including Family Support Centres and the police, prefer not to intervene, as they consider violence against women a private matter that should be solved within the family. Cases of violence tend therefore not to be prosecuted in most instances; protection orders are not granted; and divorce is not easily accessible, even when requested due to violence in the marriage.<sup>122</sup>

There are still several problems in implementing the Law, which limits women victims' access to justice. Despite the fact that the Law was adopted in 2010, a national implementation mechanism has not been developed yet. Both the National Strategy on Prevention of Domestic Violence and the National Action Plan on Prevention of Domestic Violence are still pending approval.<sup>123</sup> Unless these documents are approved and the state sets a specific budget for combating violence, the implementation and enforcement of the Law will not take place. Since the nationwide research on the prevalence rates of domestic violence in 2008, no systematic data collection has been put in place to assess the extent of the phenomenon, the dynamics over time or the effectiveness of the measures undertaken. The Law highlights the importance of collecting data, in particular through a national databank. Accountability is a crucial aspect in the effective prevention and elimination of violence against women, but the UN Special Rapporteur observed that impunity seemed to be the norm for crimes committed against women.<sup>124</sup>

In Azerbaijan, the main challenges relating to the investigation, prosecution and punishment of perpetrators for acts of violence against women are largely due to the minimal implementation and enforcement of the legal framework but also the lack of a gender perspective by law enforcement and judicial actors. The common resort to mediation as a means of dispute resolution is also a factor. Deeply rooted patriarchal attitudes regarding cases of violence against women, by police, judicial officers, other relevant civil servants as well as community leaders and families, contribute significantly to the underreporting of cases.<sup>125</sup>

---

<sup>122</sup> UN Special Rapporteur on Violence against Women, its Causes and Consequences, 25 April 2014. Paragraph 31.

<sup>123</sup> CEDAW Committee in its 2015 Concluding Observations welcomes the information provided by the state party's delegation concerning the current consideration by the Ministers' Cabinet of the National Strategy on Prevention of Domestic Violence and the National Action Plan on Prevention of Domestic Violence, and the establishment of an on-line database on violence against women.

<sup>124</sup> Report of the Special Rapporteur on Violence against Women, its causes and consequences, Rashida Manjoo. Addendum, Mission to Azerbaijan, 25 April 2014, paragraph 59.

<sup>125</sup> *Ibid.*, paragraph 70.

The process and mechanism of issuing the long- and short-term protection orders stipulated in the Law<sup>126</sup> is not well developed yet. The problem is also complicated by the fact that long-term protection orders can only be issued if and when perpetrators violate a short-term order,<sup>127</sup> and since local executive bodies rarely issue short-term orders, courts almost do not *de facto* issue long-term protection orders. There were three court cases on long-term protection orders in 2013; and one case in 2014. All four cases took place in Baku.<sup>128</sup>

Women victims of domestic violence continue facing multiple obstacles to accessing mechanisms of support and protection. The Law refers to the establishment of public support centres for victims of domestic violence to provide them with legal and medical assistance, psychological rehabilitation, social protection and allowances, and emergency shelter, among others, on a no cost basis.<sup>129</sup> However, the number of support and referral centres is very limited and these are mainly NGO-funded ones relying on donor funding. There are only three NGOs providing, *inter alia*, sheltering services to the victims of violence and functioning under the authority of the Ministry of Labour and Social Protection of the Population with the financial support of the NGO State Support Council and international donor agencies. They are providing a set of services to the victims of human trafficking and children victims of domestic violence.<sup>130</sup> There is no 24/7 national helpline for the victims of domestic violence. Only a few NGO-funded helplines are in place and these services are heavily dependent on donor funding.

#### *Divorce cases*

Enforcement of court decisions on alimony for children faces difficulties in practice. Fathers refuse to pay alimony defined by the court. 25% of applications in 2000-2007 to the Legal Clinic at Azerbaijan Private University, specialised in protection of women's rights, were on non-enforcement of court decisions on alimony. Procedures on enforcement of court decision shall be strengthened.

A special reference to the issue of employment of refugee and IDP women (Internally Displaced Persons) was made in the President's decree concerning the realisation of the State women policy. Within the framework of implementation of this decree, the SCFWCA obtained statistical data on women's employment from the Employment Service of the Ministry of Labour and Social Protection of Population. According to it, 18,381 women were provided with appropriate work, 739 of whom were refugees, 1,669 women were employed in the public sector, including 266 refugees, and unemployment benefits were issued to 7,998 persons of whom 4,049 were refugees.<sup>131</sup>

#### *Forced and child marriages*

As previously mentioned, the Family Code was amended in 2011 to establish the legal age of marriage at 18 for both men and women. The Criminal Code was accordingly amended through the introduction of Article 176-1 which criminalises forced marriages and establishes specific sanctions for such actions. The Criminal Code also establishes more severe penalties for forced marriages of children.

---

<sup>126</sup> Article 10, Law on Domestic Violence

<sup>127</sup> Article 11.3, Law on Domestic Violence

<sup>128</sup> [www.scfwca.gov.az](http://www.scfwca.gov.az)

<sup>129</sup> Article 7.1

<sup>130</sup> "Clean World" Public Union in Baku functions to accommodate the victims of domestic violence alongside the victims of human trafficking. The shelter at the Azerbaijan Children Union in Baku accommodates child victims of domestic violence and the shelter at the "Temas" Public Union in Ganja is also mainly for the victims of human trafficking.

<sup>131</sup> Responses to the list of issues and questions for consideration of the combined second and third periodic report of Azerbaijan. CEDAW/C/AZE/Q/3/Add1.

There is a lack of official data on dynamics of child marriages and investigation and prosecution of such cases. According to the head of the SCFWCA, a few instances of child marriages were prevented in different regions in 2014: “The relevant government bodies sent letters to those families informing them that they violated the Azerbaijani legislation and it could constitute a sufficient ground for initiating a criminal case against them.”<sup>132</sup> There is a high prevalence of early and/or forced marriage in Azerbaijan. Although statistics may not be accurate due to the illegal nature of the practice, the SCFWCA stated that there were more than 5,000 early marriages in 2013, and 4,000 early marriages in 2012,<sup>133</sup> the increase accounted for by the raising of the age of marriage. Existence of impunity regarding early marriage is emphasised by local NGOs.<sup>134</sup>

### *Sexual harassment*

The Law on Gender Equality prohibits sexual harassment<sup>135</sup> and defines it as “immoral behaviour humiliating and abusing a person of opposite gender comprising of physical acts (touching, hand touching) , offensive remarks, gestures, threats, disgracing advances or offers in employment or service relations.”<sup>136</sup> While the law prohibits sexual harassment, the enforcement of this provision is low. According to the representative of the SCFWCA, many women complained to the Committee regarding sexual harassment in the workplace and the Committee contacted the Ministry of Labour and Social Protection of Population to resolve the problem.<sup>137</sup> However, women who face sexual harassment at work, rarely want to take their case to court. According to the words of NGO representative, the reason, alongside with the corruption in judiciary, is that judges are mostly men.<sup>138</sup> Cultural stereotypes also influence the women’s decision not to apply to the courts and not share information about it, as it may lead to rumours about them and damage their reputation.

### *Women participation*

There is limited data available on participation of women in the planning, development, implementation and monitoring of relevant laws, policies, and programmes. The Law on Public Participation entered into force on 1 June 2014.<sup>139</sup> It establishes the right of, and mechanisms for the public to discuss and provide input on draft laws before their enactment and, importantly, provides sanctions for violations of this right.<sup>140</sup> Proper implementation of this law, especially the establishment of the Public Council at the SCFWCA would be an excellent opportunity to provide participation of women and NGOs working in related fields to take an active part in formulating, implementing and monitoring health strategies and programmes.

There is limited data on particular vulnerable population groups, such as sex workers, street children, women with disabilities, and LGBT persons.

---

<sup>132</sup> <http://www.gun.az/xeber-hicran-huseynova-bu-il-7-8-erken-nikahla-bagli-toyun-qabagini-almisig-t160211.html#.VHCvjTSUf5M> LINK NOT WORKING

<sup>133</sup> Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Addendum, Mission to Azerbaijan, 2 June 2014, paragraph 15.

<sup>134</sup> Counterpart. P. 43.

<sup>135</sup> Article 4, Law on Gender Equality.

<sup>136</sup> Article 2.0.5, Law on Gender Equality

<sup>137</sup> <https://iwpr.net/global-voices/azerbajians-women-endure-workplace-harassment>

<sup>138</sup> Ibid.

<sup>139</sup> Law of the Republic of Azerbaijan on Public Participation, 22 November 2013, No 816-IVQ

<sup>140</sup> Bayramova, Parvana Overview of the Law of the Republic of Azerbaijan on Public Participation, prepared by ICNL under the SEDA Project of USAID (not published).

## **C. Socio-economic and cultural barriers to women's access to justice**

Among socio-economic and cultural barriers in women's access to justice in Azerbaijan we can include: gender stereotypes; non-trust in justice system; lack of financial funds; lack of women staff in the justice system; lack of knowledge on women's rights. All these problems are interdependent and interrelated with each other and the removal of all these barriers requires a systemic approach to the problem covering all these barriers.

### **i. Rights of women working in informal sector**

The Employment Strategy of the Republic of Azerbaijan for 2006-2015 was approved with the Decree of the President of Azerbaijan of 26 October 2005. The Employment Strategy acknowledges that women are usually employed in activities with low status and low wages. The document refers to the fact that "Shortage of work places for women today is mostly reflected in insufficiency of flexible jobs (part-time, flexible working days, flexible schedule, work at home, etc.) relevant to the role of women both in society and in family." This reflects the Government's ambivalent approach towards women's empowerment, fostering at the same time family-friendly employment policies and cultivating harmful stereotypes about gender roles (paragraph 37 of the Strategy).

The State Programme on Implementation of the Employment Strategy of the Republic of Azerbaijan for 2011-2015 was approved with the Decree of the President of Azerbaijan of 15 November 2011. The State Programme intends to prevent working in informal sector.

Persons in informal employment (a job-based concept) represent the sum of informal jobs in formal enterprises, informal sector enterprises, and households producing goods for own consumption or hiring paid domestic workers. The informal sector consists of unregistered and/or small unincorporated private enterprises engaged in the production of goods or services for sale or barter.<sup>141</sup> According to the Department of Statistics of the International Labour Organization, informal employment ratio is 41.7% for women; and 16.6% for men in Azerbaijan.<sup>142</sup> Women mostly work in the informal sector in the lowest paying jobs as domestic or agricultural workers, men work in unregistered unincorporated private enterprises. Men's employment in informal sector affects the amount of defined alimony in divorce cases, when in reality men's income is more than indicated salary. The gender gap in informality affects decisions on the allocation of alimony. In most cases the real income of men (in cases when men work in informal sector) is higher than their official income and the courts take into account only their official income while defining the amount of alimony.

*Rights of women working in informal sector are not protected by law.*

### **ii. Level of women's awareness of their rights**

The literacy rate among women and men, as well as the official enrolment rate of girls in secondary education is high in Azerbaijan. However, high literacy rate among women cannot be a key indicator of women's awareness about their rights. Women's rights and gender equality are not included into the secondary school curriculum as mandatory subjects.<sup>143</sup> For a country like Azerbaijan, where patriarchal attitudes subordinating women and strong stereotypes regarding women's roles and responsibilities in the family and society prevail, the role of education in changing attitudes and cultural stereotypes is especially important. The existence of gender stereotypes in educational materials and the absence of women's rights and gender

---

<sup>141</sup> Statistical update on employment in the informal economy. ILO department of statistics. June 2011. Available at: [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/presentation/wcms\\_157467.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/presentation/wcms_157467.pdf) , p. 12.

<sup>142</sup> Ibid., p. 8, Graph II.

<sup>143</sup> It is important to note that there is a course on Gender and Children Rights included into the curriculum of LLM Human Rights Law Programme at the Law Faculty of Baku State University since 2010. In 2014 the Law Faculty decided to make this course optional rather than compulsory.

equality mandatory subjects in secondary school curricula and in professional training for teachers strengthen cultural stereotypes among women in relation to their lack of knowledge.

The results of surveys conducted by several NGOs identify that women have a poor understanding of their legal rights, laws and what to do in case of abuse or violence. Lack of knowledge and awareness of their rights is one of the barriers to women's access to justice.<sup>144</sup> Women are not aware of relevant administrative bodies or courts to which they could apply in cases of violation of their rights. The level of knowledge of their rights and awareness of existing national remedies among women is quite low; on the other side, they do not trust in national remedies. Practice shows that women prefer to apply to the First Lady of Azerbaijan and the Heydar Aliyev Foundation chaired by her, as women really trust the First Lady.<sup>145</sup>

Lack of knowledge is reflected on women's attitude toward gender violence issues and also their behaviour in such situations. The findings of the 2007 National Survey on Gender Attitudes in Azerbaijan revealed respondents' negative attitude towards women seeking formal protection from domestic violence.<sup>146</sup> 50% of female respondents believed that women should endure violence from their husband. Both male and female respondents were reluctant to think of the possibility for women in violent relationships to seek any formal assistance. For example, only 5.2% of men and 8.2% of women acknowledged that calling the police could be a solution for the outbreak of intimate partner violence. An even smaller number of men and women considered it acceptable for a woman victim of violence to receive help from neighbours, friends and psychologists. Respondents were not aware of the possibility of hiring a lawyer to protect women's rights in court.<sup>147</sup> At the same time, 34.2% of women and every second man were sure that women in violent relationships should not call anyone for help and should not inform anyone else about their husbands' violent behaviour.<sup>148</sup>

Many women view violence from their partner as part of family life that should be kept undisclosed and free of outside intervention. About 61% of women subjected to partner abuse did not tell anyone about the violence. The women interviewed during the survey indicated that they had decided to disclose their experience of violence to parents, relatives and friends. Less than 1% of the abused women who took part in the survey requested the assistance of public institutions. Their reasons include: the fear of retaliation and escalation of violence, shame and fear of impact on the family's reputation, not being believed, being blamed, the belief that official reporting would not help (as reflected in the experiences of other women), the fear that it would end the relationship, and the fear of losing their children.<sup>149</sup> The lack of knowledge of their rights is also one of the main reasons of such fears, especially the fear of losing their children; the ineffectiveness of official reporting mechanisms also plays a role. This situation emphasises the importance of raising awareness of the media on the need to eliminate gender stereotypes, revising school books and other teaching materials and removing any discriminatory gender stereotypes, introducing mandatory education on women's rights and gender equality in school curricula and in professional training for teachers at all levels of education.

It is important to note that the National Action Plan for Increasing Effectiveness of Protection of Human Rights and Freedoms<sup>150</sup> includes several paragraphs on increasing legal knowledge among the population, including women.

---

<sup>144</sup> Women access to justice in Azerbaijan, Report. Gender Association "Symmetry" partnership project with Karat Coalition due to support of OXFAM Novib. 2011, p. 3

<sup>145</sup> [http://musavat.com/news/olke/mehriban-eliyevaya-daha-cox-qadinlar-muraciet-edir\\_56317.html?welcome=1](http://musavat.com/news/olke/mehriban-eliyevaya-daha-cox-qadinlar-muraciet-edir_56317.html?welcome=1) (In Azerbaijani)

<sup>146</sup> National Survey Report on Violence against Women in Azerbaijan. Baku, 2011. p. 160

<sup>147</sup> Ibid. p. 161

<sup>148</sup> Ibid., See also Gender attitudes in Azerbaijan: Trends and Challenges, Azerbaijan Human development Report, UNDP, 2007, pp. 68-70

<sup>149</sup> Ibid.

<sup>150</sup> National Action Plan in Increasing Effectiveness of Protection of Human Rights and Freedoms was approved with the Decree of the President of the Republic of Azerbaijan dated 27 December 2011.

### iii. Discussion of possible specific socio-economic and cultural barriers affecting women's access to justice in the country

Gender stereotypes are the social and cultural construction of males and females, due to their different physical, biological, sexual and social functions.<sup>151</sup> In Azerbaijan, men are still expected to be the families' main breadwinners and decision-makers within society and within the family, while women are sometimes viewed first and foremost as mothers, persons who should take care of domestic affairs and individuals with the status of "inferior sex".<sup>152</sup> Gender stereotypes have close links with all existing women's rights problems in Azerbaijan, including early marriages, sex-selective abortions and gender-based violence. Gender stereotypes influence women's roles and status in the home and community; and consequently affect their access to justice as well.

As mentioned, gender stereotypes affect women's attitude to being subjected to domestic violence. Most women in violent situations consider domestic violence 'normal' and do not perceive a need to seek assistance. Social stigma, shame and dependence on the husband and his family for economic support also severely restrict a woman's perceived ability to report violence.

According to the results of a 2011 Survey on Violence against Women in Azerbaijan, the majority of women (60.8%) that ever suffered from intimate partner violence did not disclose the abuse to anyone. This silence may be explained by both the influence of patriarchal family values that do not condone the disclosure of intimate partner violence outside of family circle and the lack of a well-developed system of assistance for the victims of violence (crisis centres, help lines, shelters) in the country. According to the survey findings, women who turned to formal assistance or left home, at least for one night suffered from constant and severe abuse, and worried for their own and their children's well-being.

The survey conducted the initial assessment of main coping strategies used by women subjected to intimate partner violence. A very small number of respondents reported turning for assistance to agencies or authorities. 19 out of the 357 abused women have filed a total of 32 appeals to various public institutions. Women who sought help most frequently went to police departments, courts and medical centres. 15 out of 19 respondents who sought institutional support, reported experiencing frequent and persistent intimate partner violence accompanied by physical injuries, in some cases more than five times throughout their marital life. 338 out of the 357 physically abused respondents had never applied to public institutions for assistance. Their silence is enforced by the fear of retaliation and more violence (26%), fear to bringing a bad name to the family (15%), shame and fear of not being believed or being blamed (6%), belief that this will not help as it did not help other women (4%) and fear of losing children (1%). At the same time, 14% of women believed that intimate partner violence is not an issue to complain about. A considerable group of respondents (27%) did not know or remember why they did not apply for assistance. This may indicate a certain recollection bias related to respondents' desire to block unwanted memories and not reflect over difficult decisions (p. 159).

---

<sup>151</sup> Cook R. and Cusack S., *Gender Stereotyping: Transnational Legal Perspectives* (University of Pennsylvania Press, 2010).

<sup>152</sup> UNDP/SCFWCA, Azerbaijan Human Development Report *Gender attitudes in Azerbaijan: trends and challenges* (Baku, Azerbaijan, 2007); UNFPA/SCFWCA *National Survey Report on Violence Against Women in Azerbaijan* (Baku, Azerbaijan, 2011); UNFPA/SCFWCA, *Qualitative Assessment of Violence Against IDP Women in Azerbaijan* (Baku, Azerbaijan, 2011); UNFPA/SCFWCA (unpublished draft) *Mechanisms Behind Skewed Sex Ratio at Birth in Azerbaijani Population*

The Survey results demonstrated that women in Azerbaijan are predominantly not likely to seek formal help and protection from domestic violence. This decision is conditioned by a complex set of factors including cultural barriers and underdevelopment of a formal service system for domestic violence survivors. As a result the vast majority of women subjected to domestic violence learn to survive by silencing their voices. In these unfavourable conditions, women develop their own strategies for surviving intimate partner violence such as fighting back, leaving the house, engaging the assistance of family, friends and neighbours (p. 161).

Under the influence of cultural stereotypes, women's attitude to their rights, especially on the issues of domestic violence is different. In the majority of cases they see it as a private issue rather than a violation of rights. According to a 2008 survey, very often, interviewees considered the beating in a family justified, especially in cases when the women was unfaithful (32%), when the women went out without informing the husband (24%) and when the wife disobeyed her husband (18%).<sup>153</sup>

#### **iv. Brief overview of key statistics in the country concerning women's position in society, economy and politics vis-à-vis men's**

There are three women deputy ministers out of 20 ministries of the country; the chairperson of one State Committee out of 10 is a woman; the chairperson of one State Commission is a woman; rectors of three higher education institutions are women.<sup>154</sup> The Commissioner for Human Rights (Ombudsman) is also a woman. The representation of women in the Milli Majlis (the National Parliament) has increased from 11% (13 deputies out of 125) in the 2005 elections to 16% (20 women out of 125 deputies) in the last elections of 2010.<sup>155</sup> Even if it is higher than in 2005, it remains very low.

In the last municipality elections in December 2014 the number of women in self-government bodies increased six-fold to a total of 5,236 women. Now women consist of 35% of municipality members. In previous elections it was only 4%.<sup>156</sup> The CEDAW Committee welcomed the increase in the number of women holding positions at municipal level but the Committee is concerned that women remain significantly underrepresented in national and local legislative bodies, in the Government, and the civil service, in particular in senior and decision-making positions.<sup>157</sup>

Of a total of 524 judges, 461 are men and 63 are women, and of 74 court presidents, four are female.<sup>158</sup> According to statistics as at 31 December 2012, the total number of prosecutors is 1,069 (1,022 men; 47 women).<sup>159</sup>

According to information received from the Ministry of Economy and Industry, of the half a million entrepreneurs that are currently registered, 15% are women. Women represent the majority of the workforce in fields such as education (71.7%), social work (78.1%), and art and entertainment (63.8%). Men continue to dominate in fields such as trade, management and the technical domains of engineering, construction, etc. According to the State Statistical Committee, the unemployment rate for women is 6.0% (4.0% for men) for 2013.<sup>160</sup>

---

<sup>153</sup> Report of the Special Rapporteur on Violence against Women, its causes and consequences, Rashida Manjoo. Addendum, Mission to Azerbaijan. 25 April 2014, paragraph 10

<sup>154</sup> Consideration of reports submitted by states parties under Article 18 of the Convention. Fifth periodic report of states parties. Azerbaijan. CEDAW/C/AZE/5. Paragraph 54.

<sup>155</sup> Ibid. paragraph 55.

<sup>156</sup> <http://oxu.az/society/66242>

<sup>157</sup> CEDAW Committee, Concluding Observation on Azerbaijan 2015, paragraph 26

<sup>158</sup> COE. GRECO. Fourth Evaluation Round. Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation Report Azerbaijan. 2 April 2015. Available at:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4\(2014\)2\\_Azerbaijan\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4(2014)2_Azerbaijan_EN.pdf)

<sup>159</sup> European Commission for the Efficiency of Justice (CEPEJ). Scheme for Evaluating Judicial Systems 2013.

Azerbaijan. Available at: [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Azerba%C3%AFdjan\\_2014.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Azerba%C3%AFdjan_2014.pdf)

<sup>160</sup> Women and Men in Azerbaijan\_2013, State Statistical Committee of the Republic of Azerbaijan.

<http://www.stat.gov.az/source/gender/indexen.php>

### III. Gender responsiveness of the justice system

There is no available data on the number of cases women bring before national courts, due to lack of sex-segregated data on court applicants.

#### A. Gender bias, gender stereotypes, poor services and hostile attitudes among legal professionals and the police

As mentioned, gender stereotypes are deeply rooted in Azerbaijani society. The UN Special Rapporteur on violence against women notes in her report that violence against women “seems to be underpinned by the persistence of patriarchal social norms, deeply-rooted gender stereotypes and misconceptions, as well as customary practices that are harmful to women.”<sup>161</sup> Such attitudes prevail among legal professionals and the police as well.

According to the Code of Criminal Procedures, the victim is a party in the criminal procedure. As participants in the procedure, victims have certain procedural rights, as well as duties, which judges are obliged to explain. In 2013, the OSCE established the Trial Monitoring Team for realisation of monitoring of domestic violence cases in the justice system of Azerbaijan. The Trial Monitoring Team recorded that in the court proceedings related to domestic violence, the victims generally represent themselves in person. In such cases, the judge’s duty to explain their rights to them is particularly important. The trial observers reported that in many cases judges did not announce the list of rights, and in some cases judges merely announced the rights without any explanation. By failing to instruct the victims about their rights in a full and understandable manner, especially in cases of unrepresented victims, the courts jeopardize victims’ legal rights.<sup>162</sup>

During its monitoring of criminal proceedings involving domestic violence, the trial monitors have recorded cases such as:

- A prosecutor mentioning a proverb extolling the benefits of domestic violence to a victim;
- A judge telling a victim that her words and behaviour in the courtroom showed that she was “as guilty as her husband”; and
- A judge trying to convince a victim to proceed with a hearing in closed session, using the reasoning that since she was a woman, some of the facts to be investigated in the trial would be “shameful” for her.<sup>163</sup>

Domestic violence is still accepted and is a taboo topic to be dealt with within the family. There are no systematic and consistent efforts towards societal transformation to address traditional gender roles and stereotypes limiting the personal, social, economic, and political freedom of women in Azerbaijan. The OSCE Trial Monitoring Team observed several criminal proceedings related to domestic violence. They reported about inappropriate language by justice actors towards victims. The trial observers recorded that justice system actors do not always accord victims with the respect to which they are entitled by the law. Although few in practice, inappropriate language that indicates discriminatory attitudes, where gender based stereotypes appear to substitute the facts, may further victimise the victim.<sup>164</sup>

*Corruption* existing in the judiciary is also one of the reasons making women’s access to justice difficult. It is one of the reasons for the low level of applications to authorities for help or investigation, especially in domestic violence or sexual violence cases. It is connected mostly with lack of trust of authorities and effectiveness of initiation of any disputes related to court or

---

<sup>161</sup> Ibid, paragraph 4.

<sup>162</sup> Domestic Violence Cases in the Justice System of Azerbaijan. Rule of Law and Human Rights Unit. OSCE Office in Baku, 2013 (OSCE Report), p.18

<sup>163</sup> Ibid, p. 19.

<sup>164</sup> OSCE Report, p. 19

police. Corruption is one of the reasons why, even if people seek justice and can physically access the institutions, the outcome may not be fair/just.<sup>165</sup>

*The lack of women staff* in the judiciary and in the police further hinders a woman's ability to report. This, combined with the widely spread stereotypes, economical dependence and the fear of shame make reporting almost non-existent. The UN Special Rapporteur noted the low number of women working in the criminal justice sector as a contributing factor to the inappropriate handling of such cases.<sup>166</sup>

It is important to note that gender stereotypes and hostile attitudes among legal professionals against women display in cases, which are directly on gender issues. In cases, which have no relation to gender, such attitudes and stereotypes do not appear. Brief interviews conducted among advocates for this study confirm it as well.

## **B. Existing gender training for judges and lawyers**

The MoJ has undertaken specific education and training programmes about the principles and provisions of the CEDAW Convention and its Optional Protocol. The training is provided to all Government agencies, public officials and, in particular, the legal profession and the judiciary. Since July 2011, special training has been dispensed on the importance of invoking CEDAW and of making reference to the Convention in judgments whenever possible. The MoJ in collaboration with the SCFWCA also regularly publishes special materials for their use with the aim of raising their awareness. The SCFWCA as the central body responsible for the implementation of the gender policy in the country, gender focal points in state bodies and representatives of NGOs also benefit from trainings conducted by the MoJ. The MoJ, besides training programmes, also organises seminars which are attended by judges, prosecutors and lawyers with expertise in CEDAW and other human rights treaties. The education of judges at the Academy is dispensed in co-operation with the European Council, OSCE, UNICEF, German Technical Co-operation Organisation (GTZ) and other agencies. The MoJ has also been involved in an ongoing Joint Project called "Application of the European Convention for the Protection of Human Rights and Fundamental Freedoms" for court system and human rights advocates, in the framework of the Council of Europe/European Union Project Cooperation Framework. The MoJ also has an agreement on long-term co-operation with the European General Juridical Centre of Greece, which holds regular seminars and symposiums for judges, law enforcement personnel and court officials, and all those working in the human rights protection system.<sup>167</sup>

Hundreds of lawyers, policemen and prosecutors have been passing through training and other educational and capacity building programmes of international and local NGOs, including the Council of Europe, European Union, OSCE, ABA CEELI and UN Agencies. However, based on observations, it can be stated that the trainings on women's rights mostly have informative nature about existing domestic laws and international standards. A special curriculum on women's rights law directed to change the attitude of judges about the woman and her role in family and society should be prepared to achieve real success in educating judges and lawyers. It is also important to include the course on women rights law into the curriculum at law faculties to instruct the next generation of lawyers about the new way of thinking on gender issues. It makes sense to note that there is no topic on women's rights issues among those included into the curriculum of the initial training course for candidate-judges at the Academy of Justice.

---

<sup>165</sup> Women access to justice in Azerbaijan, Report. Gender Association "Symmetry" partnership project with Karat Coalition due to support of OXFAM Novib. 2011, p.2.

<sup>166</sup> Report of the Special Rapporteur on Violence against Women, its causes and consequences, Rashida Manjoo. Addendum, Mission to Azerbaijan. 25 April 2014, paragraph 70

<sup>167</sup> Consideration of reports submitted by states parties under Article 18 of the Convention. Fifth periodic report of states parties Azerbaijan (11 March 2013). CEDAW/C/AZE/5, paragraphs. 9-11.

### **C. Extent to which women's rights and gender equality issues have been introduced in the education of legal professionals**

In 2010, Baku State University LLM Programme on Human Rights Law included into its curriculum the course on Gender and Children Rights. It was a mandatory course until 2014. Now this course is taught as an optional course. It is the only course reflecting women's rights law as a separate subject at higher education institutions in Azerbaijan.

*See Appendix: Syllabus of Gender and Children Rights Course, LLM Human Rights Law Programme, Law Faculty of Baku State University*

## **IV. Remedies, good practices and recommendations**

### **A. Existing remedies to facilitate women's access to justice**

According to the CEDAW Committee General Recommendation No. 28, remedies for women who are subject to discrimination should include different forms of reparation, such as monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women.<sup>168</sup> Without reparation, the obligation to provide an appropriate remedy is not discharged.<sup>169</sup>

Article 68 of the Constitution states that the victims have the right to participate in the administration of justice and to demand compensation of loss. The Law on Gender Equality states that "damage to people exposed to gender discrimination shall be paid in compliance with the legislation of the Republic of Azerbaijan. Damage to employees exposed to sexual harassment shall be paid by an employer in compliance with the legislation of the Republic of Azerbaijan."<sup>170</sup>

In the spirit of ensuring that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, a "State Programme on the Development of Justice System in Azerbaijan for 2009-2013" was approved in February 2009, one of the main objectives being to improve access of citizens to judicial authorities and courts. With the Judicial Modernisation Project implemented jointly by the MoJ and the World Bank, 20 Regional Legal Advisory Service Centres have been established with the aim of sensitising the poor, especially women about their rights, raising their awareness and enhancing their access to free legal aid services including in relation to violence against women.<sup>171</sup>

As in all jurisdictions, courts are the main providers for redressing violations of the law in Azerbaijan. Women also apply to the Commissioner for Human Rights and SCFWCA when they face violations of their rights. The Commissioner for Human Rights (Ombudsman), who has oversight of the implementation of human rights provisions in Azerbaijan, can receive and investigate complaints of human rights violations by individuals and legal entities.<sup>172</sup> The Ombudsman has a right to investigate complaints concerning court bureaucracy, document loss, as well as delay in court decisions.<sup>173</sup> The SCFWCA can receive and consider complaints in relation to its area of activities.

---

<sup>168</sup> CEDAW Committee, General Recommendation No 28 on the core obligations of states parties under Article 2, UN Doc. VEDAW/C/GC/28, 2010, paragraph 32.

<sup>169</sup> Ibid.

<sup>170</sup> Article 17, Law on Gender Equality.

<sup>171</sup> Consideration of reports submitted by states parties under Article 18 of the Convention

Fifth periodic report of states parties, Azerbaijan, paragraph 8. Available at

[http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW-C-AZE-5\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW-C-AZE-5_en.pdf)

<sup>172</sup> Article 8.1, Constitutional law of the Republic of Azerbaijan on the Commissioner on Human Rights (Ombudsman), No. 246-IKQ, 28 December 2001

<sup>173</sup> Article 1.6, Ibid.

The provision of effective remedies for victims involves ensuring the rights of women to access both criminal and civil remedies and the establishment of effective protection, support and rehabilitation services. Effective remedies must address the root causes of violence, inequality and discrimination.<sup>174</sup> During her visit to Azerbaijan, the UN Special Rapporteur could not access any data on measures to ensure redress for women victims of violence. The low rate of prosecution and convictions for acts of violence against women contributes to the lack of effective redress provided to victims. Women in Azerbaijan face numerous obstacles to access mechanisms of redress including quality legal aid, counselling services and shelters.<sup>175</sup> Instead of being provided with proper redress, women victims of violence are re-victimised and exposed to further risk of violence through the intervention of the family, the community or the authorities as a result of out-of-court settlements. The UN Special Rapporteur states in her report that judges are particularly reluctant in granting divorces and often encourages both parties to seek reconciliation instead of ensuring effective redress to women survivors of domestic violence.<sup>176</sup>

According to the Law of Azerbaijan on Reimbursement of damages to the individuals caused by the illegal acts of the preliminary investigating bodies, prosecutors and courts adopted on 29 December 1998, all damages caused to the individuals by the preliminary investigating bodies, prosecutors and courts should be reimbursed by the state. According to the Code of Criminal Procedures, the court considers the application of the victim of crime about compensation of damages caused by the crime at the expense of state budget.<sup>177</sup> According to the Law Approval, Entry into Force and Related Legal Regulation Issues on the Code of Criminal Procedures, the provisions of the Code of Criminal Procedures concerning the payment of the compensation to the victims of the crime will come into force after completion of the judicial-legal reform and adoption of the relevant law in this field.<sup>178</sup> This requirement covers compensation from the state. The phrase of “completion of the judicial-legal reform” is quite uncertain and this process may take centuries. This provision postpones the payment of the compensation to the victims of crime for an indefinite period. It affects women victims of crime, including victims of human trafficking from receiving compensation from the state.

### *Remedies for victims of human trafficking*

Azerbaijan has achieved some progress in providing remedies for victims of human trafficking. The National Action Plan on Combating Human Trafficking in Azerbaijan (2014-2018) contains an impressive list of policy measures addressing the provision of physical, psychological and social rehabilitation, safe living conditions, medical examination and treatment, access to translation services, legal representation in courts, ensuring access to education as well as vocational training and the labour market, etc.<sup>179</sup> The National Action Plan for 2009-2013 ensures that once the victims of human trafficking are identified, they are given immediate and adequate material, social, medical or psychological support. Since August 2012, allowances paid to victims of human trafficking in the course of reintegration have been increased from 200 AZN to 400 AZN. The Programme on Social Rehabilitation and Reintegration of the Children Victims of Human Trafficking<sup>180</sup> was adopted in 2014. With the changes made to the Criminal Code in 2013, the definition of human trafficking in the Criminal Code has brought into compliance with international law.<sup>181</sup> To strengthen the implementation mechanism a series of orders was issued by the Cabinet of Ministers.<sup>182</sup>

---

<sup>174</sup> Report of the Special Rapporteur on Violence against Women, its causes and consequences, Rashida Manjoo. Addendum, Mission to Azerbaijan. 25 April 2014, paragraph 75.

<sup>175</sup> Ibid. paragraph 76.

<sup>176</sup> Ibid. paragraph 77.

<sup>177</sup> Article 191.1, Code of Criminal Procedures.

<sup>178</sup> Article 2

<sup>179</sup> National Action Plan on Combating Human Trafficking in Azerbaijan for 2009-2013 approved with the Decree of the President of the Republic of Azerbaijan dated 6 February 2009.

<sup>180</sup> The Programme was approved with the Decision of the Cabinet of Ministers of the Republic of Azerbaijan, 6 February, 2014, No 37.

<sup>181</sup> The Law of the Republic of Azerbaijan on making Changes to the Criminal Code of the Republic of Azerbaijan, 19 April 2013, 610-IVQD.

<sup>182</sup> Rules of National Referral Mechanism for victims of human trafficking (11 August 2009); Rules (indicators) on Identifying Victims of Human Trafficking (3 September 2009); Rules on Placing and Keeping the Children Victims of

However, victims of human trafficking also experience some problems in applying to available remedies. According to the Law of Azerbaijan on Combating Human Trafficking (Law on Combating Human Trafficking), the courts shall resolve the matter of material and moral damages related to the victims of trafficking in persons. Damage caused to the victims of trafficking in persons shall be compensated from the assets of human traffickers, or trafficking victims' assistance funds, if the assets of human traffickers are not enough for compensation in accordance with the procedural legislation.<sup>183</sup> According to the Code of Civil Procedures, civil claim arising out of a criminal case shall be filed for review under the civil procedure during the criminal proceedings. NGOs working with the victims of human trafficking state that this provision causes some problems in practice, the victims of human trafficking are informed about the date of the court proceeding and provided with a lawyer late; as a result of which, the victims of human trafficking do not have enough time to prepare civil claims before a criminal case is settled.<sup>184</sup>

## **B. National good practices to promote equal access of women to justice**

The Labour Code prohibits refusing to sign a labour contract with a woman who is pregnant or has a child under the age of 3. If an employer refuses to sign, he or she has to explain in writing the reason behind his/her decision to the woman who can seek justice from a court of law in order to protect her rights.<sup>185</sup> According to the law, women shall be granted pregnancy and maternity leave of 126 days, starting 70 calendar days prior to childbirth and ending 56 calendar days after childbirth. In the event of difficult or multiple births, women shall be granted 70 days leave after childbirth. The Law takes into account the needs of rural women and defines more days of maternity leave after child birth for women working in agriculture sphere. It is 70 calendar days after birth in normal childbirth; 86 calendar days in difficult births and 110 calendar days in multiple births.<sup>186</sup> According to the Labour Code employment contracts pregnant women and women with child under age three, men upbringing independently the child under 3 may not be terminated.<sup>187</sup>

## **C. Measures to address the obstacles that prevent equal access to justice for women**

We propose the following amendments to the relevant laws for removing direct and indirect discrimination regarding women and obstacles preventing equal access to justice for women:

Labour law:

- to remove the prohibition of women from working in particular fields of employment or particular hours; and the restrictions on women's choice of employment;
- to remove the restrictions regarding duties at work for pregnant women or women having children under 3 years of age and bring them into compliance with international norms;
- to ensure that men enjoy the same positive conditions and opportunities as women, to provide the possibility to share responsibilities in raising children for men and women;
- to amend the provision of the Law on Gender Equality stating "compensations, privileges and fringe benefits for females specified by the Labour Code shall not be considered as discrimination", as there are some provisions in the Labour Code, which constitute direct and indirect discrimination against women;
- to include compulsory paternity leave in legislation;
- to safeguard the rights of women working in informal sector.

---

Human Trafficking in Shelters (19 November 2009); Rules on repatriation of victims of human trafficking (10 September 2013).

<sup>183</sup> Article 26, Law on Combating Human Trafficking.

<sup>184</sup> Experience of Azerbaijan in Combating Human Trafficking. Baku, 2012, Ed., Bayramova P. (in Azerbaijani). p. 39.

<sup>185</sup> Article 240, Labour Code

<sup>186</sup> Article 125, Labour Code

<sup>187</sup> Article 79, Labour Code

#### Family Law:

- to provide for the equal retirement age for men and women;
- to make divorce possible only through the judiciary;
- to remove the list of reasons for applying for maintenance for a woman;
- to safeguard the rights of girls and women in unregistered marriages and their children and provide for their access to justice;
- to prohibit religious marriages prior to State registration;
- to take into account the remuneration in informal sector when defining alimony for children in divorce cases;
- to strengthen the enforcement of court decisions, especially on payment of alimony.

#### Criminal law and criminal procedure:

- to include stalking and marital rape into the Criminal Code;
- to revise the definition of rape in the Criminal Code as covering lack of consent as well;
- to include forced pregnancy and forced abortion into the Criminal Code in the context of sex-selective abortions;
- to remove the burden of proof from the applicant in the Code of Criminal Procedures in cases related to discrimination and violence against women;
- to include domestic violence into the Criminal Code as a specific crime;
- to include the specific provision into the Code of Criminal Procedures to address the particular needs and rights of women victims of domestic violence;
- to implement the provisions on forced and child marriage in practice.

#### Law on Prevention of Domestic Violence:

- to remove the state's duty to "assist in normalisation of relations between parties and resumption of family affairs" from the Law on Prevention of Domestic Violence;
- to clarify the possibility of issuing a "warning" in the Law on Prevention of Domestic Violence;
- to adopt the National Strategy on Prevention of Domestic Violence and the National Action Plan on Prevention of Domestic Violence;
- to develop the mechanisms of the short- and long-term protection orders.

