

TRAINING MANUAL FOR POLICE OFFICERS IN ARMENIA ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE



This manual on preventing and combating violence against women and domestic violence is developed for the Police Educational Complex of Armenia.

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TRAINING MANUAL FOR POLICE OFFICERS IN ARMENIA ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCES

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ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CoE	Council of Europe
CM	Committee of Ministers of the Council of Europe
CRC	Convention on the Rights of the Child
DV	Domestic violence
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECOSOC	United Nations Economic and Social Council
ECSR	European Committee of Social Rights
ESC	European Social Charter
EU	European Union
FRA	European Union Agency for Fundamental Rights
GBV	Gender-based violence
GEC	Gender Equality Commission of the Council of Europe
GRETA	Group of Experts on Action against Trafficking in Human Beings, under the Convention on Action against Trafficking in Human Beings
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence, under the Convention on Preventing and Combating Violence against Women and Domestic Violence
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
NGO	Non-governmental organisation
SDG	Sustainable Development Goals
VAW	Violence against women
WHO	World Health Organisation

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The Authors

BACKGROUND

The Council of Europe has assigned consultants to develop a training curriculum on violence against women and domestic violence and to support improvements to the existing training curriculum outline for the face-to-face course at the Police Educational Complex (PEC) of Armenia. The aim is, in cooperation with the PEC, to strengthen the capacity of the Police of Armenia to combat violence against women and domestic violence effectively. The Council of Europe provides expertise based on the European and Council of Europe standards. The course and manual were developed in the framework of the Council of Europe project “Path towards Armenia’s Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence”.

MAIN TRAINING COMPONENTS

Name	Training manual for Police officers on Preventing and Combating Violence against Women and Domestic Violence in Armenia
Beneficiaries	The materials are developed for use of the Police Educational Complex for the training of police officers.
Aim of the course	<p>This manual is designed to provide the participants with a solid understanding of the specific issues on combating gender-based violence against women throughout the daily police work. Particularly, participants will:</p> <ul style="list-style-type: none">• understand the international and national laws, roles and tasks of the police in protecting women against women and domestic violence;• recognise harmful gender stereotypes and how they are related to gender-based violence and unequal power relations between men and women;• gain knowledge about the nature of gender-based violence and its constituent elements;• understand the procedures and obligations for ensuring the protection and safety of victims as well as risk assessments and management from the aspect of gendered understanding of domestic violence;

Course contents

- familiarise with the basic principles of protecting the rights and freedoms as well as privacy and confidentiality of victims and children of domestic violence by using a victim-centred approach.

- Understand how to prevent domestic violence and hold perpetrators of domestic violence accountable.

The manual will provide the participants with a fundamental understanding of the concepts of gender, gendered stereotypes and gender-based violence against women. It will cover the forms and cycle of violence. The manual will cover the international standards outlined in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It will provide heightened knowledge of the ECtHR's jurisprudence regarding the practical application of the due diligence standard to investigations and prosecutions and the Court's jurisprudence on the application of Articles 2, 3, 8 and 14 as applied to domestic and sexual violence. The manual will cover all relevant national legislation, including the Domestic Violence Law, the Criminal and Criminal Procedure Codes, related administrative and civil procedure, and police protocols. Existing gaps between national legislation and international standards will be highlighted. The manual also covers the mechanisms for protecting human rights, which should be applied in police duties in domestic violence cases and practical guidance on handling cases of domestic violence, including communication with relevant stakeholders of a case.

Roles and tasks of the trainer The trainer guides the participants and facilitates learning processes. Mainly, the trainer:

- explains and presents,
- moderates discussions,
- organises scenarios,
- participates in demonstrations,
- poses and answers questions,
- gives tasks and evaluates them,
- observes and facilitates the learning process.

The trainer follows this process to make sure that the learning objectives of the course are met.

Assessment and evaluation The participants will be evaluated based on participants' activity in discussions and group works (40% of the grade) and individual exercises, test results (60% of the grade).

Plenary - through participation in discussions, asking questions, participating and contributing to group works, role plays, and similar group tasks.

Individually - points from exercises; points from tests.

1. INTRODUCTION

The World Health Organisation's (WHO) report estimates that 35 per cent of women worldwide experience physical or sexual violence, mostly perpetrated by an intimate partner¹. Violence against women is a universal human rights violation embedded in the unequal power relations between men and women and discrimination against women. Recognising that violence against women is gender-based violence encompasses an understanding that it is directed against a woman because she is a woman or that affects women disproportionately². Thus, violence against women needs a gender-sensitive approach in its prevention, prosecution and victim protection. The existence of gender-based violence presupposes building a gender-sensitive legal system, which is one of the preconditions for an appropriate systemic response.

A key precondition for the effective and quality performance of the police in protecting fundamental human rights and freedoms is the understanding of how crimes and violence affects men and women differently.

Domestic violence has distinct features as one of the forms of gender-based violence because, on the one hand, it disproportionately affects women more than men (although it does not completely exclude men), and on the other hand, men are the ones who are more often in the role of perpetrators.

Numerous international documents and conventions establish an obligation for the state to take active measures to prevent and protect victims of domestic violence, provide assistance and support to victims, and effectively prosecute the perpetrators of violence. Providing access to justice for victims of crime, including domestic violence victims, should be seen as the highest goal. The state should ensure that domestic violence victims receive maximum protection, that all domestic violence allegations are thoroughly and quickly investigated, and that the perpetrators are brought before justice.

Formal recognition of victims, respectively alleged victims, does not in itself mean the realisation of the rights and needs of victims of domestic violence. The position and role of the victims and their participation in the proceedings are legally regulated. In addition to an appropriate and sufficient legal framework, the successful protection of the victims' rights require the skilful and trained professionals and sufficient financial resources. Developing gender sensitivity among professionals is linked to recognising and dealing with acts of violence against women. It requires building a culture of intolerance towards gender-based violence and tackling gender prejudice.

¹ World Health Organisation (2013), Global and regional estimates of violence against women, at: <https://www.who.int/publications/i/item/9789241564625>.

² The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 2011, Article 3. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008482e>

1.1 AIM OF THE COURSE

1. Understand the international and national laws, roles and tasks of the police in protecting individuals against violence against women and domestic violence;
2. Recognise harmful gender stereotypes and how they are related to gender-based violence and unequal power relations between men and women;
3. Gain knowledge about the nature of gender-based violence and its constituent elements;
4. Understand the procedures and obligations for ensuring the protection and safety of victims as well as risk assessments and management from the aspect of gendered understanding of domestic violence;
5. Familiarise with the basic principles of protecting the rights and freedoms as well as privacy and confidentiality of victims and children of domestic violence by using a victim-centred approach;
6. Understand how to prevent domestic violence and hold perpetrators of domestic violence accountable.

1.1.2. Competencies/outputs

At the end of the course, the police officers will:

- know the laws, standards, and mechanisms for the protection of human rights applied in police duties in cases of domestic violence;
- apply the relevant legislation and guidance for dealing with cases of domestic violence;
- know the elements of the crime of domestic violence and the effective police response to these crimes;
- respect and protect victims and witnesses;
- identify gender inequality and unequal power relations and know which measures to apply in domestic violence cases;
- effectively identify risks, conduct risk assessments and ensure safety planning;
- apply sufficient measures to perpetrators to ensure their accountability and the safety of victims;
- cooperate effectively with relevant stakeholders (the Investigative Committee, support services, etc.).

1.2 METHODOLOGY

This manual ensures consistency and coherence with the relevant international human rights standards and national legislation addressing gender equality, violence against women, victims' rights, and domestic violence. It uses the following approaches:

- **An incremental approach:** each training session is built on the previous training session's learning outcomes with follow-up actions undertaken by participants.
- **A practical approach:** each training session links to the Armenian police's tasks and responsibilities, focusing on mechanisms and tools required to combat violence against women and domestic violence effectively and to protect victims.
- **A participatory approach** is to keep technical inputs and presentations short and encourage participation. The manual ensures relevance to the participant's daily work by using exercises related to their tasks and responsibilities. Sharing experiences among participants will constitute an essential learning methodology throughout the course.

This manual uses **the law-in-context method of comparative legal approach**. The law-in-context method introduces Armenian law and by-laws on gender-based violence and domestic violence. It shows how they work in practice as well as provides a comparison of the legal framework of the Republic of Armenia's (hereinafter RA³) with international obligations, international standards, and promising practices. The manual's cornerstone is to create an understanding of violence against women and domestic violence (forms, consequences), cover all stages of the law enforcement response to violence against women and domestic violence while ensuring human rights and a victim-centred approach.

The manual also uses **the case study teaching method**⁴, which consists of a short narrative and provides the course participants with an overview of the situation, background of the individuals involved and the events that led to the problem or decision at hand. Cases are based on interviews, public sources and real life events. Cases will provide practical tools and ways to deal with cases.⁵ Case studies are experiential. Police officers/students are encouraged to "walk in the shoes" of the people in the case. The assignment questions will ask police officers/students to make decisions or outline a plan based on the role they are playing.

Case studies can address the following questions:

- What are your goals as a police officer?
- As a police officer, who is your client (victim, witness, perpetrator)? What are your client's goals?

³ <https://www.mfa.am/en/overview>

⁴ The Case Study Teaching Method, Harvard Law School.

⁵ Adapted from "How to Approach a Case Study in a Problem-Solving Workshop", by John Palfrey and Lisa Brem. Permission is granted by Harvard Law School on 10 September 2020.

- What constraints and opportunities do you face?
- What options are available to you?

Police officers/students can and should bring their own experience and judgment to the role and situation. They can inhabit the role but should be aware of how the real world operates and how a typical situation could play out. Special skills and experience learnt from the case study on the part of police officers/students can be beneficial to them in solving real-life problems.

In these case studies and real-life, one critical part is assessing what facts we do not know. At an early stage in the case study, police officers/students need to think about what information they still need to gather in order to solve the case. The example cases are meant to allow time to develop fact patterns to decide measures that should be taken.

No one can ever know all the salient facts involved before making a decision. When the time comes to write up the ideas or make a recommendation, one can make assumptions and come up with the best idea or guess given the facts in the case, the supplemental readings, and participants' own experience. Assumptions should be well-grounded and based on the available evidence.

Some case studies in this manual give police officers/students only the fundamental problem with minimal background, while others will offer a wealth of information in both the text and exhibits or appendices. This information creates a rich context in which to operate. They are not designed to have hidden meanings or to provide definitive answers to the case problem. What do they tell about the problem, the situation, the client (victim, witness, perpetrator), and the client's goals and motivations? Police officers/students can choose to use or disregard some information if deemed irrelevant.

There is no single "right" answer, but there are better answers and less good answers. Some answers may be even wrong if they can lead, for example, to the danger of victim or secondary victimisation. Cases are designed to lead to a rich discussion and teamwork. The narratives for cases are chosen precisely because they lead to a range of possible solutions. Approaches or solutions should be convincing, based on facts and context-analysis, and seem plausible ways to meet clients' (victim, witness, perpetrator) goals. Solutions will be presented to the course participants and trainers.

This course is designed to give them practical skills and tools and help them practice problem solving and teamwork skills. The learning methodology will help police officers/students position themselves in the role and perspective of a victim (witness, perpetrator). The process of figuring out how to solve problems as a team, drawing on various strengths of the individuals that comprise the group, is also a significant part of the learning method.

1.3 STRUCTURE OF THE TRAINING OF THE TRAINERS' MANUAL

This manual's principal intent is to serve as a resource tool that provides for a range of topics and interactive learning exercises and case studies. However, individual professionals may also use the manual as a learning resource for background theoretical and practical information and a source of promising practice models. Firmly grounded on the standards of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the manual is divided into seven chapters.

- Chapter 1: Introduction and methodology of the manual
- Chapter 2: Understanding violence against women and domestic violence
- Chapter 3: Understanding the legal context of police conduct including international and national legal standards
- Chapter 4: Police response: Identifying risks, how to assess risks and police duties in risk management
- Chapter 5: Police response: Safety and protection of victims, avoiding secondary victimisation, victim-blaming and false perceptions
- Chapter 6: Police response: Police interaction with victims, perpetrators and witnesses
- Chapter 7: Inter-agency collaboration and coordination

Every chapter begins with introducing each topic's theoretical background and is followed by practical exercises and key messages. Trainers may apply the manual to customise their training sessions according to the participants' needs and interests. The manual includes the hand-outs, case-study companion, resources and additional reading for those interested in further expanding their knowledge base.

2. DEFINING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

Goal: Police officers will have in-depth knowledge of the nature of violence against women, its causes, consequences and disproportionate impact, and of the police response that complies with international and national standards prioritising the wellbeing of women victims and holding perpetrators accountable.

Key learning points:

- Understand the nature of violence against women, its causes and consequences, and how it impacts women and girls differently and disproportionately;
- Understand the forms and dynamics of violence against women and domestic violence;
- Identify the facts and key elements of gender-based violence;- Identify the effects of domestic violence on the victim.

2.1. UNDERSTANDING GENDER-BASED VIOLENCE AND VIOLENCE AGAINST WOMEN

GENDER-BASED VIOLENCE (GBV) is a phenomenon deeply rooted in gender inequality and continues to be a severe human rights violation within all societies. Gender-based violence is violence directed against a person because of their gender. Both women and men experience gender-based violence, but the majority of victims are women and girls.

Gender-based violence affects women disproportionately. It differs from other types of violence in that the victim's gender is the primary motive for the acts of violence described under it. In other words, gender-based violence refers to any harm that is perpetrated against a woman because she is a woman, and that is both the cause and the result of unequal power relations based on perceived differences between women and men that lead to women's subordinate status in both private and public spheres⁶. This type of violence is deeply rooted in the social and cultural structures, norms and values that govern society and is often perpetuated by the culture of denial and silence.

CEDAW General Recommendation No. 19 underscores the link between gender-based violence and traditional gender stereotypes and violence. It reads:

“Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence

⁶ The Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011, Article 3.

or coercion, such as family violence and abuse . . . Such prejudices and practices may justify gender-based violence as a form of protection or control of women”⁷.

VIOLENCE AGAINST WOMEN (VAW) is a grave violation of human rights and a severe social, health, socioeconomic, development and even a political issue as it affects not only survivors and perpetrators of violence but also their families, communities, and countries. Violence against women means “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”⁸.

The Declaration on the Elimination of Violence against Women (DEVAW) defines “violence against women” as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”⁹.

Prevalence of violence against women

Global estimates published by WHO indicate that about 1 in 3 (35%) of women worldwide have experienced either physical and sexual intimate partner violence or non-partner sexual violence in their lifetime¹⁰. According to a WHO study, GBV against women is one of the most widespread violations of human rights, with 25,4% of women in Europe and Central Asia who have experienced physical or sexual violence by an intimate partner or sexual violence by a non-partner¹¹. A large part of the world’s population suffers and lives with GBV.

In Armenia, UNFPA has researched forms of intimate partner violence (IPV)¹². The survey data clearly demonstrated that psychological violence is the most prevalent of the various forms of intimate partner violence and is followed by economic abuse and physical violence (see table 1). Concerning psychological violence, the most prevalent acts, as reported by men, were insulting a female partner or deliberately making her feel bad about herself (49.4%) and doing things to scare or intimidate her on purpose (10.1%). For women, the most prevalent acts included those (43.6% and 9.2% respectively), and humiliation by the partner in front of other people (9.8%).¹³

⁷ CEDAW General Recommendation No. 19: Violence against women, 1992, para 11.

⁸ The Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011, Article 3.

⁹ Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104 of 20 December 1993.

¹⁰ <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>

¹¹ World Health Organisation, London School of Hygiene and Tropical Medicine, South African Medical Research Council, 2013. Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence.

¹² WHO defines intimate partner violence as a “behaviour within an intimate relationship that causes physical, sexual or psychological harm, including acts of physical aggression, sexual coercion, psychological abuse and controlling behaviours. This definition covers violence by both current and former spouses and partners”. Available at: <https://apps.who.int/violence-info/intimate-partner-violence/> (accessed on 23 July 2021).

¹³ UNFPA, Men and Gender Equality in Armenia, 2016 in Mann, Lori and Sargsyan, Lusine, 2018, pg. 47-52, Training Manual on Preventing and Combating Violence against Women and Domestic Violence in Armenia. Available at: <https://rm.coe.int/eur-justice-eng/168093c14a>

As regards economic abuse, only one type of act figured prominently in the reports of both men and women (19.3% and 19.5% respectively), that is, women were prohibited by their intimate partner from getting a job, going to work, trading or earning money. Two types of physical violence were the most prevalent, but to a considerably lesser extent than in other forms of violence. Those are a man slapping his female partner or throwing something at her that could hurt her (12.9% of men and 10.3% of women) or pushing or shoving her (11.4% and 7.5% respectively).¹⁴

Table 1: Forms of intimate partner violence in Armenia			
Percentage of men who perpetrated psychological violence against a female intimate partner	20.8%	Percentage of women subjected to psychological violence by a male intimate partner	45.9%
Percentage of men who perpetrated economic abuse against a female intimate partner	53.3%	Percentage of women subjected to economic abuse by a male intimate partner	21.3%
Percentage of men who perpetrated physical violence against a female intimate partner	17.4%	Percentage of women subjected to physical violence by a male intimate partner	12.5%
Percentage of sexual violence (perpetrated and reported by men)			14.6%
Experienced at least one type of violence (Percentage of women reporting - through self-administered questionnaire - having been subjected to moderate & grave acts of physical violence outside the home in the last 3 months)			3.7%
Percentage of male respondents reporting that they exhibited controlling behaviour			95.5%

¹⁴ Ibid.

The measures of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the convention) are firmly based on the premise that violence against women cannot be eradicated without investing in greater equality between women and men and that, in turn, only real equality between women and men and a change in power dynamics and attitudes can end violence against women. The key to eradicating violence against women is not crime control, as it should be stopped before it even happens. Equality means that women and men are equal partners, have the same rights and responsibilities, the same opportunities and that their contribution to society is equally valued and respected. Consequently, the convention contains a number of provisions that aim at advancing the status of women in society *de jure* and *de facto*. Prejudices, customs, traditions, and other practices based on the inferiority of women or stereotyped roles for women and men abound. Naturally, they influence gender relations and interpersonal relationships. They also affect how women are treated and perceived by public institutions and societal structures, but also by, for example, the legal system. For this reason, the Council of Europe convention aims at changing attitudes and eliminating stereotypes not only at the level of individuals but also at the level of institutions¹⁵.

To understand the nature, causes and consequences of GBV, it is useful to reflect on differences between sex and gender and gender roles, stereotypes, and discrimination.

Almost every segment of life is different for men and women. It is undeniable that biological differences between the sexes have an impact on the differences in the lives of women and men. The sex differences between men and women refer to the different body sizes and structures, different hormone levels and different roles in reproduction. However, gender defines activities, roles and behaviours that are appropriate for both women and men and regulates their relationships in a society. Gender roles are not given but defined by a society.

¹⁵ The Council of Europe Convention Preventing and Combating Domestic Violence against Women and Domestic Violence, 2011, see for example Articles 1, 3, 4, 6, 12 and 14.

Activity 1: “Sex or gender.”

Aim: This exercise aims to identify the differences between sex and gender.

Duration: 15 min

Method: Individual work (5 min), whole group discussion (10 min).

Resources: Hand-out “Sex or gender”, flipchart, markers

Notes for the trainers: The participants are divided into two groups, and each participant is given Hand-out “sex or gender”. Group 1 is asked to mark the statements that refer to sex, and group 2 to mark the statements that refer to gender. The trainer needs to develop a positive atmosphere. The trainer writes down the participants’ answers on a flipchart and initiates guided discussion on sex/gender differences. In particular, the trainer explains that sex differences are related to biological characteristics, while gender differences are socially and culturally created. The discussion continues with explanations that assigned gender roles to change over time and across cultures. The trainer uses Box 1. Difference between “gender” and “sex” in the discussion and shares it with the participants.

Box 1. Difference between “gender” and “sex.”

Gender	Sex
Different roles and social aspect between male and female. Changeable across time.	The different biological and physical aspect between male and female. Often permanent.
Product of society, culture, tradition, shaped by teaching and learning.	Inborn.
Varies between regions, historical periods.	Universal: identical all over the world.

Hand-out “Sex or gender”

Group 1 is asked to mark the statements that refer to sex, and group 2 to mark the statements that refer to gender.

SEX or GENDER

1. *Women can give birth and breastfeed, but men cannot.*
2. *Men officers use significantly less parental leave for their children than women officers.*
3. *Men produce more testosterone than women.*
4. *Women participate in a small percentage among senior police officers.*
5. *In general, men officers have more muscle mass than women officers.*
6. *It is more natural for men officers to work with violent offenders and for women officers to work with children, juvenile and petty crimes.*
7. *Women are at higher risk for sexual violence than men.*
8. *On average, men officers earn more than women officers.*
9. *Men officers have better results in collective sports than women officers.*
10. *Police uniform looks better on men officers.*

What is the difference between gender and sex?

The World Health Organisation (WHO) offers a useful summary of this:

SEX refers to the biological and physiological characteristics that define men and women. **GENDER** refers to the socially constructed roles, behaviours, activities, and attributes that society considers appropriate for men and women.

To put it another way: ‘male’ and ‘female’ are sex categories, while ‘masculine’ and ‘feminine’ are gender categories. International conventions give similar definitions. In the context of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the convention), the term gender, based on the two sexes, male and female, explains that there are also socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for women and men. Research has shown that specific roles or stereotypes reproduce unwanted and harmful practices and contribute to making violence against women acceptable. Article 12 (1) of the convention frames the eradication of prejudices, customs, traditions, and other practices which are based on the idea of the inferiority of women or on stereotyped gender roles as a general obligation to prevent violence. Elsewhere, the convention calls for a gendered understanding of violence against women and domestic violence as a basis for all measures to protect and support victims. This means that these forms of violence need to be addressed in the context of the prevailing inequality between women and men, existing stereotypes, gender roles and discrimination against women in order to respond to the complexity of the phenomenon adequately. The term “gender” under this definition is not intended as a replacement for the terms “women” and “men” used in the convention¹⁶.

¹⁶ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence.

GENDER ROLES are context/time-specific and changeable. The economic and political situations, as well as the geographical environment, influence gender roles. Age, class, race, ethnicity, religion, morality also have an impact on gender roles. Gender roles are transmitted and imposed from an early age through the processes of socialisation that begin in the immediate family and community and continue in the educational process and further socialisation in all segments of social life: religion, science, media, cultural and legal norms, sports, labour relations, etc.. The definition of gender roles depends on the specific culture and the historical context. Gender roles vary from one culture to another, and often within one culture, and are variable over different periods.

The community determines which characteristics and behaviours of men and women are acceptable. Beliefs about the typical behaviour and characteristics of women and men are often accepted and adopted automatically, without question. For example, child-rearing is often classified as a female role. However, it is a female gender role, not a female sex role, as both male and female can do it. It is a society that ascribes these roles. Roles are learned through observation and instruction. Society ensures conformity by example, penalty or persuasion. Those who do not conform may be punished or ignored or cut off in some way. Gender is a basis on which people are labelled and judged, just like class, race, and religion¹⁷.

Box 2. Gender roles

Gender	Sex
Childcare	Pregnancy and childbirth
Men are rational, and women are emotional	Muscle mass / physical strength
Men are the breadwinners in the family	Growing beards

The Article 3(1) (1) RA Law on Providing Equal Rights and Equal Opportunities for Women and Men¹⁸ defines the term gender as an “acquired, socially fixed behaviour of people of different sexes, a social perspective on the relationship between women and men, reflected in all areas of public life, including politics, economics, law, ideology, culture, education, science and health¹⁹.”

¹⁷ Preventing and responding to Domestic Violence. UNODC. Hanoi 2011.

¹⁸ This Law has incorporated to the maximum extent the requirements of the Convention on the Elimination of All Forms of Discrimination against Women and the CEDAW Committee’s recommendations: it introduces the concept of “gender-based discrimination” into the legislation; prohibits discrimination on the grounds of sex; introduces the concepts of direct and indirect discrimination into the legislation; provides an opportunity and a procedure for protecting citizens from discrimination on the grounds of sex; introduces legal responsibility of officials and employers for discrimination; contributes to the development of culture of gender equality and to the elimination of gender stereotypes that underlie discriminatory practices; outlines the spheres, framework and timeline for the use of temporary special measures aimed to redress a gender imbalance; codifies the necessity to establish national machinery for gender equality; makes provisions for the monitoring and reporting mechanism concerning the implementation of gender policies.

¹⁹ RA Law on Providing Equal Rights and Equal Opportunities for Women and Men, HO-57-N, 2013, Article 3(1) (1).

GENDER STEREOTYPES are linked with assigned gender roles. These stereotypes are public presentations, images and views of what women or men are like. In summary, a set of typical differences in behaviours, values, abilities that is attributed to all men or women. Gender stereotypes are generalisations about women or men and are usually based on the assumption that men or women have a characteristic or typical behaviour that is characteristic only of them (only men or only women). Gender stereotypes create a false image of a woman or a man because they group people based on how others see them, not how they themselves are or would like to be perceived. Namely, the typical characteristics of the “group of men” are attributed to each man, while the typical characteristics of the “group of women” are attributed to each woman. In general, the characteristics attributed to the “group of women” are the opposite of the characteristics attributed to the “group of men”. Gender stereotypes “are preconceived social and cultural patterns or ideas whereby women and men are assigned characteristics and roles determined and limited by their sex. Gender stereotypes both result from and are the cause of deeply ingrained attitudes, values, norms, and prejudices. They are used to justify and maintain the historical power relations of men over women, as well as sexist attitudes which are holding back the advancement of gender equality. Gender stereotypes and patriarchy negatively affect men and boys too. Stereotypes about men and boys also result from and are the cause of deeply ingrained attitudes, values, norms, and prejudices. Hegemonic masculinities are a contributing factor to maintaining and reinforcing gender stereotypes”.²⁰

“Research has shown that certain roles or stereotypes reproduce unwanted and harmful practices and contribute to making violence against women acceptable. Article 12 (1) of the Council of Europe convention, to overcome such gender roles, frames the eradication of prejudices, customs, traditions and other practices which are based on the idea of the inferiority of women or on stereotyped gender roles as a general obligation to prevent violence against women²¹.”

According to the Konstantin Markin v. Russia case²²: “... the advancement of gender equality is today a major goal in the member states of the Council of Europe, and very weighty reasons would have to be put forward before such a difference in treatment could be regarded as compatible with the Convention. [...] In particular, references to traditions, general assumptions or prevailing social attitudes in a particular country are insufficient justification for a difference in treatment on the grounds of sex. For example, States are prevented from imposing traditions that derive from the man’s primordial role and the woman’s secondary role in the family.” The Court added, “[...] gender stereotypes, such as the perception of women as primary child-carers and men as primary breadwinners, cannot, by themselves, be considered to amount to sufficient justification for a difference in treatment, any more than similar stereotypes based on race, origin, colour or sexual orientation.”

²⁰ Council of Europe, Committee of Ministers. (March 2018). Council of Europe Gender Equality Strategy 2018-2023. para.39 and 41.

²¹ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, (CETS No. 210), para 43.

²² ECtHR, Konstantin Markin v. Russia, No. 30078/06, 22 March 2012, paras 127, 143.

Box 3. Gender dichotomies²³

The common associations of women (femininity)	The common associations of men (masculinity)
<ul style="list-style-type: none"> • modesty; • family; • home, caring about children and elders; • emotional;weak and gentle; • cooperative;sensitive; • sex object; • attractive physical appearance; • submissive; • intuitive; • inert 	<ul style="list-style-type: none"> • superior; • business; • the breadwinner of the family; • rational; • powerful and strong;competitive; • insensitive; • sexually aggressive; • attractive because of the achievementsassertive; • rational; • ambitious

Source: Adapted from Davies, P. p. 11²⁴

Most Armenians adhere to traditional gender norms in which men are considered the breadwinners and are not expected to undertake domestic responsibilities, including childcare. Even if a married woman works outside the home and earns income, she is still expected to continue to carry out all unpaid domestic responsibilities, including childcare. Women are also expected to take parental leave to care for their new-born children, whereas men are not. Furthermore, there is still the underlying expectation that a husband must out-earn his wife.²⁵

According to Article 3(1) (13) of the RA Law on Providing Equal Rights and Equal Opportunities for Women and Men, gender stereotypes are “hardened perceptions of the differences between women and men in a given society at a given time²⁶.”

The Compilation report on Armenia, by the Human Rights Council’s Working Group on the Universal Periodic Review, thirty-fifth session on 20-31 January 2020, highlighted equality and non-discrimination and CEDAW’s concerns about the persistence of discriminatory stereotypes concerning the roles and responsibilities of women and men in the family and society²⁷. The CEDAW²⁸ also recommended the State to introduce mandatory education on gender equality, women’s rights, and gender-based violence in school curricula at the primary and secondary levels, as well as in legal training. It also recommended that the State continue to review all school textbooks to eliminate discriminatory gender stereotypes²⁹.

²³ The word dichotomy means treating two things as opposite or entirely different. Like sex, gender has typically been viewed as having two distinct categories – maleness (or masculinity) and femaleness (or femininity) — which are mutually exclusive.

²⁴ Davies, P., “(2011). Gender, crime, and victimization. SAGE. London.

²⁵ USAID/Armenia Gender Analysis Report 2019: https://www.researchgate.net/publication/335858505_USAID-Armenia-Gender-Analysis-Report

²⁶ RA Law on Providing Equal Rights and Equal Opportunities for Women and Men, HO-57-N, 2013, Article 3(1) (13).

²⁷ Report of Human Rights Council Working Group the Universal Periodic Review Thirty-fifth session on 20-31 January 2020, Compilation on Armenia, para 19: <https://undocs.org/A/HRC/WG.6/35/ARM/2>

²⁸ CEDAW/C/ARM/CO/5-6, para. 15 (d) and (f)

²⁹ Report of Human Rights Council Working Group the Universal Periodic Review Thirty-fifth session on 20-31 January 2020, Compilation on Armenia, para 77: <https://undocs.org/A/HRC/WG.6/35/ARM/2>

Most societies are based on systems where men have more financial and political power than women do. These are called “patriarchal societies”. In Armenia, widespread negative gender stereotypes impede the advancement and progress of women and the attainment of gender equality, and some traditional practices harmful to women (primarily gender-based violence, son preference and sex-selective abortions) are still prevalent in society³⁰.

There are high levels of acceptance of intimate partner violence among both sexes. Patriarchal and traditional rigid social norms and perceptions regarding masculinity, femininity, gender equality, sexuality, the division of household tasks, and gender-based violence (intimate partner violence and peer violence) remain prevalent in Armenian society³¹. For example, the 2016 UNFPA study found that 66 per cent of men and 63 per cent of women reported that “if a woman betrays her husband, he can hit her³².”

Men are considered to be the decision-making heads of families and households. This power is maintained by the belief that men are stronger, more capable, and naturally more suited for leadership. Unequal access to education, skills, job opportunities and financial resources also maintain unequal power relations. Violence is used to maintain power and control.

At present, women are more disadvantaged than men in society at all levels. Therefore, action for gender equality tends to pay more attention to women than men in order to address gender imbalances. Promoting gender equality means ensuring that similar opportunities are available to both women and men and that society places the same values on both the similarities and differences between women and men and the different functions of each. Different measures might be needed for women and men to ensure that they are fairly treated³³.

Activity 2: “Traditional feminine and masculine traits.”

Aim: This exercise aims to recognise the existence of ‘opposite traits’

Duration: 15 min

Method: Individual work (5 min), whole group discussion (10 min).

Resources: Hand-out “Traditional feminine and masculine traits”, flipchart, markers

Notes for the trainers: The participants are divided into two groups, and each participant is given Hand-out “Traditional feminine/masculine traits”. Group 1 is asked to mark the traits that refer to femininity, and group 2 to mark the traits that refer to masculinity. The trainer asks one person from each group to present the traits they have identified. The trainer then writes the suggested traits down on the flipchart.

A **summary by the trainer** consists of marking the common opposite traits and provides arguments in support of breaking down socially constructed distinctions. The trainer asks the participants whether masculine and feminine traits are related to sex or gender and elaborates that differentiation between masculine and feminine traits is socially constructed. During the discussion, the trainer provides the Box 3: Gender dichotomies (see above).

³⁰ Men and Gender Equality in Armenia, UNFPA, 2016, p. 30.

³¹ UNFPA. Men and Gender Equality in Armenia, 2016. Available at:

³² Ibid.

³³ Preventing and responding to Domestic Violence. UNODC. Hanoi 2011.

Hand-out “Traditional feminine and masculine traits.”