#### Law on Gender Equality:

- to amend the Law on Gender Equality for bringing the definition of the 'discrimination against women' into compliance with international law as encompassing both direct and indirect discrimination;
- to enforce the prohibition of sexual harassment.

#### National remedies:

- to adopt the Law on Free Legal Aid;
- to improve the mechanism in legislation for receiving free legal aid in civil cases;
- to undertake measures to ensure qualified and effective legal assistance;
- to establish free, sustainable and state supported services for women including a free 24/7 hotline;
- to increase the number of the state-funded shelters for women victims of domestic violence;
- to ensure the availability of childcare facilities and shelters for victims of domestic violence in rural areas;
- to increase the number of female staff in the criminal justice sector;
- to ensure full implementation of the policy framework on national referral mechanisms to combat human trafficking;
- to take measures to combat corruption in judiciary and justice system;

- to take temporary special measures to achieve *de facto* gender equality in the political, economic, and social spheres;
- to establish legal aid clinics, especially in rural areas for providing free legal aid;
- investigation and prosecution of such cases;
- to implement the Law on Public Participation;
- to take measures to enhance women's participation in public life, especially in decision-making bodies, including Parliament, the Government, the diplomatic service, regional and local municipalities and the upper level of the judiciary.

#### Raising awareness:

- to raise awareness of judges, police, law-enforcement officers, and lawyers on women's rights with special trainings intended to challenge their cultural attitudes to violence and discrimination against women;
- to include women's rights law into curriculum in secondary schools and law faculties;
- to revise the content of school teaching materials and the curriculum to address gender stereotyping;
- to raise awareness about their rights among women;
- to develop a special curriculum on women's rights law for judges, law enforcement officials and lawyers with the intention to challenge the attitudes to and cultural stereotypes about women;
- to include the course on women rights law into the curriculum at law faculties with the aim to educate the new generation of lawyers with a new way of thinking on gender issues.

#### **D. Measures to address the research and data needs and gaps in the field of women's equal access to justice**

We propose the following measures to address the research and data to advance the women's access to justice:

- to collect data on the number of cases women bring before national courts, in comparison to men;
- to take measures to fill in the lack of official data on dynamics of child marriages; and
- to collect data on participation. Data should be disaggregated, including according to gender, ethnicity, urban/rural status, region, age and disability;
- to improve data collection on particular vulnerable population groups, such as sex workers, street children, people with disabilities, and LGBT persons;
- to conduct comprehensive research on women's rights in Azerbaijan, including women's access to justice.

#### **E. Relevant actors in the field of women's access to justice that the project could/should engage with (official institutions, civil society organisations, academia)**

The following actors should be engaged to promote reforms towards guaranteeing women's access to justice:

- Ministry of Justice;
- Academy of Justice at the Ministry of Justice;
- State Committee on Family, Women and Children Affairs;
- Commissioner of Human Rights (Ombudsman);
- Law Faculty of Baku State University;
- Judiciary Legal Council;
- Collegium of Advocates;
- Courts;
- NGOs specialised in protection of women's rights and other civil society human rights defenders.

## Bibliography

Bayramova, Parvana, "Overview of the Law of the Republic of Azerbaijan on Public Participation" (not published)

CEDAW Committee (2015). Concluding Observations on Azerbaijan

Constitution of the Republic of Azerbaijan, 12 November 1995

Cook, R. and Cusack, S. (2010), *Gender Stereotyping: Transnational Legal Perspectives*, University of Pennsylvania Press

Council of the European Union Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex

Counterpart International, "Alternative report to the CEDAW Committee." Submitted to the 60th Session of the CEDAW Committee (9 - 27 Feb 2015)

Criminal Code of the Republic of Azerbaijan, 14 July 2000, No 907-IQ.

European Commission for the Efficiency of Justice (CEPEJ). *Evaluating Judicial Systems 2013. Azerbaijan*. Available at:

[www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Azerba%C3%AFdjan\\_2014.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Azerba%C3%AFdjan_2014.pdf)

Family Code of the Republic of Azerbaijan, 28 December 1999

Fifth periodic report of states parties. Azerbaijan (11 March 2013). CEDAW/C/AZE/5

Gender Association "Symmetry", Karat Coalition and OXFAM Novib, 2011, "Women's Access to Justice in Azerbaijan"

Group of States against Corruption (GRECO) of the Council of Europe, Fourth Evaluation Round. "Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation Report Azerbaijan", 2 April 2015. Available at:

[www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4\(2014\)2\\_Azerbaijan\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4(2014)2_Azerbaijan_EN.pdf)

ILO Department of Statistics (June 2011), *Statistical update on employment in the informal economy*. Available at: [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/presentation/wcms\\_157467.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/presentation/wcms_157467.pdf)

Jivan, V. and Forster, C. (2008). *Translating CEDAW into law. CEDAW Legislative Compliance in the Cook Islands*. UNDP, UNIFEM.

Labour Code of the Republic of Azerbaijan, 1 February 1999

Law of the Republic of Azerbaijan on Gender Equality, 10 October 2006, No. 150-IIIQ

Law of the Republic of Azerbaijan on Public Participation, 22 November 2013, No. 816-IVQ

OSCE Rule of Law and Human Rights Unit (2013), "Domestic Violence Cases in the Justice System of Azerbaijan", Baku

Parliamentary Assembly of the Council of Europe, Resolution 1829 (2011) on Prenatal sex selection

Recommendation No. R(96)5 of the Committee of Ministers to Member States on Reconciling Work and Family Life. Council of Europe, 1996.

Report of the Special Rapporteur on *Violence against Women, its causes and consequences*, Rashida Manjoo. Addendum, Mission to Azerbaijan, 25 April 2014

State Statistical Committee of the Republic of Azerbaijan (2013), "Women and Men in Azerbaijan". Available at: <http://www.stat.gov.az/source/gender/indexen.php>

UNDP/SCFWCA (2007), Azerbaijan Human Development Report *Gender attitudes in Azerbaijan: trends and challenges*, Baku

UNFPA/SCFWCA (2011), *National Survey Report on Violence Against Women in Azerbaijan* Baku

UNFPA/SCFWCA (2011), *Qualitative Assessment of Violence Against IDP Women in Azerbaijan*, Baku

UNFPA/SCFWCA (unpublished) *Mechanisms Behind Skewed Sex Ratio at Birth in Azerbaijani Population*

# **GEORGIA**

Report prepared by  
Babutsa Pataraia

## Contents

<b>I. Summary .....</b>	<b>67</b>
<b>II. Introduction.....</b>	<b>67</b>
<b>III. Gender gaps in access to justice .....</b>	<b>70</b>
A. Analysis of the national legal and policy frameworks .....	70
B. Analysis of practices and mechanisms for the implementation of laws .....	76
C. Socio-economic and cultural barriers to women’s access to justice .....	80
<b>IV. Gender responsiveness of the justice system .....</b>	<b>85</b>
<b>V. Remedies, good practices and recommendations .....</b>	<b>91</b>
<b>Bibliography .....</b>	<b>93</b>

## I. Summary

The present report discusses the issue of women's access to justice in Georgia. The report reviews Georgian legislation, recent developments and specific legal aspects related to gender and sex. The document also reviews implementation mechanisms of the laws and identifies the shortcomings. Major stakeholders of the justice system are characterised and assessed. Based on the analysis of state policies and practices, the report highlights barriers and good practices. In addition, for understanding the local context the report offers an overview of selected research, including opinion polls, which reflect socio-economic and cultural specificities of Georgian society. To conclude, the report provides a number of recommendations to improve Georgian justice system in order to make it more accessible for women.

### *Methodology*

The present study is based on qualitative and comparative research methodology. The document is based on overview and analysis of existing qualitative and quantitative research papers developed by local and international organisations. The present study contains information provided by relevant state institutions obtained through official correspondence and interviews. The study analyses relevant legislative and policy documents.

## II. Introduction

### Background Information

As a developing democracy Georgia has been undergoing major reforms since its independence from the Soviet Union in 1991. The Rose Revolution of 2003 has been a breakthrough for Georgia from the perspective of gender equality and women's rights, strengthened with important reforms in political, social, and economic life. The reforms aimed not only at structural changes, but at transforming the mind-sets from a Communist-times ways of thinking to more liberal, Western thinking. Despite some shortcomings the reforms were unique in terms of speed and degree of innovations, and extent of institutional restructuring.<sup>188</sup> In spite of all the activities implemented by the Government of Georgia some barriers and challenges still remain in terms of women's access to justice, such as women's economic dependence, cultural barriers and traditional practices, fear and shame, lack of awareness regarding women's rights and legal safeguards, gender stereotypes, multiple discrimination (in some cases that involve women with disabilities, women belonging to national minorities and elderly women).

Georgia ranks 85 out of 142 countries in the Global Gender Gap Index of 2014.<sup>189</sup> Violence against women remains widespread and one of the most challenging problems. Relatively low level of reporting is a result of women's belief that domestic violence is a private matter, as claimed by 78 % of interviewed women according to a UNDP study from 2010.<sup>190</sup> According to the UNDP study, only 6.9 % of all women acknowledged that they had been victims of physical or sexual violence.<sup>191</sup> The figure is not high compared to other European countries, though it should be mentioned that violence is so stigmatised and related to shame in Georgian society, as showed in various perception studies discussed below, that in many cases victims of violence prefer not to reveal it, unless long term trust relations develop with a supportive professional. Moreover, as reported by Committee on the Elimination of Discrimination Against Women, Georgian women are sometimes subjected to "virginity tests".<sup>192</sup> These practices testify

---

<sup>188</sup> World Bank (April 2009), report No. 44400-GE.

<sup>189</sup> Global Gender Gap Index 2014. Available at: [reports.weforum.org/global-gender-gap-report-2014/economies/#economy=GEO](https://reports.weforum.org/global-gender-gap-report-2014/economies/#economy=GEO)

<sup>190</sup> UNDP. National Research on Domestic Violence against Women in Georgia. 2010, p 7. Available at: [www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/GeorgiaAnnexX.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/GeorgiaAnnexX.pdf)

<sup>191</sup> UNDP. National Research on Domestic Violence against Women in Georgia. 2010, p 11.

<sup>192</sup> CEDAW/C/GEO/CO/4-5 (2014), paragraph 20 (d)

to the very deeply rooted traditional and Orthodox Christian values, values that continue to dominate and impact the Georgian society.<sup>193</sup>

20% of Georgia's territory is under Russian occupation.<sup>194</sup> As a result of wars with Russia there are 250,000 internally displaced persons. The unemployment rates are alarmingly high, 17% is the official number, but the unofficial number is closer to 40%. 15% of the population furthermore lives in extreme poverty.<sup>195</sup> The justice system has had several deficiencies, for example regarding ill-treatment of prisoners, corruption and lack of independence of the judiciary. As noted by for example the UN Human Rights Council, several initiatives have been taken and the country is moving in the direction of increased public trust in the judiciary.<sup>196</sup> Cooperation between the Council of Europe and the Government of Georgia in the field of justice reform has been instrumental in recent years to reinforce judicial bodies and institutions in line with European standards and practices.<sup>197</sup>

This study is based on the understanding that access to justice is central to the rule of law and integral to the enjoyment of basic human rights. It is also an essential precondition to social inclusion and a critical element of a well-functioning democracy. Access to justice can be construed as the ability of people, including people from disadvantaged groups, to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards, without legal, procedural, socio-economic or cultural obstacles. The requirement of equality, including **gender equality**, is at the centre of the meaning, the exercise and the fulfilment of the right to justice.

### **Brief Review of Conclusions by International Human Rights Monitoring Bodies**

Georgia is a state party to the international instruments that guarantee women's access to justice, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC) and subsequent optional protocols. Georgia ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2014 and has signed the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). The Ministry of Justice of Georgia has elaborated the draft ratification legislation for the Istanbul Convention, and the Government of Georgia has now commenced ratification procedure at the parliament of Georgia for autumn 2016.

Several international human rights monitoring bodies have highlighted gaps with regards to access to justice of women, namely:

- In its 2014 Concluding Observations CEDAW raised concerns<sup>198</sup> on poor implementation of laws related to non-discrimination and gender equality (paragraph 10); poor coordination of gender policies (paragraph 14); patriarchal stereotypes and increased "sexualisation" of women in the media (paragraph 18); women's underrepresentation in the legislative and executive branches (paragraph 24); significant wage gap (paragraph

---

<sup>193</sup> UNDP. National Research on Domestic Violence against Women in Georgia. 2010, pp.15-16

<sup>194</sup> European Parliament resolution of 17 November 2011 containing the European Parliament's recommendations to the Council, the Commission and the EEAS on the negotiations of the EU-Georgia Association Agreement [www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0514](http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0514)

<sup>195</sup> Swedish Foreign Department. Land Reports - Georgia. 2011

<sup>196</sup> The Human Rights Council. Report of the Working group on the Universal Periodic Review. Georgia (A/HRC/17/11), 2011

<sup>197</sup> See also Council of Europe Action Plan on Georgia, 2013-2015. ODG/Prog/Inf(2013)15. Available at:

[wcd.coe.int/ViewDoc.jsp?id=2102099](http://wcd.coe.int/ViewDoc.jsp?id=2102099)

<sup>198</sup> CEDAW/C/GEO/CO/4-5, available at:

[tinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5](http://tinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5)

28); Lack of rehabilitation services of victims of violence and child care facilities (paragraph 28).

- In 2014, the Human Rights Committee issued the following remarks on Anti-discrimination and Gender Equality:<sup>199</sup> the problem of effectiveness of the enforcement mechanism concerning violence against women and trafficking cases; Insufficient sanctions to discourage and prevent discrimination; (Articles 2 and 26); The practice of sex-selective abortions of female fetuses (Articles 2, 3, 23, and 26); Concerned about discrimination and social stigma, hate speech and acts of violence against LGBT persons and violation of their rights to freedom of expression and assembly (Articles 2, 9, 19, 21 and 26).
- In 2011, the Universal Periodic Review (UPR) highlighted the following areas of concern regarding women's rights and gender equality:<sup>200</sup> weakness of judiciary (paragraph 41); prevalence of domestic violence (paragraph 64); feminisation of poverty (paragraphs 66, 102);
- In 2012, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) issued its observations, among which were the following:<sup>201</sup> the need to adopt a human rights-based and victim-centred approach (paragraph 223); particular vulnerability of women and girls who are Internal Displaced Persons (IDPs) or who live in disadvantaged rural areas due to their low economic status and lack of access to information on their rights (paragraph 42); not addressing issues in a "gender-sensitive" way and missing the gender mainstreaming in anti-trafficking policy (paragraph 67); very low number of victims who have benefited from rehabilitation and reintegration plans (including payment from the state-fund) (paragraph 226); significant reduction of prosecutions and convictions of trafficking since 2010 (paragraph 227).
- In 2013, Committee for the Prevention of Torture and Inhuman or degrading treatment or punishment of the Council of Europe (CPT) with regard to women's situation in prison, raised concern regarding lack of sanitary materials for women in prison (paragraph 34).<sup>202</sup>
- In 2010, the Group of States against Corruption (GRECO) underlined that corruption remains a problem with regard to the lack of transparency with regard to the funding of political parties, lack of enforcement of rules and lack of public trust in the judiciary (paragraph 78).<sup>203</sup>
- In 2014, the European Commission for the Efficiency of Justice (CEPEJ) recommended that special measures should be used to protect vulnerable persons, including victims of rape and domestic violence, ethnic minorities and disabled persons.<sup>204</sup> Georgia has an information mechanism and special hearing modalities for victims of rape and domestic violence but no other special arrangements. Information mechanisms and special hearing modalities are not available for ethnic minorities and disabled persons, which could impact the access to justice for women belonging to these groups. (p. 92). There are few female court presidents, only two out of 24 in the first instance and none in the other two higher instances (p. 329). The distribution of male and female professional

---

<sup>199</sup> Human Rights Committee. Concluding Observations on the Fourth Periodic Report on Georgia (CCPR/C/GEO/CO/4), 2014. Available at: [tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGEO%2FCO%2F4&Lang=fr](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGEO%2FCO%2F4&Lang=fr)

<sup>200</sup> The Human Rights Council. Report of the Working group on the Universal Periodic Review. Georgia (A/HRC/17/11), 2011

<sup>201</sup> GRETA, Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia, First evaluation round, GRETA (2012) 24, 7 February 2012, available at [www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA\\_2011\\_24\\_FGR\\_GEO\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2011_24_FGR_GEO_en.pdf), (need to use the most recent report)

<sup>202</sup> The Committee for the Prevention of Torture and Inhuman or degrading treatment or punishment. Report to the Georgian Government on the visit to Georgia carried out by The Committee for the Prevention of Torture and Inhuman or degrading treatment or punishment (CPT). From 19 to 23 November, 2012 (CPT/INF(2013) 18. Available at: [www.cpt.coe.int/documents/geo/2013-18-inf-eng.pdf](http://www.cpt.coe.int/documents/geo/2013-18-inf-eng.pdf)

<sup>203</sup> GRECO "Evaluation Report on Georgia on Incriminations." Greco Eval III Rep (2010) 12E, Theme I, paragraph 84. Available at: [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12\\_Georgia\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_One_EN.pdf)

<sup>204</sup> CEPEJ. Report on "European Judicial Systems. Edition 2014 (2012 Data). Efficiency and Quality of Justice"

judges within the total number of professional judges in 2012 was 56.6% against 43.4% (p. 327).

## **Brief Review of Concepts of Gender and Discrimination according to Georgian Legislation**

In accordance with international standards and obligations Georgia has developed extensive legislation concerning gender equality and non-discrimination. It also introduced definitions: in 2010, the Law on Gender Equality was adopted by the Parliament of Georgia. The law provides definitions of gender as “a social aspect of relations between sexes which is expressed in all spheres of public life and implies opinions formed about different sexes through socialisation”; and gender equality “a part of human rights which implies equal rights and duties, responsibilities and equal participation of men and women in all spheres of personal and public lives”.<sup>205</sup>

In 2014 Georgia adopted the Law on Elimination of All Forms of Discrimination, which provides definitions of direct and indirect discrimination. The definition of direct discrimination partially overlaps with the definition of indirect discrimination. Namely, it contains the following phrase: “... or when persons in inherently unequal conditions are treated equally in the enjoyment of the rights provided for by the legislation of Georgia.” The definition of indirect discrimination contains a similar phrase: “... or equally treats persons who are in inherently unequal conditions.”<sup>206</sup> It should be noted that prohibition of discrimination was included in major laws of the state prior to the adoption of the anti-discrimination law, but no definition of discrimination was provided.

### **III Gender gaps in access to justice**

#### **A. Analysis of the national legal and policy frameworks**

##### **Constitutional Law**

Equality between the persons is guaranteed under the Constitution of Georgia, supreme law of the state. Article 14 states that “everyone is born free and is equal before the law regardless of race, colour of skin, language, sex, religion, political or other opinions, national, ethnic and social affiliation, origin, property or social status, place of residence.”<sup>207</sup> Despite the fact that the text of this article proposes an exhaustive list of protected grounds, the Constitutional Court of Georgia interprets this article as non-exhaustive and proclaims gender identity and sexual orientation as constitutionally protected grounds from discrimination.<sup>208</sup>

Article 30 (4) of the Constitution concerns right to labour and states: “organic law shall define protection of labour rights, fair compensation for work and safe, healthy working conditions, as well as working conditions for minors and women.” This is the only article in Georgian Constitution mentioning “women”. This statement is problematic as it justifies specific regulations of working conditions, not for pregnant women or nursing mothers, but for women in general.

Article 36 (1) of the Constitution states: “marriage shall be based on the equality of rights and free will of spouses.” No substantive equality of men and women is mentioned in the supreme law of the state. Article 36 (3) stipulates: “the rights of mothers and children shall be safeguarded by law”.

---

<sup>205</sup> Law of Georgia on Gender Equality, Article 3, Available at:

[matsne.gov.ge/ka/document/view/91624?impose=translateEn](http://matsne.gov.ge/ka/document/view/91624?impose=translateEn)

<sup>206</sup> Law of Georgia on the Elimination of all forms of discrimination, Article 2, Available at:

[matsne.gov.ge/ka/document/view/2339687?impose=translateEn](http://matsne.gov.ge/ka/document/view/2339687?impose=translateEn)

<sup>207</sup> Constitution of Georgia, Article 14, Available at: [matsne.gov.ge/ka/document/view/30346?impose=translateEn](http://matsne.gov.ge/ka/document/view/30346?impose=translateEn)

<sup>208</sup> Beridze and others v. Parliament of Georgia, Constitutional Court of Georgia, No. 2/1-392, 2008, paragraph II.2.

## Criminal Law

In 2012, the Criminal Code of Georgia (the CCG) introduced a hate motive as a ground for imposing higher sanction for committed crimes, including hatred based on sexual orientation and/or gender identity.<sup>209</sup> However, in practice it is not implemented. Prosecutors claim that this article should be implemented solely by judges as they apply sanctions, on the other hand, if the hate motive is not investigated and argued by prosecution the article remains unusable.

In 2012, the CCG was amended and domestic violence became a separate crime of the Code. Article 126 criminalises certain forms of domestic violence, namely, “violence, systematic humiliation, blackmail, degrading treatment which causes pain or suffering.”<sup>210</sup> As physical violence such as beating, bodily damage, and sexual violence, including rape were crimes punished by the CCG, domestic violence now covers some aspects of psychological violence, which represents a novelty.

The chapter on sexual crimes is out-dated and not in compliance with international standards e.g. rape (Article 137) is a crime, but does not define concrete action and in practice it covers only vaginal penetration, while Article 138 named “violent act of sexual character”, in practice covers other forms of penetration, and uses Soviet legal language such as “homosexuality, lesbianism and other perverted actions”.<sup>211</sup> Currently, the Ministry of Justice has elaborated a new definition of rape as part of legislative changes for the ratification of the Istanbul Convention. The ratification process is pending. Neither the existing text, nor the new draft of the chapter on sexual crimes mentions marital rape. In 2012, a new Article 11 was introduced in the CCG, which brought new typology of crimes committed within the family and defined them as domestic crimes. The mentioned article enumerates a variety of crimes which are considered as domestic crimes if committed by family members, sexual crimes, including rape, are included under Article 11; it follows that rape committed among spouses is also considered to be a crime.

In 2014, forced marriage was introduced in the CCG as a separate article.<sup>212</sup> The CCG does not cover the crime of stalking, though it is envisaged in the legislative changes for the ratification of the Istanbul Convention. Crimes that are not envisaged in the CCG or on draft legislation are genital mutilation and sexual harassment. There is no practice of genital mutilation in Georgia, but sexual harassment is a problem as various studies reveal.<sup>213</sup> Sexual harassment is not penalised under the Administrative Offences Code. The only provision regarding harassment is disorderly conduct “swearing in public places, harassment of citizens or similar actions that disrupt public order and peace of citizens.”<sup>214</sup> This crime is directed against public order and not against an individual. Sexual harassment is defined in the Gender Equality Law as “any unwanted verbal, non-verbal or physical behaviour of sexual nature with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, or offensive environment.”<sup>215</sup> The problem with this provision is twofold; first, as in the majority of European countries, the definition only covers labour relations, and second, the law does not provide any remedies or implementation mechanism of mentioned in the article

---

<sup>209</sup> Criminal Code of Georgia, Article 53 (3), Available at: [matsne.gov.ge/ka/document/view/16426](https://matsne.gov.ge/ka/document/view/16426)

<sup>210</sup> *ibid.* Article 126.

<sup>211</sup> *ibid.* Article 137-138.

<sup>212</sup> *ibid.* Article 150.

<sup>213</sup> Centre for Social Sciences, Report Paper of the study “Gender Discrimination in the Georgian Labour Market”, paragraph 48-50. Available at: [css.ge/index.php?lang\\_id=ENG&sec\\_id=93&info\\_id=1038](https://css.ge/index.php?lang_id=ENG&sec_id=93&info_id=1038)

<sup>214</sup> Administrative Offences Code, Article 166

<sup>215</sup> Law of Georgia on Gender Equality Article 6 (1) (b), Available at: [matsne.gov.ge/ka/document/view/91624?impose=translateEn](https://matsne.gov.ge/ka/document/view/91624?impose=translateEn)

## Law on Domestic Violence

The Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence was adopted by the parliament in 2006. For the first time domestic violence was defined by the law. Since the changes to the law in 2014, domestic violence is defined as “violation of constitutional rights and freedoms of one family member by another family member through neglect and/or physical, psychological, economic, sexual violence or coercion.”<sup>216</sup> While physical, psychological, sexual violence, coercion and neglect of a child are prohibited, economic violence remains as mere definition, enforcement of which is not guaranteed according to Georgian legislation.

## Family Law and Property Rights

Marriage is regulated under the Constitution of Georgia, which states that marriage shall be based on the equality of rights and free will of spouses.<sup>217</sup> The constitution does not define the sex of the persons in marriage, but the Civil Code of Georgia specifies that marriage is a voluntary union of a woman and a man for the purpose of creating a family.<sup>218</sup> The Civil Code of Georgia defines all aspects of marital rights and duties. It states that only registered marriages shall give rise to marital rights and duties.<sup>219</sup> Article 1108 of the Civil Code defines 18 as marriageable age, though with the consent of parents/guardians, or where there is no consent but the person has a valid reason, a court can issue permission to marry for a 16 year old person.

The problem of early marriage is one of the most widespread child rights violations in Georgia that disproportionately affects girls.<sup>220</sup> According to the annual report of the Public Defender’s Office of Georgia (PDO), early marriage is one of the prevalent reasons of early drop out from schools by girls. In 2011-2013, 7,367 girls dropped out from school before the age of 15; the PDO documented cases of parents exchanging young girls into marriage for cattle.<sup>221</sup> As the Civil Code gave the possibility to parents to consent to marriage, it left space for abuse of rights. For example, the families of the bride and the groom may enter into an agreement for material interests, in some cases completely ignoring the best interests of the child, and violating their right to freely choose the spouse. According to the most recent change of legislation<sup>222</sup> civil marriage now is possible at 17 years of age with the permission of the court in case of childbirth; this provision is valid until 1 January 2017 after which underage persons will not be allowed to get their marriage registered. Even though they are unregistered, early marriages remain a serious challenge.

Article 1152 of the Civil Code guarantees equality in personal and property rights and responsibilities of spouses in domestic relations and Article 1153 prohibits discrimination when entering into a marriage and in domestic relations rights may not be restricted.

The Civil Code defines the following rights and duties of spouses: Article 1155 - Joint settlement of family affairs (Article 1155); Freedom of choice of activity (Article 1156); Freedom of choice of place of residence (Article 1157). Article 1157 states that “each spouse may choose his or her place of residence at his or her discretion unless doing so contradicts the family interests.” The Civil Code Commentaries do not clarify what exactly “family interests” means; though it states that this article does not oblige a wife to live with a husband, and that spouses can live

---

<sup>216</sup> Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, Article 3, Available at: [matsne.gov.ge/ka/document/view/26422?impose=translateEn](https://matsne.gov.ge/ka/document/view/26422?impose=translateEn)

<sup>217</sup> Constitution of Georgia, Article 36, Available at: [matsne.gov.ge/ka/document/view/30346?impose=translateEn](https://matsne.gov.ge/ka/document/view/30346?impose=translateEn)

<sup>218</sup> Civil Code of Georgia, Article 1106, Available at: [matsne.gov.ge/ka/document/view/31702?impose=translateEn](https://matsne.gov.ge/ka/document/view/31702?impose=translateEn)

<sup>219</sup> *ibid.* Article 1151.

<sup>220</sup> Abashidze A. The Phenomenon of Child Brides and its Impact on Georgia’s EU Integration, Policy Brief, OSGF, Riga/Tbilisi, May 2015.

<sup>221</sup> Annual Report of the Public Defender of Georgia, The Situation of Human Rights and Freedoms in Georgia 2013, (pp.272- 273), available at: [www.ombudsman.ge/uploads/other/1/1934.pdf](http://www.ombudsman.ge/uploads/other/1/1934.pdf)

<sup>222</sup> Civil Code of Georgia, Article 1507.

separately.<sup>223</sup> There are two cases decided by Supreme Court of Georgia referring to Article 1157, but both of them regard inheritance and property division and not disputes over the place of residence.<sup>224</sup>

The Civil Code regulates property issues between the spouses. Article 183 defines that acquisition of ownership of immovable property should be agreed in writing and registered in the Public register. Furthermore, Article 1158 states that “any property acquired by the spouses during their marriage shall be treated as their joint (matrimonial) property, unless otherwise determined by the marriage contract.” Paragraph two of the same article guarantees the right to matrimonial property to the spouse who does not have an independent income for valid reasons. The law also defines that care of children and running the household qualify as valid reasons. Despite the fact that spouses have equal rights to matrimonial property (Article 1159) and the matrimonial property should be administered by their mutual agreement (Article 1160 (1)), the transaction of matrimonial property is not void even if one of the spouses had no knowledge or disagreed with the transaction (Article 1160 (2)). This last provision disproportionately affects women as administration of property and transactions are mainly performed by men in their traditional role as head of the family. This practice was particular widespread in the context of privatisation processes of 1992-2007, when land property was assigned to families and the act of acceptance was signed by the heads of families (usually men).<sup>225</sup>

The Civil Code regulates issues related to inheritance. In case of intestacy first degree heirs are decedent’s spouse, children (including born after the death) and parents (Article 1336).

The Civil Code Article 1371, regardless of the content of a will, the children, parents and spouse of a testator shall be entitled to a compulsory portion that shall be one half of the portion to which each of them would have been entitled by inheritance on intestacy (compulsory share).

## Labour Law

The concept of gender is not integrated into the Labour Code of Georgia. The only article where the sex of a person is mentioned is the one referring to the prohibition of discrimination based on sex in labour and pre-contractual relations.<sup>226</sup> ‘Gender’, however, is not mentioned either in this article, or in others.

There are women-specific provisions in the Labour Code. Namely, the Code prohibits contracting pregnant women or nursing mothers for hard, harmful or hazardous work. This prohibition is introduced as a protective measure.<sup>227</sup>

The Order of the Minister of Labour, Health and Social Security # 147/N on the List of Hard, Harmful or Hazardous Work contains 538 Articles and a long list of prohibited work for pregnant women and nursing mothers.<sup>228</sup> Some of the prohibited positions are: anchors and directors of radio and television (Article 509 (1)); taxi driver (Article 481 (6)); confectioner, responsible for cooking syrup (Article 431 (5)) etc. The Order clearly needs revision in order to avoid undue restrictions on pregnant women and nursing mothers.

---

<sup>223</sup> Commentaries to the Civil Code of Georgia, book five (2000), pp. 106-107.

<sup>224</sup> Supreme Court of Georgia, case #3k/215-01, 11/04/2001. Supreme Court of Georgia, case #as-839-788-2010, 18/01/2011. Available at: [prg.supremecourt.ge/DetailViewCivil.aspx](http://prg.supremecourt.ge/DetailViewCivil.aspx)

<sup>225</sup> Assessment of Property Rights in Georgia, Landesa, EWMI, September 2013, p. 38-42, Available at: [www.ewmi-ijlep.org/images/stories/books/Landesa/GEO - Assessment of Property Rights in Georgia.pdf](http://www.ewmi-ijlep.org/images/stories/books/Landesa/GEO - Assessment of Property Rights in Georgia.pdf)

<sup>226</sup> Labour Code of Georgia, Article 2(3). Available at: [matsne.gov.ge/ka/document/view/1155567?impose=translateEn](http://matsne.gov.ge/ka/document/view/1155567?impose=translateEn)

<sup>227</sup> *ibid.* Article 4(5).

<sup>228</sup> The Order of the Minister of Labour, Health and Social Security # 147/N on the List of Hard, Harmful or Hazardous Work. Available at: [matsne.gov.ge/ka/document/view/70600](http://matsne.gov.ge/ka/document/view/70600)

As a measure of protection, the Code foresees that pregnant women and women having recently given birth should not be permitted to undertake overtime work.<sup>229</sup> In addition, night work (from 10 pm to 6 am) for pregnant women, women having recently given birth, nursing mothers, and persons who babysit children under the age of 3 is prohibited.<sup>230</sup> Employers shall be obliged to prevent pregnant woman from performing work endangering welfare, physical, or mental health of pregnant women or her foetus.<sup>231</sup>

According to Article 27 of the Labour Code, leave for pregnancy, maternity and childcare can be granted at the employee's request for 730 days, out of which 183 days are paid to the amount of 1000 GEL from the state budget<sup>232</sup>. The law does not differentiate between these three. It is obvious that pregnancy and maternity leave can be granted only for women. As for childcare leave, the Labour Code does not specify whether it is applicable for fathers as well, but the Order of the Minister of Labour, Health and Social Security # 231/N stipulates that pregnancy, childbirth and childcare paid leave will not be given to a family member of the birth-giving woman. In case of death of the birth-giving woman, childcare paid leave will be granted to the father of a living child.<sup>233</sup> Thus according to Georgian legislation, fathers are not entitled to receive childcare paid leave if the mother of the child is alive. Georgian legislation does not define paternity leave as such.

It should be noted that for civil service employees the full amount of salary is paid for maternity and childcare leaves,<sup>234</sup> the same does not apply for the private sector.

Maternity and childcare leaves, leaves due to adoption of a new born and any extra maternity or childcare leaves shall not be considered as vocational paid leave under the Code.<sup>235</sup> Unpaid childcare leave up to 12 weeks can be granted to anyone who actually takes care of a child.<sup>236</sup>

The right to retire and receive a pension is connected to the retirement age, which is 65 for men and 60 for women.<sup>237</sup>

The Labour Code does not specifically prohibit sexual harassment at workplace, which is problematic, though Article 2 of the Code defines that direct or indirect harassment constitutes towards discrimination

### **Anti-discrimination Law**

In 2014, Georgia adopted the Law on Elimination of All Forms of Discrimination. The law was adopted to meet commitments in the framework of the EU Visa Liberalisation Action Plan.<sup>238</sup> The purpose of the law is to ensure equal rights and eliminate all forms of discrimination. The law enumerates all protected grounds, including sex and gender.<sup>239</sup> The law has a wide scope of regulation as it applies to the actions of public institutions, organisations, natural and legal persons in all spheres of life.<sup>240</sup>

---

<sup>229</sup> *ibid.* Article 17 (2).

<sup>230</sup> *ibid.* Article 18.

<sup>231</sup> *ibid.* Article 35(7).

<sup>232</sup> Labour Code of Georgia, Article 29. Available at: [matsne.gov.ge/ka/document/view/1155567?impose=translateEn](https://matsne.gov.ge/ka/document/view/1155567?impose=translateEn)

<sup>233</sup> Order of the Minister of Labour, Health and Social Security # 231/N on Rule of Paying Leave on Pregnancy, Childbirth, Childcare, Adoption of an Infant, Article 10(6). Available at: [matsne.gov.ge/ka/document/view/66208](https://matsne.gov.ge/ka/document/view/66208)

<sup>234</sup> The Law on Civil Service. Article 41.

<sup>235</sup> Labour Code of Georgia, Article 22(4). Available at:

[matsne.gov.ge/ka/document/view/1155567?impose=translateEn](https://matsne.gov.ge/ka/document/view/1155567?impose=translateEn)

<sup>236</sup> *ibid.* Article 30(2).

<sup>237</sup> The Law on State Pensions, Article 5. Available at: [matsne.gov.ge/ka/document/view/27946?impose=translateEn](https://matsne.gov.ge/ka/document/view/27946?impose=translateEn)

<sup>238</sup> VLAP. Available at: [migration.commission.ge/files/vlap-eng.pdf](https://migration.commission.ge/files/vlap-eng.pdf)

<sup>239</sup> Law of Georgia on the Elimination of All Forms of Discrimination, 2014, Article 1.

<sup>240</sup> *ibid.* Article 3.

As mentioned earlier, the definition of direct discrimination is troublesome, as it covers certain aspects of indirect discrimination as well, namely, direct discrimination is defined as “when persons in inherently unequal conditions are treated equally in the enjoyment of the rights”. The exact same statement is seen in the definition of indirect discrimination as well.<sup>241</sup> Thus the law should be amended to distinguish between direct and indirect discrimination.

Another problem of the law is that it omits harassment as a separate form of discrimination.

Article 2 of the law defines temporary special measures as measures designed to “accelerate *de facto* equality, especially in gender, pregnancy, and maternity issues, also, with respect to persons with limited capabilities”. The law stipulates that such measures “shall not be considered discrimination”.

One novelty introduced by the law is the monitoring mechanism established under the PDO. The PDO is entitled to “examine acts of discrimination based on applications or complaints, as well as on his/her own initiative and make appropriate recommendations”; in addition, it can prepare general proposals and propose legislative changes to the Parliament.<sup>242</sup> The major shortcoming of the mechanism is that its recommendations are not mandatory and have purely an advisory character, which creates fertile soil for noncompliance with PDO recommendations.

### **Gender Equality Law**

The Gender Equality Law was adopted in 2010 for to prevent and eliminate any discrimination and create proper conditions for the realisation of equal rights.<sup>243</sup> The law offers definitions of discrimination based on sex. Similarly to the anti-discrimination law, the definitions of direct and indirect discriminations overlap.<sup>244</sup>

The law identifies the spheres where gender equality should be guaranteed and these are: Labour relations (Article 6), education and science (Article 7), access to information (Article 8), healthcare and social security (Article 9), family relations (Article 10), and equal suffrage (Article 11). The law also obligates state institutions to process sex-segregated data (Article 5).

Chapter 3 of the law addresses issues of monitoring the protection of gender equality. The law identifies four state institutions that are in charge of monitoring gender equality: Parliament of Georgia, autonomous republics of Georgia, local self-government bodies, PDO.

The law obliges the Parliament to set up the Gender Equality Council (the Council), which should elaborate action plans and monitor their implementation, perform analysis of the legislation and propose amendments, produce recommendations (Article 12).

The law was amended in 2014 and according to the new Article 12 supreme representative bodies of the autonomous republics are henceforth obliged “to set up a Gender Equality Council in order to ensure systematic and co-ordinated work with the Gender Equality Council of the Parliament of Georgia on gender issues in the relevant autonomous republic.”<sup>245</sup>

According to Article 13 of the law, local self-government bodies shall develop and carry out activities to ensure detection and elimination of discrimination locally.

In addition, according to Article 14 of the law, the PDO is mandated to monitor the protection of gender equality and provide appropriate response in cases of violation.

---

<sup>241</sup> *ibid* Article 2(2)(3).

<sup>242</sup> *ibid* Article 6(2).

<sup>243</sup> The Law of Georgia on Gender Equality, 2010, Article 2.

<sup>244</sup> *ibid*. Article 3(1).

<sup>245</sup> There are two autonomous Republics in Georgia, Autonomous Republic of Ajara and Autonomous Republic of Abkhazia. Constitution of Georgia, Article 3, Available at: [matsne.gov.ge/ka/document/view/30346?impose=translateEn](https://matsne.gov.ge/ka/document/view/30346?impose=translateEn)

The major shortcoming of the Gender Equality Law is that it does not provide an individual complaint mechanism, which would enable one to bring a case to the court in case s/he suffered a violation under this law. The law identifies the above-enumerated bodies to monitor its implementation, but does not contain any implementation mechanism, unlike the anti-discrimination law, which establishes a monitoring mechanism entitled to receive complaints and issue recommendations regarding discrimination.

### **The negative impact of gender-neutral legislation**

Most laws in Georgia are gender-neutral. The legislator treats its citizens similarly, as it lacks gender sensitivity and political will to effectively address gender imbalance and male-dominated social structures. Gender-neutral legislation is not enough to overcome the inherent inequality between men and women, which is observed in every sphere of social, economic and political life of Georgia. Substantive equality will not be achieved with gender-neutral legislation, as gender-neutrality is an illusion – in fact, all the laws are constructed based on opinions, values and needs of men.<sup>246</sup>

It is necessary to assess the impact of gender-neutral legislation on women. But the practice of gender assessment of legislation is not yet developed in Georgia.

### **B. Analysis of practices and mechanisms for the implementation of laws**

#### **Implementation of Laws and Policies on Domestic Violence**

To effectively develop state policy and support the implementation process of the law on domestic violence, the Inter-agency Co-ordination Council was established in 2008 under Presidential decree #625, which was nullified in 2015, as a new Inter-agency Council on Domestic Violence was established by the Georgian Government, under its resolution #630. These two councils had similar aims; the only difference is the new Council consists of representatives of governmental agencies and civil society representatives are members of a separate advisory council. The old council had representatives of international organisations and local non-governmental organisations as invited members, thus the old council meetings were attended by both governmental and non-governmental stakeholders and constituted a forum for direct consultation of all parties. The new Council does not guarantee this possibility by law. One of the major tasks of the Council is to prepare state action plans regarding the fight against domestic violence, each for the duration of three years.

Protective and restraining orders have been envisaged by the law on domestic violence right from its adoption in 2006. When domestic violence was specifically criminalised in 2012, police found it unclear whether to use administrative, criminal or both measures. Technically the legislation did not restrict usage of any or both measures, but to overcome the mentioned confusion, a 2014 amendment of the law on domestic violence clarified that “the use of measures provided in the criminal legislation of Georgia (criminal mechanisms) against the perpetrator of domestic violence shall not hinder the issuance of a restraining or protective order to ensure the protection of the person affected by violence (victim).”<sup>247</sup>

Rehabilitation services and compensation are guaranteed under the law on domestic violence. Legal Entity of Public Law (LEPL) State Fund for Protection and Assistance of (statutory) Victims of Human Trafficking (Atipfund) operates under the Ministry of Labour, Health and

---

<sup>246</sup> Council of Europe Gender Equality Commission (2013), *Feasibility Study, Equal Access of Women to Justice*, p. 9. Available at:

[www.coe.int/t/dghl/standardsetting/equality/03themes/access\\_to\\_justice/GEC\\_2013\\_1\\_abridged\\_REV%20title.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/access_to_justice/GEC_2013_1_abridged_REV%20title.pdf)

<sup>247</sup> Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, Article 10 (5), Available at: [matsne.gov.ge/ka/document/view/26422?impose=translateEn](http://matsne.gov.ge/ka/document/view/26422?impose=translateEn)

Social Affairs and organises rehabilitation services for the victims of domestic violence.<sup>248</sup> Currently Atipfund runs state shelters in Tbilisi, Gori, Kutaisi, Batumi, but the state does not operate any crisis centres. The crisis centres for the victims of domestic violence are run by two non-governmental organisations and are able to provide services only for 10-15 victims simultaneously for up to nine days.<sup>249</sup>

According to Article 10 of the law on domestic violence (on the rehabilitation of the abuser), the “protective order may instruct the abuser to complete mandatory training courses that are focused on changing the violent attitude and behaviour of the abuser.”<sup>250</sup> The problem is that rehabilitation services for abusers have not been developed by the state. The law obliges the Ministry of Labour, Health and Social Affairs to determine the state body authorised to organise mandatory training courses focused on changing the violent attitude and behaviour of abusers,<sup>251</sup> as well as rehabilitation services for persons who have committed domestic violence. It should be mentioned that development of rehabilitation services has been envisaged by the law since 2006, but the Government keeps postponing its implementation.

Following a reported rise in femicide (17 women were killed by family members in 2014),<sup>252</sup> at the end of 2014, the Ministry of Internal Affairs initiated the drafting of a state strategy on prevention of violence, including domestic violence. The draft strategy was heavily criticised by civil society, for its content and for the very low engagement of relevant stakeholders. Currently the process is suspended.

The number of recorded crimes of domestic violence has significantly increased since the end of 2014. The same can be said with regard to issuing protective orders. The situation can be explained by the active awareness-raising campaign and tougher criminal policy towards domestic violence by the government, which means that more crimes are reported to the police and the reaction of police in domestic violence cases became more adequate. According to the data provided by the Supreme Court of Georgia, the police issued 249 restrictive orders in 2013, 975 in 2014, and 1463 in the first half of 2015.<sup>253</sup> On the other hand, the number of protective orders requested by the victims of violence from courts without assistance of the police was: 60 in 2013, 102 in 2014; and 82 in the first half of 2015.<sup>254</sup> Thus, one can say that the number of victims of domestic violence seeking justice on their own grew only incrementally.<sup>255</sup>

In addition, according to the statistical data for the last three years, the number of prosecutions of crimes committed within the family has increased. Based on official correspondence from the Chief Prosecutor’s Office of Georgia<sup>256</sup> the number of prosecutions for domestic violence has steadily increased.

---

<sup>248</sup> Official webpage of Atipfund, available at: [www.atipfund.gov.ge/index.php/en/about-us/branches-and-shelters/shelter-for-victims-of-domestic-violence](http://www.atipfund.gov.ge/index.php/en/about-us/branches-and-shelters/shelter-for-victims-of-domestic-violence)

<sup>249</sup> Georgia component of a multi-country study on support services for women and girls subjected to gender-based violence, UN Women and Council of Europe, 2014, p.20.

<sup>250</sup> *ibid.* Article 10 (7).

<sup>251</sup> *ibid.* Article 21 (10).

<sup>252</sup> Public Defender’s Office, special report: *Domestic Violence and Violence against Women in Georgia* (2015). p. 32. Available at: [www.ombudsman.ge/uploads/other/3/3361.pdf](http://www.ombudsman.ge/uploads/other/3/3361.pdf)

<sup>253</sup> Official Letter from Supreme Court of Georgia #p-167-15, dated 5 October 2015.

<sup>254</sup> *ibid.*

<sup>255</sup> Pataraiia, B. (2016) *Social Work – The Missing Puzzle Piece in Combating Domestic Violence in Georgia*, p. 2. Available at: [www.osgf.ge/files/2016/EU%20publication/Equality\\_ENG\\_\(5\).pdf](http://www.osgf.ge/files/2016/EU%20publication/Equality_ENG_(5).pdf)

<sup>256</sup> Official letter from Chief Prosecutor of Georgia #13/66099, dated 23 October 2015.

**Table 1. Number of prosecutions for crimes committed in the family**

	2012	2013	2014	2015 (Jan - Sept)
Crime of domestic violence (Article 126)	41	155	411	575
Intentional infliction of grave bodily injuries (Article 117) committed by a family member	0	11	19	16
Infliction of less grave bodily injury (Article 120) committed by a family member	1	14	19	10
Infliction of light bodily injury (Article 120) committed by a family member:	6	26	49	66

It is worth mentioning that sexual crimes in a domestic context are practically unreported in Georgia, as the statistics equal almost to zero.

**Table 2. Number of prosecutions for domestic violence crimes, involving sexual violence, committed by a family member**

	2012	2013	2014	2015
Rape (Article 137)	0	0	0	3
Violent sexual assault (Article 137)	0	0	2	3
Coercion to sexual act (Article 139)	0	0	1	0

Sexual violence is one of the least reported crimes among the gender-based crimes. This is also confirmed by the analysis conducted by PDO of Georgia. In his special report on domestic violence and violence against women, the Public Defender found that only seven out of 881 protective and restricting orders mentioned sexual violence.<sup>257</sup>

This is despite the fact that in violent families, physical violence is frequently accompanied with sexual violence, sexual assaults women victims of violence are as high as 50-70% based on numerous research.<sup>258</sup> Data provided by Georgian law enforcement agencies does not reveal the mentioned correlation of physical and sexual violence within marriage. The low number of sexual crimes in Georgia is caused by lack of trust in justice system and cultural taboo blaming and shaming the victim of sexual crime.

### Implementation of Law and Policies on Gender Equality

Implementation of the Law on Gender Equality is ineffective for the following reasons. First, the Gender Equality Council (the Council) of the Parliament does not effectively monitor the implementation of the law; the reports produced by the Council concern rather its own activities, than those of other state institutions. Secondly, as already mentioned in the section of Gender Equality Law, the law does not provide for a complaint mechanism, which would make the violation of the mentioned law justiciable. Therefore, the law is of declaratory character and not justiciable.

<sup>257</sup> PDO, special report (2015), *Domestic Violence and Violence against Women in Georgia*, p. 44. Available at: [www.ombudsman.ge/uploads/other/3/3361.pdf](http://www.ombudsman.ge/uploads/other/3/3361.pdf)

<sup>258</sup> Mahoney P. and Williams L.M. (1998) *Sexual Assault in Marriage: Prevalence, Consequences, and Treatment of Wife Rape*, p.8. From J. L. Jasinski & L. M. Williams (Eds), Available at: [www.janedoe.org/site/assets/docs/Curriculum\\_SA\\_IP/Sexual\\_Assault\\_in\\_Marriage.pdf](http://www.janedoe.org/site/assets/docs/Curriculum_SA_IP/Sexual_Assault_in_Marriage.pdf)

The Council was established in 2008 by the Parliament of Georgia and it became a permanent body in 2010, after the adoption of the special domestic violence law. After 2012, the Council had less activities and initiatives compared to previous years. The activity report of 2012-2013 is available on the official webpage of the Parliament and a major activity of the Council is participation in various national and international events organised by local and international organisations.<sup>259</sup> In the reporting period there were only two legislative changes presented by the members of the Council, but again prepared by local and international organisations. The Council also elaborated and adopted the Gender Equality Action plan of 2014-2016.<sup>260</sup> This is a second action plan for Georgia, but it still lacks concrete activities and commitments. The Action Plan does not have a budget and detailed timeline. The document completely omits such acute problems as early marriages. Even the implementation reports of the state action plans are written with the help of international organisations and not the Council itself. The overall performance of the Council could be assessed as poor, despite the fact that according to its mandate, the Council could fulfil a significant role in gender mainstreaming.

### **Implementation of Anti-discrimination Law in Cases of Discrimination based on Sex and Gender**

The Law on Elimination of All forms of Discrimination was adopted in 2014. The process of drafting the law was initially transparent. The Ministry of Justice had discussions with civil society and international organisations, but when the draft was brought for discussion to the Government of Georgia, the situation drastically changed. The Government of Georgia significantly changed the draft and without any public discussion, sent it to the Parliament and requested expedited hearings. Indeed, in a week the hearings were appointed, civil society had very little time to study the new draft and prepare comments. On the other hand, the Georgian Orthodox Church strongly opposed the adoption of the law and required postponement of its adoption. The law was adopted in a very short period of time and contains a number of shortcomings. The major weakness of the law is the implementation mechanism.

As already discussed earlier, the PDO is designated to discuss claims submitted by applicants against discrimination committed by public or private persons, but it can only issue recommendations, which do not have mandatory character.

In September 2015, the PDO published its first special report on discrimination. According to the report, from May 2014 to August 2015, the PDO received 107 claims and initiated four cases itself. The PDO was able to issue eight decisions, one recommendation, two general recommendations. There are 60 ongoing cases; 21 were inadmissible; 13 were directed to other departments, two were terminated as the cases went to the common courts.<sup>261</sup> For the first year, 107 claims on discrimination to the PDO office could be assessed as satisfactory, but we could not say the same regarding the speed of the PDO work. If the department working on discrimination cases under PDO is not strengthened, the institution will be overloaded soon.

The Equality Coalition of NGOs also prepared a one-year report on the implementation of the anti-discrimination law. The report focuses on the need for legislative changes, which will make the implementation process more effective. Namely the recommendations are: to enable the PDO to fine private persons in case of not fulfilment of PDO recommendations, to increase the statutory limitation to application to court from a one month period to one year; bringing case to the court should not be grounds to stop the proceedings by the PDO, etc.<sup>262</sup>

---

<sup>259</sup> Activity Report of the Council 2012-2013. Available at:

[www.parliament.ge/ge/ajax/downloadFile/27258/sabchos\\_saqmianobis\\_angarishi](http://www.parliament.ge/ge/ajax/downloadFile/27258/sabchos_saqmianobis_angarishi)

<sup>260</sup> Gender Quality Policy Action Plan 2014-2016. Available at:

[www.parliament.ge/ge/ajax/downloadFile/27264/NAP\\_2014-2016\\_FINAL](http://www.parliament.ge/ge/ajax/downloadFile/27264/NAP_2014-2016_FINAL)

<sup>261</sup> Special Report on Discrimination, PDO, 2015, p. 10-11. Available at:

[drive.google.com/file/d/0B9BM3M8hbqAUTUdIZXd4MFJqX2s/view](https://drive.google.com/file/d/0B9BM3M8hbqAUTUdIZXd4MFJqX2s/view)

<sup>262</sup> Implementation of Anti-discrimination Law, Equality Coalition, 2015, p. 65. Available at:

[www.osgf.ge/files/2015/Publication/EU-Geirgia%20Association%20Report\\_210x270mm.pdf](http://www.osgf.ge/files/2015/Publication/EU-Geirgia%20Association%20Report_210x270mm.pdf)

## C. Socio-economic and Cultural Barriers to Affecting Women's Access to Justice

### Gender Attitudes and Stereotypes in Georgia

#### *Attitudes on women's place in society*

Georgia is a patriarchal society, where gender roles are highly dichotomised. A woman's major role is to become a mother and to keep the household. According to a UN Women study, 65.6% of respondents think that women are valued by their contribution to their families and not by their careers,<sup>263</sup> while 92% of respondents believe that the most important role of women in life is taking care of the family.<sup>264</sup> Professional life is viewed only as an addition to this main role. To reconcile family with a career, women choose more 'feminine' jobs, which are part-time, having short working days or which do not require working overtime or travelling, such as teachers and certain types of medical professions. On the other hand, men are considered to be major breadwinners and it is their responsibility to financially support their families. Men's role in taking care of children is insignificant and men generally do not perform household chores.<sup>265</sup> Moreover, it is considered to be shameful and 'unmanly'.

In Georgia, both tradition and religion urge women to be obedient. According to a UNDP study, 63% of respondents (out of which 56% of women and 72% of men) believe that a good wife should obey her husband even if she disagrees with him.<sup>266</sup> Georgian families are highly hierarchical, acknowledging supremacy of men. Men are considered to be the decision-makers within the families. According to the same UNDP study, 62% of male respondents think that men should make decisions in the family, while 62% of women think that the spouses should make decisions in the family together.<sup>267</sup>

In Georgia, most of the population thinks that women and men are equal in planning private life and defining their future. 68% of population considers having sexual relations before marriage as an unacceptable behaviour for women, while only 31% deems it unacceptable for men.<sup>268</sup> The same study shows, that consumption of alcohol and smoking is regarded as inappropriate for women.<sup>269</sup>

The perceived superiority of man is also reflected in the preferences of parents for distributing property between sons and daughters. According to the same UNDP study, 56% of respondents think that the parents' house should be given completely, or a major part, to a son; while the rest think that it should be divided equally. None of the respondents think that real estate should be given exclusively to a daughter. As for jewellery and movable property, 66% thinks that it should be divided equally.<sup>270</sup>

While Georgian society considers giving education to children as equally important for both sexes, in case of limited financial resources, 44% of the respondents would rather pay an education fee for boys, compared to 22%, who would prefer to pay for educating girls.<sup>271</sup>

---

<sup>263</sup> UN Women, Perception of Violence against Women and Domestic Violence in Tbilisi, Kakheti and Samegrelo-Zemo Svaneti, p.27, available at: <http://georgia.unwomen.org/en/digital-library/publications/2014/11/perception-of-violence-against-women-and-domestic-violence-in-tbilisi>

<sup>264</sup> UNDP Public Perceptions on Gender Equality in Politics and Business 2013, p.19, available at: [www.ge.undp.org/content/georgia/en/home/library/democratic\\_governance/public-perceptions-on-gender-equality-in-politics-and-business.html](http://www.ge.undp.org/content/georgia/en/home/library/democratic_governance/public-perceptions-on-gender-equality-in-politics-and-business.html)

<sup>265</sup> *ibid.*

<sup>266</sup> *ibid.* pp. 19-20.

<sup>267</sup> *ibid.* p. 18.

<sup>268</sup> *ibid.* p. 64.

<sup>269</sup> *ibid.*

<sup>270</sup> *ibid.* p. 70.

<sup>271</sup> *ibid.* p. 73.

### **Attitudes towards violence against women**

Similar to other societies, domestic violence is one of the most insidious forms of violence women experience in Georgia. Studies show that 1 in 3 women suffer abuse a partner and 1 in 11 suffer physical or sexual violence in marriage or similar relationship.<sup>272</sup> The research found that 82.5% of women and 69% of men consider that domestic violence is prevalent, while only 61% of women and 50% of men think that domestic violence is unacceptable and should always be punished by law. Some respondents justified beating in the following cases: 13.7% if the woman does not pay attention to the children; 6.6% if the wife quarrels with the husband, 5.4% if the wife burns the food, 4.6% if the wife refuses to have sex, 4.3% if the wife leaves home without the husband's permission.<sup>273</sup>

The majority of respondents think that divorce is appropriate in case of violence (79%); the same amount considers that a woman should not marry her kidnapper. But 17.5% of respondents think that a woman should marry her kidnaper if sexual intercourse has taken place, while for 8.9% marrying the kidnaper would be justified in any circumstances.<sup>274</sup>

Most of the respondents believe that domestic violence takes place where there is abuse of alcohol or narcotic substances by men and in cases of adultery committed by women.<sup>275</sup>

An absolute majority of respondents (94%) consider promotion of gender equality as the most effective way of combating domestic violence.<sup>276</sup>

### **Attitudes regarding women's carrier**

According to the UNDP study on attitudes toward gender equality, 85% of women realise that having a job is crucial for women's economic independence. However, even more men and women think that family and children are a higher priority for women. 51% of respondents think that doing housework makes women as satisfied as they would be in a paid job. Moreover, half of respondents believe men need employment more than women, almost same amount of respondents think that men need a higher salary.<sup>277</sup>

58% of inquired respondents declared that men make better business leaders than women. 47% of respondents consider woman weak in nature and politics as not appropriate for her. Half of the respondents believe that men are usually better at any activity than women. The research findings show that respondents consider involvement of women in business more acceptable than in politics.<sup>278</sup>

On the other hand, respondents think that women should not be excluded from politics; half of the respondents consider that the country will be better off if more women got involved in politics. Though, they consider only certain spheres are appropriate for women, but these spheres do not include high-level positions in politics.<sup>279</sup>

It is noteworthy that 46% of respondents agree, while 39% disagree, that women cannot be as successful in a career as men because of the housework and family which stand as obstacle for women's career development.<sup>280</sup>

---

<sup>272</sup> Chitashvili, M., et al (2010). *National Research on Domestic Violence against Women in Georgia. Final report.* available at: [www.genderbasedviolence.ge/en/content/show/12/research.html](http://www.genderbasedviolence.ge/en/content/show/12/research.html)

<sup>273</sup> *ibid.* pp. 27-28, pp.34-38.

<sup>274</sup> *ibid.* pp 41-43.

<sup>275</sup> *ibid.* p.39.

<sup>276</sup> *ibid.* p.56.

<sup>277</sup> UNDP *Public Perceptions on Gender Equality in Politics and Business* (2013), p.38, available at: [www.ge.undp.org/content/georgia/en/home/library/democratic\\_governance/public-perceptions-on-gender-equality-in-politics-and-business.html](http://www.ge.undp.org/content/georgia/en/home/library/democratic_governance/public-perceptions-on-gender-equality-in-politics-and-business.html)

<sup>278</sup> *ibid.* p.41. p. 48. p.58.

<sup>279</sup> *ibid.* pp. 54-55.

<sup>280</sup> *ibid.* p.29.

## Brief overview of key statistics concerning women's position in society, economy and politics

### *Women in Economy*

Gender inequality is apparent from various statistical data regarding income, expenditure, salaries, agriculture, etc. The economically active population in Georgia is 57% of women and 78% of men. Employed women constitute 49%, men 66%; unemployed women constitute 8%, men 13%; 16% of women are housewives.<sup>281</sup>

According to the recent study on gender discrimination in the labour market conducted in 2014, women's average salaries were between 251 and 400 GEL whereas for men it was between 401 and 700 GEL.<sup>282</sup> The same study revealed that the educational level of men did not affect their salary, while women had to have a graduate degree to earn a man's average salary. The National Statistics Office of Georgia (GeoStat) also collects information regarding the salary gap. In 2012, in comparison to 2011, the average monthly nominal salaries of hired employees increased by 14.6% for women and by 18.5% for men. The nominal salary of employed women is lower than men's in every sector of the economy.<sup>283</sup> Average monthly nominal salary of hired employees in 2013 was 585 GEL for Women and 920 GEL for men so the wage gap constituted 36.4% in 2013, 39.7% in 2012, 40.4% in 2011, and 42.6% in 2010.<sup>284</sup>

Studies on labour discrimination revealed that horizontal and vertical segregation was one of the aspects of wage inequality. 65% of respondents reported that they had a male manager, and only 31% reported having a female direct manager thus showing vertical segregation. Horizontal segregation is reflected in findings with regards to sector employment: women constitute 79% of employees in the health and social work sector and 78% in the education sector, whereas men constitute 96% in the construction sector, 91% in the transportation and storage sector and 47% in the public administration and in defence.<sup>285</sup> In addition, gender inequality exists in additional wage benefits and bonuses, 66% of men and only 34% of women received them.<sup>286</sup>

There are more men employed in business compared to women, namely 208,823 women and 342,062 men.<sup>287</sup> In agriculture, 70% of farm heads are men compared to 30% women.<sup>288</sup> The total income distribution, cash and non-cash, for women is 649 GEL, for men is 861GEL; the total expenditure by women is 635GEL and by men is 834GEL.<sup>289</sup>

---

<sup>281</sup> *Women and Men in Georgia* (2013) p.51. Available at:

[www.geostat.ge/cms/site\\_images/files/english/health/women%20and%20men%202013-Analytical.pdf](http://www.geostat.ge/cms/site_images/files/english/health/women%20and%20men%202013-Analytical.pdf)

<sup>282</sup> Centre for Social Sciences, Report Paper on the Study "Gender Discrimination in Georgia Labour Market" (2014), p. 3. Available at: [css.ge/index.php?lang\\_id=ENG&sec\\_id=93&info\\_id=1038](http://css.ge/index.php?lang_id=ENG&sec_id=93&info_id=1038)

<sup>283</sup> *Women and Men in Georgia* (2013) p.67. Available at:

[www.geostat.ge/cms/site\\_images/files/english/health/women%20and%20men%202013-Analytical.pdf](http://www.geostat.ge/cms/site_images/files/english/health/women%20and%20men%202013-Analytical.pdf)

<sup>284</sup> *ibid* p.11. p.92.

<sup>285</sup> Centre for Social Sciences, Report Paper on the Study "Gender Discrimination in Georgia Labour Market" (2014), p. 3. Available at: [css.ge/index.php?lang\\_id=ENG&sec\\_id=93&info\\_id=1038](http://css.ge/index.php?lang_id=ENG&sec_id=93&info_id=1038)

<sup>286</sup> Centre for Social Sciences, Report Paper on the Study "Gender Discrimination in Georgia Labour Market" (2014), p. 4. Available at: [css.ge/index.php?lang\\_id=ENG&sec\\_id=93&info\\_id=1038](http://css.ge/index.php?lang_id=ENG&sec_id=93&info_id=1038)

<sup>287</sup> *Women and Men in Georgia* (2013) p.14. Available at:

[www.geostat.ge/cms/site\\_images/files/english/health/women%20and%20men%202013-Analytical.pdf](http://www.geostat.ge/cms/site_images/files/english/health/women%20and%20men%202013-Analytical.pdf)

<sup>288</sup> *ibid* p.99.

<sup>289</sup> *ibid* p.64

## **Women in politics**

Politics in Georgia is a male-dominated sphere, like in most countries, though the gender imbalance is very prevalent. In the Georgian Parliament in 2015 women constitutes 12%, while the global average of women parliamentarians is 21.8%, as of January 2015.<sup>290</sup> With this data Georgia ranks 108 out of 139 countries according to the Inter-Parliamentary Union's Women in National Parliaments ranking.<sup>291</sup>

Female representation at the local self-government level is also extremely low. Women were able to secure only 11% in the local self-government elections (local self-government body - Sakrebulo) in 2014; the same picture was during 2010 elections.<sup>292</sup> The Executive Branch is also not an exception when it comes to gender balance; there are no female mayors in Georgia and only two out of 69 Gamgebelis (executive heads of the local municipalities) are women. Three out of the total 19 members of the Cabinet of Ministers are women.

The Government of Georgia tried to improve the low representation of women in elective bodies through the introduction of financial incentives in 2011. The organic law of Georgia on Political Union of Citizens offered a 10% increase of funding to the parties nominating two women candidates in every 10-party list position. Currently the law states: *"the election subject receiving funding from the state budget in accordance with rules prescribed by this article, will receive from the state budget 30% of supplement, if in the nominated party list (local self-government elections – all party list) it includes at least 30% of different sex among each 10 candidates"*.<sup>293</sup>

The problem of this initiative is that ruling parties do not use it, thus the political participation of women remains low, which gives rise to lobbying and advocating for imposition of mandatory legislative party quotas. Currently women's organisations and activists actively lobby for gender quotas in elective bodies.<sup>294</sup>

## **Social Life of Women**

While deciding to engage in social life not all women in Georgia are free to do what they decide to. Domestic violence research showed that more than one third of respondents (36%) reported having experienced acts intended to control their behaviour by their husbands or partners.<sup>295</sup>

Compared to the official data on unemployment provided by GeoStat, a UNDP study showed a significantly higher number of persons considered themselves unemployed: 75% of women and 59% of men. 18% of unemployed women admit it is hard for them to combine work with housework, therefore have given up on working outside the home. Also more women than men do not wish to work: 25% compared to 19%.<sup>296</sup>

An important characteristic of gender inequality in Georgian society is the existence of sex-selective abortion against girl fetuses. After the dissolution of the Soviet Union, masculine births started to increase in some post-Soviet countries, especially in the Caucasus. While the normal sex ratio at birth is 105, Georgia has a ratio of 111.8, due to more male children being

---

<sup>290</sup> Inter-Parliamentary Union and UN Women (2014), available at:

[www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2014/wmnmap14\\_en%20pdf.ashx](http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2014/wmnmap14_en%20pdf.ashx)

<sup>291</sup> *Women in National Parliaments* (2015), available at: [www.ipu.org/wmn-e/classif.htm](http://www.ipu.org/wmn-e/classif.htm)

<sup>292</sup> *Representation of Women and Gender Balance in Local Self-Government Sakrebulos in Georgia*, International Society for Fair Elections (2014). Available at: [www.isfed.ge/main/653/eng/](http://www.isfed.ge/main/653/eng/)

<sup>293</sup> Organic Law of Georgia on Political Union of Citizens, Article 30 (7<sup>1</sup>). Available at:

[matsne.gov.ge/ka/document/view/28324](http://matsne.gov.ge/ka/document/view/28324)

<sup>294</sup> Patarala, B. *Georgian Politics without Women - Quotas as a Solution to the Problem*, Policy Brief, OSGF, Riga/Tbilisi (May 2015).

<sup>295</sup> Chitashvili, M., et al (2010). *National Research on Domestic Violence against Women in Georgia. Final report.*

Available at: [www.genderbasedviolence.ge/en/content/show/12/research.html](http://www.genderbasedviolence.ge/en/content/show/12/research.html)

<sup>296</sup> Public Perceptions on Gender Equality in Politics and Business, UNDP (2013), p.28.

[www.ge.undp.org/content/georgia/en/home/library/democratic\\_governance/public-perceptions-on-gender-equality-in-politics-and-business.html](http://www.ge.undp.org/content/georgia/en/home/library/democratic_governance/public-perceptions-on-gender-equality-in-politics-and-business.html)

born.<sup>297</sup> 9% of women who live with their husbands say that they have thought about an abortion for the sole purpose of pre-natal sex selection.<sup>298</sup>

Child marriage is practiced in Georgia. In 2012, out of 30,412 marriages 14% of the brides were between 16-19 years old,<sup>299</sup> while marriages under 16 are not registered, as it is not allowed under Georgian legislation. Though in 2012, there were 114 births by mothers of 15 years of age, and 26 births under the age of 15. Adolescent mothers aged 15-19 who gave birth accounted for approximately 10% of all births in 2012.<sup>300</sup> Early marriages are estimated to be 17% of total marriages in Georgia.<sup>301</sup> According to the PDO report of 2012, it received data from the Ministry of Education and Science that 7,367 girls terminated education before the end of basic level (7th to 9th grades);<sup>302</sup> some of the cases are directly related to early marriages or to the fear of parents that their girls would be kidnapped for the purpose of marriage.

The level of social engagement of ethnic minority women is also low according to an assessment of the European Centre for Minority Issues (ECMI). Very few women in this group have experienced co-operation with NGOs. Major social activities of these women are participation in various cultural activities including activities related to their children's needs.<sup>303</sup>

### Level of Women's Awareness of Their Rights

The National Curricula developed by the Ministry of Education and Science (MES) only superficially cover human rights and equality materials. In the current national curriculum for 2011-2016, gender, gender equality or equality between sexes is not mentioned; neither are women's rights.<sup>304</sup> The school educational system in Georgia - nine grades of mandatory education at primary plus secondary school - does not provide students with an in-depth knowledge of human rights, nor are girls taught about the specific rights they have and the specific challenges they may face in life. Georgian secondary education does not even offer sexual education to its students.

The 2010 national research on domestic violence concluded that women suffered from lack of knowledge of the forms of violence other than physical, and very few women admitted that they had been sexually abused, while focus groups with service providers revealed that physical violence is usually accompanied by sexual abuse.<sup>305</sup>

It should be noted that women belonging to national minorities have additional problems due to their poor knowledge of the state language. The minority women groups in Georgia are: Armenian, Azerbaijani, Dukhobor, Meskhetian Turk and Roma women.<sup>306</sup>

---

<sup>297</sup> UNFPA, Issue Brief, Preventing gender-biased sex selection in Eastern Europe and Central Asia, p. 2. Available at: [http://eeca.unfpa.org/sites/default/files/pub-pdf/GBSS%20Brief\\_WEB.pdf](http://eeca.unfpa.org/sites/default/files/pub-pdf/GBSS%20Brief_WEB.pdf)

<sup>298</sup> UNFPA, Men And Gender Relations In Georgia, p.18. Available at: <http://en.calameo.com/books/000713529d553aaaf9682>

<sup>299</sup> UNFPA, Child Marriage in Georgia (Overview), p.9. Available at: <http://eeca.unfpa.org/sites/default/files/pub-pdf/unfpa%20georgia%20overview.pdf>

<sup>300</sup> ibid

<sup>301</sup> Christiansen, C. (2012), Early marriages and global research priorities on adolescent sexual and reproductive health, The European Magazine for Sexual and Reproductive Health, WHO. Available at: [www.euro.who.int/\\_data/assets/pdf\\_file/0007/178531/Entre-Nous-76-Eng-v2.pdf](http://www.euro.who.int/_data/assets/pdf_file/0007/178531/Entre-Nous-76-Eng-v2.pdf)

<sup>302</sup> PDO Annual Report 2012, p. 394-397, available at: [www.ombudsman.ge/uploads/other/1/1350.pdf](http://www.ombudsman.ge/uploads/other/1/1350.pdf)

<sup>303</sup> Commissioned Study, Needs Assessment of Ethnic Minority Women in Georgia, prepared by ECMI for UN Women, 2014, p. 37. Available at:

[www.unwomen.org/-/media/field%20office%20georgia/attachments/publications/2014/study%20on%20ethnic%20minority%20women\\_eng.pdf?v=1&d=20150410T190238](http://www.unwomen.org/-/media/field%20office%20georgia/attachments/publications/2014/study%20on%20ethnic%20minority%20women_eng.pdf?v=1&d=20150410T190238)

<sup>304</sup> National Curriculum 2011-2016, MES. Available at: [ncp.ge/en/curriculum/satesto-seqtsia/mimdinare-esq-2011-2016](http://ncp.ge/en/curriculum/satesto-seqtsia/mimdinare-esq-2011-2016)

<sup>305</sup> Chitashvili, M., et al (2010). *National Research on Domestic Violence against Women in Georgia. Final report.* available at: [www.genderbasedviolence.ge/en/content/show/12/research.html](http://www.genderbasedviolence.ge/en/content/show/12/research.html)

<sup>306</sup> Commissioned Study, Needs Assessment of Ethnic Minority Women in Georgia, prepared by ECMI for UN Women, 2014, p. 34. Available at:

[www.unwomen.org/-/media/field%20office%20georgia/attachments/publications/2014/study%20on%20ethnic%20minority%20women\\_eng.pdf?v=1&d=20150410T190238](http://www.unwomen.org/-/media/field%20office%20georgia/attachments/publications/2014/study%20on%20ethnic%20minority%20women_eng.pdf?v=1&d=20150410T190238)

## IV. Gender Responsiveness of the Justice System

### Access to Legal Aid

The Law of Georgia on Legal Aid regulates the functioning of an independent body, the Legal Entity of Public Law, Legal Aid Unit (the Unit) that comprises the central office, Legal Aid Bureau (LAB) and consultation centres.<sup>307</sup> LABs are available in all 11 regions of Georgia. In those remote locations where there are no LABs, a Consultation Centre ensures the involvement of a public lawyer in a proceeding. Legal aid is provided through public lawyers: LAB lawyers, a legal aid provider, or a lawyer recorded in the register.<sup>308</sup>

The Unit provides the following services: drafting of legal documents (applications, claims, complaints, statements of defence, motions and other documents); defending an accused, convicted, or acquitted person in criminal proceedings; protecting victims in criminal proceedings when conducting a defence in cases provided by the Criminal Procedure Code of Georgia (CPCG) at the expense of the State; providing representation in court with respect to administrative and civil cases; providing representation before an administrative body.<sup>309</sup> The Unit offers its services in the following areas of laws: criminal law, civil law, commercial law, labour law, administrative law.<sup>310</sup> Free legal aid is provided by the Unit only for insolvent persons in Georgia. Legal aid is provided when they are accused, convicted and/or acquitted; representation in courts in civil and administrative proceedings is provided based on the importance and complexity of the case; drafting of legal documents is provided despite importance and complexity of the case.<sup>311</sup> The Director of the Unit can also decide upon providing services for a non-insolvent person, who is nevertheless socially indigent, who, due to hard socio-economic conditions, cannot afford a lawyer's services.<sup>312</sup>

Insolvency is defined by the Government of Georgia as being a member of a family registered in the unified database of the socially vulnerable families. According to the relevant Government of Georgia Resolution:<sup>313</sup>

- a socially vulnerable person is deemed insolvent if his/her ranking point is 70,000 or less;
- a socially vulnerable person is also considered insolvent in case of holding 100,000 or less points and if s/he belongs to one of the categories listed below:
  - Member of a family with many children - 3 or more children under 18 years old;
  - Veteran of war or military forces;
  - A person with limited capacity status under 18 years of age;
  - Adult with the status of distinct or significant limited capacities;
  - An individual with the status of distinct, significant or moderate limited capacities, if this limitation of capacities takes place from childhood;
  - An orphan under 18 years of age;
  - Internally displaced persons as a result of Russian military aggression against Georgia.

It should be highlighted that insolvency is determined based on family income. This might create problems for those women, who do not have an independent income or do not have access to

---

<sup>307</sup> Law of Georgia on Legal Aid, Article 8. Available at: [www.legalaid.ge/cms/site\\_images/FOI/Primary%20Legal%20Acts/Law%20on%20legal%20Aid\\_ENG%202015\\_mats\\_ne.pdf](http://www.legalaid.ge/cms/site_images/FOI/Primary%20Legal%20Acts/Law%20on%20legal%20Aid_ENG%202015_mats_ne.pdf)

<sup>308</sup> *ibid.* Article 2.

<sup>309</sup> *ibid.* Article 3.

<sup>310</sup> Legal Aid Service website. Available at: [www.legalaid.ge/index.php?action=page&p\\_id=290&lang=eng](http://www.legalaid.ge/index.php?action=page&p_id=290&lang=eng)

<sup>311</sup> *ibid.* Article 5.

<sup>312</sup> *ibid.* See also, Decision N10 of Legal Aid Council, dated 11 July 2014.

<sup>313</sup> Government of Georgia, Resolution N424.

the family's financial resources, especially when the woman has a conflict with or is in the process of divorce from the breadwinner of the family.

In addition, a compulsory defence offered by the Unit is prescribed under CPCG when the accused has not hired a lawyer and where:<sup>314</sup>

- s/he is a minor;
- s/he does not know the language of the criminal proceedings (the state language);
- s/he has a physical or mental defect, that inhibits him/her in self-realisation;
- the decision has been made about appointing a forensic enquiry;
- the crime committed envisages a lifetime sentence pursuant to the Criminal Code of Georgia;
- negotiations are taking place about making the plea-bargaining agreement;
- the case will be heard by jury trial;
- s/he refrains from appearing before the law enforcement agencies;
- s/he was banished from the court room;
- s/he is non-identified person.

Tables 3 and 4 below summarise the statistical information provided by the LEPL Legal Aid Service on the cases dealt with in 2014 and 2015.

**Table 3. Number of cases dealt with by the Legal Aid Service, by sex, 2014**

Type of service	Women	Men
Consultation	8,263	6,047
Legal aid in criminal cases	527	7,663

Since 2015, the Unit also provides legal consultation in civil and administrative cases and it also established a more comprehensive statistical data collection system, which enables the collection of more detailed information, as below.

**Table 4. Number of cases dealt with by the Legal Aid Service, by sex, 2015 (January – August)**

Type of service	Women	Men
Consultations	4,902	3,584
Administrative cases	15	4
Civil cases	137	154
Domestic violence cases	13	88
Property cases	3	1
Inheritance cases	6	1
Alimony	9	3
Divorce	2	0

In 2015, there were no discrimination cases argued by LSA.<sup>315</sup> Also, the Unit did not litigate any administrative cases regarding protection of victims of domestic violence.<sup>316</sup> 60% of beneficiaries who received legal consultations on civil and administrative issues were women in

<sup>314</sup> CPCG, Article 45. Available at: [matsne.gov.ge/ka/document/view/90034](http://matsne.gov.ge/ka/document/view/90034)

<sup>315</sup> Information was provided through interview with Deputy Head of Legal Aid Service Mrs Irakli Shonia, on 18 August 2015.

<sup>316</sup> Legal Aid Service, Performance Report of 2015, p.20.

2015.<sup>317</sup> The fact that significantly more men than women receive legal aid in domestic violence cases has to do with the entitlement to legal aid, which is guaranteed by law for the accused, not the victim. The victim is not a party to the legal proceedings in criminal cases.

### **Access to Courts**

Georgia has a three-instance common court system: 26 city courts, two appellate courts and a Supreme Court (cassation).<sup>318</sup> In addition, Georgia has a Constitutional Court. The city courts are based in all regions of Georgia; the two appellate courts in Kutaisi (West Georgia) and in Tbilisi (East Georgia).

Given the overall poor economic situation of the country, as well as the economic inequalities affecting women in particular, court fees might act as a barrier to access to courts for many women. The fees are regulated under the Civil Procedure Code of Georgia. Article 39 defines that fee constitutes up to 3% of the disputed object, but no less than 100 GEL. For non-pecuniary claims it is 100GEL, for the appeal court 150GEL and the court of cassation 300GEL.<sup>319</sup> The law envisages the instances when the applicant is exempt from paying the court fee: a) alimony, b) damages caused by health injury and death of the breadwinner, c) damages inferred from crimes, d) violations of rights of children, e) persons registered as socially vulnerable, f) cases related to return of wrongfully retained or removed children or exercise right to access to child.<sup>320</sup> The law also envisages the possibility of a court to decide on exemptions from court fees on a case-by-case basis if the applicant proves to the court an incapability of paying the fee.<sup>321</sup>

In addition, the Administrative Procedure Code of Georgia also grants an exemption from the fee when the case is argued on social vulnerability and in administrative procedures regarding domestic violence.<sup>322</sup>

### **Women initiating cases to the courts**

According to the official letter received from the Supreme Court of Georgia, the common court system does not collect disaggregated data on the sex of the parties to the disputes. Therefore it is impossible to know how many women apply to courts.<sup>323</sup>

In addition, the abovementioned letter demonstrates that courts collect information on certain disputes and not on others, for example, courts do not have information about disputes that fall within the scope of Article 1152 (Equality of Spouses), but do collect information on the number of disputes concerning divorce (2,498 cases in 2013, 2,391 cases in 2014).

The courts also provided information regarding issuance of protective and restrictive orders in the cases of domestic violence (see Table 5).<sup>324</sup> The woman victim of domestic violence can request a protective order from the court herself, while restrictive orders are issued by police and approved by court.<sup>325</sup> Table 5 shows the dynamic over the past three years. It can be observed that the requests for protective orders increased gradually, while the number of restrictive order increased dramatically, which is related to the toughening of the policy towards domestic violence by the Ministry of Internal Affairs.