The group 1 is asked to list five feminine traits, and the group 2 to list five masculine traits

Feminine traits	Masculine traits
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

GENDER PREJUDICES are often negative judgements representing assessment, valuation, and emotional response to one or a group of women or one or a group of men before having any information. Gender prejudices are based on gender stereotypes and sexism

SEXISM is a particular form of prejudice that is based on the belief that people are superior or inferior because of sex. Sexism and sexist behaviour are rooted in and reinforce gender stereotypes. Most often, sexism reflects prejudices about the inferiority of women over men. Negative stereotypes about women and the asymmetry of power related to gender and gender roles are fertile ground for sexism. “Sexism is any act, gesture, visual representation, spoken or written words, practice or behaviour based upon the idea that a person or a group of persons is inferior because of their sex, which occurs in the public or private sphere, whether online or offline, with the purpose or effect of violating the inherent dignity or rights of a person or a group of persons; or resulting in physical, sexual, psychological or socio-economic harm or suffering to a person or a group of persons; or creating an intimidating, hostile, degrading, humiliating or offensive environment; or constituting a barrier to the autonomy and full realisation of human rights by a person or a group of persons; or maintaining and reinforcing gender stereotypes.”³⁴

GENDER-BASED DISCRIMINATION refers to any distinction, exclusion or restriction based on gender roles and norms that prevent a person from enjoying human rights may be referred to as gender-based discrimination. According to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),³⁵ gender-based discrimination against women is defined as “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 the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”. Such discrimination can be either direct: when a law, policy or practice explicitly discriminates against women, or indirect: when laws, policies, or practices, despite being seemingly gender-neutral, have a detrimental effect on women. Indirect discrimination

³⁴ Council of Europe, Committee of Ministers. Recommendation CM/Rec (2019)1 on Preventing and Combating Sexism: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168093b26a>

³⁵ UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979. Article 1. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

against women may occur when laws, policies and programmes are based on seemingly gender-neutral criteria, which, in their actual effect, have a detrimental impact on women. Gender-neutral laws, policies and programmes unintentionally may perpetuate the consequences of discrimination. They may be inadvertently modelled on male lifestyles and thus fail to take into account aspects of women's life experiences that may differ from those of men. These differences exist because of stereotypical expectations, attitudes and behaviour directed towards women and unequal power relations between men and women³⁶. States are obliged to eliminate all forms of discrimination against women, no matter whether it is perpetrated by state authorities or private organisations, enterprises or individuals.³⁷

For better understanding gender-based discrimination, it is useful to elaborate on the term gender equality. In general, **GENDER EQUALITY** refers to the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognising the diversity of different groups of women and men. Gender equality is not only a women's issue but should concern and fully engage men as well as women.³⁸

Activity 3: "Mission Planet Earth."³⁹

Aim: This exercise aims to introduce the representation of gender roles in print media, creating a supportive atmosphere for further work.

Duration: 60 min

Method: Small group exercise (15-20 min), whole group discussion (25 min), summary and input by the trainer (15 min).

Resources: Hand-out, four copies of different daily newspapers, flipchart, markers.

Instructions:

Step 1. The trainer asks participants to form smaller groups of four-five participants. The trainer supports creating a positive atmosphere for finding gaps and solutions instead of accusing a journalist of how they report. Each group receives one copy of the daily or weekly newspaper. Participants are introduced to a fictional situation:

³⁶ UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) (2004). General recommendation No. 25 on Temporary Special Measures. (CEDAW/C/GC/25). Available at:

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3733_E.pdf

³⁷ CEDAW General recommendation No. 28.

³⁸ UN Women. 2001. "Gender Mainstreaming: Strategy for promoting gender equality", available at: www.un.org/womenwatch/osagi/pdf/factsheet1.pdf

³⁹ Adapted from: Ignjatovic, T., Bogdanovic, M. (2004). **O rodnoj ravnopravnosti u obrazovanju, I modul**, [About Gender equality in the education, Module I] Priručnik za edukatore/ke, u okviru projekta: *Škola za ravnopravnost: prvi korak ka uključivanju tematike rodne ravnopravnosti u redovne programe za učenike/ce i nastavnike/ce u Srbiji*. Beograd: Centar za ženske studije, Fakultet političkih nauka (unpublished material)

“You are from the planet. You and Xox are sent on a vital mission on planet Earth. Previous mission from Xox found that intelligent beings are living on Earth who calls themselves “People”, and they are quite different from each other, primarily in appearance and skin colour, language and temperament, technological development, manner, and lifestyle. Besides, they found that people differ by sex, but they could not explain that difference. You are sent on a new mission with the task to describe and explain these sex differences. When you arrived on Earth, there was a big accident. At first, the people were terrified and fled. Then some grey-armoured and angry creatures appeared and began to threaten to destroy you. All you have from your mission are these newspapers that you managed to grab from some store at the last minute. You have a translation program, but you do not have time because you have only 20 minutes before the first call to Xox. Start studying the newspaper right away and write a short report on people and sex. Remember, the newspaper you have is your only source of information.”

Step 2. Each group is tasked to prepare a report to Xox describing and explaining sex differences between people. The report should reflect on what they have learned from the newspapers about people and their sexes. Allow the participants to brainstorm and work independently in groups discussing the following questions:

“Reporting to Xox”

- How many members of one sex and how many of the other?
- What do they look like, how are they dressed?
- What are their roles, and what do they do?
- What differences can be followed as presented in the newspapers?

Step 3. The trainer reconvenes the group and asks a reporter from each group to share their “report to Xox” and their insights in the exercise. The trainer writes down participants’ observations in the order that they are given on a flipchart. A summary by the trainer consists of marking the significant phenomena observed by the participants while focusing on the following questions:

- Does media presentation depict reality realistically?
- Why are we used to such a presentation of reality?

During the guided discussion, the trainer should also highlight the following areas:

- Numbers: how many men and women in newspaper reporting
- Pages: who is on the front page, ‘serious pages.’
- Roles/areas: in what roles are men and women presented, any exceptions and from what
- Characteristics: profound, brave, funny, successful, beautiful, and the like.
- Relationships between sexes, appearance, clothes

The media tells us - “the world looks like this”. They reflect our social reality, but they also shape reality by favouring specific topics, events, one sex, individual attitudes, values.

The media shape and nurture desirable representations of gender identities and roles: women's experiences and topics in private spheres as opposed to the public, which belongs to men. "Once conversations about gender stereotypes are opened and accepted, all other social differences are expressed and accepted more easily."⁴⁰

Hand-out "Mission Planet Earth"

For this exercise, you are asked to imagine that you are an alien on a mission to Earth with a task to describe and explain sex differences between people. You must report to your planet Xox in 15 minutes. The only source for your report is the newspaper in front of you.

"You are from the planet. You and Xox are sent on a critical mission on planet Earth. Previous mission from Xox found that intelligent beings are living on Earth who calls themselves "People", and they are quite different from each other, primarily in appearance and skin colour, language and temperament, technological development, manner, and lifestyle. Besides, they found that people differ by sex, but they could not explain that difference. You are sent on a new mission with the task to describe and explain these sex differences. When you arrived on Earth, there was a big accident. At first, the people were terrified and fled. Then some grey-armoured and angry creatures appeared and began to threaten to destroy you. All you have from your mission are these newspapers that you managed to grab from some store at the last minute. You have a translation program, but you do not have time because you have only 20 minutes before the first call to Xox. Start studying the newspaper right away and write a short report on people and sex. Remember, the newspaper you have is your only source of information."

Reporting to Xox:

- How many members of one sex and how many of the other?

- 1.
- 2.
- 3.

- What do they look like, how are they dressed?

- 1.
- 2.
- 3.

- What are their roles, and what do they do?

- 1.
- 2.
- 3.

⁴⁰ Miliwojević Snježana. (2004). "Women and the Media: Strategies of Exclusion". *GENERO: Journal of Feminist Theory and Cultural Studies, Special Issue on Media*, available at: <https://zenskestudie.edu.rs/en/publishing/genero-journal/124-genero-special-issue-on-media-2004>

- What differences can be followed as presented in the newspapers?

- 1.
- 2.
- 3.

Box 4. Gender dimensions of violence against women⁴¹

- **Gender-based violence mainly affects women and girls. Women and men experience violence in different contexts:** while men are more likely to die as a result of armed conflict, violence by strangers and suicide, women are more likely to die at the hands of somebody they know, including intimate partners.
- **In many societies, prevailing attitudes subordinate women to men and entitle men to use violence to control women.** These attitudes serve to justify, tolerate, or condone violence against women.
- **Women survivors of violence face specific barriers when seeking access to support services.** This is because women have fewer resources and options to access justice, care, and support, as a result of discrimination and their lower position in society.
- **Often, legal systems and the authorities implementing the laws ignore or fail to respond to violence against women adequately.**

Source: Cited from UNFPA and WAVE, 2014

Due to the socially assigned role of women and the socially defined relations between women and men, globally, women have much less social influence, access to and management of resources and participation in public life. It is precisely this unequal power between women and men that is the context in which GBV occurs. No less important is the invisibility of the GBV due to the unequal influence of women in public life and the creation of public policies.

Box 5: The term gender-based violence (GBV)

The term “gender-based violence” is used to highlight three key points:

- ▶ **Nature of the violence**
- ▶ **Response to the violence**
- ▶ **Necessarily includes as a cause and contribution to the violence**

⁴¹ UNFPA and WAVE (2014). Strengthening Health System Responses to Gender based Violence in Eastern Europe and Central Asia: A Resource Package. P.19

As the nature of GBV stems from gender inequality and power relations in society and the family, the only response to violence is to deal with unequal power relations between men and women in society as well as to take measures to achieve gender equality. The causes of GBV are gender discrimination and gender inequality; at the same time, these also contribute to GBV.

Who can be a victim of GBV?

Gender-based violence occurs all over the world and in all conditions. This means that GBV occurs during peace and war, before and in post-conflict situations, in conditions of natural disasters and humanitarian crises. Also noteworthy is the spatial element; namely, GBV occurs in both the public and private spheres. Victims and survivors as well as perpetrators of violence can be poor, rich, well-educated, marginalised, politicians, judges, police officers, etc.

Although victims of gender-based violence can be women and men, and girls and boys, **the vast majority of GBV victims are women. Women and girls are disproportionately more affected by GBV than men and boys.** There are also substantial differences in the types, frequency, experiences, and consequences of GBV on women as opposed to those experienced by men.

Who can commit GBV?

Men dominantly commit GBV against women in order to subordinate, control or punish them. However, women can also act as perpetrators of GBV.

The sex of the perpetrator is essential on two grounds: 1. the motive for the violence, and 2. the way society responds to the violence. Lack of GBV recognition associated with acceptance and tolerance of GBV often results in multiplied violence accompanied by secondary victimisation of female victims upon reporting to the police. When men are victims of GBV, most often the perpetrator is an acquaintance or a stranger, but in most cases when women are GBV victims, the perpetrator is a person with whom the female victim has a close personal relationship, such as a current or former intimate partner or a family member. Generally, the perpetrator of GBV against a woman is a man. Likewise, in most cases, when GBV is committed against a man, the perpetrator is a man. In rare situations, the perpetrator is a woman.

Activity 4: What is gender-based violence?

Aim: The aim of this exercise is to help participants to develop a better understanding of gender-based violence

Duration: 25 min

Method: Individual work (10 min), whole group discussion (15 min).

Resources: Hand-out What is gender-based violence?, flipchart, markers

Notes for the trainers:

The trainer distributes Hand-out What is gender-based violence? to the participants and asks them to select one answer to each question

Instructions group discussion:

When the participants have completed filling in the Hand-out What is gender-based violence?, the trainer asks the participants to share answers with the group and write them on a flipchart. The trainer comments on all answers providing an explanation to correct answer to each question, as follows,

Q1, point C. Violence against women is both a cause and a consequence of the unequal power relations between women and men.

Q2, point C. Women are disproportionately more victims of gender-based violence, although men can also be victims of gender-based violence.

Q3, point B. The absence of the victim's consent to the sexual act must be assessed in the context of the surrounding circumstances.

Q4, point B. In responding to a crime, any justification of the crime based on culture, religion, tradition, or so-called "honour" is unacceptable and must not be used as a ground to reject full protection to the victim.

Q5, point B. Participation in a fight in a bar due to an argument over food

Hand-out What is gender-based violence?

1. Violence against women in contemporary life is widespread because:

- A. Women are more likely to complain of violence, so it seems that they are more often victims.
- B. In the past few decades, there is an increase in drug and alcohol abuse, as well as people with mental disorders.
- C. Violence against women is both a cause and a consequence of the unequal power relations between women and men.

2. Victims of gender-based violence most often are:

- A. Women and men are equally victims of gender-based violence.
- B. Men do not appear as victims of gender-based violence.
- C. Women are disproportionately more victims of gender-based violence, although men can also be victims of gender-based violence.

3. For a woman to be considered a victim of sexual violence, including rape:

- A. There must be evidence that the victim was coerced and that she physically opposed the sexual act.
- B. The absence of the victim's consent to the sexual act must be assessed in the context of the surrounding circumstances.
- C. It must be proven that the victim had no previous voluntary sexual experience with the perpetrator (s).

4. If the perpetrator declares that he/she committed the violence in order to punish the victim for violating the cultural, religious, social, or traditional norms or customs of appropriate conduct, then:

- A. The cultural, religious, and traditional identity of the perpetrator (s) must be taken into account in the police response to the incident
- B. In responding to a crime, any justification of the crime based on culture, religion, tradition, or so-called “honour” is unacceptable and must not be used as a ground to reject the full protection to the victim.
- C. In police response to a crime, any justification for the crime based on culture, religion, tradition, or so-called “honour” is in principle unacceptable, but in certain situations can be used to reduce the accountability of the perpetrator (e.g., not exercising all necessary to the case police powers).

5. Which of the following is NOT gender-based violence?

- A. Regularly sending SMS messages with unwanted sexual content.
- B. Participation in a fight in a bar due to an argument over food.
- C. Taking a statement from the rape victim separately before each of the competent authorities.

Elements of the GBV definition⁴²

In analysing the GBV definition, we can distinguish four components that are essential for the existence of GBV, as follows: 1. any act (or omission); 2. against the will of the victim; 3. inflicting harm, and 4. based on socially ascribed (gender) differences between males and females.

1. Any act means an act or omission. Everything that can be invented to cause harm and suffering to another human being. Instruments are continually evolving. Particular attention deserves traditional harmful practices due to their ‘invisibility’ to society.

2. Contrary to the will of the victim involves understanding the **concept of consent**. When assessing whether an act is against the will of a person, the notion of consent must be used. Did the person consented freely or not and knew what it meant? Namely, that consenting is a decision-making process that is made in an environment without force, the threat of force, or coercion. It is essential to distinguish what constitutes genuine, free-willing consent. Informed consent is voluntary and freely expressed when it is formed on the basis of full awareness and understanding of the facts, implications, and consequences of an activity. Thereby, the consenting person should have all the facts that are important for the decision making on the one hand and be able to understand and assess the consequences of the action/activity to which s/he agrees. Furthermore, the expression of consent in order to be considered free is crucial that the person expressing consent can refuse to participate in a particular activity at any given time.

⁴² Adapted from Mircheva, S. (2020). “Gender and Crime”. Faculty of Security-Skopje.

According to the legal practice and jurisprudence of the European Court of Human Rights in *M.C. v Bulgaria*⁴³, the Court found that rape is a violation of a person's sexual integrity and self-determination and that rape legislation should focus on non-consent rather than the use of force as constituent elements of the crime of rape: "Consent must be given voluntarily, as a result of the freely expressed will of the person assessed in the context of the surrounding circumstances."⁴⁴

In general, it is considered that children (under 18 years) cannot give informed consent to a particular activity because of the inability to understand the consequences of the activity, or they cannot understand that they have the right and, they can and may refuse a specific activity. Also, persons with cognitive, sensory, or developmental disabilities may not be able to consent freely and voluntarily. There is no informed consent when the consent for a particular activity is obtained through the use of force, threat of force, other forms of coercion, fraud, manipulation.

3. Inflicting harm or suffering, which can be sexual violence (unwanted sexual acts), physical violence and injuries to the body (slapping, hitting, mutilation, death), psychological/mental/emotional violence (harassment, stalking, gaslighting, manipulation, verbal insult, coercion), economic violence (restricting to access to financial sources, labour markets, education, not paying legal alimony). There may be or may not be visible traces, but there are always lasting consequences and complex impact.

4. Socially ascribed (gender) differences between males and females is a constituent element in the definition of GBV, according to which an act of violence that has no gender dimension differs from the case of GBV. An act of violence qualifies as GBV when it reflects or reinforces the unequal power relations between men and women (for example, not all cases of child sexual abuse can be considered GBV, since sexual abuse of a boy aged nine may qualify for paedophilia instead of GBV).

The following does not define GBV and it is irrelevant for the existence of GBV:

1. Place and time where GBV occurs

Many acts of GBV can occur in private or in public spaces, during the day or night, during peace and war, before and in post-conflict situations, in conditions of natural disasters and humanitarian crises.

2. The type and kind of relationship between the perpetrator and the victim

Different forms of GBV can be committed by the perpetrator who is an acquaintance or a stranger to the victim. For example, rape and sexual assaults are often committed by a perpetrator who is known to the victim. In incidents of intimate partner violence, the relationship between the perpetrator and the victim is a constitutive element, but it is irrelevant for the existence of GBV whether the victim shares the same residence with the perpetrator or have shared, whether they have a child or not, and whether they are former or current spouses or partners.

⁴³ *M.C. v Bulgaria* no. 39272/98

⁴⁴ *Ibid.*

3. What the GBV victim did or did not do

The responsibility for the violence must always be placed on the perpetrator. There are no excuses or justifications for the violence.

4. Whether and how the act is criminalised

In many jurisdictions across the world, various acts of GBV are differently criminalised. Some acts are criminalised as separate offences, while others are criminalised only as of the conduct of a particular crime, and others are not criminalised yet. For instance, in Macedonian legislation, the crime of forced sterilisation is criminalised only as of the conduct of international crimes, but not as a separate offence, or forced marriage is recognised only between children aged up to 16.⁴⁵ For the police response, it is crucial that the particular behaviour is criminalised, but how the particular conduct is criminalised do not affect the existence and scope of a particular form of GBV. According to the UN Department of Economic and Social Affairs, “700 million women alive today were married before their 18th birthday. Of these, 250 million were married before the age of 15 years. In 2019, 1 in 5 women, aged 20-24 years, were married before the age of 18⁴⁶”. Whether or not a child marriage is criminalised, this form of GBV exists, and the states should criminalise all forms of GBV.

Causes of GBV and contributing factors

The root causes of GBV against women and girls globally are gender inequality and gender discrimination.

However, there are actors that may contribute to GBV against women or increase the risk for experiencing violence and impact the type and extent of GBV. The factors mentioned below do not cause GBV; instead, they are contributing to or are associated with some types of GBV. These factors are divided into four groups by Heise⁴⁷, who developed an ‘ecological framework for understanding violence against women.’ Heise’s ecological model serves as a comprehensive framework for understanding the risk factors of GBV and their interplay. Risk factors are divided into four levels: the individual, the relationship, the community, and the structural level. These factors increase the possibility for some persons to become a victim or a perpetrator of GBV, and they vary according to the type of GBV, the characteristics of the population and the context.

⁴⁵ Mirceva, S., (2014), “Child Marriage in the Former Yugoslav Republic of Macedonia”, UNFPA, available at: <http://eeca.unfpa.org/publications/child-marriage-former-yugoslav-republic-macedonia-overview> (accessed on 5 April 2020)

⁴⁶ United Nations, Department of Economic and Social Affairs, Statistics Division (2020). Achieve gender equality and empower all women and girls. available at: <https://unstats.un.org/sdgs/report/2020/goal-05/>

⁴⁷ Heise (1998), as cited in WHO (2005)

Table 2: Contributing factors for GBV against women⁴⁸

Ecological Framework	Description	Perpetration by men (a list is not exhaustive)	Victimisation of women (a list is not exhaustive)
Individual-level	Personal history and biological factors that increase the risk of violence	<ul style="list-style-type: none"> - Violence in previous intimate relationships - Low economic status and income - Drugs and alcohol abuse - Exposure to child sexual abuse - Mental disorders - Experience of intra-parental violence in the childhood - Perception of violence as acceptable behaviour 	<ul style="list-style-type: none"> - Violence in previous intimate relationships-Low income and economic status - Low level of education-Child and early marriage-mental disorders - Experience of intra-parental violence in the childhood - Perception of violence as acceptable behaviour
Relationship level	Relationships with intimate partners, family members, friends that contribute to the risk of GBV	<ul style="list-style-type: none"> - Multiple partners - Retaliation (family honour) 	<ul style="list-style-type: none"> - Blaming the victim
Community-level	Tolerance towards GBV	<ul style="list-style-type: none"> - Poverty - Weak disapproval of GBV 	<ul style="list-style-type: none"> - Poverty - Lack of access to shelters and support services - Lack of access to education - Lack of police protection - Lack of economic stability
Societal level	Cultural norms that shape the unequal distribution of power between women and men	<ul style="list-style-type: none"> - Traditional gender norms and social norms supportive of violence - Promotion of violent male norms - Impunity, including lack of legal framework 	<ul style="list-style-type: none"> - Traditional gender norms and social norms supportive of violence - Impunity, including lack of legal framework - Denied access to justice - Absence of women in political and economic life

⁴⁸ Adapted from UNFPA and WAVE (2014). Strengthening Health System Responses to Gender based Violence in Eastern Europe and Central Asia: A Resource Package. p.30.

2.2. FORMS OF VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

Violence against women and specifically domestic violence against women starts with coercive and controlling behaviours and attitudes that, in most cases, lead to physical violence. In abusive intimate or former intimate relationships, perpetrators use or threaten to use violence to coerce victims to comply with their wishes⁴⁹. Domestic violence against women can include different acts of psychological, physical, sexual, and economic violence. The broadest definition is provided in Article 2 of DEVAW, as follows violence against women shall be understood to encompass, but not be limited to, the following:

- Physical, sexual and psychological violence *occurring in the family*, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.
- Physical, sexual, and psychological violence *occurring within the general community*, including rape, sexual abuse, sexual harassment, and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- Physical, sexual and psychological violence *perpetrated or condoned by the State*, wherever it occurs⁵⁰.”

PHYSICAL VIOLENCE: Application of immediate and unlawful physical force that results in bodily injury, pain, or impairment. It also includes violence resulting in the death of the victim. Acts of violence include slapping, shoving, pushing, punching, beating, scratching, choking, biting, grabbing, shaking, spitting, burning, twisting of a body part, forcing the ingestion of an unwanted substance⁵¹. Physical violence also refers to using everyday objects to hit or stab a woman, weapons such as knives or guns, but also preventing women from seeking help by restraining them.

SEXUAL VIOLENCE: Refer to all forms of sexual acts which are performed on another person without her or his freely given consent and which are carried out intentionally⁵² by any person regardless of their relationship with the victim and in any setting. Acts of sexual violence include non-consensual vaginal, anal or oral penetration of a sexual nature with any body part or object, other non-consensual acts of sexual nature including sexual harassment, trafficking for the purpose of sexual exploitation, forced pregnancy, forced sterilisation, forced abortion, forced marriages, female genital mutilation.

⁴⁹ Walker, L (1979). Women’s Hall of Fame. Ed D. Colorado.

⁵⁰ OHCHR | Declaration on the Elimination of Violence against Women: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ViolenceAgainstWomen.aspx>

⁵¹ <https://www.coursehero.com/file/p3jiurh/Individual-level-factors-are-biologicalpersonal-factors-which-influence-the/>

⁵² CETS 210 – Violence against women and domestic violence, 11.V.2011, Article 36.

PSYCHOLOGICAL VIOLENCE/EMOTIONAL VIOLENCE: refers to any intentional conduct that seriously impairs another person’s psychological integrity through coercion or threats.⁵³ Acts of psychological violence include threats of violence and harm against the woman or somebody close to her, intimidation, humiliation, imposed isolation, restriction of communications, stalking, harassment, unwanted attention, comments, gestures or written words of a sexual and threatening nature, destruction of objects of sentimental value, using children by a violent intimate partner to control or hurt the woman by attacking a child, threats related to a child or forcing a child to watch the violence against their mother.

ECONOMIC VIOLENCE/RESTRICTIONS refer to denial or/and controlling women’s access to finances and resources. Acts of economic violence include prohibiting a woman from working, maintaining control of earnings, excluding a woman from financial decision making in the family, withholding money, food, clothes.

Harmful traditional practices refer to acts committed in the name of so-called “honour”, such as female genital mutilation, killings in the name of honour, forced marriages. Worth noting is that GBV against women occurs in many settings, but family/intimate relations is where women experience the most violence.

COUNCIL OF EUROPE: FORMS OF VAW

Articles 33 to 39 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence identify forms of violence that should be considered criminal offences.

- ▶ **Psychological violence** refers to any intentional conduct that seriously impairs another person’s psychological integrity through coercion or threats (Article 33). The interpretation of the word “intentional” is left to domestic law, but the requirement for intentional conduct relates to all the elements of the offence⁵⁴.
- ▶ **Stalking** is any form of direct and indirect control and surveillance of the victim, with or without physical contact. It usually takes place after the end of the relationship, but it can occur while the relationship is still ongoing. It includes threats and harassment both online or offline, following the person, spying causing the victim to fear for her or his safety (Article 34).
- ▶ **Physical violence** refers to bodily harm suffered because of the application of immediate and unlawful physical force. It also includes violence resulting in the death of the victim (Article 35).

⁵³ CETS 210 – Violence against women and domestic violence, 11.V.2011, Article 33.

⁵⁴ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, para 179.

- ▶ **Sexual violence**, including rape, covers all forms of sexual acts performed on another person without her freely given consent and which are carried out intentionally. It includes non-consensual vaginal, anal, or oral penetration of a sexual nature with any body part or object; other non-consensual acts of sexual nature; causing another person to engage in non-consensual acts of sexual nature with a third person. Unwanted acts of sexual nature between spouses are also covered (Article 36).
- ▶ **Forced marriage** refers to the physical and psychological force exerted on a victim to enter into marriage involuntarily. Luring a person to go abroad with the purpose of forcing this person to enter into marriage is also covered under the Council of Europe Convention (Article 37).
- ▶ **Female genital mutilation** consists of performing, assisting in performing, or inciting, coercing, or procuring the cutting, stitching or removal of part or all of the female external genital organs for non-therapeutic reasons (Article 38).
- ▶ **Forced abortion and forced sterilisation** refer to the termination of a pregnancy or terminating a woman or girl's capacity to naturally reproduce without her prior and informed consent (Article 39).
- ▶ **Sexual harassment** refers to unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment. Article 40 of the Council of Europe Convention gives States Parties the option to apply either criminal law or other sanctions (for instance, penalties under labour law).

The Council of Europe convention obliges that intentional conduct in the aforementioned forms of violence is criminalised⁵⁵. Moreover, the offences that comprise violence against women, the convention also calls for several criminal law provisions aiming at qualifying specific fundamental components of these offences. Under Article 41 of the Council of Europe Convention: “parties shall take the necessary legislative or other measures to establish as an offence, when committed intentionally, aiding or abetting the commission of the offences established in accordance with Articles 33, 34, 35, 36, 37, 38.a and 39 of this Convention.”

DOMESTIC VIOLENCE

According to international standards, domestic violence covers acts of **physical, sexual, psychological, or economic violence** between members of the family or domestic unit, irrespective of biological or legal family ties. Economic violence can be related to psychological violence. Domestic violence includes mainly **two types** of violence: **intimate-partner violence between current or former spouses or partners** and **inter-generational violence**,

⁵⁵ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, para 155.

which typically occurs between parents and children. It is a gender-neutral definition that encompasses victims and perpetrators of both sexes⁵⁶.

Domestic violence as intimate-partner violence includes physical, sexual, psychological, or economic violence between current or former spouses as well as current or former partners. It constitutes a form of violence that affects women disproportionately and which is therefore distinctly gendered. Although the term “domestic” may appear to limit the context of where such violence can occur, the violence often continues after a relationship has ended, and therefore a joint residence of the victim and perpetrator is not required according to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence⁵⁷.

Inter-generational domestic violence includes physical, sexual, psychological, and economic violence by a person against her or his child or parent (elderly abuse) or such violence between any other two or more family members of different generations. Again, a joint residence of the victim and perpetrator is not required⁵⁸.

Activity 5: Fact or False?

Aim: The overall aim is to identify and confront common myths about VAW

Duration: 40 min

Method: Individual work (10 min), whole group discussion (15 min), summary and input by a trainer (15 min).

Resources: Hand-out Fact or False 1, flipchart, markers.

Instructions: The trainer distributes the Hand-out Myth or Fact-1 to the participants and asks them to mark the statements as true or false. Allow participants to discuss the myths shortly (do they think the position expressed is correct, does it exist in Armenia and anything they would like to add about it).

The trainer provides a detailed explanation of each of the statements. Spend more time discussing the correct answers than myths; otherwise, there is a risk of reinforcing myths. The purpose of this exercise is to point out to the participants how according to traditional practices and beliefs, the victim is actually accused of domestic violence, the violence is justified, and the perpetrator is protected, where the opposite should be true: the perpetrator is held accountable of violence, there are no justifications to violence and victim should be protected. After the group discussion, Hand-out 2 is distributed to all participants

⁵⁶ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, paras 41, 42.

⁵⁷ Ibid.

⁵⁸ Ibid.

Hand-out Fact or False-1

1. Men are victims of domestic violence as often as women are.
Fact **False**
2. Alcohol and drug abuse is a major cause of domestic violence.
Fact **False**
3. Domestic violence affects women from certain backgrounds.
Fact **False**
4. Insulting, naming, and humiliating women is not an act of violence.
Fact **False**
5. Rapists are generally persons with mental illness.
Fact **False**
6. Marital rape cannot exist.
Fact **False**
7. Gender-based violence remains underreported to a great extent.
Fact **False**
8. Couples counselling, family therapy or mediation is the solution for domestic violence.
Fact **False**
9. Gender-based violence affects women and girls disproportionately.
Fact **False**
10. Men who commit violence are violent because they cannot control their anger and frustration.
Fact **False**
11. Men are not the only ones responsible for their violent behaviour.
Fact **False**
12. People who are religious do not perpetrate domestic violence and do not become victims.
Fact **False**
13. The best solution is to keep the family together.
Fact **False**
14. There is no point in helping abused women; they will just go back to their partners.
Fact **False**
15. Domestic violence does not affect children living in the family; it is a problem only among adults.
Fact **False**
16. Men who commit violence are often good fathers and should have joint custody of their children if the couple separates.
Fact **False**

Hand-out Fact or False -2

1. Men are victims of domestic violence as often as women are.

False. Research shows that women are victims in 95% of domestic violence cases. Reports of violence against men are often exaggerated because perpetrators will accuse their partners of violence as a way to avoid or minimise their own responsibility. In addition, men who do experience domestic violence often have more access to resources to leave violent situations than women do.

2. Alcohol and drug abuse is a major cause of domestic violence.

False. Although alcohol and drugs are often associated with domestic violence, they do not cause violence. Many perpetrators do not drink or use drugs, and those who do, usually do not show aggression towards unknown people, colleagues, or bosses but direct violence at their partners. Perpetrators often use intoxication as an excuse or argument not to have to take responsibility for their actions. It is important to realise that domestic violence and alcohol/drug abuse are two separate issues and need to be treated independently.

3. Domestic violence affects women from certain backgrounds.

False. While it is true that certain groups of women are particularly vulnerable to some forms of violence or face particular barriers in accessing justice, domestic violence does not discriminate on any ground. It affects women from all levels of society, whether rich or poor, educated/uneducated, regardless of migrant status, religion, sexual orientation, and ethnicity.

4. Insulting, naming, and humiliating women is not an act of violence.

False. The most common and least recognisable forms of domestic violence in the victim's environment, and among some professionals, are insults and humiliation of women victims. It represents psychological violence and is often associated with control over a woman's behaviour, isolation from the immediate environment (family members, friends, colleagues, neighbours, loved ones who could help the victim), and deprivation of resources. Such manifestations of violent behaviour are often accompanied by physical and sexual violence. These acts of violence are very difficult to detect because the victim does not initially recognise them as acts of violence or minimise them.

5. Rapists are generally persons with mental illness.

False. Sexual violence is a reflection of the perpetrator's perception that he can and may sexually assault women against their will. Sexual violence is often one of the manifestations of male dominance over women. Some sexual bullies may have a severe mental illness, as evidenced by research findings, but sexual bullies cannot be defined by mental illness. Labelling violent men as sick is too easy and gives them a perfect excuse, e.g. that he cannot control himself and/or be responsible for his behaviour.

6. Marital rape cannot exist.

False. The freedom to have sex extends to the entire life. Every woman has the right to decide when to have sex. The status of a marital union implies equal respect and esteem for the sexual desires and needs of both partners. This means that having sex in the marital union must be desired by both partners. Otherwise, it is rape. Sexual humiliation can also be a form of bullying control and domination of women. Certain violent men combine physical violence with sexual humiliation and harassment of women.

7. Gender-based violence remains underreported to a great extent.

Fact. Many surveys across the world suggest that gender-based violence is largely unreported for a number of reasons. For example, non-recognition by the victim (because cultural norms divide both men and women in a given space and at a given time and the victim largely accepts cultural norms that justify violence against women and accept the position of subordination to the man), then, shame, fear of condemnation from the environment, as well as self-blame for what is happening to her, as well as distrust in the institutions. Furthermore, the reaction of the institutions can be a justification of the perpetrator by blaming the victim or mild punishment of the perpetrator. The social environment plays a major role in non-reporting because it tolerates the VAW as acceptable behaviour.

8. Couples counselling, family therapy or mediation is the solution for domestic violence.

False. Couples counselling or family therapy is NOT recommended for couples trying to end the violence in their relationship due to the specific dynamic of power and control underlying the violence. Best practice shows that perpetrators should attend specialised programmes teaching perpetrators of domestic violence to adopt non-violent behaviour in interpersonal relationships, and victims should be supported by specialised centres and a domestic violence advocate. In cases of separation, mediation or family therapy is NOT recommended in order to “teach” the couple bilateral communication and/or to gain agreement on custody of children or divorce.

9. Gender-based violence affects women and girls disproportionately.

Fact. Numerous researches across the world confirm that women are dominant victims of gender-based violence and that the perpetrators are mostly men. The roles that patriarchal societies give to men and women approve and encourage violence against women and girls as a way of maintaining patriarchal relations. Research also points out that the role of women’s subordination and inferiority to men is a key reason for the predominant representation of women as victims of gender-based violence.

10. Men who commit violence are violent because they cannot control their anger and frustration.

False. Domestic violence is intentional conduct, and perpetrators are not “out of control”. Their violence is carefully targeted at certain people, during certain moments and in certain places. Perpetrators generally do not attack their bosses or people on the streets, no matter how angry they might get. Perpetrators also follow their own internal rules about abusive behaviour. They often choose to abuse their partners only in private or may take steps to ensure that they do not leave visible evidence of the abuse. Perpetrators also choose their tactics carefully—some destroy property, some rely on threats of abuse, and some threaten children. Studies also indicate that, in fact, some perpetrators become more controlled and calmer as their aggressiveness increases.

11. Men are not the only ones responsible for their violent behaviour.

False. Men are entirely responsible for their violent behaviour. But they will try to blame their partners so that their partners will not leave them or turn them in.

12. People who are religious do not perpetrate domestic violence and do not become victims.

False. Perpetrators can be religious people, including priests and parsons. Many victims have deep religious beliefs, which may encourage them to keep the family together at all costs.

13. The best solution is to keep the family together.

False. The safety and the needs of the victim must come first and should precede any other considerations. Forcing or influencing a victim to go back to an abusive relationship can have severe consequences, including death. If the perpetrator has not been held accountable for his actions or if the root causes of violence have not been addressed, violence will most likely continue.

14. There is no point in helping abused women; they will just go back to their partners.

False. Women who endure an ongoing cycle of violence can often become ambivalent about their situation, unable to decide whether to stay or go. They may leave to see if they can survive on their own or return to see if things can change. This gradual process enables some victims to eventually resolve their dilemmas and break the cycle of violence, whereas, for others, it may be more difficult.

15. Domestic violence does not affect children living in the family; it is a problem only among adults.

False. Domestic violence has a significant impact on children living in the household. Children who grow up in violent families exhibit serious emotional and psychological problems from exposure to domestic violence. As a coping strategy, some children might tend to identify with the perpetrator and lose respect for the victim, which can lead to the trans-generational cycle of violence.

16. Men who commit violence are often good fathers and should have joint custody of their children if the couple separates.

False. Studies have found that men who abuse their wives also abuse their children in 70% of cases. Even when children are not directly abused, they suffer as a result of witnessing one parent assaulting another. Perpetrators often display an increased interest in their children at the time of separation as a means of maintaining contact with and thus control over their partners.

Source: adapted from Logar, R. and Marganova-Vargova, B. (2015). p.42, Baldry, A.C. (2016); Council of Europe (2016) ⁵⁹

UNDERSTANDING DOMESTIC VIOLENCE AS GENDER-BASED VIOLENCE AGAINST WOMEN

Domestic violence is rooted in the patriarchal cultural norms, explicitly or implicitly defined in a relatively coherent system of beliefs. It is prevalent in societies ranging from the outspoken legitimacy of the violence of men against women to the detailed criminalisation of various forms of domestic violence and the existence of a wide range of sanctions and interventions. Domestic violence exists in contexts where there is the expectation for absolute subordination of women to men but also in environments dominated by the notion that sexes are or should be equal.⁶⁰

The position of women in the family in relation to man through the historical development of any society is associated with the treatment of violence against women as socially acceptable and allowed behaviour or prohibited and punishable.⁶¹ The analysis of the phenomenon of domestic violence leads to the general conclusion that this type of crime, neither by the types of violence nor by intensity and dynamics, is not an isolated or finished act. On the contrary, repetition is a substantial element of domestic violence, accompanied by an increase in intensity, dynamics, and forms of violence.

A stereotype about domestic violence as a trivial, petty crime inherent to each family is directly contrary to the results obtained in many victimological surveys that victims of domestic violence are subjected to much more violence than victims of other types of violent crime.⁶² There are many discussions, and much research is being conducted to determine the causes of domestic violence. Most authors accept that just one cause of domestic violence cannot be isolated. They also pointed out that domestic violence can only be adequately understood if it is seen in the context of the broader picture of exploitation. Domestic violence is only one aspect of how men control women.

⁵⁹ Logar, R., and Marganova-Vargova, B. (2015). "Effective Multi-agency Co-operation for Preventing and Combating Violence: Training of Trainers Manual"; Baldry, A.C. (2016). "Training of Trainers Manual: Enhancing the Professional Capacity of the Bulgarian Police to Deal with Cases of Domestic Violence and Violence Against Women". Strasbourg: Council of Europe.; Council of Europe (2016). "Preventing and Combating Domestic Violence against Women: A learning resource for training law enforcement and justice officers, General Inspectorate of the Romanian Police". Strasbourg: Council of Europe

⁶⁰ Mircheva, Chacheva, Kenig. (2014)

⁶¹ Mirceva, 2010.

⁶² Hammer&Stanko, 1985.

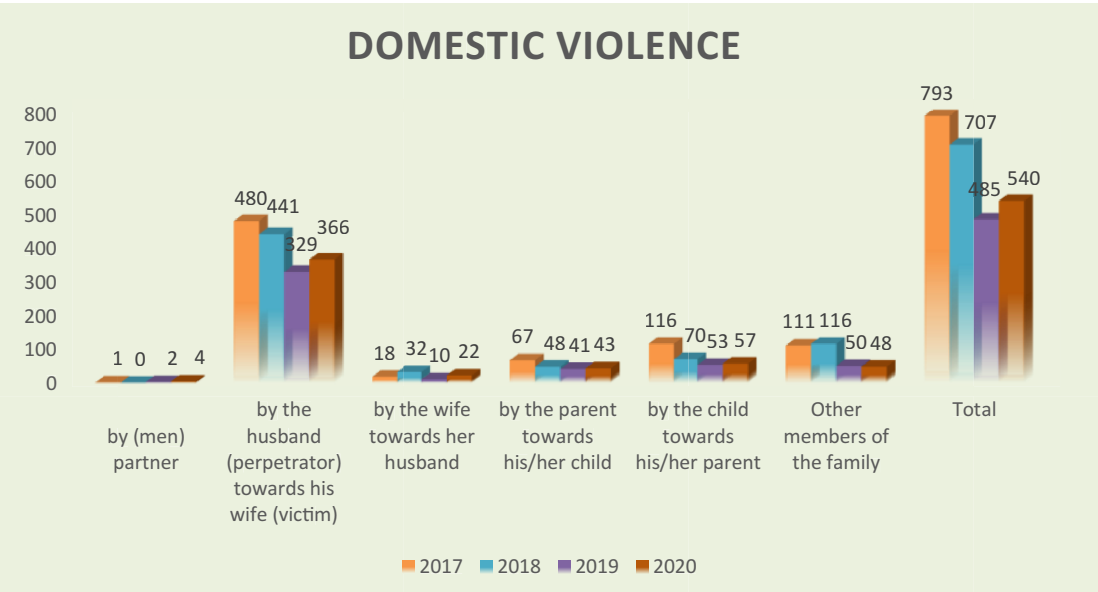
Furthermore, domestic violence should not be understood that it is caused by men instead of the socially constructed behaviour of men. It is necessary to understand that domestic violence often happens because the perpetrator believes he is allowed to behave violently towards women. This approach is associated with stereotypes about the status of women.

Men can also be victims of domestic violence. However, according to Johnson⁶³, important arguments should be considered:

- a) according to the type and intensity of violence suffered by a woman compared to men, it is far more significant in number and graver;
- b) cases in which women use violence over men are mostly due to self-defence or as a strategy for conflict settlement in situations where both partners are violent, and
- c) differences in social and physical power between the two sexes are mostly such that violence is much more terrifying for women than for men.

The results of empirical research⁶⁴ show that when women use violence against their partners, such violence differs from the violence of men against their female partners by nature, frequency, intensity, intention, physical inquiries, and psychological consequences. They confirm that usually, women who are violent towards men have suffered long-lasting violence from men, and thus turning to aggression is a kind of self-defence. Besides this, the demonstration of domestic violence by women directed at men lacks sexual violence entirely, while the presence of heavy physical harming is scarce. Furthermore, women do not employ intimidating or forceful forms of behaviour control as part of the violence.

Information Centre of the RA Police maintains Statistical Data on Crimes and Administrative infringements. **There is no disaggregated data on domestic violence cases based on sex and age in the Information Centre of the Police. See below the statistics of domestic violence cases provided by the Armenian police.**



⁶³ Johnson (2006).

⁶⁴ Dobash and Dobash, 2004, p.343.

In 2017, a total of 793 cases of domestic violence were registered by the police. 740 cases were related to physical violence, and 53 cases were related to the other types of violence. There were no registered cases related to sexual violence. The initiation of criminal cases was not commenced in 597 cases based on available evidence, which means that only in 196 cases a criminal investigation was launched.

In 2018, a total of 707 cases of domestic violence were registered by the police. 673 of the 707 cases were related to physical violence, 33 cases were related to psychological violence, and one was related to economic violence. The initiation of criminal cases was not commenced in 548 cases based on available evidence.

In 2019, a total of 485 cases of domestic violence were registered in Police. 469 of the 485 cases were related to physical violence, 14 cases were related to psychological violence, and 2 were related to economic violence. The initiation of criminal cases was not commenced in 359 cases based on available evidences.

In 2020, a total of 540 cases of domestic violence were registered in Police. 514 of the 540 cases were related to physical violence, 26 cases were related to psychological violence. The initiation of criminal cases was not commenced in 390 cases based on available evidence. Only 150 cases lead to a criminal investigation. This about 28% of the registered cases by the police.

The analysis of the police statistics reveals that the vast majority of the registered domestic violence cases were related to physical violence perpetrated by the husband towards his wife. The lack of disaggregated data on domestic violence cases *per se* does not shed light on its social-psychological aspects, or patterns.

CYCLE OF DOMESTIC VIOLENCE

Below the cycle of violence is introduced, which can help the police to understand the dynamics of domestic violence when assisting the victim.

Please note that the cycle gives one example of how dynamics can evolve in domestic violence. This is not the only way. Not every domestic violence case goes through the cycle or any of its phases.

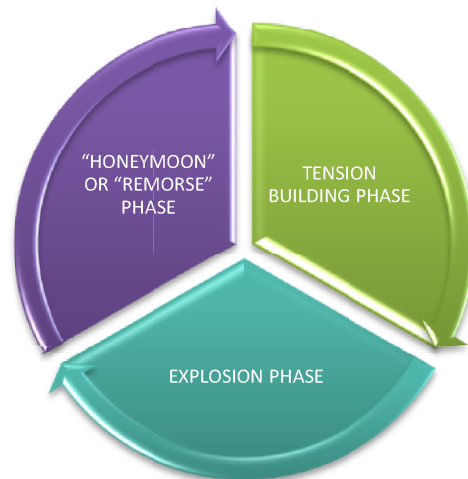
The model of the “cycle of violence” was developed by the American psychologist Lenore E. Walker in 1979. It describes the course of a violent relationship in three phases or cycles: tension-building phase, explosion phase, and honeymoon phase.

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

- ▶ the nature and duration of the relationship;
- ▶ the victim’s and perpetrator’s socio-economic background;
- ▶ the type of abuse suffered by the victim;
- ▶ whether there are children or other people involved;

- ▶ whether there is substance and alcohol abuse;
- ▶ the help and support provided to the victim;
- ▶ the extent to which the victim is isolated.

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



Starting from mood swings and criticism by the perpetrator (tension building phase) to deprivation of liberty (explosion phase- any forms of violence, including beating, rape; verbal abuse, using weapons, etc.) and to apologising and tenderness (honeymoon or remorse phase-promises that it will never happen again, send gifts, declare love) – are the phases which can introduce domestic violence.

The stages and phases of the cycle of violence can follow each other recurrently until women break themselves from the cycle or through some form of intervention or outside help and support provided to the victim⁶⁵. Some stages may overlap, while some may take place after days, months or years. An abusive relationship may also not go through the cycle at all. It is important to remember that not all victims will experience violence in the same way. Some will not get to the stage of physical violence and might never contact either the police or the judicial system. However, economic and emotional abuses are serious and invalidating and are considered a crime that needs to be investigated.

What is essential to understand is that victims usually tend to contact the police or social services at the peak stage of the cycle, after a physical or sexual attack has taken place. They seek help when they feel and are in danger and look for immediate help. During the cycle of violence, the violent partner may swing between affectionate, apologetic, and calm behaviour to periods of tension that grow into physical, sexual, or psychological violence. The perpetrator holds the woman responsible for what he claims she made him do. He might threaten to take the children away or threaten to use physical force or kill her if she tells anyone or does anything. This is when it is likely that the victim will return to the perpetrator or

⁶⁵ Walker, L (1979). Women's Hall of Fame. Ed D. Colorado.

withdraw the police report; and when victims are at their most vulnerable. The victim may even deny or minimise any violence. At this stage, risk assessment and subsequent risk management and victim safety planning are of extreme importance in order to understand the victim's needs. Victims can make choices based on realistic and concrete options and solutions to the violence they are experiencing. If these options are not present and supported, it is complicated to break the cycle.⁶⁶

DYNAMICS OF VIOLENCE IN INTIMATE PARTNER RELATIONSHIPS

Domestic violence follows a pattern of “power” and “control” of men over women. This assumes that some men still hold strong misogynist concepts and think of their partners, not as independent beings who can make decisions on their own and have their own lives. These men of all ages, socio-economic status and nationalities do not accept that their partners can leave them, have friends, or react to criticism, make their own choices, and step out from the pre-set social norms of male and female roles. Violence is a mechanism of power and control to keep women in their ‘role’ and to conform to social norms regulating sexist’s attitudes. When threatened and abused, women become scared, fear escalation, or even death, but are usually embarrassed to talk about it. They might also minimise and justify the violence since it is difficult to admit that their partner is abusive because this would also affect their self-esteem⁶⁷. This theory is reflected in the well-known “Wheel of power and control⁶⁸” shown in Figure 2.

Domestic Abuse Intervention Programs⁶⁹ in Minnesota, the U.S., developed a framework for understanding the manifestations and mechanisms of power used by the perpetrators to gain or keep control in their relationships. The wheel consists of eight fields that summarise the patterns of behaviours used by an individual to control or dominate his intimate partner: using intimidation intentionally; using emotional abuse; using isolation; minimising, denying and blaming; using children; using male privilege; using economic abuse, and using coercion and threats. The model helps explain the dynamics of abuse between partners.

These actions serve to exercise “power and control” – these words are in the centre of the wheel.

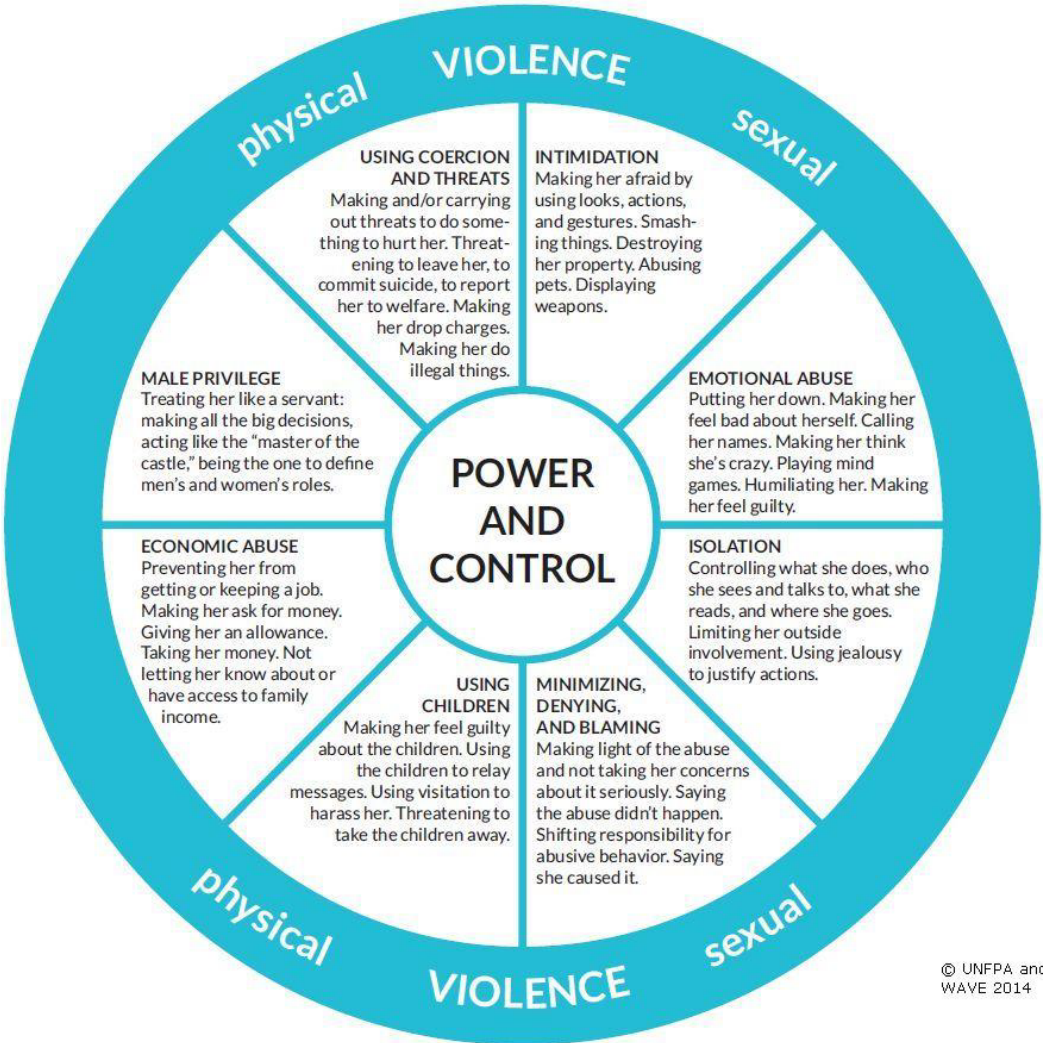
⁶⁶ Enhancing the professional capacity of the Bulgarian Police to deal with cases of Domestic violence and Violence against women. A.C. Baldry, 2016.

⁶⁷ Ibid.

⁶⁸ Domestic Abuse Intervention Programs, Duluth, Minnesota, www.theduluthmodel.org

⁶⁹ For more information use the following link: www.theduluthmodel.org/training/wheels.html

Figure 2: The wheel of power and control⁷⁰



Source: Adapted from Domestic Abuse Intervention Center Duluth, MN 218/722-4134

⁷⁰ <https://www.theduluthmodel.org/wp-content/uploads/2017/03/PowerandControl.pdf>

2.3. CONSEQUENCES AND IMPACT OF DOMESTIC VIOLENCE ON WOMEN AND CHILDREN

Domestic violence can have devastating consequences on the victims. Women, as a victim of violence, are not the only subject to an act of violence passively but are also active agents manoeuvring a problematic situation, trying to prevent, resist and cope with the violence they experience.

As a result of the violence experienced, victims of domestic violence and their children could encounter short-term and long-term consequences. Domestic violence leads to physical, psychological damage, as well as a loss of material property and reduced quality of life. The severity of the impact of domestic violence depends on personal (internal, e.g. prior history of abuse, lack of resiliency, low self-esteem, coping strategies) and social (external, e.g. presence of children, help received, social isolation, the dangerousness of the perpetrator, access to services) circumstances. These factors will make it harder or easier for the victim to break the cycle of violence.

Regardless of their role in the response and support mechanism, all professionals dealing with cases of domestic violence should be aware of the impact of different forms of gender-based violence, including domestic violence on women and their children, so as to avoid acting in an unprofessional and damaging way towards the victim⁷¹.

The gap on gender sensitivity and the lack of knowledge on domestic violence concept or discrimination by police officials, criminal justice professionals, medical personnel, psychological staff, and victim advocates can result in secondary victimisation of persons who have experienced violence. In some cases, revictimization of victims can be inadvertent and faces by victims during their interactions with law enforcement or other officials.

Physical impact and consequences - Physical harm resulting from violence can include any of the following: bruises and welts; lacerations and abrasions; abdominal or thoracic injuries; fractures and broken bones or teeth; sight and hearing damage; head injury; attempted strangulation; and back and neck injuries⁷². The consequences are not only related to direct blows or attacks. Ailments referred to as ‘functional disorders’ or ‘stress-related conditions’ are far more common. These include irritable bowel syndrome/ gastrointestinal symptoms, fibromyalgia, various chronic pain syndromes and exacerbation of asthma. Violence can also lead to serious and permanent physical disabilities. In the World Health Organisation (WHO) multi-country study⁷³, it emerged that abused women were twice more

⁷¹ Enhancing the professional capacity of the Bulgarian Police to deal with cases of Domestic violence and Violence against women. A.C. Baldry, 2016.

⁷² Heise L, Garcia Moreno C. Violence by intimate partners (2002). World report on violence and health. Geneva, World Health Organization.

⁷³ Garcia-Moreno C et al. (2005) WHO multi-country study on women’s health and domestic violence against women: initial results on prevalence, health outcomes and women’s responses. Geneva: World Health Organization.

likely than non-abused women to report poor health and suffer from physical and mental health problems, regardless of when the abuse took place.

Any domestic violence can also have lethal consequences leading to the victim's death in the short or long term.

Psychological impact and consequences - Psychological harm can have a devastating impact on a woman's state of mind. Psychologically, the effects experienced by victims are similar to those experienced by victims of kidnapping. Post-traumatic stress disorder⁷⁴ and Stockholm syndrome⁷⁵ symptoms are also very common, and these psychological consequences of violence can be as serious as the physical effects. Domestic violence can lead to depression, anxiety, eating disorders, low self-esteem, panic attacks and alcohol/substance abuse, to name a few. Abuse can trigger suicide attempts, psychotic episodes, and slow recovery from mental illness⁷⁶. Victims of sexual incidents might suffer long-term psychological consequences involving anxiety, loss of self-confidence and a feeling of vulnerability. Dealing with the psychological consequences of violence is the responsibility of psychological professionals. However, law enforcement and judicial officers also need to understand the psychological and emotional impact of violence in order to better deal with these cases.

Economic impact and consequences - Victims who are, for instance, financially dependent on their abuser might find themselves in an insecure situation or end up homeless. Sometimes women victims of violence lose their jobs as the abuser is harassing them at their workplace, or the employer does not want to have problems. Domestic violence may decrease the working ability of women, increase sick leave, or lead to unemployment, resulting in a decrease in living standards for the victim. Domestic violence may also result in destruction or loss of property⁷⁷.

Social impact and consequences - Domestic violence also has significant consequences in the immediate social circle of the victim. Family, friends and co-workers risk retaliation and intimidation from the perpetrator if they try to intervene or assist the victim in leaving an abusive relationship. Another consequence of domestic violence is a reduced quality of life, leading to lower levels of overall satisfaction and happiness. In cases of domestic violence, fear and anxiety take over every aspect of daily life and trying to cope holding down a job, being in a relationship, socialising, caring for children, and the like, extremely difficult.

Finally, there are also consequences for the community as a result of a decreased contribution of the victim to society and costs borne by society (discussed further below), but also in terms of the acceptability of violence. If perpetrators are not held accountable by the com-

⁷⁴ **Posttraumatic stress disorder (PTSD)** is a psychiatric disorder that may occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war/combat, or rape or who have been threatened with death, sexual violence or serious injury: <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd>

⁷⁵ Stockholm syndrome refers to a group of psychological symptoms that occur in some persons in a captive or hostage situation. People with Stockholm syndrome report similar symptoms as those diagnosed with PTSD. Source: <http://medical-dictionary.thefreedictionary.com/>

⁷⁶ Council of Europe, Preventing and Combating Domestic Violence against Women: A learning resource for training law enforcement and justice officers, 2016, p. 17.

⁷⁷ Preventing and Combating Domestic Violence against Women, January 2016, p.18.

munity, it means that their behaviour is tolerated, which is likely to lead to more serious violence⁷⁸. It may also discourage future victims of domestic violence from reporting abuse and seeking help.

IMPACT OF DOMESTIC VIOLENCE ON CHILDREN

The impact of domestic violence on children refers to the different forms of violence that affect them. The most common is that perpetrated by a man (usually the father of the child/children) over his partner (usually the mother of the child/children). Children can be exposed to violence against their siblings, against a grandparent or another person sharing the same residence. Multiple exposures to violence in addition to direct violence inflicted over the child are called ‘poly-victimisation’⁷⁹. When the abuse is committed by someone the child loves and trusts, the impact is not only short term (fear, anxiety, sleep and eating disorders, and the like), but it is more profound as it affects the capacity of the child to grow in a safe and protected environment and build positive and secure attachment bonds. The negative impact on children living in families affected by domestic violence has been demonstrated by many studies. Children can be exposed directly (as primary victims) or indirectly (as secondary victims witnessing domestic violence) to the violence. Even when children are not direct witnesses to all the episodes of violence, they are still exposed, aware and negatively affected by it⁸⁰.

In this context, the Council of Europe Convention on Preventing and Combating Violence against *Women and Domestic Violence* requires States Parties to afford child victims and child witnesses special protection at all stages of investigations and judicial proceedings (Article 56). The best interest, the safety and protection, of the child must be the guiding principle when children come in contact with the police or justice system as a result of domestic violence⁸¹.

Article 37 of the RA Constitution enshrines the rights of the child and stipulates that in matters concerning the child, primary attention must be given to the interests of the child.

Under Article 9 of the RA Law on Rights to the Child: “each child has a right to be protected from any type of (physical, spiritual, and the like) violence. Any person, including the parents and the legal representatives of the child, are forbidden to exercise any violence against the child or any punishment humiliating its dignity, or other similar attitudes.”

The National Strategy for Human Rights Protection and deriving Action Plan for 2020-2022, the RA Government Activities Program for 2019-2023, and the RA Government approved the Protocol Decree № 30 on Approving the Strategic Programme for the Protection of Children’s Rights in Armenia for 2017-2021, and the Action Plan underline that the rights of the child need to be protected.

⁷⁹ “Improving the Effectiveness of Law Enforcement and Justice officers in Combating Violence against Women and Domestic Violence”. Anna Costanza Baldry and Elisabeth Duban, 2016, page 16.

⁸⁰ Ibid.

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3. LEGAL CONTEXT OF POLICE CONDUCT IN CASES OF DOMESTIC VIOLENCE

Goal: Police officers have sound knowledge of international and national legislation on violence against women, victim's rights, human right principles, non-discrimination and gender equality that enable gender-sensitive police response to VAW.

Key learning points:

- The safety and well-being of the victims are the core of the police response;
- Understand the key international and national concepts and principles in combating violence against women;
- Recognise and apply relevant standards for effective police response to domestic violence set forth in the international and national legal documents.

3.1 INTERNATIONAL AND EUROPEAN CONTEXT

There are numerous standards, declarations, recommendations and policy papers of the UN, the Council of Europe, and the European Union addressing violence against women with different obligation levels. International documents can be legally binding, morally binding, and politically binding states and authorities, including the police.

Declarations are international documents with moral and political but no legal obligation. Usually, declarations refer to a document where appropriate standards are stated. They are often the first stage in the adoption of legally binding documents. They often examine some of the views and principles, as well as the public reactions to the proposed formulations and provide the most basic principles that need to be further developed. States also have a moral and political obligation to follow and implement the recommendations of the bodies of which they are members.

Legally binding international documents are named conventions. Conventions are used synonymously with Treaty and Covenant and refer to a binding agreement between states. According to the Vienna Convention on the Law of Treaties, 1969⁸³: “treaty means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”

⁸³ Vienna Convention on the Law of Treaties, 1969. Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

Conventions are stronger than Declarations because they are legally binding for governments that have ratified them. When the international or regional organisation adopts the text of a convention, it creates international norms and standards. Once the organisations adopt a convention (United Nations, Council of Europe), Member States can then ratify the Convention, promising to uphold it. If the member states violate the standards set forth in the Convention, the organisation has a right to act. Each agreement concluded by the State represents the provision of certain guarantees of a particular set of obligations related to the realisation of specific human rights and freedoms. In order for this to be achieved, exact and multi-layered procedures have been created. Namely, the negotiation in international law is carried out in a specific procedure that is performed in several stages. “Ratification”, “acceptance”, “approval”, and “accession” to a Convention mean that a State is bound by a treaty”⁸⁴. Legally binding documents impose a legal obligation on the member states to respect and implement the obligations arising from the ratified international documents at the level of the UN and the Council of Europe.

When a State ratifies a treaty, it becomes legally required to implement the provisions of that document and to follow the committee experts’ recommendations. The Treaty Bodies or Committees operate through periodic state review, general comments, and individual communication mechanisms.

In the United Nations system, different human rights monitoring mechanisms (UN Charter-based bodies, including the Human Rights Council and Bodies) are created under the international human rights treaties and made up of independent experts mandated to monitor State parties’ compliance with their treaty obligations.

3.1.1. International Legal Framework: Violence against Women

This section provides an overview of the crucial UN documents dedicated to women’s human rights and elimination of violence against women, including,

- The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, and the decisions and recommendations adopted by the CEDAW Committee (especially General Recommendations No. 19 [1992], No. 28 [2004] temporary special measures, No. 33 [2015] on violence against women and women’s access to justice, and No. 35 [2017] on gender-based violence against women, updating general recommendation No. 19, respectively);
- the UN Declaration on the Elimination of Violence Against Women, 1993.
- the Beijing Declaration and Platform for Action, 1995;

⁸⁴ ibid

The UN Convention on the Elimination of All Forms of Discrimination against Women, which was adopted on December 18, 1979, is a comprehensive document that represents longstanding efforts on the part of the UN to systematise international legal standards for the protection of women rights.

Armenia ratified the UN Convention on the Elimination of All Forms of Discrimination against Women (hereinafter CEDAW) in 1993. It thereby assumed a vast array of obligations that entailed the implementation of comprehensive measures aimed at eliminating discrimination and ensuring full development and advancement of women in the political, social, economic and cultural life of the country. The CEDAW is specific in that it makes it incumbent on a State Party to take all appropriate measures to change embedded mental structures and to modify social and cultural patterns of conduct of men and women. Furthermore, accession to the CEDAW means that a State Party not only declares respect for equal rights of men and women but also takes on a responsibility to ensure equal opportunities for their enjoyment. Besides, the CEDAW is construed as an “affirmative action” programme; hence, the State Party has agreed to the principle of granting preferential rights, which is outlined in the CEDAW. The main specific feature of the CEDAW is that it requires monitoring the State Parties’ compliance with its provisions⁸⁵.

The Committee on the Elimination of Discrimination against Women (the CEDAW Committee) is established under Article 17 of the Convention on the Elimination of All Forms of Discrimination against Women to monitor the implantation of the Convention. States parties are obliged to submit regular reports to the Committee on how the rights of the Convention are implemented. During its sessions, the Committee considers each State party report and addresses its concerns and recommendations to the State party in the form of concluding observations. Besides, the Committee has competence⁸⁶ for two other procedures:

1. to receive and consider communications from individuals or groups of individuals submitting claims of violations of rights protected under the Convention to the Committee, and
2. to initiate inquiries into situations of grave or systematic violations of women’s rights.

The Committee also formulates general recommendations and suggestions. General recommendations are directed to States and concern articles or themes in the Conventions.

CEDAW General Recommendation No. 19 (1992) of the Committee on the Elimination of Discrimination against Women (hereinafter CEDAW Committee) of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (hereafter CEDAW) define gender-based violence against women as a form of discrimination

⁸⁵ Armenian Association of Women with University Education Centre for Gender Studies, Implementation of the Convention on the Elimination of All Forms of Discrimination against Women in the Republic of Armenia in 2002-2007, Alternative Report

⁸⁶ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999. The procedures set forth with the Optional Protocol are optional and are only available where the State concerned has accepted them.

against women: “Gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on the basis of equality with men⁸⁷.” The term “women” is used to cover females of all ages, including girls under the age of 18 years.