---

<sup>317</sup> *ibid.* p.21.

<sup>318</sup> Official website of Courts of Georgia, available at: [http://court.ge/geo\\_courts](http://court.ge/geo_courts)

<sup>319</sup> Civil Procedure Code of Georgia, Article 39.

<sup>320</sup> *ibid.* Article 46.

<sup>321</sup> *ibid.* Article 47.

<sup>322</sup> Administrative Procedure Code of Georgia, Article 9.

<sup>323</sup> Official Letter from Supreme Court of Georgia #p-167-15, dated 5 October 2015.

<sup>324</sup> *ibid.*

<sup>325</sup> Law of Georgia On Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, Article 3, Available at: [matsne.gov.ge/ka/document/view/26422?impose=translateEn](https://matsne.gov.ge/ka/document/view/26422?impose=translateEn)

**Table 5. Protection orders issued in cases of domestic violence, 2013-2015**

	2013		2014		2015	
	Issued	Denied	Issued	Denied	Issued	Denied
<b>Issuance of protective orders</b>	<b>57</b>	<b>3</b>	<b>92</b>	<b>10</b>	<b>76</b>	<b>6</b>
<b>Approval of restrictive orders</b>	<b>241</b>	<b>8</b>	<b>945</b>	<b>30</b>	<b>1,410</b>	<b>53</b>

### **Lack of trust of population in law enforcement and justice system**

Various studies reveal that there is a problem of mistrust among the population towards police and the justice system. A study on attitudes towards the judiciary revealed that among political and social institutions, the judiciary receives one of the lowest levels of trust. In 2014, 37% of respondents said that they either 'fully trust' or 'partially trust' the courts, up from 32% in 2011<sup>326</sup>. The same study revealed that trust towards police is much higher compared to other law enforcement agencies and constitutes 78%. It is worth mentioning that persons who have used court services tend to positively change their attitudes towards them. A study of the quality of court services revealed that 44% of respondents obtained more positive attitudes towards the judiciary, while 36% declared that their attitudes did not change, as they were positive prior to using the court services.<sup>327</sup>

Another study on domestic violence shows a different picture regarding trust in the police. Among the reasons for not calling the police in cases of domestic violence was the lack of trust (52% of respondents).<sup>328</sup> In the same study an absolute majority of respondents prioritised talking to family members in cases of domestic violence. 79% of respondents think that divorce is an appropriate response to domestic violence, while 62% think that the appropriate response is to call the police; 65% considered talking to a lawyer to be appropriate.<sup>329</sup> Respondents considered that refraining from calling the police is based on shame (91%) and the fear of more violence (90%). The study mentioned concludes that an absolute majority of respondents do not feel that protection from police would be effective in cases of domestic violence.<sup>330</sup>

The Gender Poll of 2014 revealed that 72% of respondents think that in cases of domestic violence police and courts are entitled to interfere; on the other hand, 39% of respondents think that the cases of physical violence should only be solved within the family with 64% thinking the same about non-physical violence.<sup>331</sup>

### **Women in the Judiciary**

According to CEPEJ, Georgia is one of the lowest ranking member states of the Council of Europe as regards the number of female city court presidents (7%) and appellate court presidents (none).<sup>332</sup> Currently there are six female justices out of 16 and the Chair of the

<sup>326</sup> Attitudes to the judiciary in Georgia: Assessment of General Public, Legal Professionals and Business Leaders, CRRC, JILEP. p. 36. Available at:

[www.crrc.ge/uploads/files/research\\_projects/JILEP\\_CRRC\\_Final\\_Report\\_30July2014.pdf](http://www.crrc.ge/uploads/files/research_projects/JILEP_CRRC_Final_Report_30July2014.pdf)

<sup>327</sup> Study of Quality of Court Services, Satisfaction of Customers, 2014. Available at:

[www.supremecourt.ge/files/upload-file/pdf/2014-wlis-kvleva.pdf](http://www.supremecourt.ge/files/upload-file/pdf/2014-wlis-kvleva.pdf)

<sup>328</sup> Sumbadze, N. Institute for Policy Studies, Study of the Perceptions and attitudes towards Violence against Women and Domestic Violence in Tbilisi, Kakheti and Samegrelo-Zemo Svaneti Regions of Georgia, 2014, p. 47. available at: [www.unwomen.org/~media/field%20office%20georgia/attachments/publications/2014/english-study%20unjp.pdf?v=1&d=20150410T184908](http://www.unwomen.org/~media/field%20office%20georgia/attachments/publications/2014/english-study%20unjp.pdf?v=1&d=20150410T184908)

<sup>329</sup> *ibid.* p. 44.

<sup>330</sup> *ibid.* p. 46.

<sup>331</sup> CRRC-Georgia, Women's Political Participation in Georgia, 2014, pp.26-27. Available at:

[www.ndi.org/files/NDI%20Georgia\\_October%202014\\_Gender%20poll\\_Public%20ENG\\_Final\\_0.pdf](http://www.ndi.org/files/NDI%20Georgia_October%202014_Gender%20poll_Public%20ENG_Final_0.pdf)

<sup>332</sup> CEPEJ, 2014, p. 330. Available at: [www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport\\_2014\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf)

Supreme Court is a woman.<sup>333</sup> According to the CEPEJ, 43% of judges in Georgia are women.<sup>334</sup>

Currently, there are 1,080 women employed in the court system, out of which 128 are judges and 42 are employed in managerial positions.<sup>335</sup>

## Gender bias among legal professions

### Judiciary

To discuss gender bias of judges, the decisions and applicability of law by the judiciary should be analysed. One of the examples which shows how relevant legislation is never used is Article 1153 of the Civil Code – prohibition of discrimination in domestic relations. None of the cases discussed by the Supreme Court of Georgia mentions Article 1153. As for Article 1152 - Equality of Spouses, it is used in seven cases discussed by Supreme Court of Georgia. One case concerned alimony and all others were related to property acquired by the spouses during their marriages.<sup>336</sup> So the practice shows that Article 1152 Equality of Spouses is used in conjunction with other articles such as Article 1158 matrimonial property, Articles 1159 and 1160 management and administration of matrimonial property by mutual agreement.

### Police

Implementation of the legislation depends not only on existing mechanisms but also perceptions and attitudes of law enforcers and representatives of legal professions. Despite the fact that according to surveys, domestic violence is a widespread crime in Georgia, the statistics prove different. If we look, for example, at statistics of the Ministry for Internal Affairs for 2013, the picture is the following: in 5,447 cases people asked for help with regards to conflict within the family through the police hotline, investigations were started in over 300 cases and in only 212 cases the administrative procedure of issuing a protective order to the victim of domestic violence was realised.<sup>337</sup> It should be taken into consideration that people in Georgia consider domestic violence to be a domestic issue and try to solve it within the family, many Georgians refrain from engaging the police in these cases. After two years of very active social campaigns conducted by civil society and the Ministry of Internal affairs, emergency calls to the police have increased three-fold, and in 2015 constituted 15,910 calls.<sup>338</sup> The number of investigations increased up to 949 cases and the number of protective orders issued increased ten-fold to 2,726. It means that out of all hotline calls, the police took action in only 15% of cases; the question is what happens to the rest?

The UPR shadow report of 2015 on Women's Human Rights in Georgia indicates that non-governmental organisations, which provide services to the victims of domestic violence report that police frequently do not provide adequate help to the victims, because of their stereotypical attitude towards the crime of domestic violence; this increases the impunity of abusers and more severe crimes within the family in the long run.<sup>339</sup>

---

<sup>333</sup> Official website of Supreme Court of Georgia. Available at: [www.supremecourt.ge/eng/judges/judges/](http://www.supremecourt.ge/eng/judges/judges/)

<sup>334</sup> *ibid* p. 327.

<sup>335</sup> Official Letter from Supreme Court of Georgia #p-167-15, dated 5 October 2015.

<sup>336</sup> Supreme Court of Georgia, case law search engine, Available at: [prg.supremecourt.ge/DetailViewCivil.aspx](http://prg.supremecourt.ge/DetailViewCivil.aspx)

<sup>337</sup> See the statistic of the Ministry of Internal Affairs. Available at:

[http://www.gurianews.com/view\\_left\\_wide.html?item=21121&title=ოჯახური+ძალადობის+სტატისტიკა&cat\\_id=74&lang=ka](http://www.gurianews.com/view_left_wide.html?item=21121&title=ოჯახური+ძალადობის+სტატისტიკა&cat_id=74&lang=ka)

<sup>338</sup> Pataraiia, B. Social Work – The Missing Puzzle Piece in Combating Domestic Violence in Georgia, 2016. p.3.

Available at: [http://www.osgf.ge/files/2016/EU%20publication/Angarishi\\_A4\\_Social\\_ENG.pdf](http://www.osgf.ge/files/2016/EU%20publication/Angarishi_A4_Social_ENG.pdf)

<sup>339</sup> NGO Coalition Joint Submission on Women's Human Rights in Georgia, for Universal Periodic Review (second cycle, 23rd session, 2015), paragraph 12.

## Teaching Women’s Rights at Universities

Teaching women’s rights or related topics is not common in Georgian universities. To analyse the existing situation, universities were chosen according to the ratings based on official information of data from LEPL National Assessment and Examination Centre under the Ministry of Education and Science of 2014.<sup>340</sup> According to the ratings of 2014, there were 62 accredited universities in Georgia and among the most popular 10 universities which offer law degrees, the top four were chosen. These were Tbilisi State University (TSU), Free University of Tbilisi (Freeuni), Iliia State University (Iliiauni), located in Tbilisi, and the Batumi Shota Rustaveli State University (BSU) located in Batumi, Ajara region.

Based on the analysis of the curricula of faculties of law of the abovementioned universities, the following courses were identified:

- TSU – No relevant Bachelor of Law courses<sup>341</sup> or Master of Law<sup>342</sup> programmes identified. At the level of Master in International Law there was a practical course/law clinic on “International Standards in combating Human Trafficking and Domestic Violence”<sup>343</sup>. In addition, there is a Master’s Programme of Gender Studies which offers “Women’s Human Rights” as an elective course.<sup>344</sup>
- Freeuni – There is an ‘Anti-discrimination law’ course as an elective course at the Bachelors of Law level. The course covers discrimination based on sex and gender.<sup>345</sup>
- Iliiauni – No relevant courses are available.<sup>346</sup>
- BSU – No relevant courses are available<sup>347</sup>

As the curricula of the universities show, women’s rights, gender issues and non-discrimination are not topics offered by universities in Georgia, even as elective courses. Given that the legal education does not offer a gender perspective, it becomes difficult to raise gender sensitivity among professionals at later stages of their career development.

## Gender Training for Legal Professionals

This section overviews training courses offered to judges, prosecutors, lawyers and policemen by subsequent state institutions: High School of Justice, Training Center of Justice, Georgian Bar Association, and the Ministry of Internal Affairs Academy.

- Judges – judges are trained by LEPL High School of Justice. In 2014, the High School of Justice with the co-operation of international organisations elaborated a curriculum for training on: “Supporting Justice through Gender Equality”.<sup>348</sup> One pilot training and two training of trainers were conducted for judges in 2014. The training covers understanding gender, gender bias, stereotypes, violence, women justices, leadership, etc. The High School of Justice is currently developing curriculum regarding anti-discrimination law in co-operation with non-governmental organisations and national experts.

<sup>340</sup> Available at: <http://360gradus.ge/blog/archives/3592>, See also: [www.naec.ge](http://www.naec.ge)

<sup>341</sup> TSU, Bachelors of Law programme, Available at: [www.tsu.ge/data/file\\_db/Faculty-Law-Bakalavriati/samartlis-bak-prog2012\\_61132.pdf](http://www.tsu.ge/data/file_db/Faculty-Law-Bakalavriati/samartlis-bak-prog2012_61132.pdf)

<sup>342</sup> TSU, Master of Law programme, Available at: [www.tsu.ge/data/file\\_db/Faculty-Law-Bakalavriati/samartlis%20samagistro%20programa%202012.pdf](http://www.tsu.ge/data/file_db/Faculty-Law-Bakalavriati/samartlis%20samagistro%20programa%202012.pdf)

<sup>343</sup> TSU, Master in International Law programme, Available at: [www.tsu.ge/data/file\\_db/Faculty-Law-Bakalavriati/saertashoriso%20sam%20mag%20programa.pdf](http://www.tsu.ge/data/file_db/Faculty-Law-Bakalavriati/saertashoriso%20sam%20mag%20programa.pdf)

<sup>344</sup> TSU, Master’s programme at Gender Studies, Available at: [https://tsu.ge/data/file\\_db/faculty\\_social\\_political\\_master/MA-%20Gender%20curriculum.pdf](https://tsu.ge/data/file_db/faculty_social_political_master/MA-%20Gender%20curriculum.pdf)

<sup>345</sup> Freeuni, Master of Law programme, Available at: [http://freeuni.edu.ge/sites/default/files/u113/LS\\_Curriculum\\_%28BL%29\\_2015-2016.pdf](http://freeuni.edu.ge/sites/default/files/u113/LS_Curriculum_%28BL%29_2015-2016.pdf)

<sup>346</sup> Iliiauni, Bachelor’s and Master of Law programmes, Available at: <http://iliauni.edu.ge/ge/iliauni/AcademicDepartments/samartlis-skola-654/programebi-656/samartlis-skolis-sabakalavro-programebi>

<sup>347</sup> BSU, Bachelor’s and Master of Law programmes, available at: [http://www.bsu.edu.ge/text\\_files/ge\\_file\\_411\\_2.pdf](http://www.bsu.edu.ge/text_files/ge_file_411_2.pdf)

<sup>348</sup> High School of Justice, official letter #02/649, dated 17 June 2015.

- Prosecutors – the Training Centre of Justice of Georgia (TCJ) is in charge of organising trainings for prosecutors. Training offered by TCJ does not contain any relevant courses in regards to women’s rights or gender equality.<sup>349</sup> However, in 2012 all prosecutors underwent two hours training on domestic violence since the crime had become criminalised under CCG.
- Police – the Ministry of Internal Affairs Academy offers basic and specialised courses for police. The basic programme covers teaching issues related to domestic violence (17 academic hours). In 2014, 2x244 policemen underwent training on domestic violence.<sup>350</sup> In 2014, the Ministry of Internal Affairs Academy received the status of high educational institution and Bachelor’s and Master’s programmes received accreditation from LEPL National Centre for Educational Quality Enhancement. The Ministry of Internal Affairs Academy elaborated Bachelor’s and Master’s degree programmes in Law. Both of the programmes include teaching anti-discrimination law according to Georgian legislation and ECHR standards.  
In addition, the Ministry of Internal Affairs Academy regularly organising training on gender-based violence in co-operation with non-governmental organisations and in 2014 385 policemen were trained.<sup>351</sup>
- Lawyers – Training Centre of Georgian Bar Association (GBA Training Centre) is in charge of trainings and providing continuous education for advocates in Georgia. In 2013, the GBA Training Centre in co-operation with UN Women developed a training module on the “Elimination of Domestic Violence, Protection and Support of Victims”. Trainings were conducted in 2013-2015 in Tbilisi, Telavi and Zugdidi.  
In 2013, GBA Training Centre in co-operation with the Council of Europe conducted training on “ECHR and Social Charter”. The training focused on anti-discrimination, covering gender and sex as protected grounds. The cascade trainings still continue and have trained 1,340 lawyers so far.<sup>352</sup>

## **V Remedies, good practices and recommendations**

### **National good practices to promote equal access of women to justice**

#### **Parliamentary overview of the Executive**

In 2014, the Georgian Women’s Movement (GWM) an informal initiative group composed by around 600 women activists prepared a petition demanding changes to the state policy regarding violence on women and submitted it to the Parliament of Georgia. In response to the petition, the Human Rights and Civil Integration Committee of the Parliament (CRCC) established a working group on violence against women. The authors of the petition - activists of GWM - were invited to participate in the process. The working group, composed of MPs and high-level officials from the Government of Georgia, conducted three public hearings. During the parliamentary hearings deputy ministers reported to the working group about the ongoing and planned reforms. The members of GWM and other representatives of civil society had the opportunity to ask questions during the committee hearings. In June 2015, the working group with the co-operation of GWM representatives drafted recommendations for the Ministry of Internal Affairs, the Public Prosecutor’s Office, Ministry of Labour, Health and Social Affairs, local self-government body Sakrebulo of Tbilisi, City Hall of Tbilisi. The CRCC planned to conduct two hearings per year to assess the implementation process of the recommendations from relevant state institutions.<sup>353</sup>

<sup>349</sup> TCJ, Available at: [www.tcj.gov.ge/ka/training/](http://www.tcj.gov.ge/ka/training/)

<sup>350</sup> Ministry of Internal Affairs Academy, official letter #1502823, dated 9 July 2015.

<sup>351</sup> *ibid.*

<sup>352</sup> GBA Training Centre, Available at: <http://edu.gba.ge/ბავშვის-შეხვედრები/პროექტები/>

<sup>353</sup> Human Rights and Civil Integration Committee of the Parliament of Georgia, Recommendation #7574, dated 29 June 2015

The process of involvement of the Parliament in shaping the state policy towards the acute problem of violence against women should be considered as a good practice. Particularly when the process is open to the wider public and direct involvement of society, civil society organisations and unregistered initiative groups of human rights activists is guaranteed.

### **Gender Equality Department of the Public Defender's Office**

Gender Equality Department of PDO (GED) was established in 2013. GED conducts monitoring of implementation of gender-related legislation and policies, the shelters of domestic violence and operation of hotline on domestic violence. GED studies complaints and individual cases of violations of human rights based on sex and gender. GED conducts public awareness activities and trainings for relevant state institutions. In addition, GED collects information from all relevant state institutions and conducts qualitative studies to evaluate the effectiveness of various protection mechanisms from violence on women. GED prepares special reports on violence against women and domestic violence in Georgia on an annual basis.

The GED has studied and raised many hidden and taboo problems which are faced by women in Georgia.

### **Introduction of typology of domestic crimes in Criminal Code of Georgia**

As discussed earlier, the CCG was amended in 2012 and a new Article 11 introduced a new typology of domestic crimes. This article stipulates that domestic crimes are crimes committed by one family member against another and defines who is a 'family member'. After the introduction of this article, it became possible to have segregated data regarding all crimes committed within the family. This data enabled further analysis of characteristics of domestic violence in Georgia.

### **Legal Aid Reform**

Initially free legal aid was provided only in criminal cases for the socially vulnerable population of Georgia. In 2015 LAS is providing legal aid for civil and administrative cases for eligible persons and collects segregated data regarding the nature of civil disputes. This reform has significantly increased access to justice for women. Additional information can be seen in the relevant section of this study on legal aid.

### **Recommendations to improve women's access to justice**

1. The Government of Georgia should increase awareness of women's human rights among the general population, through short-term and long-term educational activities. Women should be informed about available services and protection mechanisms from violence.
2. The lack of trust in the judiciary and law enforcement should be addressed by the Government of Georgia through effective awareness-raising campaigns
3. Gender sensitivity of the justice system should be increased through professional development programmes and educational institutions in Georgia.
4. A gender impact analysis of various laws and policies should be conducted.
5. Gender sensitive legislation and policies should be developed to overcome low participation of women in social, economic and political life. Special and temporary measures should be introduced to empower women.
6. The Government of Georgia must combat stereotypes and harmful traditions which violate women's rights; short-term and long-term solutions should be adopted and implemented to overcome gender inequality and oppression of women.
7. Collection of sex-disaggregated data must be introduced in the justice system to collect and analyse relevant information.

## Bibliography

Abashidze, A. (2015). *The Phenomenon of Child Brides and its Impact on Georgia's EU Integration*, Policy Brief, OSGF, Riga/Tbilisi.

Beridze and others v. Parliament of Georgia, Constitutional Court of Georgia, No. 2/1-392, 2008 CEDAW/C/GEO/CO/4-5 (2014), para 20 (d)

Centre for Social Sciences, Report Paper on the Study of “*Gender Discrimination on the Labour Market in Georgia*”. Available at: [http://css.ge/index.php?lang\\_id=ENG&sec\\_id=93&info\\_id=1038](http://css.ge/index.php?lang_id=ENG&sec_id=93&info_id=1038)

CEPEJ. Report on European Judicial Systems. Edition 2014 (2012 Data). Efficiency and Quality of Justice

Chitashvili, M., et al (2010). *National Research on Domestic Violence against Women in Georgia. Final report*. Available at: <http://www.genderbasedviolence.ge/en/content/show/12/research.html>

Christiansen, C. (2012), “Early marriages and global research priorities on adolescent sexual and reproductive health”, *The European Magazine for Sexual and Reproductive Health*, WHO. Available at: [www.euro.who.int/\\_data/assets/pdf\\_file/0007/178531/Entre-Nous-76-Eng-v2.pdf](http://www.euro.who.int/_data/assets/pdf_file/0007/178531/Entre-Nous-76-Eng-v2.pdf)

Civil Code of Georgia. Available at: [matsne.gov.ge/ka/document/view/31702?impose=translateEn](http://matsne.gov.ge/ka/document/view/31702?impose=translateEn)

Code of Administrative Offences

Council of Europe Gender Equality Commission. (2013). *Feasibility Study, Equal Access of Women to Justice*. Available at: [www.Council of Europe.int/t/dghl/standardsetting/equality/03themes/access\\_to\\_justice/GEC\\_2013\\_1\\_abridged\\_REV%20title.pdf](http://www.Council of Europe.int/t/dghl/standardsetting/equality/03themes/access_to_justice/GEC_2013_1_abridged_REV%20title.pdf)

Commentaries to the Civil Code of Georgia, book five (2000)

Committee for the Prevention of Torture and Inhuman or degrading treatment or punishment. Report to the Georgian Government on the visit to Georgia November, 2012 (CPT/INF(2013) 18. Available at: [www.cpt.Council of Europe.int/documents/geo/2013-18-inf-eng.pdf](http://www.cpt.Council of Europe.int/documents/geo/2013-18-inf-eng.pdf)

Constitution of Georgia. Available at: [matsne.gov.ge/ka/document/view/30346?impose=translateEn](http://matsne.gov.ge/ka/document/view/30346?impose=translateEn)

Council of Europe Action Plan on Georgia, 2013-2015. Available at: [ODG/Prog/Inf\(2013\)15.wcd.Council of Europe.int/ViewDoc.jsp?id=2102099](http://ODG/Prog/Inf(2013)15.wcd.Council of Europe.int/ViewDoc.jsp?id=2102099)

Criminal Code of Georgia. Available at: [matsne.gov.ge/ka/document/view/16426](http://matsne.gov.ge/ka/document/view/16426)

CRRC-Georgia (2014), Women's Political Participation in Georgia. Available at: [www.ndi.org/files/NDI%20Georgia\\_October%202014\\_Gender%20poll\\_Public%20ENG\\_Final\\_0.pdf](http://www.ndi.org/files/NDI%20Georgia_October%202014_Gender%20poll_Public%20ENG_Final_0.pdf)

ECMI (2014), Needs Assessment of Ethnic Minority Women in Georgia, commissioned by UN Women. Available at: [www.unwomen.org/~media/field%20office%20georgia/attachments/publications/2014/study%20on%20ethnic%20minority%20women\\_eng.pdf?v=1&d=20150410T190238](http://www.unwomen.org/~media/field%20office%20georgia/attachments/publications/2014/study%20on%20ethnic%20minority%20women_eng.pdf?v=1&d=20150410T190238)

Equality Coalition (2015). Implementation of Anti-discrimination Law. Available at: [www.osgf.ge/files/2015/Publication/EU-Geirgia%20Association%20Report\\_210x270mm.pdf](http://www.osgf.ge/files/2015/Publication/EU-Geirgia%20Association%20Report_210x270mm.pdf)

CEPEJ (2014), Report on “European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice”. Available at: [http://www.Council of Europe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport\\_2014\\_en.pdf](http://www.Council of Europe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf)

European Parliament Resolution of 17 November 2011 containing the European Parliament's recommendations to the Council, the Commission and the EEAS on the negotiations of the EU-Georgia Association Agreement. Available at: [www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0514](http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0514)

Global Gender Gap Index 2014. Available at: <http://reports.weforum.org/global-gender-gap-report-2014/economies/#economy=GEO>

GRECO "Evaluation Report on Georgia on Incriminations." Greco Eval III Rep (2010) 12E, Theme I, para 84. Available at: [www.Council of Europe.int/t/dghl/monitoring/greco/evaluations/round3/GreCouncil of Europe val3\(2010\)12\\_Georgia\\_One\\_EN.pdf](http://www.Council of Europe.int/t/dghl/monitoring/greco/evaluations/round3/GreCouncil of Europe val3(2010)12_Georgia_One_EN.pdf)

Human Rights Committee (2014), Concluding Observations on the Fourth Periodic Report on Georgia (CCPR/C/GEO/CO/4)

Human Rights Council (2011), Report of the Working group on the Universal Periodic Review. Georgia (A/HRC/17/11)

Inter-Parliamentary Union and UN Women (2014). Available at: [www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2014/wmmn.ap14\\_en%20pdf.ashx](http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2014/wmmn.ap14_en%20pdf.ashx)

International Society for Fair Elections, 2014, Representation of Women and Gender Balance in Local Self-Government Sakrebulo in Georgia, available at: <http://www.isfed.ge/main/653/eng/>

Labour Code of Georgia. Available at: [matsne.gov.ge/ka/document/view/1155567?impose=translateEn](http://matsne.gov.ge/ka/document/view/1155567?impose=translateEn)

Landesa, EWMI. 2013. Assessment of Property Rights in Georgia. Available at: [www.ewmi-jilep.org/images/stories/books/Landesa/GEO - Assessment of Property Rights in Georgia.pdf](http://www.ewmi-jilep.org/images/stories/books/Landesa/GEO_-_Assessment_of_Property_Rights_in_Georgia.pdf)

Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence. Available at: [matsne.gov.ge/ka/document/view/26422?impose=translateEn](http://matsne.gov.ge/ka/document/view/26422?impose=translateEn)

Law of Georgia on Gender Equality. Available at: <https://matsne.gov.ge/ka/document/view/91624?impose=translateEn>

Law of Georgia on the Elimination of All Forms of Discrimination, 2014

Law of Georgia on the Elimination of all forms of discrimination. Available at: [matsne.gov.ge/ka/document/view/2339687?impose=translateEn](http://matsne.gov.ge/ka/document/view/2339687?impose=translateEn)

Mahoney, P. and Williams, L.M. (1998). Sexual Assault in Marriage: Prevalence, Consequences, and Treatment of Wife Rape. In J. L. Jasinski & L. M. Williams (Eds). *Partner Violence: A Comprehensive Review of 20 Years of Research*. Available at: [www.janedoe.org/site/assets/docs/Curriculum\\_SA\\_IP/Sexual\\_Assault\\_in\\_Marriage.pdf](http://www.janedoe.org/site/assets/docs/Curriculum_SA_IP/Sexual_Assault_in_Marriage.pdf)

Sumbadze, N. (2014), Study of the Perceptions and attitudes towards Violence against Women and Domestic Violence in Tbilisi, Kakheti and Samegrelo-Zemo Svaneti Regions of Georgia, Institute for Policy Studies. Available at: [www.unwomen.org/~media/field%20office%20georgia/attachments/publications/2014/english-study%20unjp.pdf?v=1&d=20150410T184908](http://www.unwomen.org/~media/field%20office%20georgia/attachments/publications/2014/english-study%20unjp.pdf?v=1&d=20150410T184908)

NGO Coalition, Joint Submission on Women's Human Rights in Georgia, for the Universal Periodic Review (second cycle, 23rd session, 2015).

Pataraiia, B (2015). Georgian Politics without Women -Quotas as a Solution to the Problem, Policy Brief, OSGF, Riga/Tbilisi

Public Defender of Georgia (2013), Annual Report on the Situation of Human Rights and Freedoms in Georgia 2013. Available at: [www.ombudsman.ge/uploads/other/1/1934.pdf](http://www.ombudsman.ge/uploads/other/1/1934.pdf)

Public Defender's Office (2015), Special Report on Discrimination. Available at: [drive.google.com/file/d/0B9BM3M8hbqAUTUdIZXd4MFJqX2s/view](https://drive.google.com/file/d/0B9BM3M8hbqAUTUdIZXd4MFJqX2s/view)

Public Defender's Office (2015), Special report: Domestic Violence and Violence against Women in Georgia. Available at: [www.ombudsman.ge/uploads/other/3/3361.pdf](http://www.ombudsman.ge/uploads/other/3/3361.pdf)

Study of Quality of Court Services, Satisfaction of Customers, 2014. Available at: [www.supremecourt.ge/files/upload-file/pdf/2014-wlis-kvleva.pdf](http://www.supremecourt.ge/files/upload-file/pdf/2014-wlis-kvleva.pdf)

Supreme Court of Georgia, case #3k/215-01, 11/04/2001. Supreme Court of Georgia, case #as-839-788-2010, 18/01/2011. Available at: <http://prg.supremecourt.ge/DetailViewCivil.aspx>

Swedish Foreign Department (2011), Land Reports - Georgia

UNDP (2010), National Research on Domestic Violence against Women in Georgia. Available at: [www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/GeorgiaAnnexX.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/GeorgiaAnnexX.pdf)

UNDP (2013), Public Perceptions on Gender Equality in Politics and Business. Available at: [www.ge.undp.org/content/georgia/en/home/library/democratic\\_governance/public-perceptions-on-gender-equality-in-politics-and-business.html](http://www.ge.undp.org/content/georgia/en/home/library/democratic_governance/public-perceptions-on-gender-equality-in-politics-and-business.html)

UNFPA, Child Marriage in Georgia (Overview). Available at: [eeca.unfpa.org/sites/default/files/pub-pdf/unfpa%20georgia%20overview.pdf](http://eeca.unfpa.org/sites/default/files/pub-pdf/unfpa%20georgia%20overview.pdf)  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGE0%2FCO%2F4&Lang=fr](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGE0%2FCO%2F4&Lang=fr)

UNFPA, Issue Brief, Preventing gender-biased sex selection in Eastern Europe and Central Asia. Available at: [eeca.unfpa.org/sites/default/files/pub-pdf/GBSS%20Brief\\_WEB.pdf](http://eeca.unfpa.org/sites/default/files/pub-pdf/GBSS%20Brief_WEB.pdf)

UNFPA, Men and Gender Relations in Georgia. Available at: <http://en.calameo.com/books/000713529d553aaaf9682>

UN Women, Perception of Violence against Women and Domestic Violence in Tbilisi, Kakheti and Samegrelo-Zemo Svaneti. Available at: <http://georgia.unwomen.org/en/digital-library/publications/2014/11/perception-of-violence-against-women-and-domestic-violence-in-tbilisi>

Women and Men in Georgia 2013. Available at: [www.geostat.ge/cms/site\\_images/files/english/health/women%20and%20men%202013-Analytical.pdf](http://www.geostat.ge/cms/site_images/files/english/health/women%20and%20men%202013-Analytical.pdf)

Women in National Parliaments, 2015, available at: <http://www.ipu.org/wmn-e/classif.htm>  
World Bank, April 2009, report No. 44400-GE



# **REPUBLIC OF MOLDOVA**

Report prepared by  
Doina Ioana Străisteanu

## Contents

<b>I. Introduction.....</b>	<b>99</b>
<b>II. Gender gaps in access to justice .....</b>	<b>102</b>
A. Analysis of the national legal and policy frameworks to identify the obstacles women encounter in gaining access to the justice system .....	102
B. Analysis of practices and mechanisms for the implementation of laws.....	114
C. Socio-economic and cultural barriers to women’s access to justice: .....	115
<b>III. Gender responsiveness of the justice system .....</b>	<b>117</b>
A. An overview of the number of cases women bring before national courts, in comparison to men.....	117
B. Gender bias, gender stereotypes, poor services and hostile attitudes among legal professionals and the police .....	117
C. Mapping of existing gender training for judges and lawyers .....	118
D. Mapping of the extent to which women’s rights and gender equality issues have been introduced in the curricula of the basic education and further training for legal professionals and police .....	119
<b>IV. Remedies, good practices and recommendations.....</b>	<b>120</b>
A. Existing remedies to facilitate women’s access to justice.....	120
B. National good practices to promote equal access of women to justice.....	120
C. Proposed measures to address the obstacles that prevent equal access to justice for women.....	120
D. Proposed measures to address the research and data needs and gaps in the field of women’s equal access to justice .....	120
E. Mapping of relevant actors in the field of women’s access to justice that the project could/should engage with (official institutions, civil society organisations, academia) .....	120
<b>Bibliography .....</b>	<b>121</b>

## I. Introduction

The study is based on the understanding that access to justice is central to the rule of law and integral to the enjoyment of basic human rights. It is also an essential precondition to social inclusion and a critical element of a well-functioning democracy. Access to justice can be construed as the ability of people, including people from disadvantaged groups, to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards, without legal, procedural, socio-economic or cultural obstacles.

Access to justice “refers to the various elements leading to appropriate redress against the violation of a right”.<sup>354</sup> In its recent General Recommendation 33 (2015) on women’s access to justice, the CEDAW Committee identifies “six interrelated and essential components” necessary to ensure women’s access to justice: 1) justiciability, which refers to the “ability and empowerment of women to claim their rights as legal entitlements”; 2) availability of courts; 3) accessibility of all justice systems to women, “including those who face intersectional or compounded forms of discrimination”; 4) good quality of justice, which includes the requirement that justice systems be gender-sensitive; 5) provision of remedies; and 6) accountability. Access to justice implies the right to an effective remedy, the right to equal access to courts, the right to a fair trial, the right to legal aid measures that improve access to courts, access to legal representation, as well as access to equality bodies and ombudsman institutions aimed at bridging the gap between the law and *de facto* enjoyment of rights by individuals.

The requirement of equality, including gender equality, is at the centre of the meaning, the exercise and the fulfilment of the right to justice. The Republic of Moldova has ratified numerous international and regional instruments guaranteeing access to justice. Among these, the Council of Europe treaties,<sup>355</sup> in particular: the European Convention on Human Rights (ECHR)<sup>356</sup> the Convention on Action against Trafficking in Human Beings,<sup>357</sup> the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine,<sup>358</sup> the European Convention on the Compensation of Victims of Violent Crime,<sup>359</sup> the European Agreement on the Transmission of Applications for Legal Aid,<sup>360</sup> and the United Nations (UN) instruments: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>361</sup> the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol,<sup>362</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>363</sup> the United Nations Convention against Transnational Organised Crime,<sup>364</sup> the Beijing Declaration and Platform for Action (1995),<sup>365</sup> the UN Declaration on the Elimination of

---

<sup>354</sup> Parliamentary Assembly of the Council of Europe (PACE) Resolution 2054 (2015) “Equality and non-discrimination in the access to justice”: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21753&lang=en>;

<sup>355</sup> For an intersectional analysis, see also the European Charter for Minority Languages (ETS No. 148) and the European Convention on the Legal Status of Migrant Workers (CETS No. 093).

<sup>356</sup> (ETS No. 163), [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf);

<sup>357</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>;

<sup>358</sup> Convention on Human Rights and Biomedicine, see Article 14 on non-selection of sex, <http://conventions.coe.int/Treaty/en/Treaties/Html/164.htm>. The issue of prenatal sex selection is discussed in relation to coercion and psychological violence (see Article 33 of the Istanbul Convention) and the Parliamentary Assembly Res 1829(2011).

<sup>359</sup> <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/116>

<sup>360</sup> <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/092>

<sup>361</sup> Adopted in 1979, <http://www.un.org/womenwatch/daw/cedaw>; For an intersectional analysis of discrimination against women also see for example the Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Protection of the Rights of Persons with Disabilities, the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, the Convention for the Protection of all Persons from Enforced Disappearances.

<sup>362</sup> Adopted in 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx>;

<sup>363</sup> Adopted in 1966, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>;

<sup>364</sup> Adopted in 2000, <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>; Also see [the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children](http://www.osce.org/odihr/19223?download=true); <http://www.osce.org/odihr/19223?download=true>

<sup>365</sup> <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>;

Violence against Women.<sup>366</sup> The Republic of Moldova has not yet ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).<sup>367</sup>

As part of the process of European Union (EU) integration, the Republic of Moldova is bound to reform its legislation also to the standards set out in regard to access to justice for women. Such as those in the EU Directive 2012/29/EU, establishing minimum standards on the rights, support and protection of victims of crime,<sup>368</sup> the EU Regulation No. 606 (2013) on mutual recognition of protection of victims in civil matters (which complements EU Directive 2012/29/EU),<sup>369</sup> the Directive on the European protection order 2011/99/EU<sup>370</sup> and in the Directive 2004/80/EC relating to compensation to crime victims (EU).<sup>371</sup>

This study highlights the extent to which the Republic of Moldova honours the assumed obligations to implement the standards on access to justice and the barriers that still exist, in particular for women. These barriers are legal and procedural as well as socio-economic and cultural. Numerous studies, reports, data, opinions, decisions and judgments made public by various public and private entities have been analysed and presented herein. It is hoped that this study will strengthen the understanding of the proper measures which must be put in place to ensure that the justice chain is gender-responsive and that the legal professionals involved at its stages (judges, prosecutors, lawyers, law enforcement), in the areas of gender equality, women's rights and non-discrimination, are aware of the difficulties that women face in accessing justice because they are women. The study is conducted by the Council of Europe and is part of the project on *Improving women's access to justice in five Eastern Partnership countries* (2015-2016). Similar studies have also been produced, besides the Republic of Moldova, for Armenia, Azerbaijan, Georgia and Ukraine.<sup>372</sup> This study has been presented on 5-6 October 2015 in Kvareli, Georgia at the Conference on *Improving women's access to justice in five Eastern Partnership countries* to an international audience of legal professionals and scholars, and then presented on 12 January 2016 to the Inter-ministerial Co-ordinating Council on Prevention of Violence against Women and Domestic Violence of the Republic of Moldova. The report's conclusions were welcomed and the audience comments highlighted the relevance of the issues researched and presented in this report.

The Moldovan legislation, as of today, has numerous instruments that prohibit discrimination. The first equality provision was, and remains, Article 16 of the Moldovan Constitution.<sup>373</sup> It guarantees equality to its citizens, before the law and public authorities, no matter what their race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin is.<sup>374</sup> For many years, domestic legislation had incorporated the equality principle in various laws<sup>375</sup> but had not drafted a specific law to provide definitions for discrimination and establish an enforcement mechanism.

This was the case until 2006, when the Moldovan Parliament passed Law No. 5 /2006 on equal chances between women and men.<sup>376</sup> It was the first special law to provide definition for 'sex'<sup>377</sup>,

<sup>366</sup> Adopted in 1993, <http://www.un.org/documents/ga/res/48/a48r104.htm>;

<sup>367</sup> [www.coe.int/conventionviolence](http://www.coe.int/conventionviolence)

<sup>368</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>;

<sup>369</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R0606&from=EN>;

<sup>370</sup> [http://ec.europa.eu/justice/criminal/files/directive\\_2011\\_99\\_on\\_epo\\_en.pdf](http://ec.europa.eu/justice/criminal/files/directive_2011_99_on_epo_en.pdf);

<sup>371</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:261:0018:en:PDF>;

<sup>372</sup> The project is funded as part of the CoE/EU 2015 – 2017 Eastern Partnership Programmatic Cooperation Framework and it has been designed in the framework of the Council of Europe Gender Equality Strategy (2014-2017) in particular one of its five objectives: "Guaranteeing equal access of women to justice";

<sup>373</sup> Adopted in 29 July 1994;

<sup>374</sup> Article 16 of the Constitution has a closed list of protected grounds and is applicable only to those with Moldovan citizenship;

<sup>375</sup> Every piece of legislation, once adopted, mentions equality before the law: civil procedure, criminal procedure, labour law, etc.;

<sup>376</sup> Law No. 5 was published in 'Monitorul Oficial' on 24 March.2006 and entered into force from publication;

<sup>377</sup> Defined as "the overall anatomical-physiological characteristics that separate human beings in males and females", Article 2, Law No. 5/2006;

'gender'<sup>378</sup>, 'sexual harassment'<sup>379</sup> and of course for 'discrimination based on sex'.<sup>380</sup> It incorporated a broad and complex gender equality principle for many areas of life: in mass media (Article 8), employment and access to public office (Article 6), decision making in election and political parties (Article 7), equal access to employment (Article 9), equal access to economic and business activity (Article 12), equal access to education (Article 13), equal access to health services (Article 14). This law, however, lacked a viable mechanism to secure the practical implementation of gender equality.