CEDAW General Recommendation No. 19 underlines the bonds between gender-based violence and traditional gender stereotypes and violence. It reads as follows: “Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women⁸⁸.”

According to **CEDAW General Recommendation No. 28**: “Direct discrimination against women constitutes different treatment explicitly based on the grounds of sex and gender differences. Indirect discrimination against women occurs when a law, policy, programme, or practice appears to be neutral as far as it relates to men and women but has a discriminatory effect in practice on women because the neutral measure does not address pre-existing inequalities. Moreover, indirect discrimination can exacerbate existing inequalities owing to a failure to recognise structural and historical patterns of discrimination and unequal power relationships between women and men⁸⁹.”

CEDAW General Recommendation No. 28 adopted that discrimination against women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognise such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.

CEDAW General Recommendation No. 35⁹⁰ on gender-based violence against women updates the guidance to States parties set out in general recommendation No. 19 and should be read in conjunction with it.

The concept of “violence against women”, as defined in general recommendation No. 19 and other international instruments and documents, has placed emphasis on the fact that such violence is gender-based. Accordingly, in Recommendation No. 35, the term “gender-based violence against women” is used as a more precise term that makes explicit the gendered causes and impacts of the violence. “The term further strengthens the understanding of violence as a social rather than an individual problem, requiring comprehensive responses beyond those to specific events, individual perpetrators and victims/survivors.”⁹¹

⁸⁷ CEDAW, General Recommendation No. 19, para 1.

⁸⁸ CEDAW, General Recommendation No. 19, para 11.

⁸⁹ CEDAW, General Recommendation No. 28, para 16.

⁹⁰ CEDAW, General Recommendation No. 35: <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>

⁹¹ CEDAW, General Recommendation No. 35, para 9.

The Committee considers that gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated. Throughout its work, the Committee has made clear that such violence is a critical obstacle to the achievement of substantive equality between women and men and to the enjoyment by women of their human rights and fundamental freedoms, as enshrined in the Convention⁹².

The Committee regards gender-based violence against women as being rooted in gender-related factors, such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles or prevent, discourage or punish what is considered to be unacceptable female behaviour. Those factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered a private matter, and to the widespread impunity in that regard⁹³.

Regardless of its legally non-binding character, **the UN Declaration on the Elimination of Violence against Women as of 1993⁹⁴ (DEVAW)** is an international instrument on human rights that exclusively deals with the issue of violence against women. It is an international instrument that explicitly addresses violence against women and specifies forms of violence against women. It affirms that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms. It acknowledges the longstanding failure to protect and promote those rights and freedoms in the case of violence against women.⁹⁵ It defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”

The provisions of the Declaration call the states to implement their obligation to protect the rights of women and to implement policy to ensure the elimination of violence against women. Violence against women occurs in both public and private life.

Article 2(a) of the United Nations Declaration on the Elimination of Violence against Women refers to violence occurring in the family and covers three types of violence: physical, sexual, and psychological. It then provides examples of the types of violence, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation, and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.

According to Article 2 of DEVAW: Violence against women shall be understood to encompass, but not be limited to, the following:

⁹² CEDAW, General Recommendation No. 35, para 10.

⁹³ CEDAW, General Recommendation No. 35, para 19.

⁹⁴ In 1993, the United Nations General Assembly proclaimed by its resolution 48/104 the Declaration on the Elimination of Violence against Women.

⁹⁵ Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104 of 20 December 1993.

- a) Physical, sexual, and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation, and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.
- b) Physical, sexual, and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment, and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- c) Physical, sexual, and psychological violence perpetrated or condoned by the State, wherever it occurs

The Declaration places the violence that occurs in public life at the same level as the violence in private life. It identifies the “invisible problem” and exposes what happens behind the door of the home. Thus, domestic violence is identified as a violation of the fundamental rights and freedoms of women. The Declaration explicitly proclaims that “women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms”, which include: the right to life, the right to equality, the right to liberty and security, the right to equal protection under the law, the right to be free from all forms of discrimination, the right to the highest standard attainable of physical and mental health, the right to just and favourable conditions of work, the right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment (Article 3).

Besides the legally non-binding character of the provisions of the Declaration, it has undeniable influence and particular role in shaping international policy on the phenomenon of domestic violence against women.

In 1995, the Beijing Declaration and Platform for Action, adopted at the UN’s Fourth World Conference on Women, identified the eradication of violence against women as a strategic objective among other gender equality requirements⁹⁶. It specified various forms of sexual assault on women that were not explicitly mentioned in DEVAW. These include systematic rape and forced pregnancy during armed conflict, sexual slavery, forced sterilisation, and forced abortion, female infanticide, and prenatal sex selection⁹⁷. The outcome document of the special session on Beijing +5 went a step further in calling for the criminalisation of violence against women, punishable by law⁹⁸. Paragraph 69 (c) states that governments shall “treat all forms of violence against women and girls of all ages as a criminal offence punishable by law, including violence based on all forms of discrimination.” The document also calls for the taking of measures to address VAW resulting from prejudice, racism and racial discrimination, xenophobia, pornography, ethnic cleansing, armed conflict, foreign occupation, religious and anti-religious extremism, and terrorism⁹⁹.

⁹⁶ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence.

⁹⁷ Beijing Declaration and Platform for Action, A/CONF.177/20 (1995), paras 114-115; and A/CONF.177/20/Add.1 (1995).

⁹⁸ 15 years of The United Nations Special Rapporteur on Violence against women, Its Causes and Consequences, para 4; (2009).

⁹⁹ Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action, A/RES/S-23/3 (2000).

The States are obliged and responsible to implement recognised international standards and policies for prevention, investigation, and prosecution of perpetrators of any act of violence against women, irrespective of whether state actors or private person committed the act. Nevertheless, according to the Former United Nations Special Rapporteur on violence against women, Yakin Erturk: "...there are numerous examples of States failing in their duty to appropriately investigate and punish acts of violence against women"¹⁰⁰. Numerous activities on combating violence against women have been undertaken on the international level, and especially in Europe, but still, in order to achieve effective implementation of international standards at the national level, it is necessary to transform their meaning into the local terminology, thus to position such standards into the local social contexts of power and meaning.

In the (2013) Report of the Former United Nations Special Rapporteur on violence against women, Rashida Manjoo, in relation to the state responsibilities, it is underlined that "Despite numerous developments, violence against women remains endemic, and the lack of accountability for violations experienced by women is the rule rather than the exception in many countries. Some challenges as regards State responsibility include: lack of acceptance of violence against women as human rights issue; inadequate state responses: minimum effort to deal with the problem in a systematic, comprehensive and sustained manner; minimum time, effort and resources are devoted to the problem; inadequate attention is devoted to investigating patterns, causes and consequences of violence; where cases are reported, few perpetrators are prosecuted, and even fewer convicted; and sanctions often do not reflect the seriousness of the crime perpetrated. Also, there continues to be a lack of response to addressing both individual and structural aspects of inequality and multiple and intersecting forms of discrimination, which are a cause and a consequence of violence against women"¹⁰¹.

In addition to the UN standards, several regional treaties and protocols have been adopted. The Inter-American Convention on the prevention, punishment and eradication of violence against women (the Convention of Belem do Bara) adopted in 1994 by the Organisation of American States, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) adopted in 2003 by the African Union, both address the issue of violence against women¹⁰².

3.1.2 Regional Legal Framework: Council of Europe

The Council of Europe is the first regional international organisation established in 1949 by member States with a clear mandate to promote and protect human rights and freedoms. This organisation represents a broad institutional basis for the promotion and protection of

¹⁰⁰ Yakin Erturk, 2006 (E/CN.4/2006/61), para.53

¹⁰¹ Rashida Manjoo, 2013, (A/HRC/23/49), para. 69.

¹⁰² Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence.

human rights. The Council of Europe includes 47 member states that, in order to become members, have to accept the rule of law and pledged to guarantee human rights and freedoms on their territory. All the Council of Europe member states, including Armenia, have ratified the European Convention on Human Rights.

The section below focuses on the Council of Europe legal documents dedicated to women's human rights and elimination of violence against women, as follows,

- Council of Europe Recommendation Rec (2002)5 of the Committee of Ministers to the Member States on the protection of women against violence;
- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

The Council of Europe Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence defines: the term “violence against women” is to be understood as an act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life. This includes, but is not limited to, the following:

- a* violence occurring in the family or domestic unit, including, *inter alia*, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants, crimes committed in the name of honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages;
- b* violence occurring within the general community, including, *inter alia*, rape, sexual abuse, sexual harassment, and intimidation at work, in institutions or elsewhere trafficking in women for the purposes of sexual exploitation and economic exploitation and sex tourism;
- c* violence perpetrated or condoned by the State or its officials;
- d* violation of the human rights of women in situations of armed conflict, in particular the taking of hostages, forced displacement, systematic rape, sexual slavery, forced pregnancy, and trafficking for the purposes of sexual exploitation and economic exploitation.

It is the responsibility and in the interest of states as well as a priority of national policies to safeguard the right of women not to be subjected to violence of any kind or by any person. To this end, states may not invoke custom, religion, or tradition as a means of evading this obligation¹⁰³. The reality is that the victims of domestic violence are disproportionately female. Various evidence shows that women may, in many cases, be victims of domestic violence. Domestic violence against women is often related to as “gender-based violence”

¹⁰³ Council of Europe Recommendation Rec (2002)5 of the Committee of Ministers to member states on the protection of women against violence.

because it emerges from the subordinate role of women in society. The fundamental root cause of violence against women is unequal power relations between women and men built and sustained by gender stereotypes.

Council of Europe Convention on preventing and combating violence against women and domestic violence (the Council of Europe convention) is the most far-reaching international treaty to tackle this serious violation of human rights. The ground-breaking features of the Convention are as follows:

- It recognises violence against women as a violation of human rights and a form of discrimination. This means that states are held responsible if they do not respond adequately to such violence.
- It is the first international treaty to contain a definition of gender. This means that it is now recognised that women and men are not only biologically female or male but that there is also a socially constructed category of gender that assigns women and men their particular roles and behaviours. Research has shown that certain roles and behaviours can contribute to make violence against women acceptable.
- It criminalises offences, such as female genital mutilation, forced marriage, stalking, forced abortion and forced sterilisation. This means that states will, for the first time, be obliged to introduce these serious offences into their legal systems.
- It calls for the involvement of all relevant state agencies and services so that violence against women and domestic violence are tackled in a coordinated way. This means that agencies and NGOs should not act alone but work out protocols for cooperation.

Article 3 (a) of the Council of Europe Convention on preventing and combating violence against women and domestic violence defines violence against women as follows: “Violence against women” 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 private life¹⁰⁴.

The Preamble of the Council of Europe Convention on preventing and combating violence against women and domestic violence 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. It also recognises the structural nature of violence against women as gender-based violence and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men¹⁰⁵.

¹⁰⁴ CETS 210 – Violence against women and domestic violence, 11.V.2011.

¹⁰⁵ Ibid.

The Council of Europe convention requires States to: take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men to eradicate prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or stereotyped roles for women and men¹⁰⁶.

Article 3(b) of the convention defines domestic violence as: “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.” Domestic violence includes mainly two types of violence: intimate-partner violence between current or former spouses or partners and inter-generational violence, which typically occurs between parents and children. Domestic violence affects mostly women, but also men, children and the elderly¹⁰⁷.

Domestic violence constitutes a form of violence that affects women disproportionately and which is therefore distinctly gendered. Although the term “domestic” may appear to limit the context of where such violence can occur, the Council of Europe convention recognises that the violence often continues after a relationship has ended, and therefore, a joint residence of the victim and perpetrator is not required. Inter-generational domestic violence includes physical, sexual, psychological, and economic violence by a person against her or his child or parent (elderly abuse) or such violence between any other two or more family members of different generations. Again, a joint residence of the victim and perpetrator is not required¹⁰⁸.

3.1.3. Cedaw Jurisprudence Relevant to the Police Conduct

The CEDAW Optional Protocol has also addressed cases of gender-based violence against women and domestic violence. These include inter alia:

Yildirim v. Austria case¹⁰⁹:

Fatima Yildirim and her husband Irfan Yildirim married in 2001. Fatima had three adult children from a prior marriage. Melissa was born of the marriage with Irfan Yildirim and was five years old at the time of the incidents. Upon returning from a visit to Turkey in July 2003, the couple had a dispute, and Irfan threatened to kill Fatima. He again threatened to kill her one month later, in August. Fatima and Melissa went to live with Fatima’s daughter. Thinking of him being at work, Fatima returned to her apartment to collect her belongings. Irfan entered at that time,

¹⁰⁶ CETS 210 – Violence against women and domestic violence, 11.V.2011, Article 12.

¹⁰⁷ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, para 41.

¹⁰⁸ Ibid., para 42.

¹⁰⁹ Communication No. 06/2005, CEDAW/C/39/D/6/2005.: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/495/37/PDF/N0749537.pdf?OpenElement>

assaulting her and threatening again to kill her. She reported him to the federal police. The police issued an order prohibiting him from returning to the home and requested that the Prosecutor detain him. The Prosecutor denied the request. The police referred Fatima to a domestic violence intervention centre. Two days later, with support from the intervention centre, Fatima obtained an injunction on behalf of herself and her daughter. That same day after work, Irfan harassed her as she was leaving work, and the police were called. Irfan later threatened Fatima's adult son. The next day, Irfan threatened to kill Fatima at her workplace. By the time the police arrived, he had left. The police called him to return and spoke to him in person. The police spoke to Irfan on his cell phone that evening after he had again threatened Fatima and her son. Two days later, Irfan came to Fatima's workplace and threatened to kill her. Two days later, Fatima made a formal statement to the police about the threats, and the police requested that Prosecutor detain Irfan. The Prosecutor refused the request. Two weeks later, Fatima filed for divorce. A week later, a no-contact ban was issued against Irfan for the period of the divorce proceedings, which impeded contact with his child Melissa for three months. Ten days later, Irfan followed Fatima home from work and fatally stabbed her. He was arrested a week later trying to enter Bulgaria and is serving life imprisonment.

The CEDAW Committee underscored the State's due diligence obligations, in which it is "responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation¹¹⁰." In this regard, it underscored that although the State had established a comprehensive system to address domestic violence, for the practical realisation of an individual woman's rights, "the political will that is expressed in the aforementioned comprehensive system of Austria must be supported by State actors¹¹¹." In particular, it found that the facts disclose a situation that was extremely dangerous to Fatma Yildirim of which the Austrian authorities knew or should have known, and as such, the Public Prosecutor should not have denied the requests of the police to arrest Irfan Yildirim and place him in detention¹¹². In response to the State's argument that an arrest warrant seemed "unduly invasive" at the time, the Committee reiterated its holding in *A.T. v. Hungary* that "the perpetrator's rights cannot supersede women's human rights to life and physical and mental integrity"¹¹³. The Committee found violations of Article 2(a) (Policy Measures), (c)-(f) and Article 3 (Guarantee of Basic Human Rights and Fundamental Freedoms) of CEDAW.

X and Y v. Georgia¹¹⁴:

This case was brought by a mother (X) and daughter (Y) who complained of Georgia's failure to prevent, investigate and punish prolonged physical violence and sexual and psychological abuse, suffered at the hands of their former husband and father, respectively.

¹¹⁰ Ibid. para 12.1.1

¹¹¹ Communication No. 06/2005, CEDAW/C/39/D/6/2005, para 12.1.2.: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/495/37/PDF/N0749537.pdf?OpenElement>

¹¹² Communication No. 06/2005, CEDAW/C/39/D/6/2005, para 12.1.4.: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/495/37/PDF/N0749537.pdf?OpenElement>

¹¹³ Communication No. 06/2005, CEDAW/C/39/D/6/2005, para 12.1.5.: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/495/37/PDF/N0749537.pdf?OpenElement>

¹¹⁴ Communication No. 24/2009, CEDAW/C/61/D/24/2009 (2015)

The violence suffered by X began in 1987 when she was raped by her future husband at a party. Shortly afterwards, she married him. Because of societal attitudes in Georgia, which prize the sanctity of a women's virginity prior to marriage, she believed that no one else would wish to marry her because she was no longer a virgin. Within the marriage, X gave birth to five children and gave up her job following the birth of her first child. X's husband was consistently violent towards the children, often shouting at them or punishing them with physical violence for misbehaving or arguing amongst themselves. X was assaulted by her husband whenever she intervened to protect the children and as a result of disputes over insignificant household issues. Her husband also subjected two of their children – Y and her brother – to sexual abuse.

Despite reporting the incidents of physical and sexual abuse to the authorities on more than five occasions (supported by first-hand evidence from X and Y, among others, and medical reports confirming physical injuries sustained by X at the hands of her husband), the complaints were never investigated, and no criminal charges were brought against her husband. Her husband was only ever asked by the police to sign unenforceable written declarations that he would not use further violence against his family.

Without justice from domestic courts, X and Y took their case to the European Court of Human Rights (represented by INTERIGHTS and Article 42 of the Constitution) – however, their application was found inadmissible. Undeterred, X and Y (and their defenders) filed a complaint with the Committee on the Elimination of All Forms of Discrimination against Women (the “Committee”). In 2013 their case was found **admissible**, despite the previous inadmissible application to another international body. While the application to the European Court was focused on the personal impact of the abuse suffered by the applicants, it never referred to the sex-based discrimination inherent in the authorities' failure to prevent the violence suffered by the applicants; this argument was the essence of the application made before the Committee. Consequently, the Committee acknowledged X and Y's application was factually and legally distinguishable from the one previously submitted to the European Court. In its first decision against Georgia, the CEDAW Committee recognised the violation by the state of the authors' rights under the Articles relied upon:

- Article 2(b)-(f): Policy measures and obligations in conjunction with Article 1 (definition of discrimination against women) and 5(a) (gender stereotyping and prejudice) (para. 9.2)
- General Recommendation No. 19 on Violence against Women (para. 9.3)

The CEDAW Committee found that the Georgian State had failed to enact criminal law provisions to effectively protect women and girls from physical and sexual abuse within the family, provide equal protection under the law to victims of domestic violence and sexual abuse, and protect them from domestic violence (violations of Articles 1, 2(b)-(f) and 5(a) of the CEDAW Convention). The Committee also cited the state's due diligence obligations (under Articles 1 and 2 of the Convention read in conjunction with the Committee's General Recommendation No. 19 on violence against women) to prevent, investigate, and punish acts of domestic violence by non-state actors (para. 9.3). In particular, the Committee concluded that the Georgian authorities had failed in their duty to (para. 9.7):

Goekce v. Austria¹¹⁵:

Şahide Goekce was an Austrian citizen of Turkish origin. From 1999-2002, she was subjected periodically to physical violence and death threats by her husband Mustafa Goekce. The police were informed of these ongoing threats. On two occasions, they imposed protection orders requiring Mustafa Goekce to leave the shared home first for a period of 10 days, then for a period of three months. On one occasion, Mustafa Goekce was charged with assault but acquitted because Şahide Goekce's injuries were judged to be insufficiently serious. The police asked twice that Mustafa Goekce be detained because of the death threats and violence that he was inflicting. However, the prosecutors denied these requests because of insufficient evidence. Şahide Goekce's father and brother provided further information to the police confirming that Mustafa Goekce had made many threats to kill Şahide Goekce, and that he had access to a gun. These statements were not taken seriously or recorded. Two days after prosecution for causing bodily harm and making a dangerous criminal threat was stopped, Mustafa Goekce shot Şahide Goekce with a handgun in front of two of their daughters.

The Vienna Intervention Centre and the Association of Women's Access to Justice, acting on behalf of Şahide Goekce's three children, submitted that:

“women are far more affected than men by the failure of public prosecutors to take domestic violence seriously as a real threat to life and their failure to request detention of alleged offenders. Women are also disproportionately affected by the practice of not prosecuting and punishing offenders in domestic violence cases. Furthermore, women are disproportionately affected by the lack of coordination of law enforcement and judicial personnel, the failure to educate law enforcement and judicial personnel about domestic violence and the failure to collect data and maintain statistics on domestic violence.” (paragraph 3.3)

The application to the CEDAW Committee emphasised that the remedy the family sought was not compensation but to hold the State to account for its omissions and negligence.

The Austrian Government's response indicated that on several occasions, Şahide Goekce refused to testify against her husband or to permit a prosecution, that the couple put up a front of being united in the course of child protection proceedings and partner therapy: that although the police were frequently called to the house, that she had expressly declared that she wanted to live with her husband. On this basis, the prosecutors' assessment was that threats were a frequent part of the interaction between Şahide Goekce and Mustafa Goekce, but that these threats would not be acted on. The government response admitted that Mustafa Goekce had bought a handgun three weeks before killing Şahide Goekce, even though there was a valid weapons prohibition against him.

In response, the applicants said that “the State party has wrongfully placed the burden and responsibility of taking steps against a violent husband on the victim and has failed to understand the danger the victim faces and the power of the perpetrator over the victim.[..] [The burden should] be placed on the State – where it belongs – [this] would reinforce the fact that making a criminal threat is a crime against the community as well as a crime against an individual victim.” (paragraph 5.3)

¹¹⁵ Communication No. 5/ 2005, CEDAW/C/39/D/5/2005

The Austrian Government gave detailed information about the law and practice relating to domestic violence and how officials are trained. They also noted that – particularly because Mustafa Goekce committed the offence under the influence of a jealousy psychosis that absolved him of criminal responsibility, that “it is difficult to make a reliable prognosis as to how dangerous an offender is and that it is necessary to determine whether detention would amount to a disproportionate interference in a person’s basic rights and fundamental freedoms.” (paragraph 8.10)

In response, the applicants noted that Şahide Goekce would have been afraid of losing her children, and the social and cultural contempt for a woman of Turkish descent whose children had been taken away, and this would explain why she might have played down the threats against her. (paragraph 9.6). They also noted that Şahide Goekce made many attempts to get help in the last year of her life – and others indicated the level of risk she was facing – but that these relevant details were not adequately documented.

The CEDAW Committee made a statement of principle on the issue of due diligence, which has been taken up in many subsequent cases:

“The Committee notes that the State party has established a comprehensive model to address domestic violence that includes legislation, criminal and civil-law remedies, awareness-raising, education and training, shelters, counselling for victims of violence and work with perpetrators. However, in order for the individual woman victim of domestic violence to enjoy the practical realisation of the principle of equality of men and women and of her human rights and fundamental freedoms, the political will that is expressed in the aforementioned comprehensive system of Austria must be supported by State actors, who adhere to the State party’s due diligence obligations.” (paragraph 12.1.2)

The CEDAW Committee took into account a number of factors: the frequency of calls for assistance from Şahide Goekce to the police had increased; the police had made several requests for Mustafa Goekce’s detention; the protection order in force had been breached; Mustafa Goekce had purchased a handgun despite the valid weapons prohibition against him, and a witness had reported to the police that he had a weapon. Given the combination of factors, the CEDAW Committee said that the police knew or should have known that Şahide Goekce was in serious danger and treated her last call as an emergency.

The CEDAW Committee was clear that: “the basic rights and fundamental freedoms of a perpetrator of domestic violence, such as the right to freedom of movement and to a fair trial [...] cannot supersede women’s human rights to life and to physical and mental integrity.” (paragraph 12.1.5)

Angela González Carreño v. Spain¹¹⁶:

The Supreme Court of Spain reaffirmed in 2018 that Spanish law must incorporate the rights and freedoms enshrined in human rights treaties. Ten years ago, when her daughter was three years old, Ms Carreno left her husband after he threatened her with a knife. Over a number of years, she brought complaints against him to the Spanish legal system, seeking

¹¹⁶ Communication No 47/2012, CEDAW/C/58/D/47/2012 (2014)

to protect her daughter from having visitation time with her father, as ordered by the courts. After a judicial hearing on the matter, Ms González Carreño's husband allegedly approached her and told her that he was going to "take away what mattered most to her". Later that day, he shot his daughter and then committed suicide.

In 2012, Ms González Carreño took her case to CEDAW with allegations of GB discrimination and failed protection by the police, administrative and judicial authorities. In 2014, CEDAW found that Spain had violated her human rights under the Convention and recommended the state to pay Ms González Carreño compensation and to take measures to ensure that past incidents of domestic violence are taken into consideration when determining custody and visitation rights regarding children.

In 2018, the Supreme Court of Spain enforced compliance with the Committee's recommendations and recognised the violation of her rights, ordering the Government to pay 600,000 Euros as compensation for the moral damages she had suffered. The Supreme Court acknowledged that the provisions of international treaties to which Spain is a party form part of its law and that the recommendations of CEDAW are binding in nature.

3.1.4. Case Law of the European Court of Human Rights Relevant to the Police Conduct

The European Court of Human Rights (hereinafter the ECtHR) is a permanent judicial body¹¹⁷ tasked to ensure that Council of Europe member States respect the rights and guarantees set out in the European Convention on Human Rights (hereafter the Convention). Individuals and states can lodge complaints (applications) against a member state of the Convention for alleged violation of the rights and guarantees set out in the Convention or its Protocols. The ECtHR examines and rules on the application. Where the ECtHR concludes that a Member State has breached one or more of these rights and guarantees, the ECtHR delivers a judgment finding a violation. Judgments are binding: the countries concerned are under an obligation to comply with them.

The jurisprudence from the ECtHR has played a significant role in shaping and strengthening the international and national frameworks on ending violence against women by addressing the right of women to be safe and protected from gender-based violence. Cases can only reach the ECtHR when national courts and remedies have failed. Consequently, the cases powerfully illustrate the responsibility of the State to respect, protect and fulfil human rights. The ECtHR case law has also been influential in revealing the need for coordinated and comprehensive responses and placing the responsibility on the State to prevent and combat gender-based violence effectively¹¹⁸.

¹¹⁷ Entry into force of Protocol No. 11 to the Convention, instituting the Court.

¹¹⁸ Preventing and Combating Domestic Violence against Women, January 2016, p.29.

The cornerstone case of the ECtHR on domestic violence is *Opuz v. Turkey case* from 2009, which found Turkey and its authorities to violate the right to life (Article 2), the prohibition on torture and ill-treatment (Article 3) and the right to be free from discrimination (Article 13) of the Convention¹¹⁹. The case concerned two victims, the applicant and her mother, lodging police reports on several occasions about beatings leading to severe bodily injuries and death threats. Women withdrew their complaints because the perpetrator (HO) threatened to kill them. He subsequently stabbed his wife seven times and was given a fine equivalent to about 385 euros. The two women filed numerous complaints, claiming their lives were in danger. The husband was questioned and released. The perpetrator eventually killed his wife's mother and was convicted and sentenced to life imprisonment, but the national court reduced the sentence due to the mitigating circumstance that the mother provoked him and due to his good behaviour in Court. He was released pending his appeal when he sought out the applicant and threatened to kill her and her new boyfriend. No protection measures were instituted despite the victim's request. The Court found the violence suffered by the victim, "in the form of physical injuries and psychological pressure, were sufficiently serious to amount to ill-treatment within the meaning of Article 3"¹²⁰.

The Court examined the practice across Council of Europe Member States concerning ex officio prosecutions in domestic violence cases, noting that: "a crucial question in the instant case is whether the local authorities displayed due diligence to prevent violence against the applicant and her mother, in particular by pursuing criminal or other appropriate preventive measures against HO despite the withdrawal of complaints by the victims"¹²¹. It inferred from the practice of other states that "the more serious the offence or, the greater the risk of further offences, the more likely that the prosecution should continue in the public interest, even if victims withdraw their complaints"¹²². It highlighted in this regard several common characteristics of domestic violence cases: "In view of the above events, it appears that there was escalating violence against the applicant and her mother by HO. The crimes committed by HO were sufficiently serious to warrant preventive measures, and there was a continuing threat to the health and safety of the victims. When examining the history of the relationship, it was obvious that the perpetrator had a record of domestic violence, and there was, therefore, a significant risk of further violence"¹²³.

Furthermore, the Court found that the local authorities could have foreseen a lethal attack by HO. The Court reiterates that a failure to take reasonable measures which could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the State (see *E. and Others v. the United Kingdom*, no. 33218/96, § 99, November 26 2002)¹²⁴. The Court concluded that the continued violence, in this case, was not only possible but foreseeable. It further rejected the basis for the authorities' refusal to inter-

¹¹⁹ *Opuz v. Turkey*, Application No. 33401/02 2009.

¹²⁰ *Ibid.*, paras 159, 160, 161.

¹²¹ *Ibid.*, para 131.

¹²² *Ibid.*, para 139.

¹²³ *Ibid.*, para 134.

¹²⁴ *Opuz v. Turkey*, Application No. 33401/02 2009, para 136.

vene. It stated: “it does not appear that the local authorities sufficiently considered the above factors when repeatedly deciding to discontinue the criminal proceedings against HO. Instead, they seem to have given exclusive weight to the need to refrain from interfering with what they perceived to be a “family matter”. Moreover, there is no indication that the authorities considered the motives behind the withdrawal of the complaints. This is despite the applicant’s mother’s indication to the Public Prosecutor that she and her daughter had withdrawn their complaints because of the death threats issued and pressure exerted on them by HO.

The Court concluded that the national authorities failed to meet their due diligence obligations and consequently their positive obligation to protect the right to life of the applicant’s mother, who was murdered by the perpetrator, within the meaning of Article 2 of the Convention. In assessing “whether the national authorities have taken all reasonable measures to prevent the recurrence of violent attacks against the applicant’s physical integrity”, the Court looked to the common values emerging from the practices of European States, and specialised instruments such as CEDAW¹²⁵. While noting that the authorities did not remain passive, “none of these measures were sufficient” to prevent the perpetrator from committing more violence¹²⁶. In this regard, it found that: “the legislative framework should have enabled the prosecuting authorities to pursue the criminal investigations against HO despite the withdrawal of complaints by the applicant on the basis that the violence committed by HO was sufficiently serious to warrant prosecution and that there was a constant threat to the applicant’s physical integrity”¹²⁷. It found that the authorities did not exercise the required due diligence “to prevent the recurrence of violent attacks” as the perpetrator committed them without “hindrance” and “with impunity”, and that their response was “manifestly inadequate”¹²⁸.

For the victim’s discrimination claims, the Court referred to CEDAW General Recommendation No. 19, defining gender-based violence as a form of discrimination. The Court also examined several NGO reports related to domestic violence in Turkey, which contained statistics. The reports indicated that: “the highest number of reported victims of domestic violence is in Diyarbakır, where the [victim] lived at the relevant time, and that the victims were all women who suffered mostly physical violence¹²⁹.” The reports also indicated that: “when victims report domestic violence to police stations, police officers do not investigate their complaints but seek to assume the role of mediator by trying to convince the victims to return home and drop their complaint. In this connection, police officers consider the problem as a “family matter with which they cannot interfere”¹³⁰. The NGO reports also noted the numerous delays in obtaining protective injunctions as the police treated them like divorce actions, as well as delays in serving the injunctions on the perpetrators due to the police’s “negative attitudes”¹³¹. Moreover, “the perpetrators of domestic violence do not seem to re-

¹²⁵ Ibid., paras 162-164.

¹²⁶ Ibid., para 167.

¹²⁷ Ibid., para 168.

¹²⁸ Ibid., paras 168-170.

¹²⁹ Ibid., para 194.

¹³⁰ Ibid., para 195.

¹³¹ Ibid., para 196.

ceive dissuasive punishments, because the courts mitigate sentences on the grounds of custom, tradition or honour”¹³².

The Court found that the authorities had not even used the protective measures available and had discontinued proceedings as a “family matter”, ignoring why the complaints had been withdrawn. The Court concluded that “domestic violence affected mainly women” and that “the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence”¹³³. It concluded that the victim and her mother were discriminated against on account of the authorities’ failure to provide equal protection of law due to its “insufficient commitment to take appropriate action to address domestic violence”.

Opuz v. Turkey is a significant case on issues of domestic violence as the Court for the first time held that gender-based violence resembles a form of discrimination because it mainly affects women, and women are not equally protected by law as men.

Another landmark case of the ECtHR, which recognises and advances the due diligence standard in the context of domestic violence is ***Bevacqua and S. v. Bulgaria***¹³⁴. In this case, the first applicant married Mr N. in 1995 and gave birth to a son S. (the second applicant), in January 1997. Later, Mr N. became aggressive, and on March 1, 2000, the first applicant left the family home with her son and moved into her parents’ apartment. On the same day, the first applicant filed for divorce and sought an interim custody order, stating, inter alia, that Mr N. often used offensive language and battered her. On March 7, 2000, a judge at the Sofia District Court examined the case file and fixed the date of the first hearing for April 11 2000, without examining the request for an interim order. During the first two months following the separation, Mr N. visited his son every day and took him to his apartment on weekends, with the first applicant’s consent. On May 6, 2000, Mr N. did not bring S. home after a walk. He telephoned the first applicant and told her that his son would live with him. For the next six days, he refused the first applicant’s requests for meetings or telephone conversations with her son. Several days ago, the first applicant went to see her son at the kindergarten and took him to her home. In the evening, Mr N. telephoned and then appeared outside the first applicant’s home. He was shouting and banging on the door, thus frightening the child and the first applicant. Mr N. eventually managed to enter the apartment when the first applicant’s father came home. He allegedly hit or pushed the first applicant in the presence of her parents and the child. At one point, Mr N. seized his son, but the first applicant was trying to hold him. The child was screaming. Eventually, Mr N. left with the child. The first applicant visited a forensic doctor who noted a small bruise on her face and a bruise on her hip. The second act of violation from Mr N. was on June 28, 2000, when he brought S. for a visit to his mother’s apartment; Mr N. reacted angrily to remarks by the first applicant and hit her in their son’s presence. On the next day, the first applicant visited a medical doctor who noted a bruise on her left eyelid and a swollen cheek. She also reported pain in her right wrist. After both violent acts of Mr N, the police response was not sufficient:

¹³² Ibid.

¹³³ Ibid., para 198.

¹³⁴ Bevacqua and S. v. Bulgaria, Application No. 71127/01, 12 June 2008.

- ▶ It appears that the inspector disbelieved the first applicant's version of the events and allegedly insisted that she could be prosecuted for having abducted her son¹³⁵;
- ▶ the first applicant complained to the juvenile's inspector at the local police station but was told that nothing could be done and that the dispute should be decided by the courts¹³⁶.

In July and August 2000, the first applicant complained to the Ministry of the Interior, stating that they should assist her to obtain the custody of her child and that measures should be taken to protect her son, who was in danger because Mr N. was not taking care of him properly and was aggressive towards her. The first applicant complained that nothing had been done in this respect by the police. In August 2000, she received replies stating that the matter had been examined and that no unlawful conduct on the part of police officers had been noted. The police had done what they could, and the remaining issues concerned a private dispute. During the trial, two witnesses confirmed Mr N.'s aggressive behaviour. After the appeal proceedings, the Sofia City Court upheld the lower Court's judgment but considered that there was ample evidence that Mr N. had been aggressive and had battered the first applicant during their marriage. The first applicant was, therefore, better suited to raise the child. The first applicant visited Mr N.'s apartment, accompanied by two friends, to collect her belongings. Her former husband became aggressive and battered her. On the following day, the first applicant visited a forensic doctor who noted bruises on her face, right arm and armpit and her left hip. She complained to the prosecution authorities, which by decisions of October and December 2002 and January 2003 refused to institute criminal proceedings against Mr N., noting that it was open to the first applicant to bring private prosecution proceedings, as the alleged injuries fell into the category of light bodily injuries¹³⁷.

Relying on Articles 3, 8, 13 and 14, the applicants complained that the authorities failed to take the necessary measures to secure respect for their family life and failed to protect the first applicant against the violent behaviour of her former husband¹³⁸. During the examination of the application, the Court envisaged the key international legal instruments on violence against women¹³⁹.

The ECtHR stated: "without overlooking the vulnerability of the victims in many cases of domestic violence, in this particular case the Court cannot accept the applicants' argument that her Convention rights could only be secured if the State prosecuted Mr N. and that the Convention required State assisted prosecution, as opposed to prosecution by the victim, in all cases of domestic violence. While the Court cannot exclude that the relevant Bulgarian law, according to which many acts of serious violence between family members cannot be prosecuted without the active involvement of the victim (see paragraphs 44-46 above), may be found, in certain circumstances, to raise an issue of compatibility with the Convention, its task is limited to the examination of the particular facts before it. It is not the Court's role

¹³⁵ Bevacqua and S. v. Bulgaria, Application No. 71127/01, 12 June 2008, para 16.

¹³⁶ Ibid., para 23.

¹³⁷ Ibid., paras 36-38.

¹³⁸ Ibid., para 54.

¹³⁹ Ibid., Chapter III.

to replace the national authorities and choose in their stead among the wide range of possible measures that could suffice to secure respect for the applicants' private and family life. Within the limits of the Convention, the choice of the means to secure compliance with Article 8 in the sphere of the relations of individuals between themselves is in principle a matter that falls within the domestic authorities' margin of appreciation¹⁴⁰.

The Court stated that specific administrative and policing measures – among them, for example, those mentioned in **Recommendation Rec (2002) 5 of the Committee of Ministers on the Protection of Women against Violence** or those introduced in Bulgarian law by the Domestic Violence Act 2005– would have been called for. However, at the appropriate time, Bulgarian law did not provide for specific administrative and policing measures, and the measures taken by the police and prosecuting authorities based on their general powers did not prove effective. The Court also considered that the possibility for the first applicant to bring private prosecution proceedings and seek damages was not sufficient as such proceedings required time and could not serve to prevent recurrence of the incidents complained of. In the Court's view, the authorities' failure to impose sanctions or otherwise enforce Mr N.'s obligation to refrain from unlawful acts was critical in the circumstances of this case, as it amounted to a refusal to provide the immediate assistance the applicants needed. The authorities' view that no such assistance was due as the dispute concerned a "private matter" was incompatible with their positive obligations to secure the enjoyment of the applicants' Article 8 rights¹⁴¹.

In the ECtHR's view, the cumulative effects of the District Court's failure to adopt interim custody measures without delay in a situation which affected the applicants adversely and, above all, the well-being of the second applicant and the lack of sufficient measures by the authorities during the same period in reaction to Mr N.'s behaviour amounted to a failure to assist the applicants contrary to the State positive obligations under Article 8 of the Convention to secure respect for their private and family life¹⁴².

In ***Kontrová v. Slovakia case***, the victim reported a violent incident to the police with a medical certificate, documenting that the injuries left her unfit to work for six days. She later returned to the police station with her husband to modify the complaint. The police reduced the criminal charge to a minor offence. The following month a relative of the victim called the police to indicate that the husband had locked himself into the apartment with a shotgun and threatened to kill himself and their two children. The victim also called the police. When the police arrived, the perpetrator had already left the scene. The applicant filed a complaint the next day. A few days later, the husband shot their two children and himself. Shortly after that, the police inspection service filed a complaint of abuse of public authority and dereliction of duty against two police officers who had handled the second incident for not immediately instituting criminal proceedings against the perpetrator, failing to respond appropriately to an emergency and failing to launch an investigation into the incident. The police inspection service also filed a complaint of abuse of public authority against the police officer who responded to the first complaint for altering the records and treating the incident as a minor

¹⁴⁰ Ibid., para 82.

¹⁴¹ Ibid., para 83.

¹⁴² Ibid., para 84.

offence. These cases were either discontinued or dismissed. The Prosecutor appealed to the Supreme Court, which quashed the lower decisions, finding that the police officers had been derelict in their duties. A district court found the accused police officers guilty and issued suspended sentences. On appeal, a regional court affirmed. The victim filed two claims before the Constitutional Court considering her inability to claim non-pecuniary damages in the criminal proceedings, which were declared inadmissible.

In light of the State's responsibility for the victims, the right to life under Article 2, the ECtHR found that there had been a violation of Article 2 in the light of the Slovakian Government's acknowledgement that the domestic authorities had failed to take appropriate action to protect the lives of the applicant's children. It also found a violation of Article 13 as the victim "should have been able to apply for compensation for the non-pecuniary damage suffered by herself and her children in connection with their death¹⁴³."

In ***Branko Tomašić and Others v. Croatia case***, the Court found a violation of the State's positive obligation under Article 2 (right to life). In that case, the applicants' son-in-law (MM) threatened on multiple occasions to kill their daughter (MT) and their child (VT), including blowing up the latter with a bomb on his first birthday. The perpetrator (MM) made these threats in front of both police and the staff of the social welfare centre. MT lodged a criminal complaint against him, and MM was convicted for multiple threats against MT and sentenced to five months in prison. A psychiatric evaluation recommended that he should receive ongoing psychiatric treatment in and out of prison. Upon his release, MM shot and killed MT, VT, and himself. There was no record of MM's psychiatric treatment during his prison term. The applicants (relatives) made a two-fold complaint under Article 2: firstly, the State had failed to comply with their positive obligations in order to prevent the deaths of MT and VT and secondly, the State had failed to conduct a thorough investigation into the possible responsibility of authorities for the deaths of MT and VT.¹⁴⁴

The Court reiterated that Article 2: "enjoins the State to take appropriate steps to safeguard the lives of those within its jurisdiction. This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions¹⁴⁵."

With respect to the applicable standard—whether the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life and that they failed to take measures to avoid that risk—the Court found that "the domestic authorities were aware that the threats made against the lives of MT and VT were serious and that all reasonable steps should have been taken in order to protect them from those threats". The Court thus examined "whether the relevant authorities took all steps reasonable in the circumstances of the present case to protect the lives of MT and VT".¹⁴⁶ In finding a substantive breach of Article 2, the Court first noted that despite MM's multiple threats concerning a

¹⁴³ Kontrová v. Slovakia, Application No. 7510/04, 2005.

¹⁴⁴ Branko Tomašić and Others v. Croatia, Application No. 46598/06, 2009, para 29.

¹⁴⁵ Ibid., para 49.

¹⁴⁶ Ibid., paras 51, 53.

bomb, the authorities never searched his home or vehicle for a bomb or other weapons. It also observed that the Government failed to demonstrate that “the compulsory psychiatric treatment ordered in respect of MM during his prison term was actually and properly administered¹⁴⁷.” The Court further noted in this regard that no adequate risk assessment was conducted upon the perpetrator’s release from prison. It found this “failure particularly striking given that his threats had been taken seriously by the courts and that the prior psychiatric report expressly stated that there was a strong likelihood that he might repeat the same or similar offences¹⁴⁸. These factors together led the Court to conclude that there was a substantive violation of Article 2 as the domestic authorities failed to take “all reasonable steps in the circumstances of the case” to protect the lives of MT and VT.

In Aydin v. Turkey case, the applicant was a Kurdish 17-year-old who was blindfolded and taken with other members of her family to a gendarmerie where she was stripped and subjected to torture, interrogation, raped and subsequently beaten. They were released separately the same day. The day after being released, the victim, her father and sister went to the Public Prosecutor’s office, where they filed a complaint. They were sent to the State hospital for forensic tests, where the victim was subjected to a virginity test. The doctor confirmed that the hymen had been torn and that the victim had been bruising on her inner thighs. Wounds were also documented on the bodies of her family members. The next day public Prosecutor sent the victim to a second hospital to determine when she had lost her virginity; the doctor had estimated a week before the examination. No swab was taken. Neither of the forensic doctors was sufficiently qualified experts. A month later, the Prosecutor took a second statement from the victim and sent her for the third examination of her virginity. The date of the torn hymen could not be determined. The victim received a letter that the investigation had produced no evidence of the rape. The victim and her husband suffered harassment by police and public authorities upon her filing her complaint to the European Commission for Human Rights. Her husband was taken into custody and severely beaten.

In a violation of Article 3 of the Convention (prohibition of torture and inhuman or degrading treatment), the Court found that: “While being held in detention the applicant was raped by a person whose identity has still to be determined. Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim, which do not respond to the passage of time as quickly as other forms of physical and mental violence. The applicant also experienced the acute physical pain of forced penetration, which must have left her feeling debased and violated both physically and emotionally”¹⁴⁹. Holding that in cases involving claims of torture under Article 3, Article 13 imposes on States the requirement to conduct an effective investigation. The Court found that the Prosecutor failed to conduct a prompt, thorough and effective investigation into the claims of the victim and her

¹⁴⁷ Ibid., paras 55, 56.

¹⁴⁸ Ibid., para 58.

¹⁴⁹ Aydin v. Turkey, Application No. 57/1996/676/866, 1997, para 83.

family members. In particular, the Court observed: “It would appear that [the Prosecutor’s] primary concern in ordering three medical examinations in rapid succession was to establish whether the applicant had lost her virginity. The focus of the examinations should really have been on whether the applicant was a rape victim, which was the very essence of her complaint¹⁵⁰.”

The Court further noted the weaknesses in the specific forensic procedures undertaken. It concluded that: “the requirement of a thorough and effective investigation into an allegation of rape in custody at the hands of a State official also implies that the victim is examined, with all appropriate sensitivity, by medical professionals with particular competence in this area and whose independence is not circumscribed by instructions given by the prosecuting authority as to the scope of the examination. It cannot be concluded that the medical examinations ordered by the public Prosecutor fulfilled this requirement¹⁵¹.”

In Balsan v. Romania case¹⁵², the 58 years old applicant lived in Petrosani and was married to NC. They had four children. NC assaulted the applicant on multiple occasions during 2007–2009, after which the applicant obtained forensic medical certificates documenting her injuries and which required from two to ten days of medical care. In their reports on the incidents, the responding police officers noted that NC had locked the applicant out of their joint residence, that the injuries were due to a domestic dispute, and that they had informed her of her right to file a formal complaint.

The applicant lodged two separate complaints with the Prosecutor’s office, alleging physical assault in the presence of her children, to which she attached copies of the medical certificates. The investigators took the statements of the applicant, and her siblings, months after the first incidents, all of which attested to the ongoing violence throughout the year, including threats against her life. The perpetrator, N.C., was not interviewed by the investigators until five months after the first reported assault. He denied assaulting her and indicated that she had a drinking problem and did not clean a house accurately. NC alleged that the medical certificates submitted by the applicant had been forged. Their daughters stated to the police that their father had not hit their mother but that she would drink and become aggressive when she got drunk.

The applicant applied to the Prosecutor on two additional occasions, indicating that NC had threatened to kill her and that she feared for her life. She also requested expedited proceedings and protection. On the day of the second application, the Prosecutor’s office decided not to press charges and fined NC the equivalent of 50 Euros due to the fact that the applicant had provoked the disputes after drinking alcohol. The prosecution’s decision referred to NC’s statements and those of the applicant’s two adult daughters. As regards the alleged threats, it was considered that the applicant had failed to prove her accusations.

¹⁵⁰ Ibid., para 107.

¹⁵¹ Ibid., para 107.

¹⁵² Balsan v. Romania, Application No. 49645/09, 2017.

The Prosecutor concluded that, although NC had committed the crime of bodily harm, his actions had not created any danger to society because the victim had provoked him, had no previous criminal record and was a retired person. The applicant's complaint against that decision was rejected as ill-founded. The applicant filed a complaint against the two prosecutor decisions with the Petrosani District Court, asking that NC be charged with bodily harm and be convicted and ordered to pay non-pecuniary damages for the suffering she had endured. She alleged that the administrative fine, which NC had refused to pay, had not had a deterrent effect on him as he had continued to assault her after the Prosecutor's first decision not to prosecute. She also asked the Court to impose criminal sanctions on him and requested permission to submit a recording of a conversation with NC to prove that she had been assaulted and threatened by him. In the last paragraph of her submission, the applicant stated that she feared for her life and asked the Court to "punish NC as provided for by law ... to forbid him from entering the apartment ... and to forbid him from coming near her ..."

At the second hearing before the Petrosani District Court, the applicant requested a court-appointed lawyer because she did not have the financial means to hire one. The Court dismissed the application, finding that the subject matter of the case did not require representation by a lawyer. By an interlocutory judgment, the Petrosani District Court partially quashed the Prosecutor's decision of December 19, 2007, in respect of the crime of bodily harm and the penalty imposed for it and ordered it to examine that part of the case on the merits. The Prosecutor's findings in respect of the threats were upheld. The recording was not admitted as evidence because the Court considered that it had no relevance to the case. NC gave statements before the Court, stating that the applicant had been drunk and had threatened him with a knife. He also stated that to defend himself, he had pushed her, but he denied having ever hit the applicant. The Court also heard a statement from their daughter, CB, who testified as follows: "My father used to hit my mother [the applicant] and us, the children, many times. He used to do it when he had not come home at night, and my mother asked him where he had been. Then he would get angry and hit her. The main reason he got angry was lack of money ... when I moved out of my parents' apartment, my mother continued to be hit by my father; I saw some of these incidents personally ... my mother used to drink alcohol, but it was within normal limits, and in 2007 she stopped drinking. I retract the statement I gave during the criminal proceedings because I gave it after a threat from my father."

The Petrosani District Court acquitted NC of the crime of bodily harm. The Court considered that CB's statement could not be taken into consideration without mentioning any reasons for that decision. The Court concluded as follows: the applicant has not proved her allegations that ... the defendant physically assaulted her. The Court considers, also in view of the evidence collected during the criminal investigation, that such assaults by the defendant took place principally because of the injured party's alcohol consumption and because she was not taking adequate care of her four children. The defendant's acts are not so dangerous to society as to be considered crimes, and he shall, therefore, be acquitted of the three counts of bodily harm and shall pay an administrative fine of 120 Euros. The Court further dismissed the applicant's claims for damages as ill-founded without giving reasons. No

mention was made in the judgment of the applicant's request for protective measures. The applicant lodged an appeal on points of law against that judgment. She alleged that NC was a violent person who continued to assault her, even after being punished with an administrative fine. On February 19 and April 21, 2009, the applicant made five complaints to the Petrosani police concerning new incidents of assault or threats by NC, to which she attached medical reports. On 29 September, the Prosecutor's office of the Petrosani District Court decided not to press charges against NC for the five incidents described by the applicant. It imposed another administrative fine against NC for EUR 25. The applicant did not lodge any further complaints against the decision mentioned above.

In its assessment, the ECtHR noted that the physical violence was documented in several police reports and forensic medical reports, the latter indicating that the applicant needed from two to ten days of medical care¹⁵³. It rejected the Government contends that the violence suffered by the applicant did not reach the minimum threshold to invoke Article 3. It stated: the ill-treatment of the applicant, which on three occasions caused her physical injuries, combined with her feelings of fear and helplessness, was sufficiently serious about reaching the required level of severity under Article 3 of the Convention and thus imposed a positive obligation on the Government under this provision¹⁵⁴. The Court thus examined "whether the national authorities have taken all reasonable measures to prevent the recurrence of the assaults against the applicant's physical integrity"¹⁵⁵. In this regard, it noted that they were well aware of the violence perpetrated against the applicant for almost one year, as she had made emergency calls to the police, filed criminal complaints, and petitioned the head of the police. Her complaints were always accompanied by forensic reports, which were never contested. The Court thus concluded that the Romanian authorities were obliged to respond to her complaints. The Court also observed that the applicant "had at her disposal a legal framework allowing her to complain about the domestic violence and to seek the authorities' protection"¹⁵⁶.

Concerning the application of the legal framework, the Court recalled that the investigation into the first violent incident began a month later and after the occurrence of other violent incidents. Although the applicant had indicated that her husband had threatened to kill her, he was not questioned by the police until almost five months after the first incident. The national court concluded that the crime of bodily harm had been committed; it had been provoked and was not serious to warrant more than an administrative sanction¹⁵⁷. The Court observed that the applicant's appeal of this decision was dismissed and that the District Court acquitted the perpetrator of all charges of bodily harm since he had been provoked and was not a danger to society. The Court further observed that the national court did not address the withdrawal of the statement of the parties' daughter, nor did the authorities address the applicant's request for protective measures. It noted that the national court applied

¹⁵³ Balsan v. Romania, Application No. 49645/09, 2017, para 59.

¹⁵⁴ Ibid., para 60.

¹⁵⁵ Ibid., para 61.

¹⁵⁶ Ibid., paras 62, 63.

¹⁵⁷ Balsan v. Romania, Application No. 49645/09, 2017, para 65.

a slightly increased administrative fine, despite the fact that the first fine had no deterrent effect, as the violence continued¹⁵⁸. In assessing the criminal proceedings as a whole, the Court concluded: “with concern that both at the investigation level and before the courts the national authorities considered the acts of domestic violence as being provoked and regarded them as not being serious enough to fall within the scope of the criminal law”¹⁵⁹. It found that the approach taken by the national authorities “deprived the national legal framework of its purpose and was inconsistent with international standards with respect to violence against women and domestic violence in particular”¹⁶⁰. With respect to the decision to deny the applicant the appointment of a free legal aid lawyer, as it was not “necessary” in these types of cases, the ECtHR recalled its prior holdings that “in certain circumstances, the State’s procedural obligations to ensure the effective participation of the victims in the investigation of their complaints of ill-treatment may extend to the issues of providing effective access to free legal representation”¹⁶¹. Finally, the Court noted that six additional complaints were filed in the first half of 2008, which the national authorities dismissed due to lack of evidence or as not sufficiently severe¹⁶². The ECtHR thus found a violation of Article 3. The ECtHR considered on its motion the application of Article 14¹⁶³. It reiterated its holding that the “failure by a State to protect women against domestic violence breaches their right to equal protection under the law and that this failure does not need to be intentional”¹⁶⁴. It stressed that the Council of Europe Convention on preventing and combating violence against women and domestic violence defined violence against women as a form of discrimination¹⁶⁵.

The Court then reviewed the factual elements of this case: that the applicant was subjected to violence and death threats by her husband, of which the authorities were aware, and its holding that the authorities deprived the national legal framework of its purpose by their finding that the applicant provoked the domestic violence against her, that the violence did not present a danger to society and therefore was not severe enough to require criminal sanctions, and by denying the applicant’s request for a court-appointed lawyer¹⁶⁶. It found that the authorities’ passivity in the case was further demonstrated by their failure to consider any protective measures, despite her repeated requests to police, prosecutors, and the courts. It opined that the authorities should have examined her case more attentively in the light of the vulnerability of victims of domestic violence¹⁶⁷.

The ECtHR went on to observe statistics demonstrating the tolerance of domestic violence in Romania, viewed as usual, and that police investigate only a few of the reported cases.

¹⁵⁸ Ibid., para 66.

¹⁵⁹ Ibid., para 67.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Balsan v. Romania, Application No. 49645/09, 2017, para 69.

¹⁶³ Ibid., para 72.

¹⁶⁴ Ibid., para 78.

¹⁶⁵ Ibid., para 79.

¹⁶⁶ Ibid., paras 80, 81.

¹⁶⁷ Ibid., para 82.

It observed that the number of reported cases continues to grow, in which the majority of victims are women, and that there is an insufficient number of shelters for victims, including eight counties with no shelters. It referred to the Concluding comments of the CEDAW Committee (CEDAW/C/ROM/CO/6 thirty-fifth session held between 15 May and 2 June 2006) regarding the lack of awareness in society generally on gender discrimination, women’s lack of awareness of their rights, the absence of protection and support services for victims, especially in rural areas, the absence of statistics of domestic violence prevalence and the insufficient implementation of existing legislation¹⁶⁸.

The Court underscored that the Government failed to demonstrate any monitoring of the impact of its activities in this field, nor monitoring of the implementation of the law and national strategy. The Court opined that: the combination of the above factors demonstrates that the authorities did not fully appreciate the seriousness and extent of the problem of domestic violence in Romania and that their actions reflected a discriminatory attitude towards the applicant as a woman¹⁶⁹. In the light of the prima facie evidence that domestic violence affects women primarily, the Court considered that “the general and discriminatory passivity of the authorities created a climate that was conducive to domestic violence”¹⁷⁰. It found that the criminal law system did not have “an adequate deterrent effect capable of ensuring the prevention of unlawful acts” by the perpetrator, in this case, thus violating the applicant’s rights¹⁷¹. It concluded that despite the adoption of the law and national strategy to combat domestic violence, “the overall unresponsiveness of the judicial system and the impunity enjoyed by aggressors...” demonstrated a lack of commitment to combating domestic violence. It thus found a violation of Article 14 (Prohibition of discrimination) in conjunction with Article 3 (Prohibition of inhumane and degrading treatment).

Talpis v. Italy case¹⁷² concerned the conjugal violence suffered by the applicant, which resulted in the murder of her son and her own attempted murder. The Court held that there had been a violation of Article 2 (right to life) of the Convention on account of the murder of the applicant’s son and her own attempted murder. It found, in particular, that by failing to take prompt action on the complaint lodged by the applicant, the Italian authorities had deprived that complaint of any effect, creating a situation of impunity conducive to the recur-

¹⁵⁸ Ibid., para 66.

¹⁵⁹ Ibid., para 67.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Balsan v. Romania, Application No. 49645/09, 2017, para 69.

¹⁶³ Ibid., para 72.

¹⁶⁴ Ibid., para 78.

¹⁶⁵ Ibid., para 79.

¹⁶⁶ Ibid., paras 80, 81.

¹⁶⁷ Ibid., para 82.

¹⁶⁸ Balsan v. Romania, Application No. 49645/09, 2017, para 83.

¹⁶⁹ Ibid., para 85.

¹⁷⁰ Ibid., para 86.

¹⁷¹ Ibid., para 87.

¹⁷² Talpis v. Italy, Application no. 41237/14, 2017

rence of the acts of violence, which had then led to the attempted murder of the applicant and the death of her son. The authorities had therefore failed in their obligation to protect the lives of the persons concerned. The Court also held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention on account of the failure of the authorities in their obligation to protect the applicant against acts of domestic violence. In this respect, it noted in particular that the applicant had lived with her children in a climate of violence serious enough to qualify as ill-treatment and that the manner in which the authorities had conducted the criminal proceedings pointed to judicial passivity, which was incompatible with Article 3. Lastly, the Court held that there had been a violation of Article 14 (Prohibition of discrimination) of the Convention in conjunction with Articles 2 (Right to Life) and 3 (Prohibition of inhuman and degrading treatment), finding that the applicant had been the victim of discrimination as a woman on account of the inaction of the authorities, which had underestimated the violence in question and thus essentially endorsed it.

Levchuk v. Ukraine case¹⁷³ concerned the applicant's complaint that the dismissal of an eviction claim against her ex-husband had exposed her and her children to the risk of domestic violence and harassment. She alleged that the domestic courts had been excessively formalistic in their decisions and had given her ex-husband a sense of impunity which had exposed her and her children to an even greater risk of psychological harassment and assault. The Court held that there had been a violation of Article 8 (Right to respect for private and family life) of the Convention, finding that the response of the civil courts to the applicant's eviction claim against her former husband had not been in compliance with the State's positive obligation to ensure the applicant's effective protection from domestic violence. The Court considered in particular that the domestic judicial authorities had not conducted a comprehensive analysis of the situation and the risk of future psychological and physical violence faced by the applicant and her children. Furthermore, the proceedings had lasted over two years at three levels of jurisdiction, during which the applicant and her children remained at risk of further violence. The fair balance between all the competing private interests at stake had therefore not been struck.

Volodina v. Russia case¹⁷⁴ concerned the applicant's complaint that the Russian authorities had failed to protect her from repeated domestic violence, including assaults, kidnapping, stalking and threats. She also alleged that the current legal regime in Russia was inadequate for dealing with such violence and discriminatory against women. The Court held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention, finding that the applicant had been both physically and psychologically ill-treated by her former partner and that the Russian authorities had failed to comply with their obligations under the Convention to protect her from his abuse. It also held that there had been a violation of Article 14 (prohibition of discrimination) of the Convention taken in conjunction with Article 3. In this respect, the Court noted in particular that domestic violence was not recognised in Russian law and that there was no such thing as restraining or protection orders. Those failings clearly demonstrated that the authorities were reluctant to acknowledge the gravity of the problem of domestic violence in Russia and its discriminatory effect on women.

¹⁷³ Levchuk v. Ukraine, Application no. 17496/19, 2020.

¹⁷⁴ Volodina v. Russia, Application no. 41261/17, 2019.

KEY MESSAGES

International standards and guiding principles

Under international law, domestic violence is treated as:

- ▶ discrimination against women and a violation of women's human rights;
- ▶ torture in the private sphere;
- ▶ a violation of the right to life/quality of life and the right to family life*.

Guiding principles in policing domestic violence

- ▶ non-discrimination;
- ▶ zero tolerance to the acts of violence against women;
- ▶ a perpetrator-focused approach that holds the perpetrator accountable for the violence;
- ▶ protection and safety to victims and their children;
- ▶ “do-no-harm” to victims (preventing victims being exposed to further harm, re-victimization or stigmatization by the perpetrator, the institutions, victim's families and communities);
- ▶ victims-centred approach and their empowerment (victims are heard and believed, informed about their rights, their decisions are respected, and their experiences valued, active support in fulfilling their needs and rights);
- ▶ gender-sensitive policing.

Individual rights that need to be particularly observed for victims of domestic violence:

- ▶ The right to live a life free from violence;
- ▶ The right to life and personal integrity;
- ▶ The right not to be subject to torture or cruel, inhuman, or degrading treatment or punishment;
- ▶ The right to privacy and data protection;
- ▶ The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
- ▶ The right to liberty and security of person;
- ▶ The right to equal protection under the law;
- ▶ The right to access to justice;
- ▶ The right to equality in the family; and
- ▶ The right to the highest standard attainable of physical and mental health.

**Cited from Baldry, A.N., and Duban, E., p. 25.¹⁷⁵*

¹⁷⁵ Baldry, A.N., and Duban, E. (2016) “Improving the Effectiveness of Law Enforcement and Justice Officers In Combating Violence Against Women and Domestic Violence: Training of Trainers Manual”. Council of Europe.

3.2. NATIONAL CONTEXT: LAWS, PROTOCOLS AND POLICIES

Jointly negotiated international legal instruments oblige States to enshrine women rights, protect them and eliminate all forms of discrimination against women. The Republic of Armenia has signed and ratified different international instruments and therefore has international obligations regarding the protection of women and elimination of all forms of discrimination against women:

- 1) **On 23 June 1993, Armenia ratified the International Covenant on Civil and Political Rights.** According to Article 3 of the Covenant: “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant¹⁷⁶.”
- 2) **On 13 September 1993, Armenia ratified the International Covenant on Economic, Social and Cultural Rights,** which oblige the States Parties to undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant (Article 3)¹⁷⁷.
- 3) **On 13 September 1993, Armenia ratified the Convention on the Elimination of All Forms of Discrimination against Women¹⁷⁸.** According to Article 2 of the Convention: “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
 - a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;
 - b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
 - c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
 - d) To refrain from engaging in any act or practice of discrimination against women, and to ensure that public authorities and institutions shall act in conformity with this obligation;

¹⁷⁶ International Covenant on Civil and Political Rights, Article 3, 1966: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹⁷⁷ International Covenant on Economic, Social and Cultural Rights, Article 3, 1966: <https://www.ohchr.org/EN/professionalinterest/pages/cescr.aspx>

- e) To take all appropriate measures to eliminate discrimination against women by any person, organisation, or enterprise;
 - f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices which constitute discrimination against women;
 - g) To repeal all national penal provisions which constitute discrimination against women.
- 4) **On 24 January 2008, Armenia ratified the UN Convention on the Political Rights of Women**, which defines women rights to vote in all elections, to be eligible for election to all publicly elected bodies and to hold public office, established by national law on equal terms with men, without any discrimination¹⁷⁹.
- 5) **On 22 September 2010, Armenia ratified the Convention on the Rights of Persons with Disabilities**¹⁸⁰. Article 6 of the Convention obliges (1) States Parties to recognise that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms. (2) States Parties shall take all appropriate measures to ensure the full development, advancement, and empowerment of women, to guarantee them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.
- 6) **European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR) entered into force for Armenia on 26 April 2002**. It is Europe's core human rights treaty: the Article 1 of the Convention guarantees the rights and freedoms of everyone in the jurisdiction of the 47 member States of the Council of Europe. The principle of non-discrimination based on sex is guaranteed by both the Article 14 and Protocol No. 12 to the Convention. According to the Article 14 of the Convention: "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth or other status¹⁸¹".
- 7) **Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force for Armenia 01 April 2005**,

¹⁷⁸ Convention on the Elimination of All Forms of Discrimination against Women, 1979: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

¹⁷⁹ Convention on the Political Rights of Women, 1953, New York: https://treaties.un.org/doc/Treaties/1954/07/19540707%2000-40%20AM/Ch_XVI_1p.pdf

¹⁸⁰ Convention on the Rights of Persons with Disabilities, 2006, New York: https://treaties.un.org/doc/Publication/CTC/Ch_IV_15.pdf

¹⁸¹ Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680063765>

provides for a general prohibition of discrimination. According to Article 1 of it: “the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth or other status¹⁸²”.

- 8) **The European Social Charter, ratified by Armenia on 21 January 2004**, stipulates in the Article 20 of the Revised Charter the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex. Article E of Part V of the Charter stipulates that the enjoyment of the rights set forth in the Charter shall be secured without discrimination¹⁸³.
- 9) **The Council of Europe Convention on Action against Trafficking in Human Beings entered into force for Armenia on 1 January 2008**. The Article 3 of this convention which stipulates the principle of non-discrimination in the process of implementation of the provisions of the Convention¹⁸⁴. The Convention aims at preventing and combating trafficking in women, men, and children for sexual, labour, or other types of exploitation.
- 10) On 11 May 2020, Armenia ratified **the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse**¹⁸⁵ (hereinafter the Lanzarote Convention). It focuses throughout on respect for children’s rights, ensuring their well-being, responding to their views, needs and concerns, and acting at all times in their best interests. The purposes of the Lanzarote Convention are to prevent and combat sexual exploitation and sexual abuse of children; protect the rights of child victims of sexual exploitation and sexual abuse; promote national and international cooperation against sexual exploitation and sexual abuse of children¹⁸⁶. The Lanzarote Convention requires states to take educative, protective, criminal law measures, child-friendly investigative and judicial procedures, and monitoring.