Six years later, the Moldovan Parliament passed Law No. 121/2012<sup>381</sup>, which entered into force on 1 January 2013. It defines nine different forms of discrimination<sup>382</sup> and every one of these can have sex or gender at its basis. The equality law has an open list of protected grounds, which makes it possible to extend protection against discrimination to cover other grounds as well<sup>383</sup>, such as gender identity for example. The law has three specific fields for protection against discrimination, in accordance with the European Directives in the field: employment (Article 7), education (Article 9) and access to goods and services (Article 8). To enforce the law, the Parliament instituted the Moldovan Equality Council (the Council) and appointed 5 members<sup>384</sup> to decide collegially on petitions, pending bills of law and raising awareness about discrimination.<sup>385</sup> Immediately after registration,<sup>386</sup> and beginning with October 2013, the Council opened its doors to people wishing to lodge/file a complaint. Its first report to the Moldovan Parliament presents statistics and conclusions made by the Council in its first three months of activity. During that time, the Council received 44 complaints, out of which 34 were admissible.<sup>387</sup> 12 decisions were adopted on 14 of these complaints<sup>388</sup> and on three *ex officio*<sup>389</sup> investigations. People complained about discrimination in access to justice (complaints referred to the violation of the domestic law regarding the use of Russian language in correspondence with the public authorities), in education, in employment based on sex and gender among other grounds.<sup>390</sup> There are 12 decisions of the Council finding sex-based discrimination in the

---

<sup>378</sup> Defined as "social aspect of the relationships among women and men, which manifests in all spheres of one's life", Article 2 Law No. 5/2006;

<sup>379</sup> Defined as "any form of physical, verbal or nonverbal behaviour, of a sexual nature, which violates one's dignity or creates unpleasant, humiliating, degrading or insulting environment", Article 2 Law No. 5/2006;

<sup>380</sup> Defined as "any difference, exception, limitation or preference aiming, or as consequence, to limit or intimidate the recognition, use and implementation on an equal basis by women and men of their fundamental rights and freedoms of humans", Article 2, Law No. 5/2006;

<sup>381</sup> The adoption of Law No. 121/12 was preceded with criticism and street protests of the Moldovan Orthodox Church, <http://www.ziare.com/articole/moldova+legea+antidiscriminare+biserica+ortodoxa>. The Church argued that the equality law comes to provide LGBT people with additional rights. The Moldovan Parliament accepted a compromise and deleted 'sexual orientation' from the list of protected grounds indicated in Article 1 (1) of Law No. 121/12, indicating it only in Article 7 that bans discrimination in employment. It had also introduced exceptions from discrimination, stating in Article 1 (2) of the Law No. 121/12 that non-discrimination provisions are not applicable to the adoption, to the family based on a relationship between the man and the woman, to the religious organisations and their components. Even so, the Moldovan Orthodox Church refused to accept the fact the equality law was voted, <http://omg.md/index.php?newsid=1678>;

<sup>382</sup> Indeed, Law No. 121/12 defines in Article 2 direct and indirect discrimination, reasonable accommodation, victimisation, racial segregation, harassment, discrimination by perception, discrimination by association, instigation to discrimination;

<sup>383</sup> Practical Guideline on Equality and Non-discrimination produced and launched on 19 December 2014 by the Non-discrimination Coalition, pages 63-66: <http://nediscriminare.md/ghid-practic-egalitatea-si-nediscriminarea-pe-intelesul-tutoror-editia-i-a/>;

<sup>384</sup> Doina Ioana Straisteanu and Oxana Gumennaia were appointed on 7 March 2013. Andrei Birghidin, Ian Feldman and Lucia Gavrilita were appointed on 6 June 2013 by a Parliament decision, after being selected in an open contest. Each member was appointed for five years and all five are members of the civil society;

<sup>385</sup> Report of the Non-discrimination Coalition on monitoring the activity of the Council for 2013 – 2014, available here <http://nediscriminare.md/wp-content/uploads/2015/01/Raport-MONITORIZAREA-CPPEDAE.pdf>;

<sup>386</sup> Registration procedure officially finalised on 31 July 2013;

<sup>387</sup> Not all 34 complaints, declared admissible, were been resolved in 2013. Many of these were registered in December 2013 and remained for 2014 to be examined and resolved through a decision.

<sup>388</sup> Several complaints from different individuals were merged in one case and examined together when they referred to the same person or institution acting discriminatory. Therefore, statistics show different numbers for individual complaints and for decisions.

<sup>389</sup> Any member of the Council has the right to initiate on its own motion an investigation into a possible discriminatory practice or law, pct. 60-69 of the Council's regulation adopted by Law No. 298;

<sup>390</sup> Opinion, disability, social origin, language, HIV were protected grounds invoked by plaintiffs, page 4 of the Council Report for 2013, available here <http://egalitate.md/index.php?pag=page&id=850&l=ro>;

following cases: commercial companies that had used sexism to promote and sell their products,<sup>391</sup> gender-based discrimination by law enforcement who victimised women for complaining about domestic violence<sup>392</sup>, gender-based discrimination in exercise of parental rights by child protection services for arbitrary decisions about visiting hours for the separated parent<sup>393</sup>, and gender-based discrimination in equal access to protection from the law for women who sought police assistance<sup>394</sup>. Each of these decisions is presented in detail in this study.

## **II. Gender gaps in access to justice**

### **A. Analysis of the national legal and policy frameworks to identify the obstacles women encounter in gaining access to the justice system**

#### **i. Possible discriminatory laws or policies**

Since the Council has officially started its mandate,<sup>395</sup> several pieces of current legislation have been examined from the perspective of gender equality.

#### *Parental leave benefits*

The most significant analysis was done upon the modifications to Law No. 289/2004 regarding the payments of temporary leave from work and other social security payments<sup>396</sup> changed by Law No. 332/2013.<sup>397</sup> It has been found that Article 6 paragraph 7 discriminates women and men on the basis of their marital status and gender. A woman may benefit from maternity leave payment and parental leave payment for childcare, above the minimum of 20 euro, only if she is married to the child's father and can prove that she depends upon his income. Such payments are not available to married men dependent on their wives' income or to unmarried women and men who have a child in common. The law uses "wife" and "husband" to indicate one's status as a condition to benefit from these payments, in addition to their income and previous social payments. The dependent partner in the couple should be the woman, the wife. The man, the husband, may not benefit of the same right as his wife, should the child's parents decide that the woman's income is more considerable and therefore the child's father could benefit of parental leave payments calculated from the mother's income upon which the father could have been dependent. The phrasing used by the law does not allow the child's mother or father to benefit from each other's income, as described above, if they are not married. Therefore, two impediments arise: civil status (the woman must be married to the child's father) and gender (the wife must be dependent upon her husband's income, a vice versa situation is not regulated). The Council found the provision discriminatory to mothers-to-be who are not married to the child's father but dependent upon his income.<sup>398</sup> The Ministry of Labour, Social Protection and Family finds it insufficient that on the child's birth certificate, upon the statements of both parents as the Family Law dictates, the child's paternity and maternity is recognised by both

---

<sup>391</sup> Decision of 24 February 2014 in the Case No. 048/14 regarding sexism in "Radio Plai" SRL advert; Decision of 28 July 2014 in Case No. 108/14 regarding sexist image used for candies by S.A. "Bucuria", available on [www.egalitate.md](http://www.egalitate.md);

<sup>392</sup> Decision of 28 July 2014 in the Case No. 125/14 regarding victimisation of I.T. by police officers, available on [www.egalitate.md](http://www.egalitate.md);

<sup>393</sup> Decision of 21 February 2014 in Case No. 028/13 regarding gender-based discrimination in setting out visiting hours, available on [www.egalitate.md](http://www.egalitate.md);

<sup>394</sup> Decision of 13 February 2014 in Case No. 034/13 and Decision of 30 October 2014 in Case No. 098/14 in which the Council found law enforcements' prejudice against women victims of domestic violence as impediment to secure equal protection from the law, available here [www.egalitate.md](http://www.egalitate.md);

<sup>395</sup> After having been officially registered on 31 July 2013, the Council received the first complaint on 20 September 2013 from a police officer alleging harassment at work;

<sup>396</sup> Original title "Legea privind indemnizațiile pentru incapacitatea temporară de muncă și alte prestații de asigurări sociale";

<sup>397</sup> The analysis has been given in the Decision of 26 May 2015 in the Case No. 071/14, available on [www.egalitate.md](http://www.egalitate.md);

<sup>398</sup> Ibidem;

parents. An unmarried woman, mother-to-be, is disadvantaged and indirectly forced into changing her marital status.

The Ministry of Labour, Social Protection and Family argues that these provisions are meant to protect women and motherhood as a whole. However, through the realm of current roles played by women in Moldovan society (assuming leadership roles, founding businesses, securing their own income, occupying decision-making positions, assuming the leadership in the family) such provisions fail to respond to individual situation of modern families. After all, parental leave payments and social security payments, as the law itself explains, are meant to cover the loss of income in the family due to the occurrence of particular events, such as childbirth and parenthood (not only motherhood). The only reason brought forward by the Ministry, during the official hearing in the case before the Council,<sup>399</sup> to binding the parental leave payment to the married woman, was to secure that the child legally belongs to the man whose income will serve as basis for the calculation of the payment. This provision comes to protect men from wrongful claims of paternity when he is not married to the child's mother, and as such, from wrongful claims on parental leave payments. There was no explanation given for the fact that a married man could not benefit from parental leave payment calculated of his wife's income as the dependent spouse.

### *Occupations*

Another challenge is the List of National Occupations No. CORM 006-14 updated and approved by the Ministry of Labour, Social Protection and Family.<sup>400</sup> The titles of the occupations are masculinised and feminised by the nature of the labour they refer to. For example, the decision-making positions, leadership role positions and head of divisions, institutions and others are masculinised. Childcare and cleaning occupations are feminised. Romanian language allows gender-based declinations of job titles and yet, as recently as March 2014, the Ministry of Labour, Social Protection and Family approved the new, updated list, which does not allow gender declinations for job titles. The Council initiated an *ex officio* case<sup>401</sup>, the public hearing being held on 9 July 2015.<sup>402</sup> The same *ex officio* note had examined whether the list of professions banned for women is justified.<sup>403</sup> It has been approved in 1993 and never reconsidered. The Council's decision found both lists to be sexist and recommended that the Ministry of Labour, Social Protection and Family revise them both to secure that men and women receive similar labour protection and that prejudices about their gender are not an impediment for their employment.<sup>404</sup>

---

<sup>399</sup> Ibidem, verbatim of the hearing attached to the case file No. 071/14;

<sup>400</sup> Order No. 22 of 3 March 2014 adopted by the Ministry of Labour, Social Protection and Family by which the List of National Occupations CORM 006-14 is updated and approved, published in 'Monitorul oficial' No. 120-126 of 23 May 2014;

<sup>401</sup> Any member of the Council can register an *ex-officio* note by which she/he proposes to the Council to verify whether a particular law or practice is discriminatory against a particular group. In this note, the member argued that the Ministry of Labour, Social Protection and Family commits sexism when it does not allow for gender-based declinations of the job titles.

<sup>402</sup> The list of hearings can be accessed here [http://www.egalitate.md/index.php?pag=news&id=895&rid=758&l=ro](http://www.egalitate.md/index.php?pag=news&id=895&rid=758&l=ro;);

<sup>403</sup> The list of occupations and professions banned for women has been approved by the Moldovan Government Decision No. 264 of 6 October 1993, original title "Hotărîrea de Guvern nr. 264 din 6 October 1993 privind aprobarea Nomenclatorului industriilor, profesiilor și lucrărilor cu condiții de muncă grele și nocive, proscrie femeilor și Normelor de solicitare maximă, admise pentru femei la ridicarea și transportarea manuală a greutăților";

<sup>404</sup> Ibidem, Decision of 9 September 2015.

### *Access to employment for women with disabilities*

Women with disabilities face barriers in accessing courses for professional requalification,<sup>405</sup> which would facilitate further their employment. Social payments and pensions for disability are far from securing a decent living. People, no matter what their disability is, may wish to be employed and secure their own income.<sup>406</sup> As it has been established by the Council in this particular case, a number of legal regulations, among which the Methodological standards regarding the organisation and continuous education of the unemployed approved by Order No. 42/1 of 13 March 2012 of the Ministry of Labour, Social Protection and Family and by Order No. 135 of 13 March 2012 of the Ministry of Education, requires persons with disabilities to present a medical certificate stating their capacity to work. The Council found that such a request is discriminatory because it does not allow the person with disability to take his/her own decision about employment and occupation.<sup>407</sup>

### *Access to employment for transgender people*

Access to employment is banned for transgender persons today.<sup>408</sup> Not because they cannot be employed, but because they need to change their identity papers before seeking employment.<sup>409</sup> Changing identity papers is a particular challenge for transgender persons who have been ‘diagnosed’ with “transsexualism” and started the hormone therapy to transform their bodies into the desired gender, the one they identify themselves with. Law No. 100/2001 on civil status acts<sup>410</sup> prescribes that the change of the name and the sex on the birth certificate can be accepted only upon the presentation of an official document confirming the change of sex.<sup>411</sup> The only medical document, or official document a transgender person could obtain, is the one stating the diagnosis and (if possible and accessible in the Republic of Moldova) a medical document about the surgical intervention. Cases known to have had all of these documents were rejected by the Civil Registration Offices because these were not considered “official document confirming the change of sex”.<sup>412</sup> After having consumed litigation in two court cases for transgender persons against the Civil Registration Office,<sup>413</sup> the Supreme Court of Justice issued on 2 November 2012 Recommendation No. 16.<sup>414</sup> The Court stated that the right to respect for private life includes one’s gender identity and a request for the change of the sex and the name should be considered through the jurisprudence of the European Court of Human Rights (the Strasbourg Court) under Article 8 of the European Convention on Human Rights. The Ministry of Health of the Republic of Moldova followed the Supreme Court and on 17 December 2012 issued Order No. 1268<sup>415</sup> that created an expert commission to examine and consider every single case of “transsexualism”. The Commission issues a medical conclusion stating the person’s gender identity. Unfortunately, no further changes followed the national legislation and the definition and legal regulation of “gender identity” continues to be absent. For this reason, every single transgender person has to seek a court decision obliging the Civil Registration Office to approve the change of the sex and of the name to correspond with the new gender identity.

---

<sup>405</sup> Decision of 9 September 2014 in the Case No. 110/14 regarding the refusal of the National Agency for Employment to accept a woman with psycho-social disability to a course for manicurist. Available at: [www.egalitate.md](http://www.egalitate.md);

<sup>406</sup> Petitioner’s statement, Ibidem;

<sup>407</sup> Council conclusions, Ibidem;

<sup>408</sup> Situation as described by the LGBT organisation “GENDERDOC-M”, <http://gdm.md/ro/litigations>; see also the Amnesty International letter <https://www.amnesty.org/download/Documents/24000/eur590042012en.pdf>;

<sup>409</sup> Nadine’s story <http://attitude-analyst.blogspot.com/2011/08/nadine-chilianu-moldovas-voice-for.html>. (Link to website).

<sup>410</sup> Original title “Legea nr. 100 din 26.04.2001 privind actele de stare civilă a Republicii Moldova”;

<sup>411</sup> Art. 66 paragraph 2 c) Law No. 100;

<sup>412</sup> The case of O. and S. examined by the Buiucani court, the case of A. and S. examined by the Centre Court, [www.gdm.md](http://www.gdm.md);

<sup>413</sup> Information available here <http://ilga.org/groundbreaking-strategic-legal-victory-for-transgender-people-in-moldova/>;

<sup>414</sup> Available here [http://jurisprudenta.csj.md/db\\_rec\\_csj.php](http://jurisprudenta.csj.md/db_rec_csj.php);

<sup>415</sup> <http://www.ms.gov.md/?q=legislatie>;

## ii. The negative impact of gender-neutral legislation

Gender-neutral legislation is rarely considered to be the cause of discriminatory practices. The absence of a prohibited ground directly mentioned in the text of the law, raises doubts about possible discriminatory effects of the law on a particular social group until statistics are presented to support this assumption. This becomes evident at a closer scrutiny in the situations described below.

### *Indirect discrimination of women in the regulation of the social service of 'personal assistant'*

The Government's Decision No. 314 of 23 May 2012 adopted the Framework Regulation regarding the organisation and functioning of the Social Service "Personal Assistant".<sup>416</sup> The new service aimed to secure people with severe disabilities (the beneficiary) with a caregiver who would be employed by the Social Protection Services of the Ministry of Labour, Social Protection and Family and provide all the assistance needed. The caregiver could be a member of the family or someone close to the beneficiary of this social service but should not have reached the age of retirement, which is 57 for women and 62 for men. Besides the age limit, the Framework Regulation contains a list of professional requirements that a caregiver should meet before being officially employed by the Social Protection Services: have reached the age of 18 years old, have full legal capacity, have no criminal record, be in a good condition of health that corresponds to the position's requirements and be accepted by the beneficiary. The Social Protection Services and the Ministry of Labour, Social Protection and Family argued that the age limit was an essential requirement for a caregiver because the beneficiary is a person with severe disabilities. However, they failed to explain how the age reflects one's health and ability to perform the tasks of a caregiver. The Council received a complaint from three mothers who care for their severely disabled children at home, in the family, and were denied the opportunity to be a caregiver for their children because they had reached the age of retirement - 57 years old.<sup>417</sup> In its decision of 13 February 2014, the Council found that the age limit constitutes a discrimination against women because women retire earlier than men and therefore in this particular situation they were deprived of five years to be considered and employed as caregivers for their severely disabled children. The disadvantage resided also in the fact that from 1 January 1999, national legislation excluded the years spent by parents caring for their severely disabled children at home in the calculation for the age retirement pension. Women, being primary caregivers for their own children, may have chosen to offer care and love within the family rather than transfer their children and duties of care to state-run institutions for disabled children. However, in doing so, they were deprived of the usual opportunities to find employment and secure an income for themselves and their disabled children, becoming dependent on disability payment or social alimony.<sup>418</sup>

### *Indirect discrimination of women lawyers in accessing decision-making positions within the profession*

Law No. 1260/2002 regarding lawyers<sup>419</sup> and the Lawyer's Statute,<sup>420</sup> in force since 8 April 2011 require a minimum of five years of continued work experience for a lawyer to qualify as a candidate and run in the election for the position of Chairperson, member of the Union Board, member of the Commission on admission into the profession, member in the Censors Commission, member of the Ethics and Disciplinary Commission or for the position of Dean of the Regional Bar.<sup>421</sup> It looks to be a gender-neutral legislative provision, but it discriminates against women lawyers. The Council examined a common petition from seven lawyers, women

<sup>416</sup> Original title "Hotărîrea Guvernului nr. 314 pentru aprobarea Regulamentului-cadru privind organizarea și funcționarea Serviciului social "Asistență personală" și a Standardelor minime de calitate din 23 May 2012";

<sup>417</sup> Decision of 13 February 2014 in the Case No. 030/13, available here [www.egalitate.md](http://www.egalitate.md);

<sup>418</sup> Council conclusions, Ibidem;

<sup>419</sup> Original text "Legea cu privire la avocatura";

<sup>420</sup> Original text "Statutul profesiei de avocat";

<sup>421</sup> According to Article 51 of the Lawyer's Statute, in the circumscription of every Court of Appeal the Bar Association is formed within the Union. There are the Chisinau Bar Association, the Balti Bar Association and the Cahul Bar Associations. Any other associations of lawyers, outside of the Union of Lawyers, are prohibited.

and men, raising discrimination claims in access to medical insurance policy.<sup>422</sup> One of the claims concerned a practice, which obliged pregnant women lawyers to suspend their licence in order to benefit from free medical insurance policy as any other pregnant woman during pregnancy. The same rule applies when a lawyer, a woman or a man, decides to benefit from free medical insurance policy during the first three years of the child's life. This practice has been found unjustified and discriminatory against women lawyers, but also indicated that once such a condition is imposed on women lawyers because they are women and they are pregnant or primary caregivers for their children, then statistically a woman lawyer would need more than five years of work experience to run in election to occupy a decision-making position in the Union of Lawyers. This explains the predominant number of men elected to occupy decision-making positions within the profession.<sup>423</sup>

### *Parenthood*

Parenthood seems to be the field of frequent and commonly accepted discriminatory practices based on gender.<sup>424</sup> Upon the court's pronounced divorce, one of the parents leaves the common dwelling to live separately from the ex-partner and, usually, from their common child. Child Protection Services (CPS) frequently examine requests from parents living separately to establish a schedule with visiting hours to allow the parent after separation to maintain the relationship with the child and be kept in the loop about the child's life, needs and health. Such requests lead to a full examination of both parents' situation and commonly become a ground for disputes between separated parents, sometimes a reason for conflicts or worse, for domestic violence incidents. There were six different complaints<sup>425</sup> at the Council where women and men, parents in dispute, have been discriminated by the CPS in the process of setting out a schedule for visiting hours. A common element of each of these complaints was the fact that the separated parent received a schedule that diminished significantly his/her presence in the child's life, despite remaining a parent with rights. In all cases, an additional factor for the justification of the differential access of both parents to the child given by the CPS, referred exclusively to the gender roles assumed by both parents: the girl-child is too young and she needs her mother, the mother is breast-feeding the child and she knows better when the child sleeps and when she/he is wake, it was her decision to leave their common house and leave her child behind, etc. In two of the cases,<sup>426</sup> both applicants were victims of domestic violence who escaped in leaving their common dwelling but were prevented from taking the child into their care by the abusive partners. They have addressed requests to the CPS denouncing the violent behaviour of the second parent and sought support to maintain their relationships with the children; instead they have received hourly visiting rights exclusively because they left their children when they fled the violence. The Council was struck by the fact that the CPS would use gender prejudices about women victims of domestic violence to justify the limited schedule of visiting hours given to the women and to ignore the fact that domestic violence negatively affects children as well.<sup>427</sup>

Women with disabilities face bigger challenges in parenthood. Those living in the psycho-neurological institutions are not allowed to become pregnant and have a child.<sup>428</sup> A gynaecologist and medical personal closely monitor the women's health and menstrual cycle. Instances are known where women with disabilities identified to be pregnant were sent to the local hospital accompanied by medical assistants to have an abortion. Women who have

---

<sup>422</sup> Decision from 17 April 2014 in Case No. 060/2014 initiated at the complaint of lawyers R.Z., V.G., V. M-M, N.M., M.D., O.P. and L.V. against the National Company for Medical Insurance and the Ministry of Health;

<sup>423</sup> Lawyers in decision-making positions within the Lawyers' Union can be consulted here <http://avocatul.md/despre-barou>;

<sup>424</sup> According to an analysis developed and published by the organisation Centre "Partnership for the Development" <http://www.progen.md/index.php?pag=n&opa=view&id=286&tip=publicatii&start=0&l=>;

<sup>425</sup> Case-law of the Council: Decision of 13 February 2014 in the Case No. 034/13; Decision of 21 February 2013 in the Case No. 028/13 and others, available at [www.egalitate.md](http://www.egalitate.md);

<sup>426</sup> Case Nos. 028/13 and 034/13 brought to the Council;

<sup>427</sup> Council conclusions made in Case Nos. 028/13 and 034/13;

<sup>428</sup> Decision of 4 July 2014 in Case No. 087/14 regarding the right of women with disabilities from Balti psycho-neurological institution privacy, reproductive health and family, available at: [www.egalitate.md](http://www.egalitate.md);

escaped such scrutiny and given birth<sup>429</sup> faced the risk of being to be separated from their child on the assumption that women with disabilities cannot care properly for their child since they need assistance themselves.

Lesbian women face prejudices in courts as unfit parents on account of their sexual orientation. As an example, D. had decided to divorce her husband when he found out she was lesbian and became violent. She obtained a protection order as a victim of domestic violence but the court decided to leave the child with the father. No reasons were given by the first instance court. The Chisinau Court of Appeal rejected the woman's appeal and reflected numerous prejudices against lesbians: she provoked him to be violent, she was unfit to educate a child, and she had no permanent income and place of her own. It was the Supreme Court of Justice decision that cleared the facts and granted her child custody.<sup>430</sup>

### iii. Shortcomings of the special laws aimed at equality between women and men or the protection of women

#### a. *regarding civil, labour and family law*

##### *Sexism in advertising*

Sexism in advertising and mainstream media has been in the public debate since 2009. There were cases litigated in domestic courts against some of the biggest commercial companies that advertised their products by exploiting the sexuality and femininity of the female body.<sup>431</sup> Then, an initiative emerged to raise awareness on the meaning of sexism and its influence on the perception of beauty, femininity and the relevance of some products advertised alongside a female body.<sup>432</sup> One female member of the Moldovan Parliament, being assisted by a feminist lawyer, registered a Bill of Law, which meant to introduce the definition of sexism in Law No. 1227/1997 on advertisement<sup>433</sup> and ban it. This initiative was never considered in the Parliament, but in 2015 a new Bill of Law was registered with more comprehensive changes in the gender equality field,<sup>434</sup> among which quotas for women to occupy decision-making positions in public office, parental leave for fathers and the introduction of the definition of sexism in Law No. 1227/1997 on advertisement, banning it. While the first two proposals are more than welcome, the proposal to introduce the definition of sexism in Law No. 1227/1997 on advertisement is redundant. The existence of Law No. 121/2012 on ensuring equality and the practice of the Council on cases of sexism indicate that such a definition would be better placed in the special law on equality. This would allow for the extension of the application of the definition to all the fields of human activity, not only to advertising, and leave the appreciation of the occurrence of sexism to the competence of the Council. Law No. 1227/1997 on advertisement entrusts the Antimonopoly Council to supervise that unlawful advertisement is not spread.

---

<sup>429</sup> A., the beneficiary of the psycho-neurological institution of Soroca City, gave birth to a son and was separated from him at birth; T. S., the beneficiary of the psycho-neurological institution of Balti City, gave birth to a son in June 2015;

<sup>430</sup> Full decision of the Supreme Court of Justice can be found here:

[http://jurisprudenta.csi.md/search\\_col\\_civil.php?id=3861](http://jurisprudenta.csi.md/search_col_civil.php?id=3861);

<sup>431</sup> Reflection <http://www.financiarul.ro/2011/07/26/publicitate-sexista-la-chisinau-companiile-ponti-si-evelin-deferite-justitiei/>;

<sup>432</sup> Blog on Everyday Sexism, <http://everydaysexism.com/country/md>

<sup>433</sup> Original title "Legea cu privire la publicitate";

<sup>434</sup> Bill of Law No. 180 approved by the Moldovan Government Decision no. 322 of 8 May 2014, once it will be voted by the Parliament, Law No. 1227/1997 will have the definition of sexism in advertisement;

## *Adoption and assisted reproduction*

Same-sex couples face multiple challenges when they decide to form their own families. First, they do not receive recognition under the Moldovan law as a family. It comes through the jurisprudence of the Strasbourg Court which found that same-sex couples<sup>435</sup> and single parents with their/her/his child to be families<sup>436</sup> and benefit from the protection of Article 8 of the ECHR. There is no alternative to marriage for same-sex couples to seek recognition and protection under Moldovan Family Law. Similarly, it is merely impossible to obtain the recognition of the same-sex marriage/civil partnership registered in other jurisdictions than the Republic of Moldova. Nevertheless, it appears that the Family Law protects some relationships, for example the one of a gay parent and her/his child. The second parent not affiliated biologically to the child but who lived with the child and cared for her/him, may be appointed the child's guardian in case of the death of the biological parent or if she/he is deprived of her/his parental rights or legal capacity. Once the child has reached the age of 10, the CPS is bound by Family Law to take into account the opinion of the child when it decides upon the guardianship. Before the age of 10 however, no such obligation exists and the second parent risks being excluded from the child's life by members of the extended family or by the CPS. Lesbian couples use *in vitro* or artificial insemination medical services to give birth to a child that would be biologically linked to both of them (one of the woman uses donor sperm of a close relative). Such an opportunity is not open to homosexual male couples because the birth act and then the birth certificate of the child will only indicate as the mother the woman who gave birth and never the woman who donated eggs. Surrogate birth is not allowed in law; therefore the only possible way for a homosexual male couple to become parents is for one of them to have the child with a woman who then becomes the child's biological mother. There are no known cases where maternity would be challenged among women who gave birth and the one who donated eggs. There are same-sex couples where one is officially in a registered marriage to someone else. If a child is born to such a parent, the paternity will be presumed after the mother's husband until he successfully challenges his paternity in a court. Once a child is born in a same-sex couple, the affiliation and kinship will be determined with regard to her/his biological parent only, to the mother.

Law No. 99/2010 on adoption<sup>437</sup> is explicit only about heterosexual couples and single adults, no matter of their sexual orientation, as eligible for adoption. Adoption is open for a single gay or heterosexual person, providing that other eligibility criteria are met.

Law No.138/2012 on reproductive health<sup>438</sup> guarantees the right to treatment against infertility and the right to medically assisted reproduction using new scientific technologies. It clearly states that single women can receive and use donor sperm, upon their written request, for artificial or *in vitro* insemination. Single men, however, may not use donor eggs. This is explained by the fact that surrogacy is not regulated by legislation. The law does not explicitly deny medically-assisted reproduction to same-sex couples.<sup>439</sup>

---

<sup>435</sup> Strasbourg Court case of *Schalk and Kopt v Austria*, Application No. 30141/04, judgment of 24.1.2010;

<sup>436</sup> Strasbourg Court case of *Marckx v Belgium*, Application No. 6833/74, judgment of 13.06.1979;

<sup>437</sup> Original title "Legea privind regimul juridic al adoptiei", the full text of the law <http://lex.justice.md/md/335424/>;

<sup>438</sup> Original title "Legea privind sanatatea reproducerii"; the full text of the law can be consulted here [http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=344838](http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=344838;);

<sup>439</sup> Law No. 138 of 15 June 2012 on reproductive health, Article 9 p. 6, 7, 9;

### *Discriminatory criminalisation of women who have abortions*

The right to terminate one's pregnancy<sup>440</sup> is guaranteed by the legislation in force.<sup>441</sup> Any woman, who reached the age of 16, may have an abortion before being 12 weeks pregnant. At a younger age, teenage girls need to have the consent of their parent or guardian.<sup>442</sup> If the woman wishes to have an abortion between 12 and 21 weeks of pregnancy, she needs to show that her situation falls into one of the permissible situations among those indicated in the Ministry of Health Order No. 647 of 21 September 2010 on voluntary termination of pregnancy.<sup>443</sup> The Council's decision of 4 July 2014, in Case No. 087/14, recognised as gender-based discrimination against women with disabilities residents of the Balti psycho-neurological institution, the use of abortion as contraception in the absence of the woman's informed and free consent.<sup>444</sup> Due to their disability and placement in a residential state institution, and a lack of information on reproductive health and law, none of these women known to have had such experience, complained to law enforcement authorities. The complaint to the Council, and later to the prosecution office, became possible after a female lawyer learned of this practice and assumed the role of victims' public defender.<sup>445</sup> Another case has been made public as gender-based discrimination when a young woman (Z.<sup>446</sup>) was convicted to 20 years' imprisonment for having conducted an abortion at home late in her pregnancy which was qualified as premeditated murder, then denied access to post-abortion medical care and humiliated by guards while being detained awaiting trial.<sup>447</sup> An application to the Strasbourg Court was lodged (and is still pending), which argued in addition to the shortcomings of the investigation, conviction and punishment of Z for aborting, that the actions of the legal and judicial system against her were due, in large part, to serious discriminatory attitudes towards unwed pregnant women and the stigmatisation of abortion in the Republic of Moldova.<sup>448</sup>

### *Other gaps related to the reproductive health of women*

Remaining issues in reproductive health law that present particular challenges for women are lack of data indicators on sexual and reproductive health collected regularly, including disaggregated data on vulnerable groups; absence of public mandatory, non-judgemental, evidence-based sexual education in schools,<sup>449</sup> absence of affordable contraceptives<sup>450</sup> and reproductive health services; parental consent requirement on abortion may prevent an adolescent girl from accessing safe abortion; the requirement put on doctors to report illegal

<sup>440</sup> Abortion was allowed since 1955 by the Soviet Union legislation, and performed upon woman's request until she is 12 weeks pregnant. This right suffered minor changes over the time, mostly as regards the list of situations allowing for abortion at a later stage in pregnancy, source [www.avort.md](http://www.avort.md);

<sup>441</sup> Articles 3 and 5 of Law No. 138 of 15 June 2012 on reproductive health, guarantees and secures access to safe abortion for every woman, as well as to the new technologies for prenatal diagnosis of any foetus' malformation, in which case the woman may have a free and safe abortion;

<sup>442</sup> Article 12 of Law No. 138 of 15 June 2012 on reproductive health;

<sup>443</sup> Published in the "Monitorul Oficial" nr. 241 – 246 of 10 December 2010, as Article 948 and can be consulted here <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=336941&lang=1>; Also applicable, the Ministry of Health Order No. 482 of 14 June 2011 regarding approved standards for safe termination of pregnancy;

<sup>444</sup> The full text of the decision can be consulted here <http://www.egalitate.md/index.php?pag=news&id=836&rid=503&l=ro>;

<sup>445</sup> Case No. 087/14 had at the basis the pleadings of the female lawyer who accepted to represent the women with disabilities;

<sup>446</sup> As reported by IDOM (Moldovan Institute for Human Rights, [www.idom.md](http://www.idom.md)), in May 2006, Z, an unmarried, pregnant and poor young woman from rural Moldova, induced an abortion at a late stage of her pregnancy at her home. When she was taken to the hospital for haemorrhagic shock, doctors reported her to the police. She was then charged with intentional murder, even though medical records show that she had an abortion and there is no criminal penalty for women who illegally terminate their pregnancy. In December 2006, Z was found guilty of murder and sentenced to 20 years in prison. On 31 January 2012, the Moldovan Pardoning Commission granted pardon to Z after she had spent five years in prison;

<sup>447</sup> Press release of 17 February 2012 by the Centre for Reproductive Rights "Moldovan woman imprisoned for abortion pardoned and freed", [http://www.reproductiverights.org/node/2926/map\\_popup](http://www.reproductiverights.org/node/2926/map_popup);

<sup>448</sup> The Centre for the Reproductive Rights opinion on the case, <http://www.reproductiverights.org/case/z-v-moldova>;

<sup>449</sup> Ms Tamara Plamadeala the Child's Ombudsperson and the Moldovan Orthodox Church protested against sexual education in schools: [http://www.publika.md/juristii-ortodocsi--avocatul-copilului-si-mitropolia-moldovei--impotriva-vietii-sexuale-in-scoli--cerem-retragerea-cartii\\_1321531.html](http://www.publika.md/juristii-ortodocsi--avocatul-copilului-si-mitropolia-moldovei--impotriva-vietii-sexuale-in-scoli--cerem-retragerea-cartii_1321531.html);

<sup>450</sup> Contraceptives are not covered by the medical insurance policy;

abortions may lead to women being blamed, stigmatised and marginalised which may impede them from accessing post-abortion medical care; continued gender stereotypes in the health system and other areas, including media, stigmatisation of women who have had an abortion.<sup>451</sup>

### *The discriminatory pressure of caregiving roles for women*

Mass media periodically reports on cases of discrimination against women for being at a reproductive age or for being parents. Parenthood becomes a barrier for a woman to find or keep employment. Termination of women's employment due to pregnancy or childcare duties is not uncommon.<sup>452</sup> Women report being asked about their civil status and presence of children at job interviews. Companies explain that they seek dedicated employees and expect them to be at work, not on sick leave or childcare leave. It is a common practice for private companies to employ women for a determined period of time (e.g. one year) with the possibility to continue the employment for another year. Such an approach allows the employer to terminate the agreement once the woman employee becomes pregnant. In this case she may lose her maternity and parental leave payments.<sup>453</sup>

Women continue to be primary caregivers for their family members, children and elderly. They juggle with childcare duties and employment and some state institutions consider such a situation as identifiable only to women.<sup>454</sup>

### *Discriminatory effects of unequal retirement ages*

Initially, different retirement ages for women and men was meant to "compensate" women for the time spent giving birth and caring for the children. Experts consider that the calculation of pensions for women and men today uses the same formula for both sexes which in the end penalises women: a woman and a man having both the same minimal work years for their sexes, having reached the retirement age for their sexes and having had the same monthly income results in the woman receiving a smaller pension than the man.<sup>455</sup> This may be corrected if women and men retire at the same age.

### *Prejudices limiting access to employment for Roma women*

Roma women are discriminated in access to employment based on their ethnicity.<sup>456</sup> The National Centre of Roma in the Republic of Moldova stated that due to poor education opportunities and competitiveness of Roma in labour market, the employment rate of Roma is low. Those who succeed in education and find employment are subjected to further discrimination. The organisation reported on a case of a Roma woman being denied employment because "she is a gypsy and gypsies steal"<sup>457</sup> and on a second case of a Roma woman harassed to leave her position as a teacher in kindergarten because "she is a gypsy and can put a spell on their children".<sup>458</sup> There is no information on whether these women sued for having been discriminated against.

---

<sup>451</sup> Human Rights NGOs submitted a letter of protest to the Minister of Health against the intention of an orthodox group to place a "commemorative stone for the unborn, aborted children" near a maternity Centre for the Mother and Child: <http://www.avort.md/wp-content/uploads/2015/06/SCRISOARE-DE-SESIZARE-ON-PRIVIN-A-INTIMID-RII-FEMEILOR-ON-EXERCITAREA-DREPTULUI-LA-ALEGERE-I-DISPUNERII-DE-PROPRIUL-CORP1.pdf>

<sup>452</sup> Journalist analysis: <http://www.europalibera.org/content/article/24507729.html>;

<sup>453</sup> Journalistic complex investigation: <http://www.investigatii.md/index.php?art=541>;

<sup>454</sup> On 16 June 2015, the General Police Inspectorate of the Republic of Moldova announced a contest among women police officers to choose the best candidate to become the hero of a journalistic report reflecting on "women in police", <http://www.igp.gov.md/ro/content/inspectoratul-general-al-politiei-lanseaza-concursul-politista-anului-2015> One of the criteria indicated in the announcement for being chosen, was to show how she manages her professional duties with the family ones. Such criteria was never considered applicable for a police man neither reflected in a public media.

<sup>455</sup> "Reforming the pension system through gender dimension", [http://www.progen.md/files/6827\\_reforma\\_pensii\\_final.pdf](http://www.progen.md/files/6827_reforma_pensii_final.pdf), page 9 of the analysis.