Armenia is also a signatory to the Beijing Platform for Action (1995), which stipulates the equal rights and inherent human dignity of women and men; reaffirms the commitment to ensure the full implementation of the human rights of women and the girl child as an inalienable, integral and indivisible part of all human rights and fundamental freedoms¹⁸⁷.

¹⁸² Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680080622>

¹⁸³ European Social Charter (Revised): <https://rm.coe.int/168007cf93>

¹⁸⁴ Council of Europe Convention on Action against Trafficking in Human Beings: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008371d>

¹⁸⁵ CETS 201 – Protection of Children against Sexual Exploitation and Sexual Abuse, 25.X.2007: <https://rm.coe.int/1680084822>

¹⁸⁶ Ibid.

¹⁸⁷ Beijing Platform for Action (1995): <http://www.un.org/News/Press/docs/1995/199509199509001.htm>

Recommendations of the Council of Europe’s Committee of Ministers are negotiated by Armenia and guides all the member States: Recommendation No. R(84)17 on equality between men and women in the media¹⁸⁸, Recommendation No. R(85)2 on legal protection against sex discrimination¹⁸⁹, Recommendation No. R(85)4 on Violence in the Family¹⁹⁰, Recommendation No. R(96)5 on reconciling work and family life¹⁹¹, Recommendation No. R(98)14 on gender mainstreaming¹⁹², Recommendation No. R(2002)5 on the protection of women against Violence¹⁹³, Recommendation No. R(2003)3 on Balanced participation of women and men in political and public decision making¹⁹⁴, Recommendation No. Rec(2007)17 on gender equality standards and mechanisms¹⁹⁵, address violence-related issues and have a resolute role at the national level.

The Armenia Complication Report of the Human Rights Council Working Group on the Universal Periodic Review¹⁹⁶ at the thirty-fifth session on 20-31 January 2020 highlighted equality and non-discrimination and the CEDAW’s concern about the persistence of discriminatory stereotypes concerning the roles and responsibilities of women and men in the family and society¹⁹⁷. It also stressed the Committee against Torture’s concern that domestic violence was still prevalent. It recommended that Armenia strengthen its efforts to prevent and combat domestic violence, including by adopting without undue delay a law criminalising domestic violence and ensuring its effective implementation. It also recommended that all cases of domestic violence be promptly and thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with effective and dissuasive sanctions and that victims have access to means of protection and redress, including sufficient, safe and adequately funded shelters as well as access to medical, social, legal and other support services¹⁹⁸.

On 18 January 2018, Armenia signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence¹⁹⁹ with an intention to ratify it. The convention is widely recognised as the most comprehensive international in-

¹⁸⁸ <https://rm.coe.int/16804ec678>

¹⁸⁹ <https://rm.coe.int/168058ff43>

¹⁹⁰ <https://rm.coe.int/16804f120d>

¹⁹¹ <https://rm.coe.int/16804d4ea1>

¹⁹² <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804ec94a>

¹⁹³ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e2612

¹⁹⁴ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e0848

¹⁹⁵ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d4aa3

¹⁹⁶ The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all UN Member States. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur. Currently, no other universal mechanism of this kind exists.

¹⁹⁷ Report of Human Rights Council Working Group the Universal Periodic Review Thirty-fifth session on 20-31 January 2020, Compilation on Armenia, para 19: <https://undocs.org/A/HRC/WG.6/35/ARM/2>

¹⁹⁸ Report of Human Rights Council Working Group the Universal Periodic Review Thirty-fifth session on 20-31 January 2020, Compilation on Armenia, para 78: <https://undocs.org/A/HRC/WG.6/35/ARM/2>

¹⁹⁹ In accordance with Article 78, paragraph 2, of the Convention the Republic of Armenia reserves the right not to apply the provisions of the Convention laid down in: Article 30, paragraph 2; Article 55, paragraph 1 in respect of Article 35 regarding minor offences; Article 58 in respect of Article 37; Article 59. Articles concerned: 78, 59, 58, 55, 35, 30: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/declarations?p_auth=4ebx9lxL

strument to tackle violence against women and domestic violence in its many forms. Article 5(2) of the Council of Europe convention provides that Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this convention that is perpetrated by non-State actors. Article 7 of the Council of Europe convention provides that Parties shall ensure that policies referred to in paragraph 1 place the rights of the victim at the centre of all measures and are implemented by way of active cooperation among all relevant agencies, institutions, and organisations. Measures taken according to this Article shall involve, where appropriate, all relevant actors, such as government agencies, the national, regional, and local parliaments and authorities, national human rights institutions, and civil society organisations. Article 19 of the convention provides that Parties shall take the necessary legislative or other measures to ensure that victims receive adequate and timely information on available support services and legal measures in a language they understand.

The empowerment of women and the elimination of violence against women are part of the **UN Sustainable Development Goals. The Goal 5 is about achieving gender equality.** The Government of Armenia considers the implementation of the UN Sustainable Development Goals as one of the essential tools for implementing comprehensive internal reforms launched in Armenia.

Equality before the law and non-discrimination are principles enshrined in **the Constitution of the Republic of Armenia.** The Article 28 of the RA Constitution provides that everyone shall be equal before the law. The Article 29 provides that discrimination based on sex, race, skin colour, ethnic or social origin, genetic features, language, religion, world view, political or other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited. Equality between women and men is additionally prescribed in the 2015 Amendments to the Article 30 of the RA Constitution²⁰⁰.

The Article 5 of the Republic of Armenia Constitution provides **that international norms shall prevail in case of a conflict between national law and ratified international conventions.** The similar provision is contained in Article 3(3) of the Law on International Treaties. Procedural codes also emphasise that ratified international treaties form part of procedural legislation.

Article 86 of the Constitution provides that a “main objective” of state policy is to promote actual equality between women and men. The safeguards for ensuring equality between women and men are also prescribed in the **2013 RA Law on Equal Rights and Equal Opportunities of Women and Men.**

According to Article 1 of the RA Law on “**the Provision of Equal Rights and Equal Opportunities for Women and Men**”, **the Law** defines the guarantees of provision of equal rights and equal opportunities for women and men in all spheres of political, social, economic, cultural and public life and regulates the relationships arising therefrom. It also defines the

²⁰⁰ The Constitution of the Republic of Armenia Adopted 06.12.2015: <http://www.concourt.am/armenian/constitutions/index2015.htm>

prohibition of direct and indirect gender discrimination in the spheres of public life, and stipulates the forms of direct and indirect discrimination, defines the prohibition of direct and indirect gender discrimination in the spheres of public life, and stipulates the forms of direct and indirect discrimination, sets forth the legal guarantees of implementation of the law, and regulates the legal relationships concerning the funding of the implementation of state policy on the provision of gender equality.

In general, despite the RA's efforts to ensure gender equality in national legislation, a gap between legislation and implementation continues to exist, and gender inequalities are still socially accepted or tolerated. This is particularly the case in rural areas where gender inequalities are historically more entrenched, which makes it more difficult to implement reforms on equality.

3.2.1. Domestic Violence Law

In 2017, RA adopted the Law “**on the Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family**” (hereinafter Domestic Violence Law). The scope of the Domestic Violence Law stipulates legal and organisational grounds for the prevention of domestic violence and protection of victims, provides definitions of different forms of violence, sets forth the competencies of bodies designated to prevent violence within the family and protect the victims, identifies the types of protective measures, grounds for their use, particularities of reconciliation of victims of violence and perpetrators, and legal protection of information about the victims of violence. The Domestic Violence Law is a benchmark tool for preventing and combating domestic violence, protect the victims of domestic violence, and punish the perpetrators in Armenia. However, it has gaps, such as the absence of a gender-sensitive approach.

The Domestic Violence Law establishes obligations for the police to prevent domestic violence and protect the victims. The law also requires the state to establish shelters for victims, provide free healthcare to victims and conduct regular trainings for all professionals working with victims of domestic violence, including the police. The law regulates data collection on domestic violence and requires raising awareness on the prevention of domestic violence, among other things. The Domestic Violence Law affords an essential position to the police, in particular, the specialised divisions to deal with domestic violence. The Domestic Violence Law provides for both emergency barring orders (Article 7) and longer-term protection orders (Article 8) as stipulated by the Council of Europe Convention.

DEFINITION OF DOMESTIC VIOLENCE IN ARMENIAN LAWS

Article 3 of the Domestic Violence Law defining the scope of violence within a family as an act of **physical, sexual, psychological, or economic violence** occurring between the family members as well as an act of negligence. Forms of violence within the family shall include:

- 1) **Physical violence** – battering stipulated by the Republic of Armenia Criminal Code and other acts of violence, intentional infliction of health impairment, unlawful deprivation of liberty, intentional infliction of severe physical pain;

Note: Most cases of domestic violence in Armenia are prosecuted under Article 118 for battery²⁰¹. The battery is defined as the commission of violent acts that have not resulted in light injuries, as envisaged by Article 117. The Cassation Court has held “that battery is the infliction of multiple (more than one) blows to the victim that resulted in physical pain”²⁰². This construction of the actus reus fails to capture the elements that characterise most cases of domestic violence, typically involving series of acts over long periods of time, each of which may in itself not be penalised (e.g. one slap). The Armenian legal response to violence relies on a traditional perception of the criminal action, focused on isolated events causally related to consequences. This approach makes it very difficult to effectively prosecute behaviours such as those comprised in the definition of domestic violence²⁰³.

- 2) **Sexual violence** – offences against sexual integrity and sexual freedom stipulated in the Republic of Armenia Criminal Code;

Note: The Armenian Criminal Code takes a harm-based rather than a consent-based approach to sexual violence, as required by the jurisprudence of ECtHR. It thus contains no offence criminalising sexual violence which is solely constituent on the lack of consent.²⁰⁴ Rape is a criminal offence in Armenia under Article 138 of the Criminal Code. Although not explicit, it covers marital rape. The definition of rape only covers sexual intercourse, requiring proof of penetration between “a man with a woman”. Secondly, it requires that the act be performed against the will of the victim, that is, without her consent. The offence includes a third constituent element: the perpetrator must use violence, threats or take advantage of the woman’s helpless situation. Similarly, Article 139 covers other forms of sexual violence, including between persons of the same sex, and includes the same constituent element: the perpetrator must use violence, threats or take advantage of the woman’s helpless situation.

The European Court of Human Rights found in the *M.C. v. Bulgaria* case that **the authorities failed to sufficiently investigate the surrounding and contextual circumstances of the rape, “putting undue emphasis on ‘direct’ proof**

²⁰¹ The Council of Europe, Gap analysis of Armenian criminal law in light of the standards established by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, p. 21, available at: <https://rm.coe.int/gap-analysis-armenian-law-eng/168075bac2>.

²⁰² Decision of the Cassation Court No. ԱՐԴ/0176/01/11, case of Arevik and Tsovinar Sahakyans, 1 November 2012, para 18.

²⁰³ Gap analysis of Armenian criminal law in light of the standards established by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, prepared by Javier Truchero in collaboration with A. Urrutia and L.Sargsyan, p.21.

²⁰⁴ *Ibid*, page 7.

of rape, namely the force and threat elements as required by the national legislation, and “practically elevating [the victim’s] ‘resistance’ to the status of defining element of the offence”²⁰⁵. The Court placed great emphasis on **the lack of consent as the defining constituent element in rape cases**, citing criminal legislation from the numerous European States, as well as the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY). It stated: “while in practice it may sometimes be difficult to prove lack of consent in the absence of “direct” proof of rape, such as traces of violence or direct witnesses, the authorities must nevertheless explore all the facts and decide on the basis of an assessment of all the surrounding circumstances. The investigation and its conclusions must be centred on the issue of non-consent”²⁰⁶.

- 3) **Psychological violence** – stipulated in the Domestic Violence Law as intentional infliction of severe mental suffering, including a genuine threat of physical, sexual or economic violence, intentional and regular acts resulting in a justified fear in person for his/her or a family member’s safety, regular violation of human dignity, extreme social isolation, forced abortion.

Note: the RA Criminal Code **fails to criminalise psychological violence** in violation of Article 33 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence²⁰⁷. **The RA Criminal Code contains three articles that could be used until the legislation is amended.** The first is Article 119 on “infliction of severe physical pain or mental suffering”. Obstacles to its effective use include the fact that the Criminal Code does not define mental suffering, and Article 119 lacks any reference to the means or acts the perpetrator may employ to achieve the resulting suffering. Such vagueness hinders the effective application of this provision and makes it more difficult to tackle the attempted commission of this crime²⁰⁸. Furthermore, Article 119 encompasses an aggravated form that includes inter alia, discriminatory motives, such as national, racial, or religious hatred or religious fanaticism. Gender discrimination is not included here as a ground for aggravation. It should also be noted that the Criminal Code does not provide for the criminalisation of coercion, which usually works as a catch-all offence in criminal law. Article 137 of the Criminal Code prohibits threats, but only for a limited number of crimes: to murder, to inflict severe damage and to destroy property. It requires proof of real danger that the threat would be carried out, which is a high threshold. Finally, inducement to suicide is criminalised in Article 110.

²⁰⁵ M.C. v. Bulgaria, Application No. 39272/98, 2004, para 182.

²⁰⁶ M.C. v. Bulgaria, Application No. 39272/98, 2004, para 181.

²⁰⁷ Lori Mann “Gap analysis and recommendations on the Armenian Law on Prevention of Violence within the Family, protections of victims of violence within the family and restoration of peace within the family and related police orders”, 19 February 2019, Council of Europe, page 6.

²⁰⁸ Article 34 of the Criminal Code covers attempt.

- 4) **Economic violence** – stipulated in the Domestic Violence Law as forcing a person into material dependence or controlling that person by depriving the latter of vital means of existence (food, clothing, housing, medicine) by unlawfully limiting the rights to possess, dispose or use the property solely or jointly owned by the person, by restricting the rights of the person to education or free choice of employment;

Note: There are no provisions in the Armenian Criminal Code that criminalise the forms of economic violence that occur in the domestic violence context, including neglect. Furthermore, no sanctions are contemplated for violations of protection orders that require the payment of alimony by perpetrators who have been removed from the home. Economic violence can be committed in Armenia with relative impunity²⁰⁹.

- 5) **Negligence** – stipulated in the Domestic Violence Law as intentional failure to provide minimum necessary living conditions (food, clothing, housing, healthcare and medical service, education) to the child by a parent or legal guardian, or minimum necessary living conditions (food, clothing, housing, healthcare and medical service) to incapable or disadvantaged parents by their capable and adult children when the parent or legal guardian or the capable adult children have appropriate information and resources as well as access to relevant services.

There are not any provisions in Armenian legislation concerning stalking, forced marriage, and forced abortion or sexual harassment in the workplace, public spaces, or in education. The RA Criminal Code does not contain violence against women or domestic violence as specific crimes. There are not clear criminal penalties for domestic violence or aggravating penalties for spouse or family member as guided by international standards. The RA Criminal Code does not also explicitly criminalise marital rape.²¹⁰

DOMESTIC VIOLENCE LAW AND POLICE

The Article 13 of the Domestic Violence Law specifies the state bodies responsible for the prevention of domestic violence and protection of victims of domestic violence, among which is the RA Police. Article 13 (2) provides that state and local self-government bodies shall, within the limits of their powers, facilitate the efforts of combatting domestic violence and cooperate with the Competent Authority in this field.²¹¹

²⁰⁹ Lori Mann “Gap analysis and recommendations on the Armenian Law on Prevention of Violence within the Family, protections of victims of violence within the family and restoration of peace within the family and related police orders”, 19 February 2019, Council of Europe, page 7.

²¹⁰ Besides of the fact that the National Strategy for Human Rights Protection and deriving Action Plan for 2020-2022 in Action 5 provides the obligation to criminalize the domestic violence and the violence against women in accordance with international standards up to the second half of 2020, there is not any proviso for it.

²¹¹ Under Article 13 of the Law, the Competent Authority is the national executive authority responsible for social issues, i.e. the Republic of Armenia Ministry of Labour and Social Affairs.

Article 15 of the Domestic Violence Law prescribes the powers of the RA Police concerning the prevention of domestic violence and the protection of victims of domestic violence. These powers include informing victims about their rights and services available to victims that report domestic violence (Paragraph 1(3) of Article 15 of the Law), as well as the application of two protection measures provided by Law. Under Article 15 of the Law, the Police has the power to apply two of the three protection measures for domestic violence victims—warnings and emergency barring orders. Protection orders are applied based on a court decision. Article 5(2) describes that the decision to apply protection measures shall be well-grounded. The protection measures shall be applied following the principles set forth in the Domestic Violence law and ensuring the proportionality of intervention. Application of any protection measures does not avoid the initiation of a criminal case and criminal prosecution under the procedure provided by law. This provision means that granting protection is not tied to criminal prosecution. Victim’s safety and protection need to be always ensured.

The Domestic Violence Law describes the following protection measures (Article 5) available to victims of domestic violence:

- ▶ **The warning** shall be applied when the Police identify a case of violence within the family for the first time, it does not have evident elements of an offence, and there are no grounds for an emergency barring order. The warning decision shall include a notification of applicable legal sanctions in case of continuing or repeated violence. The warning is issued as soon as possible after learning about the case (Article 6).
- ▶ **Emergency barring order (EBO)** is made by a competent police officer to protect the life and health of a member of the family if one member of the family has committed violence against another member of the family and there is a reasonable belief of imminent risk of repeated or continuing violence. An emergency barring order may also be made if a violent act without elements of the offence is committed within one year after receiving a warning. The validity term of an emergency barring order shall not exceed twenty days. If during the validity term of an emergency barring order, the court examines the application for a protective decision, then it shall be effective until the ruling of the court (Article 7).
- ▶ **Protection Order** - The victim of violence within the family or the support centre, with the consent of the latter, may submit to the court an application for a protection order. If the victim of violence within the family is a minor or a person ruled by the court as incapable or with limited capability, the motion for the protection order could be made by close relatives, the legal representative and the guardianship and trusteeship body. The effectiveness of an emergency barring order does not exclude the possibility to apply for a protection order. The protection order is issued to protect the victim of violence within the family and

persons under the victim's care and prevent new acts of violence within the family. The protection order is issued for a period of up to 6 months and can be extended by the court for up to 3 months twice on the basis of a well-grounded application justifying the need for such extension (Article 8).

The application of those measures shall not hinder the institution of a criminal case and criminal prosecution stipulated by law.

As we see above, Article 6 of the Domestic Violence Law defines that warnings are to be issued upon the first police response if there are no elements of a criminal offence nor grounds for an emergency barring order. This violates the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, which requires that the issuance of a protection order without reference to the commission of an offence. In contrast, the issuance of an emergency barring or protection order does not require the commission of a crime. It is important to note in this regard that many acts that constitute domestic violence under the convention are not considered grounds for either a criminal or administrative offence in Armenia, thus contravening international standards. These include acts of physical violence that do not meet the legal threshold of battery (e.g., slaps, pulling hair), diverse forms of economic violence and neglect.

In the CEDAW case *V.K. v. Bulgaria*, the State authorities rejected the victim's request for a protection order because the violence in question, "striking," did not meet the required threshold under national law. The national court had stated, "striking, as described, is not associated with a disturbance of the physical [integrity] of the plaintiff. Striking at someone, you can exercise violence, but only after breaking certain limits of abuse". The CEDAW Committee recalled that gender-based violence "is not limited to acts that inflict physical harm, but also covers acts that inflict mental or sexual harm or suffering, threats of any such acts, coercion and other deprivations of liberty," and found that the national "courts focused exclusively on the issue of a direct and immediate threat to the life or health of the author and on her physical integrity while neglecting her emotional and psychological suffering"²²².

The Domestic Violence Law provides for other protection measures for victims of domestic violence, as well: under Paragraph 1(6) of Article 13, support centres and shelters are allocated to provide protection and support to victims of domestic violence. Under Paragraph 1(7) of Article 14, the Competent Authority has to regularly publish in a manner accessible for the public the list of the telephone numbers of the free-of-charge helplines for victims of domestic violence, which support centres are obliged to have. Victims of domestic violence, including women with disabilities, their family members, and others, may immediately contact support centre staff or specialists of the support centre and receive free-of-charge support, including available support.

The Law contains other explicit provisions on the support services as well. Under Paragraph 1(3) of Article 15, Police shall explain to individuals who informed the Police about violence against them within the family their rights and possibility to benefit from available services, refer them to support centres if necessary, make a decision to transfer victims of

²¹² Communication No. 20/2008, CEDAW/C/49/D/20/2008, paras 9.8, 9.9.

violence within the family and persons under their care to the shelter in cases and following the procedure specified in this law. Under Paragraph 5 of Article 20, domestic violence victims may be placed in a shelter according to their application if there is a threat of repeated or a risk of continued violence, based on the risk assessment followed by risk management measures to prevent further violence.

The provisions of the Domestic Violence Law are protected by the force/power of state coercion, including criminal, civil and administrative ones. Particularly, **the RA Code of Administrative Violations** (hereinafter Administrative Code) foresees liability for disclosure of the location of the victim of violence within the family accommodated at the shelter and provided for fines from 200-400 minimal salaries (Article 47.14). Administrative Code foresees sanctions for the violation of emergency barring and protection orders and provides for fines from 80-100 minimal salaries for violating the no-contact bans, bans on child visitation and failure to attend rehabilitation programs (Article 206.16).

The Domestic Violence Law and related legislation contain numerous gaps with significant consequences for the protection of victims. Some key gaps that violate international standards include:

- Procedural protections in the issuance of protection orders focus on the perpetrator's rights to the detriment of the victim's rights, and the same procedural protections are not envisaged for victims;
- Several forms of domestic violence, including those covered and not covered by the Domestic Violence Law, are not covered by the Criminal Code, including economic violence, psychological violence, stalking and physical violence not meeting a minimal threshold. Consequently, these forms of violence do not trigger protective orders, precluding victims from bringing actionable claims seeking protection and a remedy for them;
- Several forms of violence against women are not criminalised at all, including female genital mutilation, forced and early marriage, forced abortion and sexual harassment;
- Mitigating circumstances based on concepts of morality and honour²¹³.

One of the vivid gaps of the Domestic Violence Law is that Article 12 provides that protection measures may not be applied concerning minors or persons with no legal capacity. Because of this provision, the authorities can not intervene to protect all victims of violence. In one case, a complainant reported violence committed against her by a person with a disability, but the police officers failed to act to address or prevent it because the person had a disability. This problem is encountered in practice because the cases are not recorded when the alleged perpetrator has a disability.

In this context, Article 12 of the UN Convention on the Rights of Persons with Disabilities provides that persons with disabilities have the right to recognition everywhere as persons

²¹³ "Preventing and combating Violence against Women and Domestic Violence in Armenia" 2018, L. Mann and L. Sargsyan, page 54.

before the Law. In General Comment 1 (2014) to the UN Convention on the Rights of Persons with Disabilities, the Committee has reiterated that a disability must never be a ground for denying legal capacity or any of the rights provided for in article 12. All practices that in purpose or effect violate article 12 must be abolished in order to ensure that full legal capacity is restored to persons with disabilities on an equal basis with others. Achieving equal recognition before the Law, legal capacity must not be denied discriminatorily. Denial of legal capacity must not be based on a personal trait such as gender, race, or disability or have the purpose or effect of treating the person differently²¹⁴.

Under Paragraph 5 of the Order 15-L of the RA Police Head (17 July 2019, has been amended on 9 March 2020)²¹⁵, the specialised subdivision shall not maintain preventive records of persons (adult or minor) that do not comprehend the dangerousness of their acts due to a chronic mental illness, temporary impairment of mental activity, dementia, or other mental disorder, if such persons are already recorded in a medical institution. Besides, Paragraph 45(1) of the same Annex provides that a record card compiled on a minor shall be discontinued if the minor, while being in the records, has acquired a mental illness and become recorded in the relevant medical institution. Paragraph 5 of the Annex above contradicts Article 12 of the Law because the content of the Annex is inconsistent with the term “legally incompetent”. Furthermore, the wording in the Annex is based on the notion of inculpability prescribed by the Criminal Code. Maintaining records of domestic violence perpetrators has a preventive aim and shall be monitored to prevent further domestic violence²¹⁶. The lack of record-keeping on persons with mental disorders, as mentioned in Order 15-L of the RA police Head, directly obstructs the prevention of domestic violence cases.

DOMESTIC VIOLENCE LAW AND RECONCILIATION

The Domestic Violence Law provides a reconciliation between perpetrator and victim of domestic violence²¹⁷. According to the Domestic Violence Law, reconciliation is to be conducted by the support centres during the period of emergency barring or protection orders and pursuant to procedures established by the Competent Authority, namely, the Ministry of Labour and Social Affairs. Consequently, according to the Law, reconciliation is available to the parties of a domestic violence dispute for a limited period, the 20 days of a reconciliation order, and up to one year during a protection order. Article 10(5) precludes reconciliation in cases involving minor victims or victims with no legal capacity. Significantly, reconciliation can serve as a basis to revoke emergency barring and protection orders. Either the victim or the perpetrator can request the police or court to revoke the emergency barring or protection order if conciliation is reached.

²¹⁴ General comment 1 (2014) to the UN Convention on the Rights of Persons with Disabilities, paras. 9 and 32, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>.

²¹⁵ The Head of Police Order No. 15-L regulates the procedure for preventive record-registration of persons having committed violence in the family in units (groups) for juvenile cases and prevention of violence within the family of territorial subdivisions of the Police of the Republic of Armenia.

²¹⁶ The Domestic Violence Law, Article 11, para 1.

²¹⁷ Article 10, Domestic Violence Law.

The RA criminal code provides for the possibility of reconciliation in cases involving private prosecution, such as those involving light injuries or battery. Importantly, the national legislative framework provides for diverse and conflicting possibilities between a civil procedure, criminal procedure and the Domestic Violence Law. Under Articles 35 and 36 of the Criminal Procedure Code, reconciliation between the victim and the accused excludes the institution of a criminal case, prevents its prosecution or allows for termination of the proceedings. In accordance with the procedural law, the Criminal Code envisages under Article 73 the exemption of criminal liability in cases of reconciliation with the victim in “non-grave crimes”. While domestic violence is now subject to public prosecution²¹⁸, pursuant to the Domestic Violence Law, such cases can also be reconciled with the written consent of both of the parties. There is no legal obligation for the victim to enter into a reconciliation process or to accept an offer for reconciliation, and the Law requires the support centre to terminate the conciliation process if there is a reasonable belief that the victim’s decision to participate was influenced by threats²¹⁹.

The RA Minister of Labour and Social Affairs approves the Procedure for Arrangement and Implementation of Reconciliation Between the Persons Subjected to Domestic Violence and the Persons who Exercised It²²⁰. It provides that reconciliation shall be performed on the basis of an application by the victim or perpetrator of violence, which shall be lodged with the support centre provided by law. The reconciliation application of the victim or perpetrator of violence shall be presented during the term of effect of the emergency barring order or protection order. Within a reasonable period of receiving the reconciliation application of the victim or perpetrator of violence, the support centre shall give written notice to the other party. Such notice shall be sent to the address of the party’s actual residence. Within one day of receiving the written agreement of the other party to participate in the reconciliation, the support centre shall launch the reconciliation process. If a written agreement is not received within ten days of the date of giving proper notice to the other party of the existence of a reconciliation application, the reconciliation proposal shall be deemed rejected. The victim and perpetrator of violence shall participate in the reconciliation process in person. The terms of reconciliation between the victim and perpetrator of violence shall be discussed jointly. No more than three joint meetings may be held at the designated place of the reconciliation process between the victim and perpetrator of violence. The centre shall terminate the reconciliation process in case of failure to reach an agreement within three months and if there is a reasonable assumption that the victim of violence is participating in the reconciliation process under the influence of coercion.

In case of reaching an agreement on the terms of the reconciliation, the victim and perpetrator of violence shall conclude a written agreement on reconciliation in two counterparts. One counterpart shall be provided to the support centre, and the second shall be sent to the relevant police officer or court for terminating the emergency barring order or protection order, respectively. Each of the victim or perpetrator of violence may apply only once for reconciliation in the same case of violence in the family.

²¹⁸ Article 10, Domestic Violence Law.

²¹⁹ Ibid.

²²⁰ The decision of the RA Minister of Labour and Social Affairs N-120-N, from 13.11.2018.

International standards ban reconciliation procedures in domestic violence cases. The Article 48 of the **Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence bans mandatory alternative dispute resolution procedures in relation to cases of violence against women.** It requires States: “to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this convention“. CEDAW’s General Recommendation No. 33 on women’s access to justice goes further and recommends that States “**ensure that cases of violence against women, including domestic violence, are under no circumstances referred to any alternative dispute resolution procedures.**” As the Explanatory Report describes, victims of domestic violence “can never enter the alternative dispute resolution processes on a level equal to that of the perpetrator”²²¹.

The mediation and reconciliation practices assume that the parties approach the process with equal resources and power. Cases of violence against women, especially domestic violence, involve unequal power relationships based on acts of assault, violent intimidation, and/or controlling, abusive or humiliating behaviour. As a result of these concerns, in many parts of the world, mediation practices have been prohibited in cases of intimate partner violence. Informal justice mechanisms can also pose serious risks to victims, who may agree to return to a perpetrator only to face escalating forms of violence. Furthermore, traditional gender norms can negatively impact women’s agency in mediation. In these processes, women often risk giving up their individual rights so as to preserve the harmony of the social group²²².

The CEDAW Committee notes that the use of mediation may lead to further violations of the victims’ rights “and impunity for perpetrators due to the fact that [reconciliation] often operate[s] with patriarchal values, thereby having a negative impact on women’s access to judicial review and remedies”²²³. Other factors such as corruption, government policies and priorities, and mediators’ weak skills can impact the efficacy of mediation. The absence of gender sensitivity among mediators is a big concern. The CEDAW Committee specifically recommends that “alternative dispute settlement procedures do not restrict access by women to judicial and other remedies in all areas of law and does not lead to further violation of their rights”²²⁴.

The most important point raised as a measure of quality in reconciliation procedures is whether the victim is truly at the centre of these practices. Good practice has recognised that to improve informal mediation systems, and practitioners should build on the strengths of the existing system and include:

- Increasing the participation of women in the mechanisms;
- Providing comprehensive training to all mediators and other participants in the mechanisms;
- Increasing engagement from civil society organisations to alter power inequities;
- Strengthening links with the formal justice system²²⁵.

²²¹ Explanatory Report, para 252.

²²² “Preventing and combating Violence against Women and Domestic Violence in Armenia” 2018, L. Mann and L. Sargsyan, page 115.

²²³ CEDAW, General recommendation on women’s access to justice, CEDAW/C/GC/33, para 57.

²²⁴ CEDAW, General recommendation on women’s access to justice, CEDAW/C/GC/33, para 58(b).

²²⁵ “Preventing and combating Violence against Women and Domestic Violence in Armenia” 2018, L. Mann and L. Sargsyan, page 115.

DOMESTIC VIOLENCE COUNCIL

The Council for the Prevention of Domestic Violence²²⁶ was established in Armenia in 2018. The Council shall consist of maximum 25 members, who participate in the Council's work on an unpaid basis. The Council chair is the Deputy Minister of Labour and Social Issues, who coordinates family, women's, and children's affairs²²⁷.

The Council comprises of:

- 1) One representative from each of the RA Ministry of Labour and Social Issues, the RA Ministry of Health, the RA Ministry of Education, Science, Culture, and Sports, the RA Ministry of Regional Government and Development, the RA Ministry of Justice, the RA Police, the Investigative Committee, the General Prosecution Office, and the Office of the Human Rights Defender;
- 2) Eight representatives (subject to their consent) of non-governmental organizations active in the field of prevention of violence in the family and protecting persons subjected to violence in the family (one representative of each non-governmental organization), provided that at least one of the representatives is from an NGO that has experience defending rights of persons with disabilities in at least the last three years;
- 3) Eight representatives of the support centres and shelters, as per nominations by the Minister of Labour and Social Issues.

The Council discusses and makes proposals on state policies on preventing and combating domestic violence. It discusses issues, including urgent issues related to the prevention of domestic violence, and can present proposals on addressing them. The Council proposes activities to raise public awareness of domestic violence. The Council discusses the results of surveys conducted by local and international organisations and, based on them, present recommendations. The Council makes recommendations on programmes aimed at victims and perpetrators of domestic violence. The Council can conduct studies and discuss the reports published by national executive authorities on programmes aimed at preventing and combating domestic violence. The Council can make proposals to the Ministry of Labour and Social Issues on managing the account for temporary support to victims of domestic violence and providing temporary financial assistance.

ADMINISTRATIVE DATA ON DOMESTIC VIOLENCE CASES

The RA Ministry of Labour and Social Issues performs centralised record-keeping on cases of domestic violence based on data provided by the RA Police, Investigative Committee, Special Investigative Service, General Prosecution Office, Judicial Department, support

²²⁶ The RA Prime Minister Decision 1685-A (dated 28 December 2018) approved the individual members of the Council for the Prevention of Violence in the Family.

²²⁷ The decision of the RA Government N-786-N, from 10.07.2018, On Establishing the Council for Prevention of Domestic Violence and Approving the Procedure of Formation and the Functions of the Council.

centres provided by law (hereinafter “Support Centres”) not registered by them, as well as trusteeship and guardianship authorities, the RA Health Ministry, and the RA Ministry of Education, Science, Culture, and Sports²²⁸. To ensure data confidentiality, the body providing the data shall present the information package containing personal data to the RA Ministry of Labour and Social Issues in paper form, marked “not subject to disclosure” on the sealed envelope and the Sheets provided by the procedure, in the top right corner. The information on cases is provided at least semi-annually to the ministry, before the 30th date of the month following the reported semi-annual period. Within a month of receiving the information, the ministry consolidates and publish relevant administrative data.

3.2.2. Criminal Code and Criminal Proceedings Code

The RA Criminal Code (the new Criminal Code of RA has been adopted in the first reading by the National Assembly of Armenia on 09 December 2020) criminalise physical violence, sexual violence, and psychological violence (Article 119 of the RA Criminal Code criminalises only the infliction of severe physical pain or substantial mental suffering).

However, the Criminal Code does not criminalise economic violence and, forced marriage and forced abortion and stalking, for example, as required by international human rights standards. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence defines **stalking** as following: “the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, meaning following the victim physically, visiting the victim’s workplace or sports or education institutions, or stalking in the virtual world, or damaging another person’s property, leaving insignificant traces on their items, opening false online accounts using the person’s data, or disseminating false information²²⁹”.

²²⁸ The decision of the RA Government N-1381-N, from 10.10.2019, “On Defining the Procedure for the Centralized Registration of Instances of Domestic Violence. The other by-laws are adopted on the bases of Domestic Violence Law:

1. The decision of the RA Government N-364-N, from 29.03.2019, “On Defining the Requirements Set for the Shelters and the Personnel of the Shelters for Persons Subjected to Domestic Violence, and on Approving the Template Contract for Funding the Shelters for Persons Subjected to Domestic Violence and Making Alterations and Supplements to the RA Government Decision N-1078-N from 10 September 2015, and Making an Alteration to the RA Government Decision N-1069-N from 10 September 2015.”
2. The decision of the RA Government N-333-N, from 29.03.2019, “On Defining the Procedure for Managing the Temporary Assistance Account of the Persons Subjected to Domestic Violence.”
3. The decision of the RA Minister of Labour and Social Affairs N-119-N, from 13.11.2018, “On Approving the Plan of Rehabilitation of the Persons who Exercised Domestic Violence and the Procedure for Arrangement of such Rehabilitation.”
4. The decision of the RA Minister of Health N-3177-A, from 29.11.2019, “On Approving the Procedure for Arrangement of Free Primary Medical Aid to the Persons Subjected to Domestic Violence, the Procedure for Registration and Reporting the Information on the Persons Who Applied for Medical Aid in a Result of Violence, the Medical contract insert for Instances of Domestic Violence, and the Registration Book for the Persons who were Subjected to Domestic Violence and, as a result of it, Suffered Bodily, Mental and Reproductive Disorders.”

²²⁹ CETS 210 – the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 11.V.2011, Article 34.

The effective response to domestic violence cases may also be impeded by the mitigating circumstance defined by Paragraph 1(7) of Article 62 of the Criminal Code, i.e. the illegal or immoral nature of the victim's conduct, which caused the crime. It is contradictory to international standards. Under the Article 42 of the Council of Europe convention²³⁰ unacceptable to justify crimes committed in regard to culture, custom, religion, tradition or so-called "honour". This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour.

The Criminal Code of the RA in Article 353.1 ensures criminal liability for the breach of the emergency barring and protection orders involving: the removal of the perpetrator from the victim's residence; bans from the victim's workplace, schools, leisure venues and home; bans prohibiting the perpetrator from approaching the victim from within a specified distance, and the surrendering of firearms²³¹. The sanctions contemplated include a fine in the amount of 300 to 500 minimal salaries; arrest and detention from one to three months; imprisonment for up to 6 months²³².

The Article 183(4) of the **RA Criminal Procedure Code**²³³ addresses the public and private prosecution concerning domestic violence cases. In particular, the prosecutor may, irrespective of the victim lodging a complaint, initiate a criminal prosecution in a domestic violence case concerning the crimes prescribed by Paragraph 1 of this Article, including the infliction of wilful medium-gravity or light damage to health²³⁴, battery²³⁵, and threats^{236,237}, when the victims is unable protect his or her lawful interests "where the person, by virtue of his or her helpless state or dependence on the alleged offender". In this case, the criminal case is initiated and investigated under the general procedure provided by the Code, and the criminal prosecution will not be terminated even if the victim and perpetrator reconcile²³⁸.

The General Prosecutor has adopted the "Guideline for the implementation of part 4 of Article 183 of the Criminal Procedure Code of the Republic of Armenia". The Guideline refers to the Domestic Violence Law with respect to the definitions of violence in the family and its forms, and pursuant to Article 183(4) of the Criminal Procedure Code requires verification that the victim is in "a helpless state" or dependent upon the alleged perpetrator as a mandatory requirement for initiating the prosecution ex officio. While much of the language of the Guideline remains unclear, the victim's dependence can be material and/or non-material²³⁹. The Guideline, inter alia, defines a "helpless state" by a "real and immediate threat to life or health" of the victim, referencing the standards articulated by the ECtHR.

²³⁰ Ibid., Article 42.

²³¹ These restrictions are provided for both emergency barring and protection orders, pursuant to Article 7(3)(1)-(4) and Article 8(5) (1)-(4) of the Domestic Violence Law, respectively.

²³² Article 353.1, the RA Criminal Code.

²³³ Criminal Procedure Code of the Republic of Armenia, Article 183 (4).

²³⁴ Criminal Code of the Republic of Armenia, Articles 113(1), 114(1), 115, 116 and 117.

²³⁵ Criminal Code of the Republic of Armenia, Article 118.

²³⁶ Criminal Code of the Republic of Armenia, Article 137.

²³⁷ In Armenia, most cases of domestic violence have been prosecuted under these articles via private prosecution.

²³⁸ "Preventing and combating Violence against Women and Domestic Violence in Armenia" 2018, L. Mann and L. Sargsyan, page 81.

²³⁹ Ibid

Like Article 183(4) of the Criminal Procedure Code, the Prosecutor’s Guideline raises several issues. First, the criteria by which it determines whether an ex officio prosecution should be initiated, namely the helplessness or dependence of the victim, does not reflect that set forth in Article 55 of the Council of Europe convention²⁴⁰, namely: the severity of the offence. The criteria set forth in the Guideline also fails to reflect that set forth by the ECtHR in the *Opuz v. Turkey* case, as listed above²⁴¹. It is important to recall the ECtHR’s rejection as insufficient the Turkish legislation limiting ex officio prosecutions to violence based on the severity of the injuries²⁴². More problematic, the Criminal Procedure Code and Guideline’s reference to the helplessness of the victim as a criterion seems to be based on impermissible gender stereotypes²⁴³. As the Criminal Procedure Code and the Prosecution Guideline may function as an impediment to effective decision-making with respect to ex officio prosecutions in Armenia, and render Armenia vulnerable to adverse judgements by the ECtHR.

3.2.3 Administrative Procedure Code

The RA Administrative Procedure Code stipulates an appeal procedure for an emergency barring order. According to Article 222.11: “(2) If an appeal is launched against an emergency barring order specified in the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family, the court shall make one of the decisions listed in the Article 77, section 1 of this Code within 36 hours after receiving the application.”

The competent court must decide on the following:

- the admissibility of the appeal,
- the return of the appeal (e.g., for errors),
- rejection of the application as inadmissible,
- redirecting the application to another court²⁴⁴.

Notice on the emergency barring order appeal case need to be served to the applicant, the respondent, and the victim of violence or her legal representative immediately after setting the date of the court session. A public notice cannot serve as a way of notification. The court needs to review an appeal against an emergency barring order specified in the Domestic Violence Law and make a substantive judgment within 48 hours after the admission of the application.

²⁴⁰ CETS 210 – the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 11.V.2011, Article 55.

²⁴¹ *Opuz v. Turkey*, Application No. 33401/02, 2009, para 138.

²⁴² *Karen Tayag Vertido v. The Philippines*, Communication No. 20/2008.

²⁴³ *Karen Tayag Vertido v. The Philippines*, Communication No. 20/2008.

²⁴⁴ Article 77 of the RA Administrative Procedure Code.

3.2.4. Civil Procedure Code

In contrast to warnings and emergency barring orders, protection orders are governed by the civil law and procedure law and examined by the court in a special lawsuit procedure²⁴⁵. According to the Article 8 of the Domestic Violence Law, the victim, or the support centre acting with the victim's consent, may submit an application for a protection order to the first instance civil court. Chapter 27.1 of the Civil Procedure Code provides special procedures on the issuance of protection orders. According to Article 234.1, the application is lodged with the first instance court of the place of residence of the victim or in the place where the support centre is located that is bringing the application on behalf of the victim.

In addition to the general information required in civil proceedings, the application must also include:

- relevant legal provisions of the Domestic Violence Law,
- information regarding family relations between the respondent and victim,
- information that substantiates the immediate threat of violence in the family,
- note about the use of specific restrictions pursuant to the Domestic Violence Law,
- whether the respondent has been subject to preventive registration.

If available, decisions regarding warnings and emergency barring orders also must be attached to the application. In cases in which the support centre is applying on behalf of the victim, her written consent must also be attached.

According to the Article 234.3 of the Civil Procedure Code, the court shall decide whether to accept the application within three days of its submission. A reply to the application to appeal by the perpetrator must be filed within three days from the date of receipt of the application by the perpetrator. The court must issue a decision within ten days of accepting the application. A decision on the issuance of a protection order is at the total discretion of the judge, who is not bound by the evidence, motions, recommendations, explanations and objections presented by the participants in the proceedings and, upon its own motion, must take adequate measures to obtain available information on the facts that are required for issuing a determination in a specific case.

The protection order comes into force upon its publication. The court's decision is sent to the victim and the perpetrator, and other parties to the application. "If necessary", copies of the judicial actions are provided to the police, the authorised body designated by the Domestic Violence Law (the Ministry of Labour and Social Affairs) and the Compulsory Enforcement Service²⁴⁶. **The failure to systematically inform the police of the issuance of a protection order raises significant concerns. The implementation of (an emergency barring order or) a protection order requires the following actions: patrolling, contacting**

²⁴⁵ Article 202 of the RA Civil Procedure Code.

the victim periodically, continually updating the risk assessment and possibly electronic monitoring. Rather, all justice sector actors must have access to up-to-date information on the issuance and implementation of protection orders. It remains questionable whether the Compulsory Enforcement Service can effectively engage in the meaningful implementation of protection orders. Notably, the Articles 7(11) and 8(9) assign the implementation of protection orders to the police.

According to Article 234.4(6) of the Civil Procedure Code, the protection order may be terminated earlier by the court in the case of reconciliation, pursuant to the Domestic Violence Law. The court can do so without holding a hearing, which raises potential protection concerns. A protection order can also be terminated if it is proven that the victim “undertakes such actions on a regular basis”, which results in the perpetrator violating the protection order²⁴⁷. This provision further violates best practice standards²⁴⁸. Victims should not be held liable for violating a protection order issued on their behalf, nor should the protection order be terminated due to the victim’s actions. Secondly, Article 234.4(6) is phrased in such a way as to blame the perpetrator’s violation of the protection order on the victim, constituting explicit legislative victim-blaming.

According to the Article 41 of **the RA Law on Advocacy**, the public defender (the ombuds-person) provides free of charge consultations for the victims of domestic violence.

STRATEGIES AND ACTION PLANS OF THE RA

The RA Government adopted Decree 650-L (on 16 May 2019) on Approving **the Republic of Armenia Government Activities Programme for 2019-2023**. The Activity 11.1 ensure the need for “legislative improvement and compliance with obligations adopted by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence”²⁴⁹.

The RA Government adopted Decree 1334-L (on 19 September 2019) on Approving **the Strategy and Action Plan for Gender Equality in 2019-2023 in the Republic of Armenia**. Five priorities are defined in the Gender Policy: equal participation of women and men in administration and decision making, overcoming gender discrimination in the social and economic sectors, expansion of the full and effective participation of and opportunities for women and men in education, science and healthcare, prevention of gender discrimination. The fifth priority includes the prevention of violence against women and domestic violence, the protection of victims of violence and the prosecution of perpetrators, including the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and the adoption of the National Action Plan on Combating Domestic Violence as final outcomes.

²⁴⁶ If the judicial act relates to the interests of a minor or an incapable person, it is also sent to the guardianship and trusteeship body.

²⁴⁷ Article 234.4 of the RA Civil Procedure Code.

²⁴⁸ “Preventing and combating Violence against Women and Domestic Violence in Armenia” 2018, L. Mann and L. Sargsyan, page 74.

²⁴⁹ <https://www.arlis.am/Annexes/5/Lokal-2019N650.1k.v..pdf>

The RA Government adopted Decree 1978-L (on 26 December 2019) on Approving **the National Strategy and Action Plan for Human Rights Protection 2020-2022**. One of the main objectives of the strategy stresses the issue of domestic violence: The strategy and action plan specifically address issues related to the protection of the right to life for persons in life-threatening situations, including survivors of domestic violence, mostly women. The state faces profoundly serious challenges from gender-based fatalities of women, including homicides and suicides²⁵⁰.

The National Human Rights Protection Action Plan requires national authorities to criminalise domestic violence and violence against women in line with international standards (Right to Life, Action 5); to establish legislation on procedural guarantees of remedy for survivors of domestic violence and violence against women in accordance with international standards (Right to Life, Action 6); to train police officers, investigators, prosecutors, judges and medical personnel, representatives of educational institutions, and the staff of support centres for victims of domestic violence on the subject of domestic violence and violence against women in line with international standards (Right to Life, Action 7); to create support centres and shelters for survivors of domestic violence (Right to Life, Action 8)²⁵¹.

Activity 6: National obligations from international treaties for the protection of women

Aim: This exercise aims to familiarise the participants with the international bodies, in particular bodies entitled to monitor the national implementation of legally binding international treaties (e.g., the CEDAW Committee). Also, the activity enables participants to assess and discuss the CEDAW Committee Recommendations to the Republic of Armenia.

Duration: 45 min

Method: Small group exercise (10 min), whole group discussion (20 min), summary and input by the trainer (15 min).

Resources: Hand-out National obligations from international treaties for the protection of women, flipchart, markers.

Instructions:

²⁵⁰ The National Strategy for Human Rights Protection and deriving Action Plan for 2020-2022, Appendix 1: http://justice.am/storage/uploads/01Appendix_1.pdf

²⁵¹ The National Strategy for Human Rights Protection and deriving Action Plan for 2020-2022, Appendix 2: http://justice.am/storage/uploads/02Appendix_2.pdf

Step 1.

The trainer opens a discussion with participants on the core international treaties (namely CEDAW and its Recommendation 35, and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence) protecting women from discrimination and human rights violations and links the international treaties to the national police work in Armenia by using following questions:

- **What international legal acts do you know that regulate violence against women, including domestic violence?**
- **What are the main roles of state authorities, including the police officers, according to these treaties?**

Notes for the trainers:

The trainer asks the participants to share their ideas with the group and write their ideas on a flipchart. The trainer comments that the promotion, prevention and protection of human rights is a duty of the state. The state has a negative and positive duty. Negative duty refers to the obligation of state officials to respect the law and to refrain from the commission of a wrongful act. Positive duty means that state officials must protect individuals from wrongful acts committed by other non-state actors. The Article 5, paragraph 1 of the Council of Europe Convention defines the state's obligation to ensure that state authorities, officials, agents, institutions and other actors acting on behalf of the refrain from engaging in any act of violence against women. The second paragraph sets out the state's obligation "to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention (forms of violence against women) that are perpetrated by non-state actors". Clearly, the state is responsible to **prevent, investigate, punish the perpetrator and provide reparation to victims** of all forms of violence against women, including domestic violence. According to jurisprudence from the European Court of Human Rights, this positive obligation arises where the "**authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life** of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk"²⁵².

Step 2.

The trainer asks the participants to form smaller groups of four-five participants. Each group receives one CEDAW Concluding observations on the combined fifth and sixth periodic reports of Armenia adopted by the Committee at

²⁵² European Court of Human Rights (2009), Judgement case of Tomasic and others v. Croatia.

its sixty-fifth session (see the handout below). The trainer asks them to recall a situation from their professional environment about each concluding observation and to list:

- Two examples from their professional environment that describe the observation.
- Two examples from their professional environment contrary to the conclusion.

Step 3.

After the small group work, the trainer reconvenes the group and asks participants to share their examples. Groups are asked to reflect together using the following structure:

- If you were asked to start working in a similar situation, what would you do?
- What is expected by the police in similar situations?
- What is the possible damage for the victims from that particular situation?
- What type of institutional reaction can further harm the victim?

In the end, the trainer answers questions, summarise the examples and supplement them with her/his input.

Notes for the trainers:

During the discussion, the trainer explains that safety is a right of every human being. Women victims of domestic violence frequently need to feel safe when seeking help. They need safe accommodation or issuing of an emergency barring order in a situation of immediate danger. Providing safety applies to all women victims and their children without discrimination on any ground. The trainers can refer to the KEY MESSAGES: International standards and guiding principles from this chapter.

Hand-out: National obligations from international treaties for the protection of women

Selected paragraphs are from the Concluding observations on the combined fifth and sixth periodic reports of Armenia adopted by the CEDAW Committee at its sixty-fifth session (24 October-18 November 2016)²⁵³.

Group 1

Women from ethnic minorities

40. The Committee is concerned, however, by early marriage in Yazidi and Molokan communities, the dropping out of school by girls from these com-

²⁵³ <https://digitallibrary.un.org/record/861851>

munities and difficulties in access to health and other State services.

- **Two examples from their professional environment that describe the observation**

- **Two examples from their professional environment contrary to the conclusion**

Group 2

Gender-based violence against women

16. The Committee notes the elaboration of a draft law in 2012 on domestic violence, as well as the establishment of an inter-ministerial working group in 2016 to develop a new draft on various forms of gender-based violence against women in the domestic sphere. The Committee also notes the recruitment of female police officers, the provision of training on gender-based violence for civil servants, social workers and police recruits and the creation of a specialized police department to prevent and investigate cases of gender-based violence. Nevertheless, the Committee remains concerned about:

(b) Underreporting of acts of gender-based violence against women by victims and the resulting lack of data;

- **Two examples from their professional environment that describe the observation**

- **Two examples from their professional environment contrary to the conclusion**

Group 3

Gender-based violence against women

16. The Committee notes the elaboration of a draft law in 2012 on domestic violence, as well as the establishment of an inter-ministerial working group in 2016 to develop a new draft on various forms of gender-based violence against women in the domestic sphere. The Committee also notes the recruitment of

female police officers, the provision of training on gender-based violence for civil servants, social workers and police recruits and the creation of a specialized police department to prevent and investigate cases of gender-based violence. Nevertheless, the Committee remains concerned about:

(c) Persistent attitudes among police officers of accepting and justifying gender-based violence against women and perceptions that this type of violence, particularly in the domestic sphere, is a private matter,

- **Two examples from their professional environment that describe the observation**

- **Two examples from their professional environment contrary to the conclusion**

Group 4

Stereotypes

14. The Committee is concerned about the negative perception of the concept of “gender”, as well as the persistence of discriminatory stereotypes concerning the roles and responsibilities of women and men in the family and society, undermining women’s social status and their educational and professional careers. The Committee has been informed that such stereotypes and degrading images of women are conveyed through school textbooks and the media without sufficient monitoring. Moreover, the Committee is alarmed about the limited acceptance in Armenian society of provisions implementing the international and national framework for gender equality.

- **Two examples from their professional environment that describe the observation**

- **Two examples from their professional environment contrary to the conclusion**

4. POLICE RESPONSE: SAFETY AND PROTECTION OF VICTIMS

4.1. BASIC FRAMEWORK

Goal:Police are more effective in fulfilling their duty to protect and provide safety to victims when they have in-depth knowledge of the rights and needs of victims and a well-informed understanding of their role in providing safety to victims of violence against women and domestic violence.

Key learning points:

- Respect, protect, promote and fulfil women’s right to non-discrimination when policing violence against women and domestic violence cases;
- Safety and protection of victims is central to decision-making;
- Effective protection to victims aligned with international standards of due diligence;
- Competent implementation of the “do no harm” principle by respecting the victim’s rights, her privacy and confidentiality; Active listening skills and acting in a non-judgemental manner with respect to the dignity of the victim.

The Council of Europe convention²⁵⁴ signed by the Republic of Armenia sets exact requirements that state institutions, including the police, **must respect in the process of victim protection**. Article 18 of the Convention defines that member states are obliged to take all legislative and other measures in order to:

- Protect the victim from further violence;
- Establish mechanisms that will ensure effective cooperation between all state bodies and organisations involved in the system of protection of victims of all forms of violence covered by the Convention, as well as to the child-witnesses of violence;
- Ensure that all measures are taken to protect and support victims shall:
 - be based on a gendered understanding of violence against women and domestic violence and shall focus on the human rights and safety of the victim;
 - be based on an integrated approach which takes into account the relationship between victims, perpetrators, children and their wider social environment;

²⁵⁴ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 2011. Available at: <https://rm.coe.int/168008482e>

- aim at avoiding secondary victimisation;
- aim at the empowerment and economic independence of women victims of violence;
- allow, where appropriate, for a range of protection and support services to be located on the same premises;
- address the specific needs of vulnerable persons, including child victims, and be made available to them²⁵⁵.

4.2. VICTIM-CENTERED APPROACH

The victim-centred approach **places the needs and rights of women victims and their children at the centre of all measures**. All actions based on respect for the rights and needs of the victim involves a gender-sensitive approach and stems from the understanding that domestic violence is a violation of a woman's human rights and a form of discrimination. Hence, the measures and activities for support and protection of victims are specific.

The Council of Europe convention²⁵⁶ sets out clear requirements that state institutions, including the police, should protect the victim. This means the police needs to:

- 1) Act based on a gendered understanding of violence and placing the rights and safety of the victim at the centre of all interventions;
- 2) Have a non-discriminative attitude and understanding that certain victims may be particularly vulnerable;
- 3) Orientation towards the needs and rights of the victim, avoiding re-traumatisation of the victims and their empowerment.

This approach ensures that the victim of domestic violence receives the greatest possible support and protection against violence²⁵⁷.

The Council of Europe Convention in Article 4, paragraph 3, stipulates that it is necessary for states **to ensure the implementation of all measures to protect the rights of victims, without discrimination** on any grounds such as gender, gender, race, colour, language, religion, political or other opinions, national or social origin, affiliation with a national minority, property, birth, sexual orientation, gender identity, health status, disability, marital status, migrant or refugee status, age, or other status. In addition to a non-discriminatory approach to victims, the Convention seeks to **take into account circumstances that may make certain victims particularly vulnerable**. When dealing with cases of domestic violence, it is important to understand that a number of factors at the individual and community level influence the victim's decision to tolerate violence. These include economic dependence on the abuser, inability to secure housing, unemployment, non-acceptance by the family, and potential en-

²⁵⁵ Ibid., Article 18.

²⁵⁶ Ibid.

²⁵⁷ Brankovic, B. Mirceva, S. 2016

vironmental condemnation for breaking up the home. Many women face long-term violence because they have no choice but to live independently. Addiction to the perpetrator, along with poverty, makes the victim particularly vulnerable to violence.

Many women, due to some characteristic or condition, experience multiple discrimination. Exposure to multiple discrimination, for example, women from ethnic minorities, from rural areas, with specific illnesses or disabilities, may be particularly vulnerable to domestic violence and reduces the chances of the women victim leaving the abuser. The intersection of several factors increases the state of inequality, which is essentially the root of violence. For example, a woman with a disability from a rural area belonging to an ethnic minority may face many obstacles in trying to escape from violence. The needs and rights of women victims of domestic violence do not differ because of any of their characteristics or conditions. Hence, it must always be borne in mind that the support and protection of victims of domestic are provided without discrimination on any grounds and with respect for differences.

Box 6: Victim-centred approach

Adoption of a victim-centred approach by the police enables:

- Treat the victim in a gender-sensitive manner;
- Understand the needs of the victim to have her rights respected;
- Protect the rights of victims;
- Deal effectively with the perpetrator;
- Assess risks and define and implement together with the victim a safety plan for the protection of a victim of domestic violence.

It is worth highlighting that the usual way of police intervention in a criminal event is not sufficient in cases of domestic violence against women. On the contrary, the different approach is needed originating from the essential understanding of domestic violence as gender-based violence and hence **the need for gender-sensitive treatment of victims of domestic violence**. This encourages the understanding that men and women have equal rights and responsibilities, equal protection of their rights, equal opportunities and are equally respected and valued.

The police approach should be oriented towards the needs and rights of the victim, avoiding re-traumatisation of the victims and their empowerment. Along with the need for safety and protection from violence, the basic need for domestic violence victims is to be heard and trusted. Basic human needs include accommodation that is safe, warm and clean, the need for food and the need for sleep. Given that many victims of domestic violence have children and often cannot meet their basic needs, they need help in meeting basic human needs. Women victims of domestic violence need empathy and encouragement, not blame. It is also necessary to understand that the victim needs to be empowered in order to be able to decide freely about her life. That decision may include declining to testify or prosecute against the abuser or a decision to return to the abuser. Insisting that the victim should

change her freely formed and expressed decision does not respect her rights and may lead to institutional violence and secondary victimisation. That is, to replace violence and control by the perpetrator with violence and control by the institutions²⁵⁸. The principal aim is to enable and encourage the empowerment of the woman victim from the initial reaction of the system. In particular, by avoiding stereotyping, expressing distrust in the victim's allegations, and blaming her in order to reduce the possibility of further traumatising the victim. This encourages the victim to seek help and protection from the institutions of the system and increases her trust in the system.

In addition, to understanding the basic needs of victims, special attention must be paid to understanding that victims have different individual needs depending on the specific situation of each victim. The individual needs of each victim should be identified together with the victim, and protection and support need to be individualised.

Empowering and holistic support to victims should be offered. Victims of domestic violence are vulnerable and sensitive to the violence they suffer, but that does not mean they should be treated as passive or fearless. On the contrary, victims should be approached from the perspective that they have the capacity and ability to make decisions about their lives, to be independent and to control their own lives. Victims may not be able to control the violence they face, but they can choose what kind of service they need and what action they can take to get rid of the violence and consolidate their lives. The process of empowering domestic violence victims means that they have access to information, education, financial support, and any other support service they need that allows them to make decisions freely²⁵⁹.

Women victims of domestic violence have no control over the perpetrator's behaviour and are **not to be blamed for the violence**. Women victims should not be blamed for not protecting children. The perpetrator is responsible for the violence, and he should be blamed. Hence, it is not recommended to force the mother to leave the abuser by taking the children away. Often, professionals, because they feel helpless, can pressure the female victim to leave the abuser. Such actions can lead to fear of the institutions and cause the victim to be pushed into an even more difficult situation²⁶⁰.

In providing support and protection, the Council of Europe convention²⁶¹ requires that all measures and activities be taken with regard to the relationship between the victim, the perpetrator, the child and their social environment. The aim is to avoid situations where victim support measures are planned and provided outside of its social reality.

Victim's support needs to be coordinated among authorities, including the police. Given the complex nature of domestic violence, it is illusory to expect that isolated action by only one institution in the system can produce an effective response to a serious and complex phenomenon such as domestic violence. Meeting the basic needs of victims, as well as individual-specific needs such as, protection, adequate and long-term accommodation, health

²⁵⁸ Logar, R. et al., 2015.

²⁵⁹ Logar, R. et.al., 2015

²⁶⁰ Logar, R. et.al., 2015

²⁶¹ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 2011. Available at: <https://rm.coe.int/168008482e>

care, access to the labour market, education, efficient access to justice, and the smooth enjoyment of economic, social and civil rights require coordinated action of numerous institutions and entities. This includes joint and coordinated action by the police, the prosecution, the judiciary, social services, civil society organisations, the health system and other relevant partners in order to enable the victim to live without violence²⁶².

Protection and support of child victims and witnesses of domestic violence should be at the centre. Often, when domestic violence occurs, in addition to women, their children also suffer. Children exposed to domestic violence can be direct and/or indirect victims. In cases of domestic violence, children are victims regardless of whether the violence is directed at them or they are witnesses and live with the consequences of the violence. In other words, children living with domestic violence need protection and support.

The well-being of children is the main priority of all professionals who act in cases of domestic violence. In particularly severe cases, it may be necessary to separate the children from the family. However, separation must always be the last resort. Effective child protection can be emergency barring orders by which the abuser is removed from the home and banned from approaching. In that way, the children do not suffer additional consequences from domestic violence, i.e., they do not leave home, interrupt school, leave their friends, but the abuser bears the responsibility for his actions²⁶³.

4.2.1. Ensuring the Rights and Safety of Victims

Violence is closely linked to the enjoyment of rights and their protection. A fundamental human right is **the right to live without violence**²⁶⁴. This right includes the right to life, the right to liberty, the right to health, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. This right extends to both the public and the private sphere and the residence of an individual. It is important to understand that the protection of the right to life without violence covers both the public and private spheres of a person's life²⁶⁵. At the same time, each individual enjoys the right to privacy and family life. The right to family life incorporates enjoyment of peaceful and safe life. Proper understanding of the obligation of the state to protect and guarantee the right to life without violence while respecting the right to privacy requires understanding that violence threatens bodily integrity and the right to private life. In *Bevacqua and S. v. Bulgaria*, the European Court of Human Rights stressed in particular that considering the dispute to be a "private matter" was incompatible with the authorities' obligation to protect the applicants' family life.

²⁶² Brankovic, B., Mirceva, S. 2016

²⁶³ Brankovic, B., Mirceva, S., 2016

²⁶⁴ Article.4, Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 2011, CETS:210.

²⁶⁵ Logar, R. et. al. 2015.

The principle of autonomy includes respect for the free, voluntary and clearly expressed will of an individual. The victim of domestic violence can not necessarily express freely and voluntarily her will because of the fear of revenge from the perpetrator and future repercussions²⁶⁶. If there is no proper and systematic intervention that will provide the victim with time and distance from the perpetrator to make a truly free decision about her life, then there is no autonomy of the person. Precisely in order to respect the autonomy of the victim, the protection of that autonomy should be enabled. In particular, the fact that domestic violence consists of finding ways to establish power and control over the victim by the perpetrator must be taken into account. The state is obliged to ensure that a certain decision is a true and free expression of the will of an individual. Especially in cases of domestic violence, the specific situation of the victim as a result of the cycle of violence, dependence on the perpetrator, feeling of helplessness, fear and tendency to minimise violence must be taken into account. According to Dobash and Dobash²⁶⁷, only when the victim is freed from such a condition, her decision is a true and free expression of her will.

The freely formed and expressed will of the woman-victim to remain in a relationship with the abuser is her legitimate right. Hence, the victim enjoys both the right to protection from domestic violence and unconditional support with due respect for her decision about her own life. Behaviour change is required of the abuser, not the victim. It is crucial that victims are not “sent” a message that they are expected to be responsible for their own safety and protection (e.g., “If you divorce, you will be protected from violence you should have divorced earlier from him when you realised, he was violent.”)

Personal data protection. In providing support and protection services to women victims of domestic violence, it is necessary to understand and consistently apply the guarantee of confidentiality. This means that victims of domestic violence, in addition to their need to be heard and trusted, also have the right to the confidentiality and protection of their personal data. Confidentiality implies that the sharing of victim data with other institutions is permitted only if the victim has previously consented to it. Possible exceptions to the principle of confidentiality exist. An exception to the rule of confidentiality may be a suspicion of child abuse or neglect of life-threatening situations, suspicion of suicidal tendencies or a serious threat of harm to others²⁶⁸. The rule of confidentiality further means that it is necessary to develop special protocols that would regulate the issue of data exchange between institutions. To this end, the victim must be informed of the right to confidentiality and possible confidentiality restrictions. Consistent respect for the right to the confidentiality of the victim’s data is an essential step in her empowerment.

²⁶⁶ Ellison, 2002

²⁶⁷ Dobash & Dobash, 2001

²⁶⁸ UN Police Gender Toolkit (UN. Department of Peace Operations - DPO/ DPET/Integrated Training Service, 2015). According to UNPOL, in such cases, the police can act if there are reasonable grounds to prove these situations and seek advice from health care workers and counsellors.