<sup>456</sup> Report of National Centre for Roma, <http://roma.md/ro/rapoarte/87-rapoarte-anuale-2010>;

<sup>457</sup> The case of D.M. in Zirnesti, Cahul, <http://roma.md/ro/rapoarte/87-rapoarte-anuale-2010>;

<sup>458</sup> The case of E.S. in Tohatin District, <http://roma.md/ro/rapoarte/87-rapoarte-anuale-2010>;

## *Measures to redress the under-representation of women in decision-making positions*

A separate concern continues to be the low representation of women in decision-making positions in the public and private sector. To this, the UN Committee on Economic, Social and Cultural Rights recommended that temporary special measures be introduced to promote the representation of women at decision-making positions.<sup>459</sup> In a comprehensive Bill of Law, the Moldovan Government proposes changes to Law No. 64/1990 on the Government,<sup>460</sup> Law No. 797/1996 approving the Regulation of the Moldovan Government to impose a minimum quota of 40% in all decision-making positions in Parliament and in the Government to be occupied by women. The Bill also suggests introducing changes to the Election Code, as well as, allowing the Central Election Commission to refuse to register the list with candidates for the political party willing to run in elections if 40% of all the candidates are not women.<sup>461</sup>

### *b. regarding criminal and misdemeanour laws*

#### *Sexual harassment*

There is no protection in the law against stalking and harassment, unless it qualifies as discriminatory or sexual harassment. Law No. 121/2012 recognises harassment as a form of discrimination.<sup>462</sup> Harassment, in particular, is banned in employment, providing that one can prove that hostile working environment is based upon one's protected ground, e.g. sex, age, disability, religion, etc.<sup>463</sup> If there is enough evidence, the Council, upon the victim's request, may decide to recommend that the court apply a penalty with a fine.<sup>464</sup> Sexual harassment<sup>465</sup> has been recognised as a criminal offence<sup>466</sup> in the Moldovan Criminal Code since 2010. The burden of proof in criminal cases rests on the prosecutor's office and since sexual harassment occurs in private settings, in absence of any eye-witness or direct evidence, successful investigation and conviction is problematic. There is no data about the number of complaints lodged or cases brought successfully to the court that ended with a conviction. One criminal case known to have reached the domestic court concerned two female state employees that had complained about being sexually harassed by their boss. They filmed the ordeal and reported him to the law enforcement. Once the criminal case reached the court, the defendant and the victims made an agreement of pardon. The court accepted the agreement and closed the case.<sup>467</sup> There are also a number of cases lodged in civil courts known to have examined allegations of harassment. In one case a woman sued her ex-husband for harassing her because of her sexual orientation. In another case, one individual alleged to have been sexually harassed when the aggressor forced him to undress and filmed him without his consent. One single case was lodged before the Council alleging sexual harassment in the work place.<sup>468</sup>

---

<sup>459</sup> Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, Geneva, Session 2 – 20 May 2011, p. 9 - <http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/CO-on-Republic-of-Moldova.pdf>

<sup>460</sup> Original title "cu privire la Guvern";

<sup>461</sup> Bill of Law No. 180 approved by the Moldovan Government Decision No. 322 of 8 May 2014;

<sup>462</sup> Defined as unwanted conduct that creates degrading, hostile working environment based on a protected ground aimed, or resulted in, humiliation of one's dignity, Article 2 of Law No. 121 of 25 May 2012;

<sup>463</sup> Article 7 Law No. 121 of 25 May 2012;

<sup>464</sup> Article 54 (2) of the Misdemeanour Code imposes a penalty with fine from 2,600 MDL to 8,000MDL;

<sup>465</sup> Law No. 5 of 9 February 2006 on equal chances of men and women defines *sexual harassment* as any behaviour of physical, verbal or non-verbal of sexual nature that denigrates the dignity of the person or creates unpleasant, hostile, degrading, humiliating or offensive environment. This definition will be changed by Bill of Law No. 180 approved by the Moldovan Government Decision No. 322 of 8 May 2014, once it will be voted by the Parliament. The new definition will be same with that of the Criminal Code;

<sup>466</sup> It has been defined differently by Article 173 of the Criminal Code and by Article 2 of Law No. 5 on equal chances for men and women;

<sup>467</sup> News article reporting on the case <http://unimedia.info/stiri/dosar-penal-pe-numele-sefului-hidrometeo-pentru-hartuire-sexuala-50791.html>;

<sup>468</sup> Decision of 12 June 2014 in the Case No. 074/14 lodged by N.G.-J against her boss A.R. and colleagues I.C., V.C., V.G. employees of S.A. "Apa-Canal". The Council did not find sexual harassment but stated about discriminatory practices against women in promotion;

## Domestic violence

Law No. 45/2007 on prevention and combating family violence<sup>469</sup> recognises several forms of domestic violence: physical, psychological, sexual, economical and spiritual. Law enforcement and prosecutor offices open criminal investigations only where victims can show the presence of bodily injuries, however light or insignificant. This approach left women unprotected who suffered other forms of domestic violence than physical abuse.<sup>470</sup>

Access to protection orders for victims of domestic violence remains problematic<sup>471</sup>. The law is applicable only to those who constitute a *family* and therefore either living together or separately.<sup>472</sup> If none of these situations are applicable to the parties then Law No. 45/2007 on prevention and combating family violence will not be applicable. The law presents a particular challenge for same-sex couples. They may not marry or register their relationship in any other way. When violence breaks out, one leaves the common dwelling but may not access a protection order as a victim of domestic violence.<sup>473</sup> None of the situations described in the law is applicable: they do not live together anymore, they are not married or divorced. A child facing violence in her/his home for being gay may benefit from the protection of Law No. 45/2007 and yet, the children's fear of violence and hatred towards them for being gay or lesbian stops them from seeking protection. As a result they may become runaways and become homeless.<sup>474</sup>

Once a request for protection order is lodged with the court, a full hearing is scheduled and both parties invited: the victim and the aggressor, to give their testimonies.<sup>475</sup> If a protection order is issued, it takes up to 7 days for it to reach the police officer responsible to inform the aggressor upon the legal consequences he may face once protection measures are violated. The execution of the protection orders shall be secured by the police and social protection services; therefore the court sends them a copy of the protection order. The execution rate however, is next to zero.<sup>476</sup> The intervention of the social protection services is still unqualified and prejudicial. The victim is the one monitoring the execution of the protection order and calls the police for every breach of it. Even so, police officers commit errors in documenting violation of protection orders, which nullifies any opportunity to secure a misdemeanour conviction for the aggressor.<sup>477</sup>

Some cases also show that the prosecutor's office will open a criminal case on a domestic violence crime only after the victim has bodily injuries (light, medium, grave). Economical violence or psychological violence are not considered enough for a criminal conviction.<sup>478</sup>

Gender is not among the grounds recognised by the Criminal Code as aggravating circumstances. Hate crimes may be only those regarding one's race, religion, nationality or social status. There are statistics indicating that for 2013 and 2014, women remain the predominant group of victims of domestic violence.<sup>479</sup> In the cases of *Eremia and Others v The Republic of Moldova*<sup>480</sup> and *Mudric v the Republic of Moldova*<sup>481</sup> the Strasbourg Court found the

---

<sup>469</sup> Original title "Legea privind prevenirea și combaterea violenței în familie";

<sup>470</sup> Strasbourg Court case of *T.M. and C.M. v. Moldova*, Application No. 26608/11, judgment of 7 January 2014, paragraph 47;

<sup>471</sup> Report produced by the organisation Promo-Lex

[http://www.promolex.md/upload/publications/ro/doc\\_1427803913.pdf](http://www.promolex.md/upload/publications/ro/doc_1427803913.pdf);

<sup>472</sup> If *living together* then the parties must either be married, or in divorce, or in a civil unregistered partnership, in a guardianship, or in a close relationship due to being relative, dependents, wives and husbands of the relatives. If *living separately* then the parties must either be married, in guardianship or dependents.

<sup>473</sup> Information provided by the organisation GENDERDOC-M, [www.gdm.md/cases](http://www.gdm.md/cases);

<sup>474</sup> See GENDERDOC-M information, [www.gdm.md/cases](http://www.gdm.md/cases);

<sup>475</sup> See The Report of the Promo-Lex, [http://www.promolex.md/upload/publications/ro/doc\\_1427803913.pdf](http://www.promolex.md/upload/publications/ro/doc_1427803913.pdf);

<sup>476</sup> Statistics currently made public by Promo-Lex,

<http://www.promolex.md/index.php?module=press&cat=0&item=1815>;

<sup>477</sup> Analysis done upon 32 cases taken through the system, <http://dis.md/2011/11/11/adevarata-provocare-executarea-ordonantelor-de-protectie-pentru-victimele-violentei-in-familie/>

<sup>478</sup> Facts-based Survey of the OSCE and La Strada "Existing practices on access to justice for victims of domestic violence and the realisation of their right to legal assistance in the Republic of Moldova"

<sup>479</sup> Ibidem, Table 2 "Statistical information";

<sup>480</sup> Strasbourg Court, Application No. 3564/11, judgment of 28 May 2013

Republic of Moldova responsible for discriminatory ill-treatment, meaning failure to fulfil its positive obligations to protect women from gender-based violence such as domestic violence.

### *Rape*

Rape remains an egregious crime against women.<sup>482</sup> Evidence of physical resistance and of lack of consent for sexual intercourse is required of victims, no matter their age.<sup>483</sup>

Women with disabilities, residents of psycho-neurological institutions, are extremely vulnerable to sexual violence, as has been proven by the law enforcement during criminal investigations between January and May 2013 when 20 women were identified as having been sexually abused by their doctor.<sup>484</sup> Some of them were left pregnant and underwent abortions at late stages of pregnancy.<sup>485</sup>

#### **iv. Access to legal aid**

There are numerous factors impeding a woman's effective access to justice.<sup>486</sup> Not being guaranteed free and qualified legal aid is among these barriers. Law No. 1260 /2002 on lawyers<sup>487</sup> says that the state guarantees access to qualified legal assistance to everyone.<sup>488</sup> Once a lawyer is appointed by the Territorial Office of the National Council for Qualified Legal Assistance, she/he must secure an effective right to protection and representation.<sup>489</sup> In addition, Law No. 198/2007 regarding state qualified legal assistance<sup>490</sup> declares that non-discrimination of beneficiaries of legal aid is one of the core principles of the free legal aid system.<sup>491</sup> However, the legislation currently does not secure unconditional access to free legal aid for victims of domestic violence or to women who suffered any form of gender-based violence.<sup>492</sup> Neither will women subjected to discrimination because of their gender, sex or gender identity benefit from free legal aid. The actual procedure for accessing state guaranteed legal aid is too cumbersome for them, consumes time and impedes immediate access to free legal aid.<sup>493</sup> According to La Strada,<sup>494</sup> 9 out of 10 victims, who benefited from legal aid had been informed by local authorities of available services only after finding themselves in life threatening situations. Women who did not benefit from legal aid knew nothing about legislation, rights or the existing legal aid resources. In half of such cases, local authorities knew about domestic violence cases but did not provide them with information on the rights and legal

---

<sup>481</sup> Strasbourg Court, Application No. 74839/10, judgment of 25 June 2013

<sup>482</sup> Article 171 of the Moldovan Criminal Code states – *Rape, meaning sexual intercourse committed by use of physical or psychological constraints of the person or by abusing one's inability to defend oneself or to consent, is punishable with imprisonment from three to five years* and Article 174 of the Moldovan Criminal Code states - *Sexual intercourse, homosexual acts, or lesbian acts, with a person who is certainly known to be under the age of 16, are punishable with imprisonment for up to five years.*

<sup>483</sup> The case of *I.G. v the Republic of Moldova*, Application No. 53519/07 judgment of 15 May 2012

<sup>484</sup> Criminal case against Doctor V.F. pending before the Balti court on numerous accounts of rape and sexual abuse

<sup>485</sup> The Council concluded this to be the case when it had examined the complaints and issued Decision of 4 July 2014 in the Case No. 087/14

<sup>486</sup> Conclusion made also in the Facts-based Survey of the OSCE and LaStrada "Existing practices on access to justice for victims of domestic violence and the realisation of their right to legal assistance in the Republic of Moldova";

<sup>487</sup> Original title "Legea cu privire la avocatura";

<sup>488</sup> Articles 3 and 5 (2) of the Law No. 1260;

<sup>489</sup> Article 46(1) of the Law No. 1260;

<sup>490</sup> Original title "Legea cu privire la asistenta juridica garantata de stat". This law establishes the National Council of the State Qualified Legal Assistance, with territorial offices in Balti, Chisinau, Comrat and Cahul, as main authority to select lawyers who will provide free legal aid and to monitor the quality of the legal aid provided, <http://www.cnajgs.md/ro/structura/page/cnajgs>;

<sup>491</sup> Article 4 of the Law No. 198;

<sup>492</sup> A Bill of Law has been sent to the Ministry of Justice for consultation which would secure free legal aid to any women victim of abuse, [www.justice.gov.md](http://www.justice.gov.md);

<sup>493</sup> Facts-based Survey of the OSCE and LaStrada "Existing practices on access to justice for victims of domestic violence and the realisation of their right to legal assistance in the Republic of Moldova";

<sup>494</sup> Conclusion made by the organisation in its Study "Existing practices regarding the access to justice for the victims of domestic violence and the exercise of their right to legal aid in the Republic of Moldova", presented at the press conference held on 10 December 2014 at "Infotag" Press Agency;

procedures. The study also denotes the fact that in the course of criminal proceedings the state mandatorily provides the aggressor with a lawyer, promptly and free of charge, while victims must seek for their defence on their own.<sup>495</sup>

#### *Additional barriers for women from national and linguistic minority groups*

Women from national and linguistic minority groups and Russian-speakers face additional barriers when accessing the court. Over a dozen complaints submitted and examined by the Council, show that judges refuse to accept complaints and lawsuits if written in Russian.<sup>496</sup> In six decisions,<sup>497</sup> the Council found such practice to be discriminatory against national and linguistic minorities to whom the domestic law guarantee the right to use Russian for inter-ethnic communication. On 25 May 2015, a representative of the Supreme Council of Magistrates assured members of the Council that such practice will end.<sup>498</sup>

Women with disabilities, residents of psycho-neurological institutions, may not access free legal aid. One reason resides in their legal capacity being taken away by court decisions. The Ministry of Labour, Social Protection and Family asks for the court decision declaring that the person with disability is incapable and should be placed under guardianship before issuing an acceptance to accommodate her/him in one of its residential institutions. A guardian for a woman with disabilities declared incapable can be a member of her family (husband, an offspring or a relative), the social assistant or the residential institution itself. She will then depend on her guardian's willingness to help her protect her rights when she is abused. The criminal case against the doctor of Balti psycho-neurological institution, charged with raping and sexually abusing 20 women with disabilities, clearly shows that neither of these women's guardians acted with diligence to secure that such abuse be reported immediately and will not repeat. Only one guardian, the sister of the first complainant, sought to engage a lawyer and insisted that a criminal case be initiated. Recently, another case was reported to have occurred in the city of Soroca with a woman placed under guardianship of her husband due to her mental health disability. She could not divorce him and seek another guardian without his consent as the court rejected her lawsuit and the lawyer she chose to represent her.<sup>499</sup> Only recently, the domestic law changed to secure that people placed under guardianship may access the court with any lawsuits or complaints they need to lodge.<sup>500</sup>

#### **B. Analysis of practices and mechanisms for the implementation of laws**

The Council is currently the most effective mechanism for combating non-discrimination. Established by Law No. 121/2012, the Council applies all the relevant national legislation and international standards when it examines a complaint alleging discrimination. Between October 2013 and June 2015, the Council had received 265 complaints, out of which 17 were *ex officio* investigations. 102 complaints were declared inadmissible because they were either anonymous or failed to show a *prima facie* discrimination. There are 126 decisions and only in 68 of them the Council found discrimination. Statistics also show that the larger number of decisions, 30, found discrimination in access to public goods and services. 16 decisions referred to sex and gender-based discrimination.<sup>501</sup>

The Council gains people's trust and lawyers' confidence. Recent interviews with lawyers actively litigating discrimination cases, outlined numerous difficulties they face in court: prejudices, insignificant knowledge of Law No. 121/2012, misunderstanding about a *prima facie* claim and burden of proof among others. The Council will produce by the end of 2015 a full analysis of the courts' practice on discrimination cases.

---

<sup>495</sup> Ibidem

<sup>496</sup> Council report for 2014, available at [www.egalitate.md](http://www.egalitate.md)

<sup>497</sup> Example Case No. 007/13 Decision of 30 November 2013, Case No. 009/13 decision of 2 December 2013, the text of the decision can be consulted here [http://www.egalitate.md/media/files/files/decizia\\_009\\_4237096.pdf](http://www.egalitate.md/media/files/files/decizia_009_4237096.pdf)

<sup>498</sup> Council's Round Table on "Dignity at Work"

<sup>499</sup> Statement made by Dumitru Sliusarenco, lawyer acting in the case;

<sup>500</sup> Article 24 of the Civil Code, available here <http://lex.justice.md/md/325085/>;

<sup>501</sup> Statistics indicated in the Reports for 2013 and 2014, available at [www.egalitate.md](http://www.egalitate.md);

## C. Socio-economic and cultural barriers to women's access to justice:

### i. Level of women's awareness of their rights

On average, women living in urban areas may access various sources of information and they are mostly the ones who seek out lawyers and actively defend their rights in courts. On average, women living in rural areas lack information on the legislation on combating domestic violence, sex-based discrimination, on their rights and available resources for legal assistance. In urban areas information is available via Internet, TV, radio, newspapers. Internet access and a computer are absent in rural areas, which means that rural women may access only the information available to them through newspapers, some TV and some radio stations. Police officers, social assistance, local public authorities were found inactive in helping women to receive information.<sup>502</sup> Women lack confidence in the legal system and the fear of possible repercussions triggers the refusal to defend their rights.<sup>503</sup> Women with disabilities living in residential institutions receive only the information they may access within the premises. Access to information is also limited to the way it is presented.

### ii. Discussion of possible specific socio-economic and cultural barriers affecting women's access to justice in the country

Women's economical situations can be decisive when it comes to defending their rights in court or with police. Women receive 13% less in wages than men.<sup>504</sup> Official statistics show that in 2015 there were 51.37% of unemployed women and 48.63% of unemployed men.<sup>505</sup> The causes for unemployment among women differ from those for men and are rooted in their perceived gender roles as mothers and wives. Women continue to be primary caregivers and as such, spend most of their early years caring for children and the elderly, and keeping house. A woman who was formerly a housewife and decided to seek employment, would face numerous challenges: prejudices, low pay, long work hours, job offers below her education, discrimination due to her childcare obligations. These barriers demotivate women in seeking employment, leaving them dependent on husband's/partner's/family's income or in poverty. In the NGOs submission<sup>506</sup> to the UN Committee on the Elimination of All Forms of Discrimination against Women, to be considered along with the state party's report, survey results were presented indicating that only 40.2% of all women facing violation of their employment rights "*tried to clarify the situation with the manager/head of the unit*", only 6% of them complained to their supervisor and only 2.6% lodged their case with the court or to law enforcement bodies.<sup>507</sup> Among the factors which prevents women's access to employment and to securing a decent income, are indicated as: 1) existing stereotypes of employers, according to whom, there are feminine and masculine professions – 36.5%; 2) possible loss of profits due to hiring women of a certain age (possible maternity, childcare, medical leave) – 26.3%; 3) lack of knowledge about the rights in the field of women's employment – 17.3% and 4) existing traditions that imply the existence of different gender roles in society – 16.7%.<sup>508</sup>

Where the woman is dependent on the income of her family or partner/husband, her chances to access the legal system and protect herself from abuse in the family diminish significantly. Even specialists, legal advisors and psychologists, admit that victims of domestic violence encounter

<sup>502</sup> Facts-based Survey of the OSCE and LaStrada "Existing practices on access to justice for victims of domestic violence and the realisation of their right to legal assistance in the Republic of Moldova"

<sup>503</sup> Statement made by Ms R. Munteanu, victim of domestic violence who complained to the Strasbourg Court (Application No. 34178/11) on non-execution of protection orders, court's failure to see domestic violence in actions of her abusive husband, police negligence towards her complaints which forced her to abandon from complaining any further

<sup>504</sup> <http://www.statistica.md/category.php?l=ro&idc=264&>

<sup>505</sup> According to official data for 2015 made public by the National Employment Agency on <http://www.anofm.md>

<sup>506</sup> Alternative/shadow Report on Women's Rights in the Republic of Moldova, presented at the 56th session of the Committee on the Elimination of Discrimination against Women (CEDAW), 30 September – 18 October 2013, available here [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDA&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDA&Lang=EN)

<sup>507</sup> Ibidem, page 11-12;

<sup>508</sup> Ibidem;

most obstacles on the issuance of the Protection Order, on marriage dissolution and on determination of children residence, on the collection of minor child support and distribution of community property.<sup>509</sup>

Many still consider domestic violence to be a normal routine in a family and to be primarily physical violence. The society considers domestic violence as family affair matter, preferring not to intervene.<sup>510</sup> Although the subject of domestic violence is not new for the society, it is still treated as taboo for many families or an issue/problem which not even specialists (police officers, doctors) want to discuss, as they are also marked by social stereotypes.

The perception of women and men in society is also influenced by numerous sexist advertisements and journalistic articles that present women as perfect housewives and mothers, extremely sexy, always looking perfect or criticising them for not being up to the standard. Mass media scrutinises women's behaviour and is judgemental of their life style.<sup>511</sup>

### iii. Brief overview of key statistics in the country concerning women's position in society, economy and politics vis-à-vis men's

As of 1 January 2013, out of an overall 3,559,500 people, 51.9% are women and 48.1% men. These numbers change depending on the age groups, for example there are 52% women at the age below 15 and only 42% men, while among the elderly, 69.5% are women and only 30.5% are men. Women live longer than men by approximately 7.8 years. They also marry sooner, at the age of 23 while men marry for the first time at the age of 26. The employment rate among women is decreasing to 36.5% in 2012, compared to men 40.6%. This has been explained by the fact that when women have children beyond the age of 16, or more than one child, they drop out of the labour market. Figures show employment rate for women with more than one child to be 15.3% where the child is younger than 2 years old, while the men are employed at 53%. Unemployment rate is higher among men with 2.5 points. 75% of women are employees with a job, while 60.1% of men prefer to have their own businesses and be self-employed. Of all the decision-making positions, men occupy 56% of them, women only 44%. From an overall number of employers, whether a public or private company, one in four is a woman.

It has been reported that there were 441 judges sitting in the courts of the Republic of Moldova in 2012, of which 59.9% were men and 40.1% were women. Among all the courts in the country, 26% were presided by women. The Prosecutor's Office, as of 2012, had 66.89% male employees and only 33.10% were women. The territorial prosecutor's offices had male leadership in 90.8% of them.<sup>512</sup> There are no official disaggregated data on the number of women and men in other legal professions: lawyers, notaries, court clerks and bailiffs.

Women constitute 57% of all the students enrolled at university. Women give preferences to social assistance (85%), education and communication (84%), pharmacy (82%) and medicine (74%), social science (81%) and humanitarian studies (77%), public service (75%), and art (62%). Men dominate in military and transport services, where for 100 men there are only six women. Men are predominant in studies about security and protection (88%), engineering (86.7%), agriculture (80.5%), architecture (70.9%), sport (69.3%) and science (64.1%).

Of all those who benefit from social payments, 66% are women. 72% receive an old age pension and 50% receive a disability pension. Women receive smaller pensions (934.3 MDL) than men (1115.7 MDL).<sup>513</sup>

---

<sup>509</sup> Ibidem;

<sup>510</sup> A preliminary and primary investigation of the phenomenon in the Republic of Moldova – *Rapid assessment of domestic violence in the Republic of Moldova* conducted by the International Center "La Strada" in 2007;

<sup>511</sup> An example is the show "what women wants" (ce vor femeile) produced by [www.ea.md](http://www.ea.md);

<sup>512</sup> CEPEJ Report on "European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice", [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport\\_2014\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf);

<sup>513</sup> Official statistics:

[http://www.statistica.md/public/files/publicatii\\_electronice/femei\\_si\\_barbati/Portret\\_statistic\\_femei.pdf](http://www.statistica.md/public/files/publicatii_electronice/femei_si_barbati/Portret_statistic_femei.pdf);

Official statistics indicate that women commit less criminal offences than men.<sup>514</sup> In 2013, out of a total of 5,363 detainees there were 429 detained women. 99 women were convicted to various terms of imprisonment (1,727 men), 178 women were fined (1,966 men), 272 women received a conditioned sentence (2,867 men), 56 women received community service (2,132 men).

Statistically, women continue to occupy most of the low paid jobs available and experts stated that poverty in the Republic of Moldova has a feminine face.<sup>515</sup> The UN Committee on Economic, Social and Cultural Rights described as alarming the “significant gender disparities in wages, resulting in women earning 76.4% of the average monthly wage of men in 2009”<sup>516</sup> Two years after this finding, nevertheless, the Minister of Labour, Social Protection and Family recognised officially that the situation reported for 2009 continues to be applicable in 2011, although a much larger number of women than men obtain higher education and skills.<sup>517</sup> In 2012, women were earning 13% less of the average monthly wage of men and a woman’s pension is smaller.<sup>518</sup> It is argued by experts that this causes poverty for women once they decide to retire, as the law<sup>519</sup> prescribes at the age of 57.

### III. Gender responsiveness of the justice system

#### A. An overview of the number of cases women bring before national courts, in comparison to men

There is no official data about the number of cases brought to court by women or by men. An estimate, at least qualitative, is given by women human rights NGOs that manage hotlines and provide a large spectrum of services, among which legal aid.<sup>520</sup>

#### B. Gender bias, gender stereotypes, poor services and hostile attitudes among legal professionals and the police

I have recently witnessed a woman victim of violence being ignored by a police officer when she entered the police station seeking for help.<sup>521</sup> He explained that he was busy taking testimonies from other people and asked her to leave her phone number for him to call later. He did not ask what happened to her and whether she needed help.<sup>522</sup> Police officers’ negligence to provide women with information about their rights, legal procedures and assistance that are available to them, take away their confidence.

---

<sup>514</sup> Women committed 1,183 criminal offences in 2013, while men committed 14,820: <http://www.statistica.md/category.php?l=ro&idc=264&>;

<sup>515</sup> See page 6 of the analysis “Reforming the pension system through gender dimension”, available at [http://www.progen.md/files/6827\\_reforma\\_pensii\\_final.pdf](http://www.progen.md/files/6827_reforma_pensii_final.pdf)

<sup>516</sup> Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, Geneva, Session 2 – 20 May 2011, p. 9 - <http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/CO-on-Republic-of-Moldova.pdf>;

<sup>517</sup> Ms V. Buliga stated in a press conference, dedicated to the International Women’s Day, that no matter how qualified women are, they still receive a lesser wage than men, March 2011, <http://www.timpul.md/articol/ministrul-muncii-femeile-sunt-mai-instruite-dar-au-salarii-mai-mici-decat-barbatii-21199.html> .

<sup>518</sup> Official statistics available at: <http://www.statistica.md/category.php?l=ro&idc=264&>;

<sup>519</sup> Law No. 156- XIV of 14 October 1998 on State social insurance pensions states that women retire at the age of 57 and men at 61.

<sup>520</sup> La Strada provided some data in a 2014 public statement <http://cupluarmonios.lastrada.md/en/access-to-justice-of-victims-of-domestic-violence/>. Namely, it had stated that “[...] Trust Line 0 8008 8008 works for 5 years now, having recorded over 7,500 calls during this time. Through their intermediary, over 5,000 people benefited of support, information and directions in cases of domestic violence, around 4,000 of which being in crisis situations. The Trust Line consultants got involved as trainers in 4 national projects implemented by partner organisations, within which had been trained over 5,000 police officers, paralegal advisors, national trainers and representatives of the civil society”

<sup>521</sup> I.B. was beaten by her neighbour who disliked her looks. She ran to the police station seeking protection and help to access medical assistance, Case No. 0345 of 3 July 2015 at Buiucani Police Station No. 4

<sup>522</sup> This explanation was provided by the police officer in the same day, after an official complaint was lodged with his superior for having refused to receive the complaint from I.B.

Judges and prosecutors continue to use prejudices when deciding upon a case of gender-based violence. It is believed that female judges will sympathise with women victims of rape or domestic violence, but there is no confirmation of that. An illustration of the prejudices against women, being made formal, came out at the examination of the case of *I.G. v the Republic of Moldova*<sup>523</sup>, while pending before the Strasbourg Court. In August 2012, the General Prosecutor's Office issued a recommendation to all prosecutors' offices about effective investigation of sexual crimes.<sup>524</sup> One of the recommendations stated that to determine consent of the victim to sexual intercourse, the prosecutor should understand that the young age of the woman suggests that her partner needs to use force to consume the act with her. This shall not be considered rape. This recommendation still applies.

There are events dedicated to awareness-raising about violence against women and domestic violence in particular. An example is the "16 Days of Activism against gender violence" campaign,<sup>525</sup> organised annually in the Republic of Moldova. A strategy to be applied at all levels: regional, national and local, so that it reaches all potential women victims of domestic violence. The campaign features a number of activities, including press-conferences, round tables, public debates, conferences, TV and radio programmes on human rights, gender-based violence and domestic violence. Similar events on raising awareness about domestic violence and gender-based violence are organised to celebrate the International Family Day on 15 May.<sup>526</sup>

### C. Mapping of existing gender training for judges and lawyers

In 2014, the National Institute of Justice and the non-governmental organisation International Center "La Strada", in partnership with the International Organisation of Migration Mission in Moldova and the OSCE Mission in the Republic of Moldova, held six workshops on "Hearing child victims-witnesses of abuse/sexual exploitation" for psychologists, prosecutors, instruction judges and representatives of multidisciplinary teams from the local authorities, experts who participated in the hearing of child victims-witnesses. There were 166 trained professionals: 37 judges, 46 prosecutors, 73 psychologists, 10 co-ordinators of multidisciplinary territorial teams.<sup>527</sup> Continuous training of judges, prosecutors, lawyers and paralegals represents an important objective of the strategy on the development and building of institutional, management and research capacity of the National Institute of Justice for the years 2012-2016, and the Action Plan on Strategy implementation.<sup>528</sup> Since 2009, the National Institute of Justice, in partnership with the OSCE Mission in the Republic of Moldova has trained around 400 judges, prosecutors and lawyers (women and men) on issues pertaining to prosecutors and lawyers on combating trafficking in human beings and efficient examination of cases of domestic violence. In 2012-2013, 50 public lawyers and 25 paralegals were trained on how to counsel in cases of domestic violence. In 2014, around 175 judges and prosecutors were trained on how to handle cases of trafficking in human beings, and issuance and execution of protection orders in cases of domestic violence.<sup>529</sup> Also, in 2014, as a pilot project, the OSCE Mission, in partnership with the National Institute of Justice, the Ministry of Labour, Social

---

<sup>523</sup> Cited above

<sup>524</sup> It can be consulted here [http://www.promolex.md/upload/publications/ro/doc\\_1332166962.pdf](http://www.promolex.md/upload/publications/ro/doc_1332166962.pdf); Romanian title of this recommendation "Ghidul metodologic privind investigarea infracțiunilor sexuale", publicat la 15 August 2008 de Direcția Urmărire Penală din cadrul Procuraturii Generale;

<sup>525</sup> The Contribution of the Republic of Moldova on Key Challenges and Good Practices on Access to Justice for Women Victims of Violence at National Level, published by the Council of Europe on 03 February 2014, page 69 - 70:

<https://rm.coe.int/CoERMPublicCommonSearchServices/SSO/SSODisplayDCTMContent?documentId=0900001680597b15>

<sup>526</sup> The Contribution of the Republic of Moldova on Key Challenges and Good Practices on Access to Justice for Women Victims of Violence at National Level, published by the Council of Europe on 3 February 2014, page 70,

<https://rm.coe.int/CoERMPublicCommonSearchServices/SSO/SSODisplayDCTMContent?documentId=0900001680597b15>

<sup>527</sup> Gender Equality Commission of the Council of Europe "[Compilation of good practices to reduce existing obstacles and facilitate women's access to justice](#)", page 87;

<sup>528</sup> Ibidem;

<sup>529</sup> Ibidem;

Protection and Family, and the NGO Gender-Centru organised a workshop on promoting gender equality and non-discrimination based on gender for around 20 judges and prosecutors, both women and men. In November 2014, a group of Moldovan judges and prosecutors completed a 'Train-the-Trainers' course to enhance the capacity of the Moldovan judiciary system to prevent and combat domestic violence. During the three-day training, organised by the OSCE Mission to the Republic of Moldova in partnership with the National Institute of Justice and the Women's Law Centre, 25 officials were trained by four specialists from the American NGO Advocates for Human Rights.<sup>530</sup>

The National Institute of Justice currently has a separate course on domestic violence and one on non-discrimination, which covers also gender equality. Each course has its own subjects and is approved annually by the Board. The National Institute of Justice showed receptiveness to host a course on women human rights, either as a separate course or as a subject component of a more general one on human rights.

The Council of Europe office in the Republic of Moldova organised a 'Training of Trainers' in 2013 for lawyers, and later in 2014 and 2015 cascade trainings for other lawyers and legal professionals on various subjects of equality and non-discrimination. It also hosted open thematic seminars for anyone interested. Since 2015, the Council of Europe office in the Republic of Moldova has scheduled seminars for judges and prosecutors on access to justice, which was promised to accommodate a module on equality and non-discrimination.

**D. Mapping of the extent to which women's rights and gender equality issues have been introduced in the curricula of the basic education and further training for legal professionals and police**

According to the information given by the Ministry of Labour, Social Protection and Family,<sup>531</sup> as well as by the Ministry of Internal Affairs<sup>532</sup>, in order to consolidate the police in the fight against domestic violence, the Ministry of Internal Affairs, with the support of the US Department of State, the United Nations Population Fund in partnership with the Women's Law Centre, have initiated the specialised training sessions at the Institute of Continuous Professional Education and Applied Scientific Research within the Academy "Stefan cel Mare" on effective police response to cases of domestic violence.<sup>533</sup> A 'Training of Trainers' for a group of police officers, lecturers of the Police Academy and civil society representatives was conducted by the Advocates for Human Rights in partnership with the Women's Law Centre in December 2012. The national trainers, based on a special curriculum developed by the Women's Law Centre, trained at least 500 police officers from all over the Republic of Moldova during 2013-2014. These training sessions are part of multidisciplinary efforts, three 'Training of Trainers' were organised during October-November 2012 for health workers. At the same time a project funded by the US Department of State and implemented by the International Organization for Migration (IOM) focuses on training all multidisciplinary teams at local level from all over the Republic of Moldova. As part of the project, at least 1,400 professionals from 455 multidisciplinary teams from 21 regions were trained during 2014.<sup>534</sup>

---

<sup>530</sup> Ibidem.

<sup>531</sup> The Contribution of the Republic of Moldova on Key Challenges and Good Practices on Access to Justice for Women Victims of Violence at National Level, published by the Council of Europe on 3.2.2014, page 68, <https://rm.coe.int/CoERMPublicCommonSearchServices/sso/SSODisplayDCTMContent?documentId=0900001680597b15>

<sup>532</sup> The meeting of 1 July 2015 with representatives of key actors and state institutions about current situation on access to justice for women

<sup>533</sup> Described also in the Gender Equality Commission of the Council of Europe "Compilation of good practices to reduce existing obstacles and facilitate women's access to justice", page 53;

<sup>534</sup> The Contribution of the Republic of Moldova on Key Challenges and Good Practices on Access to Justice for Women Victims of Violence at National Level, published by the Council of Europe on 3.2.2014, page 71, <https://rm.coe.int/CoERMPublicCommonSearchServices/sso/SSODisplayDCTMContent?documentId=0900001680597b15>

#### **IV. Remedies, good practices and recommendations**

##### **A. Existing remedies to facilitate women's access to justice**

- There is a Bill of Law aiming to grant access to free legal aid to women as soon as there is a case on domestic violence, sexual abuse or any other violence against her;
- The Council examines complaints against police officers and prosecutors who use prejudices to undermine effective access to protection from the law;
- There is training organised at the National Institute of Justice on domestic violence in particular and access to justice for women.

##### **B. National good practices to promote equal access of women to justice**

- execution of the Council decision in finding police officers responsible for discrimination of women, victims of violence, in accessing legal remedies;
- planned training on gender equality for police officer throughout the country (2015–2016);
- awareness-raising campaigns on women rights and domestic violence.

##### **C. Proposed measures to address the obstacles that prevent equal access to justice for women**

- information made available in rural areas in all public places for women to access and learn about their rights,
- injunctions on journalistic interventions about women and men being measured through prejudices and stereotypes,
- higher scrutiny on police officers to give proper support to women in need,
- rigorous supervision for the execution of protection orders,
- continuous campaigns targeting women and men on prohibition of violence and discrimination,
- introducing mandatory courses on women human rights for police, prosecutors, judges and lawyers, social assistants and child service.

##### **D. Proposed measures to address the research and data needs and gaps in the field of women's equal access to justice**

State institutions should consider disaggregating data on women's accessing legal system: number of requests for legal aid, number of cases brought to courts, police or prosecutor offices, or to other public authorities. These are currently unavailable. The only sex-disaggregated data that have been produced, and referred to in this study, are those of 2012 of the National Bureau of Statistics called "Statistical portraits of women and men in Republic of Moldova".<sup>535</sup>

##### **E. Mapping of relevant actors in the field of women's access to justice that the project could/should engage with (official institutions, civil society organisations, academia)**

- Moldovan Equality Council,
- NGOs with activity focused on women human rights (domestic violence, discrimination, abuse),
- Ministry of Labour, Social Protection and Family,
- Ministry of Internal Affairs,
- Ministry of Justice and National Council for State Guaranteed Legal Aid,
- National Institute for Justice,
- Moldovan State University.

---

<sup>535</sup> [http://www.statistica.md/public/files/publicatii\\_electronice/femei\\_si\\_barbati/Portret\\_statistic\\_femei.pdf](http://www.statistica.md/public/files/publicatii_electronice/femei_si_barbati/Portret_statistic_femei.pdf);

## Bibliography

Coalition for Non-Discrimination (2014), *“Practical Guideline on Equality and Non-discrimination”*, available at: [nediscriminare.md/ghid-practic-egalitatea-si-nediscriminarea-pe-intelesul-tutoror-editia-i-a/](http://nediscriminare.md/ghid-practic-egalitatea-si-nediscriminarea-pe-intelesul-tutoror-editia-i-a/)

Coalition for Non-Discrimination (2014), *Report monitoring the activity of the Moldovan Equality Council for 2013 – 2014*, available at: [nediscriminare.md/wp-content/uploads/2015/01/Raport-MONITORIZAREA-CPPEDAE.pdf](http://nediscriminare.md/wp-content/uploads/2015/01/Raport-MONITORIZAREA-CPPEDAE.pdf)

Ciobanu, C. (2013), *Analytical Note on the Reform on Paid Childcare Leave*, Center “Partnership for the Development”, Chisinau, available at: [www.progen.md/index.php?pag=n&opa=view&id=286&tip=publicatii&start=0&](http://www.progen.md/index.php?pag=n&opa=view&id=286&tip=publicatii&start=0&)

Ciobanu, C. and Vaileanu, C. (2013), *Analytical note on “Gender perspective on the reform of the pension system”*, Centre “Partnership for Development”, Chisinau, available at: [www.progen.md/files/6827\\_reforma\\_pensii\\_final.pdf](http://www.progen.md/files/6827_reforma_pensii_final.pdf)

Everyday sexism blog (the Republic of Moldova): [everydaysexism.com/country/md](http://everydaysexism.com/country/md)

European Commission for the Efficiency of Justice (CEPEJ) (2014), Report on *“European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice”*, available at: [www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport\\_2014\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf)

Gender Equality Commission of the Council of Europe (2014), *Compilation of Contributions from Member States on Key Challenges and Good Practices on Access to Justice for Women Victims of Violence at National Level*, Contribution of the Republic of Moldova, pp. 69 – 70, GEC (2013) 12 Rev. Available at: [rm.coe.int/CoERMPublicCommonSearchServices/sso/SSODisplayDCTMContent?documentId=0900001680597b15](http://rm.coe.int/CoERMPublicCommonSearchServices/sso/SSODisplayDCTMContent?documentId=0900001680597b15)

Gender Equality Commission of the Council of Europe (2015), *“Compilation of good practices to reduce existing obstacles and facilitate women’s access to justice”*, Council of Europe, Strasbourg

Parliamentary Assembly of the Council of Europe (PACE) Resolution 2054 (2015) “Equality and non-discrimination in the access to justice”: [assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21753&lang=en](http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21753&lang=en);

La Strada (2007), *Rapid assessment of domestic violence in the Republic of Moldova*

National Centre for Roma (2011), *Annual Report 2010*, available at: [roma.md/ro/rapoarte/87-rapoarte-anuale-2010](http://roma.md/ro/rapoarte/87-rapoarte-anuale-2010);

National Council for Preventing and Eliminating Discrimination and Ensuring Equality (Equality Council of the Republic of Moldova), *Annual Reports for 2013 and 2014*, available at: [www.egalitate.md](http://www.egalitate.md)

OSCE and La Strada (2014), *“Existing practices on access to justice for victims of domestic violence and the realization of their right to legal assistance in the Republic of Moldova”*, available at: [www.lastrada.md/publicatii/ebook/Practices\\_on\\_access\\_justice\\_for\\_VDV\\_ENG\\_A5.pdf](http://www.lastrada.md/publicatii/ebook/Practices_on_access_justice_for_VDV_ENG_A5.pdf)

Promo-Lex (2015), *Evaluation Report of the Issuance and Enforcement of Protection Orders in Cases of Violence in the Family for the Period 2012-2014*, Chisinau, available at: [www.promolex.md/upload/publications/ro/doc\\_1427803913.pdf](http://www.promolex.md/upload/publications/ro/doc_1427803913.pdf) (in Romanian)

Străisteanu, D. I. (2011), “*The Real Challenge: The Enforcement of Protection Orders for Victims of Violence in the Family*”, available at: [dis.md/2011/11/11/adevarata-provocare-executarea-ordonanțelor-de-protectie-pentru-victimele-violenței-in-familie/](http://dis.md/2011/11/11/adevarata-provocare-executarea-ordonanțelor-de-protectie-pentru-victimele-violenței-in-familie/)

UN Committee on Economic, Social and Cultural Rights, Concluding observations on the Republic of Moldova, Geneva, Session 2 – 20 May 2011, available at: [www.reproductiverights.org/sites/crr.civicaactions.net/files/documents/CO-on-Republic-of-Moldova.pdf](http://www.reproductiverights.org/sites/crr.civicaactions.net/files/documents/CO-on-Republic-of-Moldova.pdf)

Working Group for Women’s Rights in Moldova, Alternative/Shadow Report on Women’s Rights in Moldova, presented at the 56th session of the Committee on the Elimination of Discrimination against Women (CEDAW), 30 September – 18 October 2013, available here [tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDA&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDA&Lang=EN)

# **UKRAINE**

Report prepared by

Olena Uvarova

## Contents of contents

<b>I. Introduction</b> .....	125
A. The concept of access to justice .....	125
B. International standards on gender equality .....	125
C. Key definitions .....	127
D. The issue of women's rights in Ukrainian constitutional reform .....	128
E. Obligations of Ukraine to ensure gender equality according to the Association Agreement between the European Union and Ukraine .....	129
<b>II. Gender gaps in access to justice</b> .....	129
A. Analysis of the national legal and policy frameworks to identify the obstacles women encounter in gaining access to the justice system .....	129
B. Analysis of practices and mechanisms for the implementation of laws.	135
C. Socio-economic and cultural barriers to women's access to justice .....	138
<b>III. Gender responsiveness of the justice system</b> .....	141
<b>IV. Remedies, good practices and recommendations</b> .....	144
A. Existing remedies to facilitate women's access to justice .....	144
B. National good practices to promote equal access of women to justice ....	145
C. Proposed measures to address the obstacles that prevent equal access to justice for women .....	145
D. Proposed measures to address the research and data needs and gaps in the field of women's equal access to justice .....	145
E. Mapping relevant actors in the field of women's access to justice that the project could/should engage with (official institutions, civil society organisations, and academia).....	146
<b>Bibliography</b> .....	147
<b>Appendix: Questionnaire for judges</b> .....	148

## I. Introduction

### A. The concept of access to justice.

This study is based on the understanding that access to justice is central to the rule of law and integral to the enjoyment of basic human rights. It is also an essential precondition to social inclusion and a critical element of a well-functioning democracy. Access to justice can be construed as the ability of people, including people from disadvantaged groups, to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards, without legal, procedural, socio-economic or cultural obstacles. The requirement of equality, including **gender equality**, is at the centre of the meaning, the exercise and the fulfilment of the right to justice.

“Access to justice is a broad concept which refers to all the measures that improve access to courts, legal representation and alternative dispute resolutions, as well as access to or action by equality bodies and ombudsman institutions aimed at bridging the gap between the law and *de facto* enjoyment of rights by individuals. Access to justice implies but goes well beyond the right to an effective remedy, the right to equal access to courts, the right to a fair trial or the right to legal aid for those who lack sufficient resources”.<sup>536</sup>

### B. International standards on gender equality.

Ukraine has ratified key international and European documents which guarantee gender equality – the European Convention on Human Rights (ECHR), the CEDAW convention, the European Social Charter, the Convention on Action against Trafficking in Human Beings, etc. Ukraine signed the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and is now preparing to ratify it. Ratification is planned for 2016.

For the purposes of this study, I conducted a survey of judges from various regions of Ukraine. Thirty judges participated in the survey by providing written answers. The question about their awareness of key international documents was included in the questionnaire (Do you know the content of such international documents – International Covenant on Civil and Political Rights, ECHR, European Social Charter, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, Convention on the Elimination of All Forms of Racial Discrimination, Convention on Action against Trafficking in Human Beings and the Istanbul Convention. 30% of the judges indicated that they were very familiar with the ECHR, while 70% of the judges said they had heard about this Convention. Only 3% of the judges indicated that they are familiar with all the mentioned documents, including the Istanbul Convention. The judges noted also that they only applied the ECHR. As they said, the main reason for this is the adequacy of national legislation for dispute resolution.

The specific situation in Ukraine at the moment is that a decree on derogation from the obligations under the ECHR and the International Covenant on Civil and Political Rights in some Ukrainian territories has been adopted by the Parliament of Ukraine on 21 May 2015. Ukraine derogates from the obligation under the International Covenant on Civil and Political Rights paragraph 3 Article 2 (to ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy), Article 9 (right to liberty and security of person), Article 12 (right to liberty of movement and freedom to choose residence), Article 14 (equality before the courts and tribunals), Article 17 (no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation) and also the ECHR Article 5 (right to liberty and security), Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), and Article 13 (right to an

---

<sup>536</sup> Explanatory report to the Parliamentary Assembly of the Council of Europe Resolution 2054 (2015) “Equality and non-discrimination in the access to justice”, adopted on 24 April 2015.

effective remedy). As stated in the decree, the main reason for the derogation is the occupation of some territories of the Donetsk and Lugansk regions by the Russian Federation.

In Ukraine, there was an attempt to challenge the actions of the Parliament to derogate from its international obligations on human rights. The corresponding claim was submitted to the High Administrative Court of Ukraine by the NGO “Institute of Legal Policy and Social Protection”, but the Court did not consider it. The Court referred to the fact that this issue had to be the subject of the Constitutional Court of Ukraine (see decision of the High Administrative Court on 30 June 2015 in the Case No. 800/220/15<sup>537</sup>). The claim was not submitted to the Constitutional Court of Ukraine as only very few subjects have the right to petition the Constitutional Court about the constitutionality of some acts. This right belongs to members of the Parliament of Ukraine (not less than 45 members), the President, the Government, the Ombudsperson, and the Supreme Court of Ukraine. None of these subjects submitted the matter to the Constitutional Court of Ukraine.

It should be noted also that when the decree on derogation was adopted, Ukraine already had laws which allowed for some limitations on the application of human rights. These laws allow preventive detention for a period of more than 72 hours but not more than 30 days in the area of counter-terrorist operations with the consent of the prosecutor and without court authorisation; the introduction of a special regime of pre-trial investigation, according to which the investigative powers of judges are transferred to the prosecutors. These laws also changed the territorial jurisdiction of cases that had to be considered by the courts, which were located in the area of counter-terrorism operations. The military-civilian administrations received powers to limit loitering at a certain period of the day in the streets and other public places, to limit the movement of vehicles and pedestrians in the streets, roads and open terrain areas; to organise the audit of documents for identifying individuals, to review things, vehicles, baggage, office space and citizen’s housing.

Now, one of the most perceptible problems for women is the complicated movement across the line of conflict within Donetsk and Lugansk regions. Ukraine has introduced a temporary procedure for monitoring the movement of persons, vehicles and goods along the contact line within Donetsk and Lugansk regions. Citizens of Ukraine, foreigners and stateless persons who want to enter the uncontrolled territory or leave it must have a passport and special permission.

Courts and other authorities have to understand that the decree of derogation does not exempt the state from the obligation to justify the reasonableness and proportionality of the restrictions of human rights, the legitimate purpose of these restrictions and their necessity in a democratic society. In this light, the position of the Lviv court, that recently examined a case in which the request of a serviceman to take parental leave until the child reaches three years of age had been refused, is controversial. The court reasoned that such a refusal is legitimate. It was stated that the legislation of Ukraine concerning military service allows granting parental leaves only to the father who brings up a child without a mother. The court also found that the reference to the decision of the European Court of Human Rights (the Strasbourg Court) in the case of *Konstantin Markin v. the Russian Federation* (22 March 2012) against discrimination based on sex was unacceptable because Ukraine derogated from the obligations under the ECHR (see decision of the Lviv District Administrative Court on 9 June 2015 in the Case No. 813/2538/15).<sup>538</sup> The court went beyond the statement that was made by Ukraine and refused to apply the requirements of the ECHR, which are binding for Ukraine. The formal reason for this was the derogation from the obligations under the ECHR but the court had misunderstood the essence of such derogation. As a result, it violated the right to judicial protection.

---

<sup>537</sup> High Administrative Court of Ukraine, 30 June 2015: <http://www.reyestr.court.gov.ua/Review/46059183>.

<sup>538</sup> Lviv District Administrative Court, 9 June 2015: <http://www.reyestr.court.gov.ua/Review/44809591>

### C. Key definitions

There are definitions of gender equality, discrimination, direct discrimination, indirect discrimination in Ukrainian legislation. The Law of Ukraine "On ensuring equal rights and opportunities for women and men" defines:

*discrimination based on sex*

as action or inaction that contains any distinction, exclusion or benefits on the basis of sex, if they intend to limit or prevent recognition, implementation or enjoyment of equal rights and freedoms for women and men. The concept of *discrimination based on sex* is used in the judicial decisions, but usually, judges just cite this concept. Such links are mostly absolutely formal; they do not affect the resolution of the case;

*sexual harassment*

as sexual acts expressed verbally (threats, intimidation, indecent remarks) or physically (touching, slapping) which humiliate or insult persons who are in labour relations, work, financial or other jurisdiction. There are rare examples of using this concept in the judicial decisions. In one case a woman demanded reinstatement. She claimed that she was a victim of sexual harassment when she worked at an organisation. The real reason of the dismissal was her refusal to have sexual relations with her superior. Among other things she said that "in the absence of colleagues, the manager hugged her from behind, offered to join him in a sexual relationship, but she did not agree. She also claimed that the chief did not raise her salary because of her refusal. The plaintiff informed the company's management about the facts of sexual harassment only after the dismissal. She did not inform about this before because of the fear of losing job. The plaintiff did not appeal to the law enforcement bodies because she thought that she could not prove the fact of sexual harassment." Witnesses explained that the manager really showed interest toward the plaintiff, he always danced with her and carried her in his arms during parties. The woman was not reinstated. Instead, the manager claimed the denial of false information and compensation for moral damage caused to him. The court refused to satisfy the claim. The court informed the law enforcement authorities of the claim of sexual harassment (see decision of Balakliysky District Court of Kharkiv region on 14 December 2009 in the Case No. 2-1664/09).<sup>539</sup> In other words, a woman can get redress for the violation of her rights, only if the fact of sexual harassment is established by law enforcement bodies according to the way prescribed by criminal procedural law. The situation is complicated by the fact that sexual harassment is not a specific crime in the legislation of Ukraine.

The concepts of "gender equality" and "positive measures" are also defined by law, but they are not applied in judicial decisions.

The Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" defines:

*discrimination*

as a situation when a person and/or a group of persons suffers restrictions of recognition, implementation or using their rights and freedoms because of their race, colour of skin, political, religious and other beliefs, gender, age, disability, ethnic or social origin, nationality, family and property status, place of residence, linguistic or any other status. The cases when such restriction has a legitimate and objectively justified goal and methods of achieving it are appropriate and necessary are exceptions. This concept is sometimes used in judicial decisions by Ukrainian judges but it usually does not affect the resolution of the case. The main reason for this is that judges believe that a person who claims discrimination must prove it. The burden of proof is therefore laid completely on a plaintiff. The procedural basis for this opinion of judges is Article 60 of the Civil Procedural Code of Ukraine, according to which each party to proceedings must prove the circumstances, to which they refer as the basis of their claims and objections. At the same time, the Law of 5 December 2014 included to the Civil Procedural Code of Ukraine

---

<sup>539</sup> Balakliysky District Court of Kharkiv region on 14 December 2009 : <http://www.reyestr.court.gov.ua/Review/7118756>

the norm according to which, in cases of discrimination, the plaintiff must bring evidence proving that discrimination took place. In the case of granting such data proving their absence relies on the defendant. However, at the present time, courts have not formed a sustainable approach to the application of the rules and mostly do not understand its procedural significance.

On the other hand, there was another problem: according to the Law of 6 September 2012, plaintiffs who file claims "regarding disputes related to discrimination" were exempt from court fees (p. 6 p. 1, Article 5 of the Law on the court fee). Accordingly, plaintiffs often claimed to have been subjected to discrimination for the sole purpose of being exempt from paying court fees. This norm was abolished on 1 September 2015.

Furthermore, the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" defines:

*direct discrimination*

as a situation in which a person and/or group of persons with certain characteristics are treated less favourably than another person and/or group of persons in a similar situation, except when such behaviour has a legitimate, objectively justified goal, that is to be achieved through appropriate and necessary methods;

*indirect discrimination*

is a situation when implementation or application of formally neutral legal norms, evaluation criteria, rules, requirements or practice create less favourable conditions or situation for an individual and/or a group of individuals compared to other individuals and/or groups of individuals, unless such implementation or application has a legitimate and objectively substantiated aim and the methods for attaining this aim are appropriate and necessary.

The concepts of direct discrimination and indirect discrimination were applied in seven judgments during the whole period of the action of the Law "On Principles of Prevention and Combating Discrimination in Ukraine". However, the Court used the concept of indirect discrimination substantively just once, in the case on deprivation of the Ukrainian Orthodox Church of parish tax incentives that other religious organisations have (see decision of Kyiv District Administrative Court on 18 June 2015 in the Case No. 826/4593/15).<sup>540</sup>

#### **D. The issue of women's rights in Ukrainian constitutional reform**

Ukraine continues to work on the preparation of amendments to the Constitution, which is actually designed to present a new version of the Constitution. The working group, which is functioning within the Constitutional Commission and which includes well-known Ukrainian scientists, political leaders, and human rights activists, has released a new version of Part II of the Constitution of Ukraine in July 2015, which is devoted to human rights. In contrast to the current edition where the principle of equality, particularly equality between women and men is enshrined at the beginning of Part II (Article 24 is the fourth article in Part II), a new version of the constitutional rights to equality and the prohibition of discrimination are mentioned at Articles 41 and 42 respectively. They are the 21st and 22nd ones in the Part on human rights. It is considered that the rules are arranged according to their importance, but it does not affect their validity directly. It is seen as the sign for a society that a particular problem became less important.

Article 43 of the draft of the new edition of the Ukrainian Constitution defines the principle of equality of rights for women and men. It ensures equality of women and men in all spheres of society, including employment, work and benefits. The state is obliged to maintain equality of rights and opportunities for women and men by adopting measures that provide special measures for the underrepresented sex. An expert group is currently preparing proposals for improving this edition of Article 43 of Part II. Experts drew attention to the incorrect use of the

---

<sup>540</sup> Kyiv District Administrative Court on 18 June 2015: <http://www.reyestr.court.gov.ua/Review/45456147>

phrase "equality for women and men", undesirability of focusing only on labour relations, as it underplays the problem of discrimination in other areas of life, and the need to unify the terminology with European Union (EU) law. On the latter point, experts proposed the rejection of the wording "measures that provide special benefits for the underrepresented sex" because, firstly, it refers to activities that are known in European law as positive actions; secondly, they are not only confined to providing special advantages; and, thirdly, their focus is not limited to the problem of insufficient representation of a particular sex. These proposals were not taken into account by the Constitutional Commission.

## **E. Obligations of Ukraine to ensure gender equality according to the Association Agreement between the European Union and Ukraine**

According to Article 419 of the Association Agreement, the parties shall strengthen their dialogue and co-operation on promoting a decent work agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and non-discrimination. Co-operation in the area covered by Article 419 of the Agreement shall pursue, *inter alia*, the goal of gender equality and ensuring equal opportunities for women and men in employment, education, training, economy, society, decision-making, and combating discrimination on all grounds.

In 2015, a volume was published and translated into Ukrainian containing the EU directives on gender equality and equal opportunities for men and women in employment. The volume also presents a number of decisions from the Court of Justice, which clearly shows the importance of applying the directives in real situations.<sup>541</sup>

### **II. Gender gaps in access to justice**

#### **A. Analysis of the national legal and policy frameworks to identify the obstacles women encounter in gaining access to the justice system, such as:**

##### **i. Discriminatory laws or policies.**

In general, the legislation of Ukraine and its practical implementation are described as non-discriminatory. This evaluation is included, in particular, in the National Review of Ukraine's implementation of the Beijing Declaration and Platform for Action and the outcomes of the Twenty-third special session of the General Assembly on "Gender policies and institutional mechanisms for its implementation in Ukraine" (September 2014).

The survey of judges which was conducted for this research indicates the confidence of the vast majority of judges that there is no discrimination on any basis (sex, material or social status, nationality, ethnic origin, sexual orientation, etc.) in Ukraine (except those who are specifically interested in the theme of discrimination, first of all discrimination against women – the judges who are members of the NGO "Women Judges of Ukraine"). The 45 students of Ukrainian law universities who were interviewed also assessed the situation in a slightly different way: according to them there are no obstacles to justice for women in Ukraine (95% of respondents said this), on grounds of sexual orientation, religion (95% of respondents); there are however some problems with access to justice for rural people (30% of respondents mentioned that access to justice for rural areas is worse than for urban ones), for persons who belong to national or ethnic minority (20%), for elderly people (20%), for persons with disabilities (25%). 100% of respondents indicated a lack of equality in access to justice depending on social status.

---

<sup>541</sup> Рівність за ознакою статі в економічній сфері: зобов'язання України перед ЄС (ключові Директиви ЄС щодо забезпечення гендерного балансу на ринку праці та в професійній діяльності, їх розвиток у практиці Суду Справедливості) / Упорядник О.О. Уварова. – Х. : Видавництво «НТМТ», 2015. – 150 с. // Equality on the grounds of sex in the economic sphere: Ukraine's obligations according to the EU (key EU Directive to ensure gender balance in the labour market and professional activity, their development in the practice of the Court of Justice) / Comp. O. Uvarova. – Kharkiv, 2015. – 150 p.

*Analysis of legislation and its implementation indicate some discriminatory provisions. Here are the most striking examples:*

a) In Ukraine, women are not allowed to be involved in night work according to the Labour Code. The survey I conducted shows that judges mostly agree with the legality of such ban.

The analysis of the ban on night work for women refers to the reasons for its establishment.

One would assume that the prohibition of night work for women, as well as a number of other purely paternalistic labour law requirements (such as the prohibition of employment of women in work that involves heavy lifting and jobs with hazardous or dangerous working conditions, and underground work, a ban against the involvement of women with children under the age of 3 in working overtime and on weekends, or travelling on business trips) is dictated by the desire to protect women because of their reproductive function. However, one should be aware that this imposed "special care" leads to a number of negative effects (a significant difference in the financial security of women and men, creating diametrically different expectations for women and for men, the image of women as uninformed persons in need of external control and care).

However, the ban on night work for women is even more serious. To understand the ban, it is essential to know that the domestic Labour Code actually duplicates the provisions of the International Labour Organization's Convention concerning *night work of women* adopted on 29 October 1919 and provides an exception – night work for women is allowed at enterprises where only members of the same family are employed.<sup>542</sup> This means that the *prima facie* reason of concern for the health of the woman is not the determining factor behind these provisions.

There are two possible interpretations of these regulations.

The first possible interpretation sees the prohibition of night work for women as necessary for ensuring their safety, especially their physical and sexual integrity. In this understanding of the prohibition, the state assumes positive obligation to ensure order and personal security. Such limitations to the right to work are not acceptable in a democratic society because the legitimate aim of women's security, which public authorities refer to, is achieved by a way that is obviously disproportionate and burdensome for women. Moreover, this regulation establishes the idea that a woman is a defenceless creature, which always requires external protection – either from the state or from members of her family. This is a breach of personal autonomy, as the woman is not given the opportunity to choose whether or not to work at night.

The second interpretation of the prohibition of night work for women is not better. It puts into question the ability of women to self-control their own behaviour, including their sexual behaviour. The prohibition of night work for women, except night work with members of their own families, aims to eliminate the situation when a woman is alone at night with men who are not members of her family.

It is hoped that this prohibition will be abolished soon (the new draft Labour Code, currently in Ukraine's Parliament, contains a prohibition of night work only for pregnant women. This draft was submitted to the Parliament by the Speaker and deputies who belonged to the ruling coalition in May 2015. The chances that the project will be adopted are very high but unlikely any time soon. There have been no hearings of this legislative proposal yet.

---

<sup>542</sup> Article 3 "Women without distinction of age shall not be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed." [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C004](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C004)

b) More than 500 professions are prohibited for women by laws. The current list of 'heavy' work and work with harmful and dangerous conditions, which are prohibited for the women employment is provided by the Decree of the Ukrainian Ministry of Health Care, adopted on 29 December 1993, No. 256). It is important to note that the list did not become a "dead rule". Courts continue to apply it and it leads to violations of women's rights to work. An example of this occurred when the Manevichsky District Court of Volyn region dismissed a woman's claim about reinstatement on 25 May 2015. The Court pointed out that they disregard the plaintiff's explanation that she was not offered a job as a keeper of raw materials warehouse and that she was not transferred with her consent to this job, and that the terms of the current collective agreement, prohibiting women to engage in night work, are those that do not meet current legislation. The Court noted that according to Article 175 of the Labour Code, night work is prohibited for women, except for those sectors of the economy where it is caused by special need and is allowed as a temporary measure. One of the provisions of the list prohibits the employment of women if a job relates directly to fire fighting. The duty of fire fighting is provided by the employment instruction of a watchperson. On this basis, the Court found that in this case, the condition of the collective agreement, which prohibits night work for women, particularly working as the watchperson, does not violate the woman's right to work. On the contrary, it strengthens the legal position of women (see decision of 25 May 2015 in the case No. 164/409/15-ц<sup>543</sup>).

Moreover, the practice of the courts goes even beyond the list and recognises the refusal to hire women as street cleaners as legitimate, referring to the fact that this work involves stumping trees branches that hang over the sidewalks, and therefore a woman cannot be accepted, even if she agrees to perform such duties (see decision of the Tlumach district court of Ivano-Frankivsk region of 29 April 2013 in the case No. 353/509/13-п).<sup>544</sup>

Importantly, the ban on night work for women, the prohibition of travel for women with children under the age of 3, the ban on women taking a job that is listed as hazardous and heavy work have never become a ground for a petition to the Constitutional Court of Ukraine (p. 3 of Article 8 of the Civil Procedure Code of Ukraine).

*Shortcomings of the special laws aimed at equality between women and men or the protection of women.* At national level, there are a lot of provisions in the laws guaranteeing gender equality. For example, Ukraine has laws on ensuring equal rights and opportunities for women and men (2005); on principles of prevention and combating discrimination in Ukraine (2012); on employment (this law prohibits the advertisements of work vacancies only for women or only for men, except for specific work which can be performed only by persons of a particular sex; it was adopted in 2012); on preventing domestic violence (2001); on guaranteeing the right to a fair trial (2015) and many others. The new edition of the law on local elections (14 July 2015) was adopted by Verkhovna Rada of Ukraine (the Parliament). Under Article 36 of the law on local elections, each political party is required to provide a minimum of 30% of persons of the same sex in the electoral lists of candidates.

Despite the fact that Ukraine has recognised basic international documents to be mandatory for the country, such as in the area of gender equality, support of the principle of non-discrimination based on gender at the constitutional level, adoption of a special law on ensuring equal rights and opportunities for women and men, creating appropriate institutional capacities in this area, the issue of women's access to justice and ensuring gender equality in civil litigations remains vital for Ukraine. Among the main reasons for this situation are:

- A low level of awareness of women (especially in rural areas) about international standards in the area of protection from gender discrimination. Most women are not aware that their rights have been infringed due to discrimination, and as a result they do

<sup>543</sup> Manevichsky District Court of Volyn region, 25 May 2015: <http://www.reyestr.court.gov.ua/Review/44526303>.

<sup>544</sup> Tlumach district court of Ivano-Frankivsk region of 29 April 2013: <http://www.reyestr.court.gov.ua/Review/31437350>.

not turn to court. This state of things is demonstrated by the fact that during the 10 years since the law of Ukraine “On ensuring equal rights and opportunities for women and men” has been in force, it has been referred to in only 115 judicial decisions. Moreover, the vast majority of the cases are initiated by the state controlled bodies, not by the victims of such discrimination. Very often, women cannot identify discriminatory attitude towards them. Moreover, women are not even aware of their rights enshrined by law. The following example is illustrative: A woman asked the Women's Consortium of Ukraine - a Ukrainian NGO - for legal advice. She works at the support service (call-centre) of one of Ukraine's banks. She has a 9 month old baby and continues to breastfeed. For this, she agrees with colleagues informally to substitute for her twice a day. Each time the woman is worried that her absence will be registered by the personnel department and she will have problems at work. She does not know that the Law of Ukraine (Article 183 of the Labour Code) provides that a woman with a child under the age of 18 months is entitled to an additional break for feeding the baby. These breaks are given to women not less than every three hours for a minimum of thirty minutes each. If there are two or more babies, the break duration is set for at least an hour. The employer sets the terms and procedure for granting breaks considering the desire of the mother. Breaks for feeding a baby are included in the working time and are paid. An analysis of judicial decisions shows that there were no petitions to the court about the refusal to satisfy the woman's claim for a break for feeding a baby;

- Inability of judges to identify the cases where the violation of rights was a result of: (a) discriminatory legislation, (b) gender-neutral legislation which in practice leads to discriminatory consequences, (c) gender stereotypes that exist in society. Moreover, judges that were interviewed noted that they couldn't conclude in their decisions that discrimination took place if the claimant did not refer to it in her/his claim. Judges believe that in this case, the rule of their connectedness with the claim should be applied (they cannot go beyond the requirements of the plaintiff, and since the plaintiff does not refer to discrimination, that means that the court cannot consider the case in this context). To my mind, the issue of discrimination is not a matter of claim; it is rather a question of correct qualification of the legal situation. Even if the victim of discrimination claims violations of her or his right but does not refer to the fact that the violation was the result of discrimination, it should not prevent the judge from giving correct legal qualifications with references to discrimination.

There are some cases of obvious discrimination, in which experts of NGOs who specialise in gender discrimination have expressed doubts about the prospects of the trial. The following example is illustrative. A woman applied to the Virtual Legal Aid Service of Women's Consortium of Ukraine. She informed that she was a programmer in a company, where all other programmers were men. Two other women worked as a secretary and an accountant. The applicant even got the nickname "Bill Gates in a skirt" due to her professional skills. The applicant worried that throughout the entire time of her work for the company (five years) she had never been appointed project manager, while men had. Moreover, the applicant accidentally discovered that men who performed the same job received a salary that was 1.5 or more times higher than the salary of the applicant (<http://legal.wcu-network.org.ua/question/15>). However, even experts of NGOs who answered this question were sceptical about the prospects of the judicial review of such employer's practices;

- Perception by judges of international instruments on gender equality as some abstract designs that do not offer specific models for solving real-life disputes. As a result, in judicial decisions there are almost no references to the relevant international instruments. In the State Register of judgments, there are only 18 judicial decisions, which contain references to the Convention on the Elimination of All Forms of Discrimination against Women. The following example is illustrative. The CEDAW was referred to by the Kyiv Court of Appeal in the electoral dispute. The Law on Political Parties (2013) provides that electoral lists of candidates should contain a minimum level

of representation of women of 30% of the total number of candidates. The Central Election Commission has explained that the violation of the gender quota is not a ground to prohibit a political party to participate in elections. Political party "Samoposh" ("Self-Help") appealed to the Court to recognise the position of the Central Election Commission as illegal. The Kyiv Court of Appeal referred to Article 7 of CEDAW. According to this article, states parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (i) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (ii) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (iii) To participate in non-governmental organisations and associations concerned with the public and political life of the country.

As a result, the Court recognised the illegal position of the Central Election Commission (decision of 30 September 2015).<sup>545</sup>

In other cases, the CEDAW was referred to by plaintiffs, and courts included information about it in their decisions. For example, a woman demanded the eviction from the apartment of her ex-husband, who systematically committed physical or psychological violence.<sup>546</sup> In another case, a financial inspection pointed out that the payment of a bonus to a man to mark International Women's Day was a violation of the CEDAW, and therefore it wanted to fine the company who paid the bonus.<sup>547</sup>

- Lack of awareness among judges of good practices of so-called "identification" of the situation in a particular case where there is gender-based discrimination (even if the victim does not identify herself as such), identification of discriminatory provisions of the existing legislations and settlement of the case, taking into account relevant international standards.

I can confirm these conclusions by using the results of other research. The publication on "Issues of prohibition and combating discrimination: guidelines for lawyers" (which was compiled by Ganna Chrystova)<sup>548</sup> was published in the first half of 2015. It stated that practicing lawyers (at least the majority of them):

- do not know about the problem of discrimination and do not realise its importance for the Ukrainian society;
- do not understand the nature of discrimination as a general legal principle and legal category, which has interdisciplinary nature, it is used both in international and national law, it is applied in public and private spheres, in substantive and procedural law;
- do not have the proper level of special legal terminology (direct or indirect discrimination, oppression, reasonable accommodation, victimisation, segregation, positive discrimination, affirmative action, temporary special measures, etc.);
- do not have the legal skills of qualification of relevant factual situation as discrimination on the relevant grounds, as well as skills of legal reasoning and proving in cases of discrimination;
- restrict the scope of the application of the principle of non-discrimination to the "typical" problems (discrimination based on disability, age, etc.) or associate it only with selected "newest" problems (discrimination against persons with HIV-AIDS, LGBT representatives, etc.);
- do not consider the anti-discrimination provisions as effective legal instruments;

---

<sup>545</sup> Kyiv Court of Appeal, 30 September 2015: <http://www.reyestr.court.gov.ua/Review/51659827>.

<sup>546</sup> <http://www.reyestr.court.gov.ua/Review/29239068>

<sup>547</sup> <http://www.reyestr.court.gov.ua/Review/16062765>

<sup>548</sup> <http://www.coe.int/uk/web/kyiv/-/assistance-to-ukrainian-lawyers-how-to-protect-oneself-against-discrimination-using-legal-methods>.

- do not have the practical skills of application of standards in combating discrimination which are produced in the practice of the European Court of Human Rights (i.e; the test on non-discrimination, anti-discrimination standards, etc.).

While the application of the principle of non-discrimination is generally limited, in the case of women it is even more so. To provide only an illustration, all the examples of discrimination in the Practical Guide to Argumentation in Cases of discrimination (compiled by Sergei Zayats and Roman Martynovsky) are about men. There is one example about women, which applies to a case of domestic violence.

Ukrainian legislation provides a requirement for gender-based legal expertise of laws and draft of legal acts to determine their compliance with the principle of equal rights and opportunities for women and men. This is a requirement of the Law of Ukraine “On ensuring equal rights and opportunities for women and men”. At the same time, the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” requires to conduct the anti-discrimination analysis (expertise) of the drafts of normative legal acts.

There are two different procedures. The first is the expertise of draft regulations to verify their compliance with the principle of equality between women and men. This expertise is conducted by the Ministry of Justice of Ukraine. There is a public source which regularly reports about the results of this expertise in Ukraine.<sup>549</sup> The average is six acts passing the gender-legal expertise annually. In 2015, these legal acts are the laws “On Resorts”, “On Tourism”, “On innovation activity”, “On indexation of money incomes”, etc. Gender expertise is absolutely formal. The conclusions of the Ministry of Justice indicate that textual analysis of articles of the law proves that they do not contain discriminatory norms based on sex. This conclusion is usually based on the fact that the terminology used in the law is gender-neutral;

The second one is the anti-discrimination expertise of the drafts of normative legal acts. This expertise is conducted by legal service of executive state bodies at the time of legal review of the drafts of normative acts. There is no opportunity to get systematised information about the results of such expertise.

Thus, today in Ukraine there are two parallel expertises – the gender and the anti-discrimination. They are undertaken by different bodies and according to different procedures; there is no way to co-ordinate them. Moreover, there are some cases when courts refuse to consider the plaintiff's reference to discriminatory regulation. The argument for such refusal is the fact that the relevant regulation passed anti-discrimination or gender expertise, and thus it is presumed in compliance with the principle of non-discrimination (see decision of Kyiv District Administrative Court on 11 September 2014 in the case No. 826/9399/14).<sup>550</sup>

## ii. *Access to legal aid.*

Ukraine has a law on free legal aid. However, women cannot receive free legal aid in such cases as domestic violence, human trafficking, the division of property during divorce, etc. The law does not give them the right to free legal aid. Most NGOs deal with legal advice and representation of women's interests in courts but on an occasional basis.

The initiative of the Women's Consortium of Ukraine which founded the Virtual Legal Service in February 2014 is very interesting. It was created to protect the rights of women in employment and entrepreneurship; family relationships; in communication with the officials and to combat discrimination based on sex.<sup>551</sup> This Service provided more than 100 consultations on legal advice. The most popular are legal advice in the labour and the family areas.

<sup>549</sup> [http://old.minjust.gov.ua/law\\_gendpravexp](http://old.minjust.gov.ua/law_gendpravexp)

<sup>550</sup> Kyiv District Administrative Court, 11 September 2014: <http://www.reyestr.court.gov.ua/Review/40511798>

<sup>551</sup> <http://legal.wcu-network.org.ua/>

International Women's Rights Centre "La Strada – Ukraine" provides assistance through national hotlines on domestic violence, human trafficking and gender discrimination (0 800 500 335, short number 386). For the 1st quarter of 2015, the total number of calls was 2,632, including: gender discrimination 1.1%, human trafficking 4.2%, internally displaced persons 36.3%, domestic violence 58.4%. The gender distribution of calls is 80.8 % of women and 19.2 % of men. Types of violence for which citizens called: 3.3% - sexual, 11.7% - economical, 36.4% - physical, 48.6% - psychological. For Internally displaced persons (IDPs) the greatest urgency is the question of humanitarian aid (51.8 % calls) and also the question of information support (21.1%). IDPs also seek assistance in about social benefits, psychological help, departure from the zone of military conflict, verification of status, restoration of documents, registration of location, housing, employment, health care, schooling, returning to a permanent residence, volunteering, theft, among others.<sup>552</sup>

## **B. Analysis of practices and mechanisms for the implementation of laws**

*Prevalent challenges for women's access to justice.* I conducted a survey for the purposes of this study, which was attended by 30 judges from different regions of Ukraine. Judges were asked to consider some model cases, which are based on current labour legislation of Ukraine (the full survey is available in an appendix to the present study).

The general conclusion that can be drawn on the basis of this survey is that judges do not identify discrimination and do not test the provisions of legislation on their compliance with the international instruments ratified by Ukraine.

i. *The negative impact of gender-neutral legislation.* For example, according to the Ukrainian Family Code, a parent who lives separately from the child has to pay alimony. The minimum amount of alimony for one child may not be less than 30% of the living wage for a child (47-58 Euros in 2015). However, in case of divorced parents, the child is living with his/her mother in 99% of cases. So the situation is such that a man is obliged to pay only 30% of the living wage and a woman 70%.

I prepared some model cases, which were based on the gender-neutral legislation with the proposal of the several ways to solve each case. The model cases were brought up in the interviews with the judges. The aim of the interviews was to determine the ability of judges to recognise indirect discrimination. This is one of the model cases:

*"The court of the first instance ordered child support in the amount of 30% of the minimum subsistence level for a child of appropriate age. It took into account the fact that the defendant has a new family into which a child will be born soon. Ms D. who is a plaintiff in this case filed an appeal against this decision.*

1) Article 184 of the Family Code of Ukraine provides that the amount of child support is determined by some circumstances, which may be important: for example, the court takes into account whether the maintenance payer has other children. The legislator sets the minimum amount of maintenance for one child; it cannot be less than 30% of the subsistence minimum for a child of appropriate age. The court ruled on the provisions of the Family Code of Ukraine. So the judgment in this case is lawful;

2) When there is a divorce, in most cases the child lives with the mother. If we take the minimum subsistence level as the reference point, the parent who lives with the child should ensure 100% of the maintenance. The other parent (which usually is the father of the child) pays alimony of 30% of the minimum which is required for the maintenance of the child. So one of the parents (usually the mother) ensures 70% and the other 30%. It is unfair and it contradicts the requirements of international standards on equal distribution of rights and responsibilities of parents on upbringing and child support.

---

<sup>552</sup> <http://www.la-strada.org.ua/>

90% of respondent judges chose answer No. 1. The judges who chose answer No. 2 added a footnote that in practice the case will be solved as described in the first option.

The development of *legislation on domestic violence and violence against women* requires special attention. According to statistics from the Ministry of the Interior of Ukraine, in 2014, the police received 117,941 applications about domestic violence. 77,709 persons were registered for committing domestic violence offences. Women made up almost 90% of the victims of domestic violence in Ukraine.<sup>553</sup> Some researchers state that the level of violence against women in Ukraine is very high, and the stereotypes in this area, including among judges, are the main obstacles to an effective protection of women's rights. For so many women, domestic violence is a terrible torture and regular beatings which reduces their quality of life and even threatens their lives. Ukrainian's society, which is traditional, does not address this problem as serious.

Active work to prepare for ratification of the Istanbul Convention is now underway in Ukraine. Ukraine has signed this important international legal document on 7 November 2011. The Council of Europe project "Preventing and combating violence against women and domestic violence in Ukraine" (the Project hereinafter) is being implemented in Ukraine. The purpose of the project is the ratification of the Istanbul Convention by Ukrainian authorities, including the preparation for the ratification and its implementation. The main aim of the project is to provide the Ukrainian authorities with an accurate picture of what the state of affairs is in these three areas (law, policy and practice), and what needs to be changed in order to improve the situation and comply with Council of Europe standards, notably the Istanbul Convention, to prevent and combat violence against women and domestic violence as a pervasive human rights abuse.<sup>554</sup> The assessment report on "Preventing and combating violence against women and domestic violence in Ukraine: compliance of selected Ukrainian laws with the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) was presented in May 2015. This report was prepared and edited by Javier Truchero Cuevas and Ganna Khrystova for the Council of Europe with the contribution of Mykola Havroniuk<sup>555</sup>. This report is part of the Project. The Project, through legislative review, seeks to assist the Ukrainian authorities in improving the legal framework on violence against women and to bring it into compliance with the obligations of the Istanbul Convention. The report and its ensuing recommendations have a limited scope and only intend to identify legal deficits and shortcomings, thus pointing at legal changes required by the Istanbul Convention. The main recommendations are:

- Ukraine should introduce a definition of violence against women/gender-based violence in its legislation;
- Ukraine shall re-define the subjective scope of application of its laws and policies to ensure they address all forms of violence against women and domestic violence, while paying particular attention to women victims of gender-based violence;
- Ukraine may improve its legal framework on anti-discrimination and on equality between women and men (the Istanbul Convention Working Group on Legislation Review agreed that the Law on ensuring Equal Rights and Opportunities of Women and Men should be amended to recognise violence against women as a form of discrimination, thus establishing a linkage between these two policy areas);
- Ukraine should establish a legal basis for the co-operation with relevant non-governmental organisations and of civil society active in combating violence against women;
- Ukraine should ensure the collection of disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the Istanbul Convention;

---

<sup>553</sup> Antonina Vykhest, Fulbright scholar, who conducted the study "Women's access to justice in Ukraine".

<sup>554</sup> Council of Europe Project on Preventing and combating violence against women and domestic violence in Ukraine: <http://www.coe.int/en/web/stop-violence-against-women-ukraine/vaw-dv-project>.

<sup>555</sup> See the Assessment report, 2015:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168044e7bf>.

- Ukraine should promote or conduct, on a regular basis and at all levels, awareness-raising campaigns or programmes in accordance with the aims of the Istanbul Convention. Such campaigns and activities shall allow for the appropriate participation of civil society and non-governmental organisations;
  - Ukraine should include teaching materials in formal curricula and at all levels of education aiming at preventing all forms of violence against women and promoting equality between women and men in accordance with the Istanbul Convention.
- ii. *a brief review of the role of specialised equality bodies, such as the national anti-discrimination body.* In Ukraine, the Ministry of Social Policy is a special authorised central executive body on equal rights and opportunities for women and men and for prevention of domestic violence. There are also the Department of non-discrimination and the Department of Gender Equality in the Office of the Ukrainian Ombudsperson.

Ukraine has the state programme to ensure equal rights and opportunities for women and men for the period until 2016, approved by the Cabinet of Ministers of Ukraine on 26 September 2013. The Head of the Programme is the Minister of Social Policy and implementers of the Programme are the Ministry of Social Policy, the Ministry of Education, the Ministry of Culture, the State Committee on Economic Development, regional and Kyiv City State administrations, international organisations and NGOs. The Programme implementation period is 2013-2016. One of the key directions of the Programme is to develop a mechanism for implementing the right to protection from gender discrimination and to take the necessary steps for the review of cases of such discrimination, in particular, to ensure effective response to sex discrimination. The responsible authority is the Ministry of Social Policy. The planned activity includes a study of the level of women's access to justice, discrimination and gender-based violence.

The Regulation on the Expert Council on combating gender discrimination was approved by the Ministry of Social Policy on 18 December 2012. The tasks of the Expert Council are: to considerate the appeals on the facts of sex discrimination; to considerate issues of equal rights and opportunities for women and men in Ukraine; to prepare proposals for amendments to legislative acts for the purpose of compliance with the principle of equal rights and opportunities for women and men; to prevent all forms of discrimination based on sex. The Expert Council sent letters to institutions and organisations for the immediate elimination of violations. Analysis showed that most of the appeals are themed towards advertising products, which impose or promote negative stereotypes about social and gender roles of women and men.

The Expert Council on non-discrimination and gender equality was established in the Office of the Ombudsperson.<sup>556</sup> The main goals are to conduct research on systematic violations in the field of non-discrimination and gender equality; to prepare proposals to address the main causes of discrimination; to inform the general public and international institutions about the activities of the Ombudsperson and his/her representatives in the field of non-discrimination and gender equality; to make proposals for the Ombudsperson on how to improve legal culture and legal awareness among the Ukrainian people.

The first meeting of the Working Group on gender equality policy and combating against discrimination in education was held on 23 July 2015 in the Ministry of Education with the participation of Inna Sovsun, Deputy Minister of Education and Science of Ukraine. Experts on gender equality will be recruited to work on developing standards that will include knowledge of gender issues by graduates.

Information about consideration of complaints regarding gender-based discrimination lodged to the Office of the Human Rights Commissioner was included into the Eighth Periodic Report of Ukraine on the implementation of commitments under CEDAW (paragraph 68). Most of these complaints are related to domestic violence. At the same time, the number of complaints is relatively low (about 100 complaints per year), which the Commissioner explains by a low level

---

<sup>556</sup> Expert Council on combating gender discrimination and Expert Council on non-discrimination and gender equality are two different institutions with different tasks.

of legal awareness of people, a lack of knowledge on how to "identify" the displays of gender-based discrimination or cases of domestic violence, and by traditional gender stereotypes in public thinking regarding the place and role of women and men in family and society.

The number of complaints submitted to the Expert Council at the Ministry of Social Policy is even smaller (26 complaints were received from 2010 to 2013). Most of the complaints are related to advertisement materials that impose negative stereotypes about social and gender roles of women and men (paragraph 69 of the Report).

### **C. Socio-economic and cultural barriers to women's access to justice:**

i. *Level of women's awareness of their rights.* Women's low awareness of their rights is one of the main reasons for the severe under-reporting of discrimination or other violations of these rights: many women are not aware that certain situations constitute violations of their rights, or they are not aware of the mechanisms which protect their rights and interests. Moreover, there are a lot of stereotypes on the social role of women in a society. This is felt particularly acutely in rural areas. The 2015 study on "Rural women: a comprehensive study of statuses of women who live in rural areas" is very interesting in this context. The study focuses on the CEDAW and was carried out with expert support of the Ombudsperson's Office within the United Nations Development Programme in Ukraine. The authors of the study are Inna Volosevych, Tamila Konoplytska, Tatiana Kostyuchenko and Tamara Martsenyuk.<sup>557</sup> The study includes several parts: a) rural women participation in political life and in NGOs; b) rural women access to adequate health care including information, counselling and service planning family size; c) using social insurance programmes; d) obtaining formal and informal education, including functional literacy; e) economic opportunities and participation in collective activities; f) violence against women in rural areas; g) the level of legal awareness, women's awareness of their rights and mechanisms for their protection. For example, among the problems found, 17% of rural women who are employed argue that the employer does not pay them when they are sick. Lack of paid sick leave, as 42% of women think, is caused by the fact that employers often only offer informal work to women, because they do not want to bear the social obligations that are very onerous in Ukraine. 23% of women who were respondents stated that they refuse formal employment for higher salaries of their own volition. 15% of women do not use sick leave because they are afraid of being fired. 14% of women who worked before maternity leave say that their leave is not paid and most women do not know the reasons for this. Thus, every tenth rural woman who is on maternity leave has the right to social protection, but she is cannot fulfil it. Only 52% of respondents are sure that their employers offer them the same or a similar position after maternity leave. 34% have no guarantees and 14% are sure that their employer does not offer the same or similar work.

In case of job loss, most rural women do not seek help from the state: 71% of the unemployed rural women stated that they are not registered at an employment centre. The main reason is the lack of belief that the centre can find them a suitable job (as indicated by 48% of the unemployed rural women). The distance to the employment centre and difficulties with collecting documents for registration are barriers to accessing the employment centre's help for respectively 20% and 19% of the unemployed rural women.

According to another study, published by the Ministry of Social Policy of Ukraine,<sup>558</sup> there is higher awareness in the population of the laws that prohibit various forms of domestic violence against women than of the laws that are intended to improve position of women in the labour market and representation in politics. Half of the respondents know about the Ukrainian laws that prohibit human trafficking, including sexual or labour exploitation of women (45%). The awareness on the Ukrainian laws that prohibit the exploitation or the prostitution of women,

---

<sup>557</sup> Комплексне дослідження становища жінок, які проживають у сільській місцевості/Інна Волосевич, Таміла Коноплицька, Тетяна Костюченко, Тамара Марценюк – К.: ВАІТЕ, 2015. – 88 с.

<sup>558</sup> Study from the Ministry of Social Policy:

[http://www.mlsp.gov.ua/labour/control/uk/publish/category%3Bjsessionid=3FEE35A10D5AAF74725F8F130263E382.app1?cat\\_id=166710](http://www.mlsp.gov.ua/labour/control/uk/publish/category%3Bjsessionid=3FEE35A10D5AAF74725F8F130263E382.app1?cat_id=166710)

even with the consent of the women, is in second place (40%). More than a third of respondents are aware of the existence of Ukrainian laws that prohibit physical and sexual violence against women in the family (39% and 36% respectively). Ukrainians are less aware of laws that prohibit psychological and economic violence in the family (29% and 23% respectively).

One third of respondents know the Ukrainian laws that prohibit sexual harassment at the workplace, but only 22% of respondents are aware of the Ukrainian laws that require the employer to create conditions for men and women for combining family obligations with raising children and professional duties. The level of knowledge of the Ukrainian laws that prohibit sex-specific job offers or unequal pay is the lowest (14% and 15% respectively).

The Ministry of Social Policy of Ukraine states that combating any kind of discrimination against women requires a high level of women's awareness on their rights. Large-scale information campaign to inform Ukrainian women about legislative guarantees of equal rights and opportunities is necessary. Effective ways of informing employers, judges and representatives of law enforcement agencies and local authorities are also needed.

*ii. Discussion of possible specific socio-economic and cultural barriers affecting women's access to justice in the country:*

- Ukraine is going through a military conflict on its territory, a part of which is recognised as occupied. The questions of personal safety are relevant to women much more than men;

- Experts expect that there will be a surge of domestic violence in Ukrainian society soon. The reason is that men who participated in military operations in the East of Ukraine, are coming back home.<sup>559</sup> They may have psychological trauma. In addition, they often cannot find jobs and have economic difficulties. A man who was required for military operations may feel he is no longer necessary in civilian life;

- The difficult economic situation in Ukraine. The national currency has depreciated three times during 2014-2015. The inflation index has reached 37% in the first four months of this year. We need to answer: are women feeling the crisis to a greater extent than men? For example, women who have taken the credit in foreign currency are in a more difficult situation now than men because, on average, women have less income than men. According to official statistics in Ukraine, there are 296,000 unemployed women and 210,000 unemployed men. The average monthly salary in Ukraine is 121 Euro for women and 159 Euro for men. The highest rate is in financial and insurance activities: 237 Euro for women and 368 Euro for men. In an interview on 8 March 2015, Aksana Filipishyna, the representative of the Ombudsperson responsible for children's rights issues, non-discrimination and gender equality, drew attention to the fact that women make up 54% of Ukraine's population, that they have high educational and intellectual level, but that their average salary in the public sector is 24% less than the one of men,<sup>560</sup>

- The norm according to which "the indexation of cash income depends on the financial resources of the budgets of all levels for the relevant year" may lead to indirect discrimination against women, because budgetary institutions in 2015 abandoned indexation of money incomes of their employees, and most of these employees are women;

- Ukrainian's society is mostly traditional: the question of the possibility of legalising same-sex marriage is not even raised in Ukraine. It is not on the agenda of public discourse; there is very biased attitude towards persons with same-sex sexual orientation; a majority of the population disapproves of sex change; and surrogate motherhood is not always approved in society. So lesbian, bisexual, transwomen, and surrogate mothers need special guarantees

<sup>559</sup> <http://www.rferl.org/content/ukraine-conflict-domestic-violence/26979064.html>

<sup>560</sup> <http://khpq.org/index.php?id=1425814399>.

especially if they live in rural areas. There is a common belief that it is sufficient to have gender-neutral laws and a gender-neutral judicial practice. This situation exists despite the fact that there are very few women in politics or managers in public and private structures. According to information from the Virtual Legal Service of the Women's Consortium of Ukraine, women seek help when they want to work, but their husbands are strongly against and set ultimatums – such as choosing between family and work.

- There are a lot of stereotypes in Ukrainian society, even within the official level. For example, the Minister of the Cabinet of Ministers of Ukraine approved the dress code recommendations for women employees of the Government of Ukraine. It states: "At the workplace a woman should look feminine, stylish, and elegant. Woman should have a unique charm, despite some limitations business etiquette. The main thing is the look of a business woman - well-groomed, a sense of proportion, elegance and expediency";

- There was an initiative to prohibit abortions in Ukraine. At the beginning of June 2015, Igor Mosiychuk, a Ukrainian parliamentary member who is a member of the coalition, announced that he initiated the draft law on the prohibition of abortions. Activists and human rights defenders have been shocked by this news. On 27 June, a demonstration against the ban abortion took place in Kiev. The participants pointed out that the adoption of this law will have catastrophic consequences for Ukrainian society. State intervention in a woman's choice is an attack on reproductive rights.

The issue of IDPs in Ukraine needs special attention. According to the UN Monitoring Mission, which has studied the human rights situation in Ukraine since the beginning of the military operations in April 2014, the deaths of at least 6,362 people (including at least 625 women and girls) are documented. During this time, 15,775 people were injured in the conflict zone in Eastern Ukraine. Many people were reported as missing. Experts noted that Ukrainian media ignore the problems of women who are in the conflict zone. Gender-based violence is not mentioned in their reports. Ukrainians receive information about losses of fighters on the front lines every day, but unfortunately, they know almost nothing about the fate of women who are in the occupied territories. Gender-based violence in the conflict zone is persistently ignored; this crime is marginalised in Ukraine. Society believes that it is not worth the attention as compared with other news/crime/events.<sup>561</sup>

The Ukrainian Institute for Social Research named after Yaremenko has published the report "Assessing the needs of internally displaced women and elderly people in Ukraine" (2015) which states that priority needs for internally displaced women are receiving non-food products, health care, financial assistance, food, housing search, registration at the place of temporary residence, registration of social benefits, pensions and care. The analytical report "Policy on internally displaced persons in Ukraine" (Andrew Solodko, Taras Doronyuk, 2015, with the support of the International Fund "Renaissance") was also published.<sup>562</sup>

I analysed the judgments of the first half of 2015. The analysis shows that:

- Of 217 claims which are considered on application of the Law of Ukraine "On the rights and freedoms of internally displaced persons", 95% are submitted to courts by women;
- Failure to obtain a certificate of registration of internally displaced persons, or unawareness with other formal requirements are the main obstacles for women to defend their rights in court (see decision of Svyatoshinsky District Court in Kyiv, 24 June 2015, Case No. 2/759/4430/15,<sup>563</sup> decision of Moscow District Court of Kharkiv, 19

<sup>561</sup><http://voxukraine.org/2014/12/19/%D0%B6%D1%96%D0%BD%D0%BA%D0%B8-%D0%BD%D0%B0-%D0%B2%D1%96%D0%B9%D0%BD%D1%96-%D1%81%D1%82%D0%BE%D1%80%D0%BE%D0%BD%D0%B0-%D0%BC%D0%B5%D0%B4%D0%B0%D0%BB%D1%96-%D0%BF%D1%80%D0%BE-%D1%8F%D0%BA%D1%83/>.

<sup>562</sup> Policy on IDPs in Ukraine, 2015: <http://www.irf.ua/content/files/dp-2015-7.pdf>

<sup>563</sup> Svyatoshinsky District Court in Kyiv, 24 June 2015: <http://www.reyestr.court.gov.ua/Review/45835966>.

January 2015 Case No. 643/455/15-ц,<sup>564</sup> decision of Berdyansk District Court of Zaporozhye Region, 4 February 2015, Case No. 310/1071/15-a,<sup>565</sup> etc.);

- Main categories of cases involving women who are IDPs are family affairs (alimony, divorce, establishing the fact of birth), social (the receipt of targeted assistance, appeal the refusal to pay a pension at the new place of residence), administrative (appeal against refusal to register as IDPs), employment (see decision of Rivne City Court of Rivne Region, 26 March 2015, Case No. 569/3293/15-a,<sup>566</sup> decision of Volodarsky District Court of Donetsk region on 24 February 2015 in case No. 222/100/15-a<sup>567</sup> etc.).

*iii. Brief overview of key statistics in the country concerning women's position in society, economy and politics vis-à-vis men's:*

- Women constitute only 11% of members of the Ukrainian Parliament. Of the 27 committees in the Parliament, only 6 are headed by women. The cross-party association "Equal Opportunities" was established in the Parliament. It aims to develop legislative initiatives directed to ensure gender balance and respect for equal rights for men and women. It publishes regular digest.<sup>568</sup>

The Civic Network OPORA analysed the activity of parliamentary members in 2015. The results of this study show that women have participated in legislative activity twice more often than men.<sup>569</sup>

- there are only two women in the government now;
- in Ukraine there have been 18 governments, and only one of these has been headed by a woman;
- there is just one woman in the Constitutional Court of Ukraine (18 judges);
- the heads of the higher courts in Ukraine are only men.

Ukraine ranked 83 out of 187 in the UNDP "Gender-related development index" (GDI) at the beginning of 2015.

### **III. Gender responsiveness of the justice system**

*a) An overview of the number of cases women bring before national courts, in comparison to men.*

In Ukraine, there are no special statistics disaggregated by sex of applicants. But the State Register of all court decisions is open to the public (in civil, administrative, commercial and criminal cases). The analysis of the materials of this Register helped to establish the proportion of cases brought by women before national courts, in comparison to men, including in the context of certain types of cases:

- i. in cases about illegal dismissal and reinstatement, 55% are claims by men and 45% are women's claims; appeals from men are twice higher than appeals from women;
- ii. in cases about alimony, 100% are claims from women;
- iii. in cases about the division of property upon divorce, 90% are claims from women. The main reason is that, usually, the official owner of the property is a man. A woman

<sup>564</sup> Moscow District Court of Kharkiv, 19 January 2015: <http://www.reyestr.court.gov.ua/Review/42893769>.

<sup>565</sup> Berdyansk District Court of Zaporozhye Region, 4 February 2015:

<http://www.reyestr.court.gov.ua/Review/42602739>.

<sup>566</sup> Rivne City Court of Rivne Region, 26 March 2015: <http://www.reyestr.court.gov.ua/Review/43339098>.

<sup>567</sup> Volodarsky District Court of Donetsk Region, 24 February 2015:

<http://www.reyestr.court.gov.ua/Review/42917734>.

<sup>568</sup> One of the latest editions: <https://drive.google.com/file/d/0B7N541d2jwrgc1NOQIM5RHc5NUE/view>.

<sup>569</sup> Civic Network OPORA, 2015: <http://oporacv.org/v-ukrajinskomu-parlamenti-zhinky-pratsovytishi-od-cholovikiv-analiz-skladu-fraktsij-komitativ-aktyvnostej/>.

must prove in the court that the property was jointly acquired in marriage and that she also has the owner's rights.

Moreover, the Association of Women Judges reported that in one week, 36 women and 57 men filed claims to three local courts.

In addition, the Ministry of Social Policy of Ukraine notes that it is impossible to provide statistical information on the number of court decisions in criminal, civil cases and cases on administrative offenses related to gender issues, and the number of judgments, which confirmed the facts of discrimination against women (paragraph 46 of the Report on the implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women (Eighth Periodic Report, Kyiv, 2014)). Furthermore, the Report includes information about two court cases about discrimination against women which were considered in Ukraine and brought before the court by "La Strada - Ukraine". One of the cases was against the former Prime Minister, Mykola Azarov, for his discriminatory remarks that women have no place in government. The second case was against the Ministry of Interior for discrimination of girls at entry to universities. In both cases the courts found no gender discrimination.

Finally, the Report stresses the need to submit proposals to change the court statistic forms for the possibility of gender analysis.

*b) Discussing gender bias, gender stereotypes, poor services and hostile attitudes among legal professionals and the police*

There is a high level of corruption in the courts of Ukraine. This is one of the main reasons why Ukraine's place is so low in the international rankings for the implementation of the rule of law. (For example, in the 2015 World Justice Project Rule of Law Index, Ukraine ranks 84th place among the 102 states on such indicators as "Absence of Corruption".<sup>570</sup> In the 2014 UNDP/Human Development Gender Inequality Index, Ukraine is in 57th position among the 188 countries<sup>571</sup>). There is uncertainty with the lustration procedure of the judiciary in Ukraine. It started, but is now suspended because of the low level of the legal framework. There is no alternative effective mechanism to settle disputes out of the court room such as mediation, arbitration, neutral evaluation and facilitation:

- The courts and police stations are not equipped with a place for people with children;
- The level of enforcement of judgments in Ukraine is low;
- There are more than 7,000 professional judges in Ukraine among which, 49.7% are women. There are 58.6% women in commercial courts of appeal, but there are no women among the heads of the courts.

*c) Mapping existing gender training for judges and lawyers (official institutions, civil society organisations).*

According to the Law of Ukraine "On the Judicial System and Status of Judges", the National School of Judges of Ukraine is a public institution with a special status which provides for the organisation of special trainings for the candidates to judge positions; trainings for judges who are appointed first time or are elected for a lifetime; research on improving justice; study of international experience in the organisation of the courts, etc.<sup>572</sup>

---

<sup>570</sup> World Justice 2015 report, available at: [http://worldjusticeproject.org/sites/default/files/roli\\_2015\\_0.pdf](http://worldjusticeproject.org/sites/default/files/roli_2015_0.pdf)

<sup>571</sup> 2014 UNDP Human Development Report, Gender Equality Index, available at: [http://hdr.undp.org/sites/default/files/2015\\_human\\_development\\_report\\_1.pdf](http://hdr.undp.org/sites/default/files/2015_human_development_report_1.pdf)

<sup>572</sup> See also: [http://www.coe.int/t/dghl/cooperation/cepej/cooperation/Eastern\\_partnership/default\\_en.asp](http://www.coe.int/t/dghl/cooperation/cepej/cooperation/Eastern_partnership/default_en.asp)

The Ministry of Social Policy of Ukraine in the Report on the implementation of CEDAW stated that the Ukrainian-Canadian project on judicial co-operation was implemented in Ukraine. It was funded by the Canadian International Development Agency. There were 16 educational workshops on gender equality and a roundtable discussion on gender violence in the family in 2010. 497 people (210 judges and 287 court staff) took part in this project. The concepts of discrimination as a legal category; discrimination *de jure* and *de facto*, positive actions (temporary special measures) were analysed during the trainings.

Training for law enforcement officers on the protection of women's rights were also conducted in Ukraine. The Ministry of Social Policy reported that seven seminars on "Interaction of state and local governments on prevention of domestic violence" were held in 2010 as part of the UNDP - EU "Equal Opportunities and Women's Rights in Ukraine" project. Seminars for district police officers were held in all regions of Ukraine in 2010-2011. Their aim was to ensure operative consideration of appeals in the cases of domestic violence and to prevent rejection of registration these applications.

Interactive classrooms for the trainings of practical skills to combat domestic violence were opened at the three universities in 2009-2011 with the support of OSCE in Ukraine. Six workshops and trainings on the themes "Judicial protection of the rights of domestic violence victims in Ukraine", "Prevention and Combating of Domestic Violence", "Court cases relating to violence against children", and "Litigation of domestic violence cases" were organised and conducted by the National School of Judges in 2011-2013. A training programme for specialists of the Ministry of Interior on the prevention of violence against women was developed by the Ukrainian Foundation for Public Health in co-operation with the Ministry of Social Policy and the Ministry of Interior with the support of UN Women. In 2013-2014, 150 district police officers trained.

In 2010, the Ukrainian-Canadian project of judicial co-operation developed, published and distributed among members of the judiciary of Ukraine the textbook for judges "Principles of gender equality"; the manual for teacher-trainers "Fundamentals of gender equality"; "Creation of gender equality society: international experience. The laws of foreign countries on gender equality "; brochure "Sexual harassment at the workplace"; "Judicial protection from domestic violence. Information materials for judges", "Legal protection from domestic violence. Information materials for the public".

However there are no unified, systematised training programmes on women's access to justice, as part of a formal training programme for judges in Ukraine yet.

The Kharkiv Regional Foundation "Public Alternative" ran the project "Monitoring of court decisions regarding gender discrimination, focusing on the application of Ukrainian legislation and international laws". The main purpose of the project is to enhance the judicial system of Ukraine providing effective protection of women against gender discrimination. The project is funded by USAID.

- d) *Mapping curricula of the basic education and further training for legal professionals and police to gauge the extent to which women's rights and gender equality issues have been introduced in their initial and further education.*

The curricula of higher educational institutions of Ukraine was analysed (law faculties of Kyiv National University named after Shevchenko, Kharkiv National University named after Karazin, Lviv National University named after Ivan Franko, National University "Lvivska Politehnika", Odesa National University named after Mechnikov, Sumy State University, National University "Kyiv Mogilyanska Academy"; National Law University named after Yaroslav Mudryy, Odesa National Law University. There are 134 higher educational institutions where students *get a law degree* in Ukraine). There are no leading law schools in Ukraine which have a compulsory training programme course on women's rights, gender equality or non-discrimination on grounds

of sex. Lectures and classes on specified topics are conducted only on an optional basis (meetings with students, non official workshops, roundtables, master classes, etc.). They are not part of the basic education curricula.

#### **IV. Remedies, good practices and recommendations**

##### **A. Existing remedies to facilitate women's access to justice**

Ukraine has:

i. anti-discrimination legislation:

Law on ensuring equal rights and opportunities for women and men;  
Law on principles of prevention and combating discrimination in Ukraine;  
Law on employment (this law prohibits advertising vacancies only for women or only for men, except for specific work which can be performed only by persons of a particular sex);  
Law on preventing domestic violence;

ii. national programmes:

Ukraine has a state programme to ensure equal rights and opportunities for women and men for the period until 2016, approved by the Cabinet of Ministers of Ukraine on 26 September 2013. The head of the programme is the Minister of Social Policy;

iii. specialised equality bodies:

In Ukraine, the Ministry of Social Policy is a special authorised central executive body on equal rights and opportunities for women and men and for prevention of domestic violence.

There is also the Department of non-discrimination and the Department of Gender Equality in the Office of the Ukrainian Ombudsperson.

The Expert Council on non-discrimination and gender equality was also established in the Office of the Ombudsperson.

The Working Group on gender equality policy and combating discrimination in education was established in July 2015 in the Ministry of Education.

iv. *special measures:*

The Law on Political Parties (2013) provides that at least 30% of women must be in the list of the party. On 14 July 2015, a new edition of the law on local elections was adopted by Verkhovna Rada of Ukraine. Under Article 36 of the law on local elections, each political party is required to provide a minimum of 30% candidates of each sex in the electoral lists.

v. gender-based legal expertise:

Ukrainian legislation provides a requirement for gender-based legal expertise of laws and draft of legal acts to determine their compliance with the principle of equal rights and opportunities for women and men. This is a requirement of the Law of Ukraine "On ensuring equal rights and opportunities for women and men". At the same time the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" requires the anti-discrimination expertise of the drafts of normative legal acts;

## **B. National good practices to promote equal access of women to justice:**

i. National hotlines for domestic violence, human trafficking and gender discrimination were founded by La Strada – Ukraine;

ii. The Women's Consortium of Ukraine founded the Virtual Legal Service in February 2014. It was created to protect the rights of women in employment and entrepreneurship; family relationships; in communication with the officials and to combat discrimination based on sex<sup>573</sup> ;

iii. There is a close interaction of State authorities (the Ministry of Social Policy, the Ministry of International Affairs, the Ministry of Internal Affairs, the Ombudsperson, the Supreme Court of Ukraine), non-governmental organisations and international organisations (the Office of Council of Europe in Ukraine) in preparing for the ratification of the Istanbul Convention;

iv. The cross-party association "Equal Opportunities" was established in the Parliament of Ukraine. It aims to develop legislative initiatives directed to ensure gender balance and respect for equal rights for men and women.

## **C. Proposed measures to address the obstacles that prevent equal access to justice for women:**

i. to conduct, on a regular basis, an information campaign to raise women's awareness about their rights and mechanisms for their protection, and to overcome existing stereotypes in society;

ii. to develop and implement a comprehensive system of training for judges, police officers, lawyers, prosecutors, representatives of other legal professions on gender equality issues, non-discrimination law regulation, barriers, remedies and good practices for women's access to justice in Ukraine;

iii. to include women's rights and gender equality issues in the curricula of the basic education and further training for legal professionals and police.

## **D. Proposed measures to address the research and data needs and gaps in the field of women's equal access to justice:**

i. to explore the level of awareness among judges of international standards in the area of protection against gender discrimination and their understanding of the standards' mechanism of action, and use of patterns of such standards when addressing real situations by summarising the information obtained from the analysis of judgments, including indicators such as: a) a reference to existing international and regional instruments in the area of protection against gender discrimination, the European Court of Human Rights, the essential or formal nature of such references; b) the existing reference to domestic law, to ensure equal rights and opportunities for women and men (including the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine", the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men"), the essential or formal nature of such references; c) representation of cases where the appeal of the court to international, regional or national standards in the area of protection against gender discrimination could be a reason for a different result solving the case; d) application of gender-neutral legislation in court, resulting in *de facto* discrimination and application of gender discriminatory legislation; e) identifying the types of cases that are the most vulnerable as to manifestations of gender discrimination, the degree of representation of these cases in the administration of justice in general courts, administrative and commercial judicial proceedings; f) characteristics of resolution of cases by courts of different instances (first, court of appeal, court of cassation, Supreme Court of

---

<sup>573</sup> Women's Consortium of Ukraine: <http://legal.wcu-network.org.ua/>

Ukraine); g) availability of cases in which there were grounds to suspend the case and to appeal to the Supreme Court of Ukraine to the Constitutional Court of Ukraine to address the issue of compliance or non-compliance of some provisions of the law with the Constitution of Ukraine because of their discriminatory nature;

ii. to collect statistical information (the maximum possible) on: a) the number of court cases initiated by women, compared to the number of court cases initiated by men; b) the average duration of disputes, the subject of gender discrimination; c) the percentage of appeals and cassation appeals of decisions rendered in cases of gender discrimination; d) the number of court decisions in which the reference was made to the international act, the European Court of Human Rights, the internal law on protection from gender discrimination; e) the number of court decisions on cases of domestic violence, their distribution by the type of domestic violence, the result of the case; f) the number of cases where a woman claimed to be a victim of discrimination, compared with the number of cases where a woman complained about the violation of rights and legal interests, not realising that the violation was the result of gender discrimination;

iii. to evaluate the readiness of judges to apply international standards in the area of protection from gender discrimination, including the cases where the claimant does not associate violation of her rights and legitimate interests with gender discrimination. In particular, developing the criteria and methods of analysis of judicial decisions and create a form of a judicial decision analysis to identify the cases where infringement of the rights and legitimate interests is a result of gender discrimination (direct or indirect);

iv. To develop methods for the identification by judges of cases where the violation of rights and legitimate interests is the result of (a) the discriminatory legislation, (b) gender-neutral legislation which in practice has discriminatory consequences, (c) gender stereotypes that exist in society; to then distribute relevant teaching materials among judges;

v. To prepare a review of the best practices in the area of judicial protection from gender discrimination by analysing the practice of resolving cases in the area of gender discrimination by the courts of the EU member states, the European Court of Justice, the courts of the United States and selecting cases in which the ability of judges to identify cases of gender discrimination is the most vivid, based on the analysis, and resolving such disputes, including the reference to the international and regional standards of protection in this area (reviewing the best practices);

**E. Mapping relevant actors in the field of women’s access to justice that the project could/should engage with (official institutions, civil society organisations, and academia).**

- i. Official institutions: the National School of Judges, the Ministry of Justice, the Ministry of Social Affairs, the relevant committees of the Parliament of Ukraine, including the Committee on Legal Policy and Justice, the Committee on Human Rights, the National Minorities and International Relations Committee, the Ombudsperson Office, the State Judicial Administration of Ukraine, the High Qualifications Commission, the Council of Judges of Ukraine;
- ii. Civil society organisations: International Women’s Rights Centre “La Strada – Ukraine”, the Women’s Consortium of Ukraine, Women Judges of Ukraine, Kharkiv Regional Foundation “Public Alternative”.

## Bibliography

Khrystova, G. (2015), "*Issues of Prohibition and Combating Discrimination: Guidelines for Lawyers*", available at: [www.coe.int/uk/web/kyiv/-/assistance-to-ukrainian-lawyers-how-to-protect-onself-against-discrimination-using-legal-methods](http://www.coe.int/uk/web/kyiv/-/assistance-to-ukrainian-lawyers-how-to-protect-onself-against-discrimination-using-legal-methods)

Ministry of Social Policy of Ukraine (2014), "*Eight Periodic Report on the Implementation of CEDAW in Ukraine*", Ministry of Social Policy of Ukraine and UNFPA, Kyiv. Available at: [www.un.org.ua/images/CEDAW\\_report\\_eng.pdf](http://www.un.org.ua/images/CEDAW_report_eng.pdf)

Yaremenko, O. (2015), Ukrainian Institute for Social Research, Sociological survey on "*Assessing the needs of internally displaced women and elderly people in Ukraine*"

Parliamentary Assembly of the Council of Europe (PACE) (2015), "*Explanatory report to the Resolution 2054 (2015) 'Equality and non-discrimination in the access to justice'*", adopted on 24 April 2015

Solodko A. and Doronyuk T. (2015), "*Analytical report on 'Policy on internally displaced persons in Ukraine'*", available at: [www.irf.ua/content/files/dp-2015-7.pdf](http://www.irf.ua/content/files/dp-2015-7.pdf)

Truchero Cuevas, J. and Khrystova G. (2015), "*Assessment Report on Compliance of Selected Ukrainian Laws with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)*", Council of Europe, Strasbourg, available at: [\\*rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168044e7bf](http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168044e7bf)

Uvarova O. (2015), "*Equality on the grounds of sex in the economic sphere: Ukraine's obligations according to the EU: Key EU Directives to ensure gender balance in the labour market and professional activity, their development in the practice of the Court of Justice*", Kharkiv, 150 pages

Volosevych I. et al (2015), "*Rural Women: A Comprehensive Study of the Status of Women who Live in Rural Areas*" UNDP and the Office of the Ukrainian Parliament Commissioner for Human Rights, Ukraine. Summary in English available at: [www.ua.undp.org/content/ukraine/en/home/presscenter/Articles/2015/05/04/new-study-on-rural-women-rights-reveals-gaps-and-challenges.html](http://www.ua.undp.org/content/ukraine/en/home/presscenter/Articles/2015/05/04/new-study-on-rural-women-rights-reveals-gaps-and-challenges.html)

UNDP (2015), "*Gender Inequality Index*" in Human Development Report. Available at: [hdr.undp.org/sites/default/files/2015\\_human\\_development\\_report\\_1.pdf](http://hdr.undp.org/sites/default/files/2015_human_development_report_1.pdf)

World Justice Project, Rule of Law Index (2015). Available at: [worldjusticeproject.org/sites/default/files/roli\\_2015\\_0.pdf](http://worldjusticeproject.org/sites/default/files/roli_2015_0.pdf)

**Appendix**  
**Questionnaire for judges**

**1. Do you know the content of these international documents:**

- a. International Covenant on Civil and Political Rights
- b. European Convention on Human Rights
- c. European Social Charter
- d. Convention on the Elimination of All Forms of Discrimination against Women
- e. Convention on the Rights of the Child
- f. Convention on the Rights of Persons with Disabilities
- g. Convention on the Elimination of All Forms of Racial Discrimination
- h. Convention on Action against Trafficking in Human Beings
- i. Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

**2. Do you apply international treaties in your practice?**

a) If yes;

*What international treaties do you apply?* \_\_\_\_\_

*How often do you apply international treaties? )* \_\_\_\_\_

*In what cases do you apply international treaties?* \_\_\_\_\_

b) If no, why not?

- i) The adequacy of national legislation to resolve disputes;
- ii) Requirements of international treaties too abstract;
- iii) Lack of adequate information about the content of relevant international treaties;
- iv) Other reasons (What are these reasons?) \_\_\_\_\_.

**3. One of the essential requirements of the rule of law is access to justice. In Ukraine justice is equally accessible for all, irrespective of:**

- |  |        |       |
|--|--------|-------|
| - <i>financial position of the person</i>                          | a) Yes | b) No |
| - <i>social status</i>   | a) Yes | b) No |
| - <i>place of residence (for residents of cities and villages)</i> | a) Yes | b) No |
| - sex (for women and men)  | a) Yes | b) No |
| - age (including for elderly people)                               | a) Yes | b) No |
| - the physical state of the person (disability)                    | a) Yes | b) No |
| - nationality or ethnic origin                                     | a) Yes | b) No |
| - religion   | a) Yes | b) No |
| - sexual orientation   | a) Yes | b) No |

**4. Do you know the content of these Ukrainian laws?**

- a) The law “On Ensuring equal rights and opportunities for women and men”?
- b) The law “On Principles of Prevention and Combating Discrimination in Ukraine”?
- c) The law “On preventing domestic violence”?

**5. Do you apply these laws?**

- a) Yes

In what cases and what laws do you apply?

- b) No.

**Model cases**

Select solutions you think are right.

*1. The plaintiff A. appealed to the court to recognise the unlawfulness of her dismissal, reinstall her at work and pay an average salary for the period of her forced absence. The employer did not offer her a vacant post in the company because this position involves night work. The employer relied on the fact that Article 175 of the Ukrainian Labour Code prohibits night work for women.*

*How should the court decide the case?*

The judges were asked to think of solutions to this case:

1.1 The claim should be satisfied; the prohibition of night work for women is discriminatory; it restricts women's right to equal access to work. If the position subject to redundancy was occupied by a man he would be offered the vacant post, with the need to work at night. The mere fact that an employer terminated the contract with a woman became an obstacle for the preservation of her employment at the same enterprise;

1.2 The proceedings must be suspended; the court appeals to the Supreme Court of Ukraine to address the Constitutional Court of Ukraine about the issue of constitutionality of Article 175 of the Labour Code;

1.3 The claim must be rejected; the legislator set a clear ban on the night work for women. This prohibition corresponds to Article 24 of the Constitution of Ukraine, which provides the possibility of special measures to protect the safety and health of women.

**90% of judges which were respondents chose answer 1.3.**

*2. Inspection on labour has made an administrative protocol under Article 41 of the Code on administrative offences in connection with the finding of the fact that a woman who has a child under the age of 3 was directed to go on a business trip. The protocol submitted to the court for a hearing on bringing the company director to administrative liability in the form of a fine of 30 to 100 non-taxable minimum (from 510 to 1700 UAH). The director explained that business trips are an important component of the job of this employee; otherwise she must be transferred to another position. In addition, a woman who is an employee in this case agreed to go to business trips regularly. She also pointed out that the father of the child has the opportunity to take care of the child when she is absent.*

*How should the court decide the case?*

2.1 The director must be held accountable, because in this case there is an unambiguous violation of Article 176 of the Labour Code, which prohibits business trips for women with children under the age of 3 without exceptions for cases where the woman herself agrees to a trip and Article 41 of the Administrative Code establishes liability for the violation of labour law;

2.2 The court must recognise the fact that the administrative violation has occurred, but considering the employee's claim, the company director should be released from the liability due to insignificance of the breach with an oral remark;

2.3 The court must waive Article 176 of the Labour Code because it contradicts the principle of equality and the international obligations of Ukraine, in particular Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women, as a woman who has a child under the age of 3, as opposed to the man who is the father of the child of the same age, cannot claim to occupy the position if it is required to travel regularly.

### **85% of judges who were respondents chose 2.1.**

*3. Plaintiff B. appealed to the court with a claim to recognise the refusal to hire her as unlawful. She informed that the announcement of a vacancy for a bulldozer driver was placed by the company which refused her this job because it is included on the list of heavy work and work with harmful and dangerous conditions, which prohibits the employment of women. How should the court decide the case?*

3.1 Refusal to accept women as bulldozer drivers should be declared illegal. It violates women's right to work and to be equal with men. In a similar situation a man who applies, would get the job. The list of prohibited work for women is not applicable because it acts contrary to higher legal force acts (the international treaties which Ukraine ratified, the law "On Ensuring equal rights and opportunities for women and men" etc.);

3.2 Refusal to accept women for the job of bulldozer drivers is lawful. This work is included in the list of prohibited work for women. The corresponding list is approved in accordance with Article 174 of the Labour Code, which is not recognised as unconstitutional, and therefore it retains its validity.

### **90% of judges which were respondents chose 3.2.**

Additionally, several model cases drawn from the practice of the Court of Justice were asked to review by judges.

*1. Imagine the situation. Under the current law of state X. the right to pension is guaranteed for the persons who had 15 years of work experience, but the 15 years are calculated based on full employment. A woman who appeals to the court worked as a cleaner for 18 years in part-time - her working time was 4 hours per day. The reason for this schedule was the fact that the woman is the mother of three children whom she took care of. How should the court decide the case?*

1.1 The Court has concluded that such a regulation leads to indirect discrimination. The proof of this is statistical figures: despite the fact that the legislation does not set any specifics in addressing the pensions of women and men, the actual situation is such that women are victims of such procedure because there are much more women than men among people who work part-time. This situation exists because traditionally, women do all the housework and raise children. Accordingly, there is a violation of the applicant's right to a pension;

1.2 The pension system is in the competence of the legislative body. It takes into account the economic capacity of the country. In this case, the law which requests to have the relevant full working experience corresponds to the requirements of reasonableness, proportionality and predictability (the person had known about the requirements of pension legislation and that, working only part-time, she or he cannot require the same pension than the one of people who worked full time). Consequently, there is no violation of the right to pension.

**90% of judges which were respondents chose 1.2.**

*2. Imagine the situation. The law prohibits the dismissal of pregnant women and women who are on maternity leave. It has been reliably established that the employer began to prepare the release of the woman when she just informed him about her pregnancy (the employer posted a vacancy with the prospect of career growth and indicated the time when such a vacancy will be available; this time coincided with the time of the future release of the woman). The employer informed her about her dismissal after the completion of the maternity leave. So formally he fulfilled the requirements of the law. What do you think, is there a violation of the ban?*

2.1 Yes, there is a violation. The main goal of the prohibition is to protect a pregnant woman or a woman who has recently given birth. The woman will be stressed if she feels under threat of dismissal or if she knows that the employer is already preparing her release. In addition, an employer who is preparing to release the woman immediately when she comes back from maternity leave cannot bring another motive of release than the fact that the worker has a small child;

2.2 No, there is no violation. The legislator expressed his position clearly by setting the ban on dismissal during the employee's pregnancy and the period when she is on maternity leave. The employer can terminate her employment contract.

**90% of judges which were respondents chose 2.2.**

*3. Imagine the situation. The law of state G. provides that achieving retirement age can be a ground for the dismissal of a person. There is a different retirement age for men and women in State G. It is 60 years old for women and 65 for men. Citizen S. of this state filed a lawsuit on the illegality of her dismissal after reaching 60 years; men are not subject to release when they are 60. What should be decided in the case?*

3.1 Dismissal is legal. The legislator who is guided by the desire to create new jobs for young people provides that the reach of retirement age is the independent ground for dismissal. This base is the same for both women and men;

3.2 Dismissal of women on the sole ground that they have reached retirement age which under national law is different for men and women is discrimination based on sex.

**90% of judges which were respondents chose 3.1.**