Box 7: Confidentiality throughout the procedure

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

Privacy and confidentiality of personal information are guaranteed by the Personal Data Protection Law of the RA and the RA Law on State and Official Secrets. The RA Law on Police also enshrines the provisions of privacy and confidentiality of personal information.

KEY CONCEPTS

- **Privacy and confidentiality mean not revealing personal information of cases and respecting the victim's will.**
- **Police officers should give a due consideration to confidentiality not to endanger lives.**
- **Police officers not conforming to the law are held responsible, and administrative or criminal actions should be taken to hold them responsible. This is even more important in cases of domestic violence where the suspect/perpetrator is a police officer.**

Victims of domestic violence have the same procedural safeguards as any other victims of crime. However, due to the complex characteristics of domestic violence crimes, they can also benefit from additional support services. Police officers should remember that the victim of domestic violence may not be aware of professional legal aid or other support. Hence, the victim should be informed about her/his rights and how to access to justice, legal aid and other support. It is also crucial that the victim is told about the steps in criminal proceedings, her obligations, and her rights as well as allowing her to ask questions.

According to Article 59 of the RA Criminal Procedure Code the victims' rights includes the following:

- 1) to know the essence of the indictment;
- 2) to give evidence;
- 3) to give explanations;
- 4) to present materials for the inclusion into the criminal case and examination;

- 5) to declare challenges;
- 6) to declare motions;
- 7) to object against the actions of the bodies of criminal prosecution and to demand on the inclusion of his/her objections into the protocol of the investigatory or other procedure action;
- 8) to get acquainted with the protocols of the investigatory and other procedure actions, in which he/she participates, and to submit remarks on the correctness and fullness of the records in the protocol; to demand, during the participation in investigatory or other procedure action, the inclusion into the protocol of the mentioned action or the court session the records on the circumstances, which, upon his/her opinion, have to be mentioned; to get acquainted with the protocol of the court session and to bring remarks on it;
- 9) to get acquainted with all materials of the case, from the moment of accomplishment of the preliminary investigation, make copies from them and write out from the case any data in any volume;
- 10) to participate in the sessions of the Court of the first instance and review court;
- 11) to receive upon his/her request, free of charge copies of the decisions on the abatement of criminal proceedings, on inclusion into the case as an accused, the copy of the indictment or final act, and also the copy of verdict or other final decision of the Court;
- 12) to appeal to the actions and decisions of the body of inquiry, the investigator, prosecutor, the Court, including the appeal of the verdict and other final court decision, as established in this Code;
- 13) to reconcile with the suspect and the accused in cases prescribed by this Code;
- 14) to object to the appeals of other participants of the trial regarding the verdict or other final court decision;
- 15) to receive the compensation, stipulated by law, of the damage caused by unlawful actions;
- 16) to receive the compensation of expenses incurred during the criminal proceedings back the property, seized by the body, conducting criminal proceedings as material evidence or on other bases, the originals of the documents, belonging to him/her; to receive back the property belonging to him/her seized from the person, conducted a deed forbidden by the criminal law;
- 17) to get back the property, seized by the body, conducting criminal proceedings as material evidence or on other bases, the originals of the documents, belonging to him/her;
- 18) to have a representative and to terminate the powers of the representative.

Article 98 of the RA Criminal Procedure Code stipulates that participants in criminal proceedings (witnesses, experts, victims and the like) and persons who report a crime, whose testimony or disclosure may endanger the life, health, property, rights and legitimate interests of the person under protection or a member of his family, close relative, or close associate has the right to protection. Hence, the person participating in the criminal proceedings or reporting the crime, as well as his/her family members, close relatives and friends, have a right to be protected. Furthermore, law enforcement officials must apply such protective measures of victims and witnesses ex officio, as well as upon the request by the persons in question. Protection measures are mandatory if the persons participating in the criminal proceedings or their close relatives were physically threatened in connection with their participation in the proceedings²⁶⁹.

According to Article 183(4), the prosecutor may, irrespective of the victim lodging a complaint, initiate a criminal case in a domestic violence case concerning the crimes prescribed by Paragraph 1 of this Article if the victim cannot defend his or her legitimate interests due to his or her helpless situation or dependency on the alleged perpetrator. The criminal case is initiated and investigated under the general procedure provided by the Code, and the criminal prosecution will not be terminated even if the victim and perpetrator reconcile²⁷⁰.

As one of the main actors in combating domestic violence, the police have a significant role in the protection of victims' rights. When victims of violence call for help or report an incident, the police services are most often the first point of contact with the criminal justice system. The police should have the possibility to provide protection to victims.

In addition, women should be able to **trust the police** and to have the certainty that their complaints are taken seriously²⁷¹. A lack of trust in and a lack of action taken by the police in previously reported cases is a reason why many women do not report their case to the police. It is therefore important that the police create trust among women in order to ensure that women notify their complaints.

Moreover, victims may be ashamed or afraid to make the violence public. They may fear the loss of family approval. The victim might not have any support from family or friends. Family, friends or even her children, in situations of spousal abuse, might pressure her to drop the case. Possibly the victim may fear she will lose her status in her community, or her husband might leave her if she complains. She might hold religious beliefs that prevent her from leaving the marriage. In situations where the victim is a child, she might fear being sent away from her home to a state-run children's home. Therefore, police need to ensure privacy and confidentiality when dealing with victims.

²⁶⁹ The RA Criminal Procedure Code, Article 98.1.

²⁷⁰ Criminal Procedure Code of the Republic of Armenia, Article 183 (4).

²⁷¹ United Nations, Department of Economic and Social Affairs Division for the Advancement of Women, "Handbook for legislation on violence against women", New York, 2009, p.39.

4.2.2. Due Diligence Principe

Under international human rights law, the state has both negative duties and positive duties: state officials must both respect the law and refrain from the commission of wrongful acts and must protect individuals from their commission by other non-state actors.

Under international law, states are responsible for human rights violations, whether those violations are caused by the state or by private individuals within the state. The core of the concept of due diligence is that states are responsible for the violation of rights. The State's obligations regarding human rights violations by individuals are in the following areas:

- I. Prevention and protection (acts of violence against women by private individuals and the state should be prevented and victims should be protected);
- II. Sanctioning the perpetrators - private persons (in situations when the violent acts have already been committed, the state authorities should undertake an investigation, prosecution and punishment of the perpetrator);
- III. Compensation to the victim (state authorities should provide victims with support and compensation for violence committed by private individuals).

Regarding acts of violence by the state authorities, the due diligence principle implies that: the relevant judicial institutions should analyse in detail the circumstances under which the violation of a right of a particular individual occurred; check the existing evidence and determine whether a right has been violated and to examine in detail what the state institutions did or did not do. In order for the international courts to conclude that the State did not act in accordance with the standard of due diligence, it is necessary to prove without a doubt that the State did not take appropriate action since the representatives of the state institution could take certain measures (and did not do so) to prevent such an event from occurring at all, including the adoption of laws, rules, institutional procedures, etc., or state authorities could initiate an adequate and proper investigation (and they did not) or fail to take all possible measures to identify and properly punish the perpetrator and to adequately support and compensate the victim²⁷². The concept of due diligence is of particular importance for the protection of women from gender-based domestic violence, as their rights are violated by perpetrators in the private sphere or within an intimate partnership.

The following list of considerations for determining state's compliance with obligations of due diligence has been developed by the Former UN Special Rapporteur on Violence against Women, Radhika Coomaraswamy in her 1999 report²⁷³ on domestic violence: "ratification of international human rights instruments; constitutional guarantees of equality for women; the existence of national legislation and/or administrative sanctions providing adequate redress for women victims of violence; policies or plans of action that deal with the issue of violence against women; the gender-sensitivity of the criminal justice system and police; accessibility and availability of support services; the existence of measures to raise aware-

²⁷² Brankovic, 2013

²⁷³ UN Human Rights Council's special rapporteur on violence against women Annual Report, 1999, E/CN.4/1999/68, para. 25.

ness and modify discriminatory policies in the field of education and the media, and the collection of data and statistics concerning violence against women”.

The former UN Special Rapporteur on Violence against Women, Yakin Ertürk²⁷⁴, has as well defined the basic principles on which the concept of due diligence in the field of violence against women:

1. The **state is ultimately responsible** for ensuring that obligations of due diligence are met. The state cannot delegate its obligation to exercise due diligence, even in situations where certain functions are being performed by another state or by a non-state actor.
2. **Principle of non-discrimination**, which implies that states are required to use the same level of commitment in relation to prevention, investigation, punishment and provision of remedies for violence against women as they do with regards to the other forms of violence.
3. **Due diligence obligation must be implemented in good faith** with a view to preventing and responding to violence against women. This will necessarily entail taking positive steps and measures by states in order to ensure that women’s human rights are protected, respected, promoted and fulfilled.
4. The duty to ensure that interventions designed to prevent and respond to violence against women are based on **accurate empirical data**.

The due diligence principle in the Optional Protocol to the Convention on the Elimination on the Elimination of All Forms of Discrimination against Women, CEDAW, (2000) reaffirms states’ obligation to comply with the standard of due diligence in cases of domestic violence against women or sexual abuse of women/girls. The following CEDAW Committee Decisions based on the Optional Protocol are related to failure to apply the due diligence standard in the area of violence against women: AT v. Hungary, VK v. Bulgaria, SVP v. Bulgaria, Isatou Jallow v. Bulgaria, Vertido v. the Philippines, Cecilia Kell v. Canada, Fatma Yildirim (deceased) v. Austria, Şahide Goekce v. Austria, Inga Abramova v. Belarus, VPP against Bulgaria. These decisions are confirming and reaffirming the obligation of the state party:

- to prevent acts of violence against women by private individuals with due diligence,
- to protect the victim and to grant her proportionate compensation for the physical and mental damage suffered, and
- to conduct an investigation and punish the perpetrator.

The CEDAW Committee also insists on the obligation of the state to protect the right to life of women, as evidenced by the decisions in cases of violence that led to the death of victims: Fatma Yildirim (deceased) v. Austria; Şahide Goekce (deceased) against Austria.²⁷⁵

²⁷⁴ *ibid.*; paras. 34-37

²⁷⁵ Brankovic, 2013

The ECtHR's jurisprudence²⁷⁶ on the due diligence standard establishes the state's liability "if the state authorities fail to act with due diligence" in:

- i) protecting,
- ii) investigating,
- iii) prosecuting and
- iv) punishing violations committed by third persons, and,
- v) providing redress for victims²⁷⁷.

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence explicitly requires (Article 5, paragraph 2) that state parties adhere to the standard of due diligence in preventing, investigating, punishing perpetrators and providing compensation to victims of acts of violence covered by this Convention. Article 5, paragraph 1, addresses the state obligation to ensure that their authorities, officials, agents, institutions and other actors acting on behalf of the state refrain from acts of violence against women, whereas paragraph 2 sets out parties' obligation to exercise due diligence in relation to acts covered by the scope of this Convention perpetrated by non-state actors. In both cases, failure to do so will incur state responsibility²⁷⁸.

A State's duty to protect victims of gender-based violence derives from the due diligence obligations set forth under Article 1 of the European Convention of Human Rights (ECHR)²⁷⁹.

Prevention/protection: The ECtHR has found that states have positive obligations to do so under Articles 2, 3 and 8 of the ECHR, protecting the right to life, the prohibition on torture and ill-treatment and the right to respect for private and family life, respectively.

In the *Opuz v. Turkey* case, the Court found that a positive obligation under Article 2: involves a primary **duty on the state to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions**. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual²⁸⁰.

In an examination of the State's positive obligation "to take preventive operational measures" to protect the right to life under Article 2, the Court applied the standard: whether the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the

²⁷⁶ See Chapter II, Sub-chapter 2.1.2.

²⁷⁷ *A. v. Croatia*, Application No. 55164/08, 2010; *Bevacqua v. Bulgaria*, Application No. 71127/01, 2008; *Kontrova v. Slovakia*, Application No. 7510/04, 2007.

²⁷⁸ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, para 57.

²⁷⁹ See also, CEDAW General Recommendation 28.

²⁸⁰ *Opuz v. Turkey*, Application No. 33401/02, 2009, para 128; see also, *Branko Tomašić and Others v. Croatia*, Application No. 46598/06, 2009, para 49.

life of an identified individual from the criminal acts of a third party and that they failed to take measures . . . which, judged reasonably, might have been expected to avoid that risk²⁸¹.

Investigation: The due diligence standard also requires **states to properly and effectively investigate crimes, including those involving violence against women**. While the Court issued its finding under the substantive aspect of Article 2 in the Branko Tomašić and Others v. Croatia case, it further noted that the procedural aspects of Article 2 required that “there should be some form of effective official investigation when individuals have been killed as a result of the use of force, either by State officials or private individuals²⁸².” The Court continued: the essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life. The authorities must take the reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the cause of death, or identify the person or persons responsible, will risk falling foul of this standard. Whatever mode is employed, the authorities must act once the matter has come to their attention²⁸³.

Thus, States’ positive obligation under Article 2 requires ex officio investigations. In the M.C. v. Bulgaria case, involving the multiple rapes of a 14-year-old girl, the Court held that States also have a positive obligation to investigate under both Articles 3 (prohibition against torture and ill-treatment) and 8 (right to respect for private life) of the Convention²⁸⁴. Concerning the State’s positive obligation to investigate under Article 3, the Court stated: “Article 3 of the Convention gives rise to a positive obligation to conduct an official investigation. Such a positive obligation cannot be considered in principle to be limited solely to cases of ill-treatment by State agents”²⁸⁵. With respect to the positive obligation under Article 8, the Court explained: While the choice of the means to secure compliance with Article 8 in the sphere of protection against acts of individuals is in principle within the State’s margin of appreciation, effective deterrence against grave acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions. Children and other vulnerable individuals, in particular, are entitled to effective protection²⁸⁶.

In Aydin v. Turkey, the ECtHR found that the State had failed to conduct a proper investigation because it did not seek out eyewitnesses to the rape and torture of the victim²⁸⁷. The Court agreed with the victim that there was an “absence of an independent and rigorous investigation and prosecution policy,” a “prevalence of intimidation of complainants . . . and the lack of professional standards for taking medical evidence”²⁸⁸.

Prosecution: The third obligation of a State under **the due diligence standard is to fairly and effectively prosecute those who commit these crimes**²⁸⁹. This issue takes on particular

²⁸¹ Opuz v. Turkey, Application No. 33401/02, 2009, para 130.

²⁸² Branko Tomašić and Others v. Croatia, Application No. 46598/06, 2009, para 62.

²⁸³ Branko Tomašić and Others v. Croatia, Application No. 46598/06, 2009, para 62.

²⁸⁴ M.C. v. Bulgaria, Application No. 39272/98, 2004, paras 150-153.

²⁸⁵ M.C. v. Bulgaria, Application No. 39272/98, 2004, paras 151.

²⁸⁶ M.C. v. Bulgaria, Application No. 39272/98, 2004, para 150.

²⁸⁷ Aydin v. Turkey, Application No. 23178/94, 1997.

²⁸⁸ Aydin v. Turkey, Application No. 23178/94, 1997.

²⁸⁹ “Preventing and combating Violence against Women and Domestic Violence in Armenia” 2018, L. Mann and L. Sargsyan.

relevance in domestic violence cases, where the cycle of violence frequently results in victims withdrawing their complaints. As described above, the Court found that a “crucial” question in the *Opuz v. Turkey* case was whether the authorities displayed due diligence “despite the withdrawal of complaints by the victims²⁹⁰.”

In that case, the Court inferred from the practice of other Council of Europe Member States that “**the more serious the offence or, the greater the risk of further offences, the more likely that the prosecution should continue in the public interest, even if victims withdraw their complaints**²⁹¹”. It noted in this regard several characteristics of the case, common to cases of domestic violence. It highlighted that: “there was escalating violence against the applicant and her mother by [the perpetrator]. The crimes committed by [the perpetrator] were sufficiently serious to warrant preventive measures, and there was a continuing threat to the health and safety of the victims. When examining the history of the relationship, it was obvious that the perpetrator had a record of domestic violence, and there was, therefore, a significant risk of further violence”²⁹².

In General Recommendation No. 28, the CEDAW Committee affirmed that: Where discrimination against women also constitutes an abuse of other human rights, such as the right to life and physical integrity in, for example, cases of domestic and other forms of violence, States parties are obliged to initiate criminal proceedings, to bring the perpetrator(s) to trial and to impose appropriate penal sanctions²⁹³.

Punishment: CEDAW General Recommendation 19 provides: “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”²⁹⁴. Moreover, Article 45 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence requires states to take the necessary legislative or other measures to ensure that the offences established in accordance with this convention are **punishable by effective, proportionate and dissuasive sanctions**, taking into account their seriousness. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty, which can give rise to extradition. States may adopt other measures in relation to perpetrators, such as monitoring or supervision of convicted persons; withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way.

In *A. v. Croatia*, the ECtHR found a violation of Article 8 in a case involving multiple proceedings (three criminal proceedings; four minor offences) in a domestic violence case. These proceedings resulted in the issuance of several protection orders, pre-trial detention, psychiatric and psycho-social treatment and a prison term. Although some of the sanctions were implemented, the perpetrator did not serve prison sentences for two offences, one of

²⁹⁰ *Opuz v. Turkey*, Application No. 33401/02, 2009.

²⁹¹ *Opuz v. Turkey*, Application No. 33401/02, 2009, para 139.

²⁹² *Branko Tomašić and Others v. Croatia*, Application No. 46598/06, 2009, para 50.

²⁹³ CEDAW, General Recommendation No. 28 on the Core Obligations of State Parties Under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW/C/GC/28, 2010, para 34.

²⁹⁴ CEDAW General Recommendation No. 19, para 9.

which included making death threats to the victim. The ECtHR found that the state failed to adequately protect the applicant's rights when the authorities did not take into consideration the diverse criminal and minor offences proceedings concerning multiple violent acts committed by the same person against the same victim, thus failing to view the case history as a whole. This case underscores the importance of coordination across the judicial system and the need to consider the full scope of the proceedings when determining the appropriate sanction and/or protection measure. It also draws attention to the role of judicial oversight in ensuring that judgements are executed and sentences are served²⁹⁵.

Compensation: Also falling under the right to an effective remedy, Article 30 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence requires **states to “take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with this convention”**. In the case of *Kontrová v. Slovakia*, the ECtHR held that there had been a violation of Article 13 (the right to an effective remedy), as the applicant should have been unable to seek compensation for non-pecuniary damages for the dereliction of duty convictions against the police officers who had failed to protect her children from being shot by her husband²⁹⁶.

States have an obligation to provide compensation to victims, even if state agents are not directly responsible for the violence. The United Nations Special Rapporteur on Violence Against Women, its Causes and Consequences has observed that “in the context of norms recently established by the international community, a state that does not act against crimes of violence against women is as guilty as the perpetrators”²⁹⁷.

In order to assist criminal justice systems and professionals in meeting their due diligence obligations, in December 2010, the United Nations adopted the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice. The updated Model Strategies and Practical Measures provide a comprehensive set of criminal justice strategies and measures that can assist criminal justice professionals in better addressing the needs of women and ensure their fair treatment in the justice system. In particular, they provide that the responsibility for prosecuting violence against women lies with prosecution authorities and not with victims of violence, regardless of the level or type of injury.

²⁹⁵ Council of Europe, Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice, 2016, p. 85, available at: <https://rm.coe.int/training-manual-final-english/16807626a4>.

²⁹⁶ *Kontrová v. Slovakia*, Application No. 7510/04, 2007.

²⁹⁷ Special Rapporteur on Violence Against Women, its Causes and Consequences, Alternative Approaches and Ways and Means within the United Nations for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms, para 72, U.N. Doc. E/CN.4/1995/42, (Nov. 22, 1994) (prepared by Radhika Coomaraswamy), also stating: “measures of redress need to link individual reparation and structural transformation,” which “subvert, instead of reinforce, pre-existing patterns of gender hierarchies, systemic marginalization, and structural inequalities.

Box 8. Elements of an effective criminal justice system response to violence against women and girls

The updated Model Strategies and Practical Measures set out the following elements of an effective criminal justice system response to violence against women and girls²⁹⁸:

- **Victim-centred.** Victim safety and well-being are paramount goals of criminal justice response. A victim-centred approach to criminal justice system responses recognises that victims are central participants in the criminal justice process, and they deserve timely, compassionate, respectful, and appropriate treatment. Victims have the right to be well informed in order to make their own decisions about participation in all the stages of the investigation and criminal justice process. Victims know far more about what they need and the risks they face. The criminal justice system response is to assist them in managing risk and ensuring victim safety. The law enforcement and justice system, with all its procedural rules and policies, should be applied in a manner that empowers individual women who are victims of violence. Domestic violence, rape and sexual assault, sexual harassment and other forms of violence often deprive women of their sense of control, autonomy, self-respect, and personal privacy. The law enforcement and justice system should seek to restore and reinforce those qualities while avoiding measures that re-victimise the victim.
- **Offender accountability.** In violence against women cases, the criminal justice system needs to shift the focus away from questioning the credibility of victims to enhancing evidence-gathering and case-building and ensuring consistency in the investigation, prosecution, and punishment. This could include early case discussion between police and prosecutor to explore potential evidential weaknesses and whether these might be addressed through additional evidence, expert testimony, research findings or courtroom advocacy.
- **A comprehensive, coordinated, and multidisciplinary approach.** The various institutions of the criminal justice system need to work together in a coordinated manner to respond to violence against women. The criminal justice sector should also promote the involvement of all relevant government sectors, as well as relevant sectors of civil society, to ensure a comprehensive response to victims of violence. For instance, support agencies could work with police and prosecutors to ensure support to victims during statement taking and providing information on the progress of the case.

²⁹⁸ General Assembly resolution 65/228. Available at: https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Model_Strategies_and_Practical_Measures_on_the_Elimination_of_Violence_against_Women_in_the_Field_of_Crime_Prevention_and_Criminal_Justice.pdf

- **Use of specialised expertise.** Specialised approaches to violence against women may include establishing special police and prosecutorial units and special courts or dedicated justice system personnel and dedicated court time and adequately funding specialised training, as well as multidisciplinary approaches such as one-shop centres (which provide multisectoral case management for victims such as healthcare, social services, counselling and legal services in one location).
- **Adequate resources.** States need to commit adequate resources to ensure an effective response.
- **Monitoring mechanism.** The law enforcement and administration of justice need to be monitored in order to evaluate the effectiveness of the state's response as well as to provide oversight.

4.3. AVOIDING SECONDARY VICTIMISATION AND VICTIM BLAMING

The primary task of every professional in the system when dealing with domestic violence, starting from the first intervention and in any further action, is to ensure the safety of the victim and children and respect for their rights and needs. Providing protection and support to women victims of domestic violence and their children should not manifest behaviour that expresses disrespect to the victim, blaming, pity or patronage. Although at first glance, it seems simple and easy to apply, professionals can act (often unconsciously) under the influence of deep-rooted gender stereotypes.

The concept of **SECONDARY VICTIMISATION** was first developed in the 1980s by women's non-governmental organisations working with victims to describe women's experiences with the justice system and to explain why women were reluctant to report cases to the police. Secondary victimisation can be defined as additional trauma caused by stereotyping and victim-blaming attitudes, behaviours, practices, and processes engaged towards victims of domestic violence - or other forms of violence against women - by authorities, institutions, service providers, the media, community, or family²⁹⁹.

Secondary victimisation consequently occurs through the intentional or unintentional responses of individuals and institutions to the victim after they have been subjected to an act of violence. In addition to victim-blaming, examples of secondary victimisation include disbelief or disinterest, passing judgement, lack of empathy and sensitivity, siding with the perpetrator, intrusive behaviour, offering conditional help, asking inappropriate questions, and omitting information. **The effects and impact of secondary victimisation are contrary to a**

²⁹⁹ Lofar, R. et. al., 2015.

victim-centred approach to domestic violence and are likely to lead to ineffective and harmful interventions. If the victim has a re-traumatising experience from contact with institutions or services, it can minimise her trust in the system as well as minimise her belief that there is someone who can help her and her children, in addition to increasing the probability that she will not seek help in the future³⁰⁰. Secondary victimisation can result in distrust or a decrease in the victim's trust in the system, disbelief that someone can help her, creating a sense of guilt, not reporting future violence.

There are certain moments in the criminal justice process, from response to adjudication, that can result in the re-traumatisation of the victim. These are:

- ▶ Interviews and having to go through multiple interviews;
- ▶ Forensic testing;
- ▶ Testifying and having to re-testify;
- ▶ Lack of in-court protection, confrontation with the accused;
- ▶ Postponements and continuances;
- ▶ Decisions based on gender stereotypes³⁰¹.

Secondary victimisation occurs when system professionals do not support the victim but blame her for the violence she has experienced. That is, the victim is re-traumatised by professionals in institutions that have an obligation to protect and support her. In addition to blaming the victim, secondary victimisation consists of behaviours that express distrust of the victim's allegations, indifference, insensitivity, minimising or ignoring violence, condemning the victim, justifying the perpetrator, assertive behaviour, and conditional assistance with witnessing her the perpetrator and/or to participate in the court proceedings, an attempt to "reconcile" between the victim and the perpetrator or to indicate to the victim that she should be "patient", inappropriate questions and incomplete information.

One of the factors that can help reduce the re-traumatisation of the victim is to ensure that victim can choose to have a female police officer to deal with her case. These police officers need have concluded specialised training on violence against women and victim/survivor interview techniques. Women contribute to diversity among police officers which strengthens the effectiveness of the response³⁰². It is recommended (if possible) for female police officers to participate in on-site police intervention and other domestic violence-related activities³⁰³.

³⁰⁰ Preventing and Combating Domestic Violence against Women, January 2016, p.19.

³⁰¹ "Preventing and combating Violence against Women and Domestic Violence in Armenia" 2018, L. Mann and L. Sargsyan.

³⁰² Fernandez, M., Townsley, J.(2021). "Handbook on gender-responsive police services for women and girls subject to violence: for women and girls subject to violence". UN Women, United Nations Office on Drugs and Crime (UNODC) and the International Association of Women Police (IAWP).

³⁰³ Brankovic, B. Mirceva, S. 2016.

Activity 7. How you should and should not address the victim/survivor

Aim To raise the understanding of professionals for procedures and statements that may harm the victim

Duration: Total 35 minutes: individual work - 5 min, group work, 10 min, group discussion -20 min.

Resources: Hand-out: How should and should not.

Method: Individual work, group work, group discussion (in which the whole group participates)

Instruction: The trainer asks the participants to fill in the Hand-out: How should and should not. After completing the hand-outs individually, the trainer divides the participants into three groups and asks them to fill in for the second time one Hand-out: How should and should not, this time considering that:

Group 1 should be borne in mind that the woman victim is a member of the Roma population,

Group 2 should be borne in mind that the woman victim is engaged in prostitution,

Group 3 should be borne in mind that the woman victim has a disability.

The trainer asks one member of each group to list the answers from their group and then writes them down on the flipchart. The trainer stimulates a discussion focusing on devastating effects on the victim by the adoption of victim-blaming language by the police, in particular, what questions should not have been asked and why. The trainer explains that victims feel that they are blamed for the violence they suffered. It is crucial to be aware and confirm that the perpetrator is responsible for the violence.

Hand-out: How should and should not

Please fill in the “how should “column.

How should not	How should
1. “It is just an ordinary dispute; you will reconcile down.”	
2. “It is not that bad; if it were that bad, you would have left him by now.”	
3. “What did you do to hit you?”	
4. “He never hit you; what you are reporting is not such violence, is it?”	
5. “Why don’t you just leave him?”	
6. “I do not believe that XX could do such a thing; he is always very polite and takes care of you and the children.”	

How should not	How should
7. "He is definitely under much stress at work."	
8. "If he stops drinking/taking drugs, he will stop being violent."	

Source: Brankovic B., and Mirceva, S. 2016

The **documentary "Telling it how it is"** is available at the following link
<https://www.youtube.com/watch?v=ChwocBsef5E>

Discuss the documentary. The trainer supports the discussion on the following questions:

What happened?

How would you act?

Why?

Is there victim blaming?

What is the message for the victim?

In cases of domestic violence, the basic function of the overall system of protection and support of women victims of domestic violence is to provide sufficient support and adequate protection to enable them to decide freely and independently on their own safety and to move towards a life without violence. Whether to get out of a violent relationship, to leave the abuser or not, is a decision that only the victim makes. The role of the professionals in the institutions is to enable the victim to decide freely. This means that the measures and activities of the institutions of the system are not aimed at breaking the violent relationship but at empowering the victim to make a decision. Making a decision to leave the abuser is a complex process and is related to the enjoyment of the basic human right to privacy and family life. However, when the victim can and freely decides not to end the violent relationship, it does not, in any case, mean that this stops the enjoyment of another basic human right - the right to safety, i.e., to live without violence. Understanding the inseparable rights of victims that are not mutually exclusive is the basis for reducing their potential secondary victimisation.

Professionals are often surprised or disappointed by a domestic violence victim's decision to return to a violent relationship, refuse to participate in criminal proceedings, withdraw a report or statement. From the point of view of taking measures for the protection and/or support, which includes spending human and material resources, the victim's refusal to "cooperate" with the institutions of the system can generate resistance among professionals. In this sense is the belief that she is a "real" victim of domestic violence, i.e., how she should behave. The stereotype of a victim can lead to victim-blaming and consequent secondary victimisation.

Many victims of domestic violence are blamed of causing the violence, or are accused of having a problem or deserving violence because they return to the abuser. This situation strongly contributes to diverting attention from the real problem, which can result in blaming

the victim instead of the perpetrator. Locating the responsibility for the violence, in whole or in part, on the victim by the professionals who are supposed to provide protection and support, as well as from the family and the environment, contains double damage. First, the victim feels discouraged from seeking help and support and admits that she is to blame for the violence she is suffering. Second, the violence by the perpetrator is justified, the responsibility is shifted from the perpetrator to the victim, and the violent pattern of behaviour is confirmed³⁰⁴.

In the literature, this phenomenon is called **VICTIM-BLAMING**. Blaming a victim is “a devaluing act that occurs when the victim of a crime or case is held liable - in whole or in part - for the crime committed against her. The blaming can come in the form of a negative social reaction from professionals in the legal, health, social system, as well as from the media and the victim’s family and their social environment³⁰⁵”.

Acting in cases of domestic violence is not an easy task. Professionals must understand that they bring with them their own experiences of violence and trauma. Often, the victim’s traumatic experience can be so frightening that professionals need to emotionally distance themselves and rationalise the victim’s experience to protect themselves. In such cases, there may be a tendency to blame the victim or to distrust her. That is why professionals who deal with cases of domestic violence have a key role to play in preventing further trauma to the victim. The best way to achieve this is to focus on the needs and rights of the victim. It is no less important for professionals to identify and deal with their own views and prejudices so that they can develop a more sensitive treatment of domestic violence victims.

There are several theories in the literature regarding the reasons for blaming the victim, such as belief in a just world, the theory of attribution error, and the theory of invulnerability³⁰⁶.

Belief in a just world

- It is based on a person’s belief that the world is a safe and just place where good things happen to good people and bad things happen to bad people.
- The victimisation was caused by certain guilt of the victim, and the victims deserve their trouble: she was unfaithful, disobedient.
- Beliefs about personal responsibility and outcome control.

Attribution error theory

- People make two types of attribution: internal (personal characteristics of people are the reason for their situation) and external (individuals identify the environment and circumstances as the reason for a person’s behaviour).
- Attribution error occurs when a person’s experience is attributed to his / her personality, and the impact of the situation is ignored (e.g., the perpetrator’s responsibility for their own behaviour).

³⁰⁴ Brankovic, B., Mirceva, S., 2016

³⁰⁵ The Canadian Resource Centre for Victims of Crime (2009). “Victim blaming”. Available at: http://crcvc.ca/docs/victim_blaming.pdf

³⁰⁶ General Inspectorate of the Romanian Police, 2016.

- Hence, the victim is partly to blame for what is happening to her.

Theory of invulnerability

- People blame the victim for making them feel safe and for protecting their own sense of invulnerability. Example: “She was raped because she was going home alone at night. If I do not act like the victim, I will never be raped.”

Source: Adapted from *Preventing and Combating Domestic Violence against Women: A learning resource for training law enforcement and justice officers*, 2016, General Inspectorate of the Romanian Police.

Activity 8: Obstacles and Challenges

Victims of domestic violence face numerous obstacles in trying to receive help, support and protection from domestic violence.

Duration: 30 minutes

Notes for the trainer:

The trainer instructs the participants to list three different answers to the following question on a piece of paper: In your opinion, what are the main obstacles that the victim faces when she runs away from the perpetrator and asks for help and support?

After 5 minutes, the trainer asks each participant to read their answers and group the obstacles identified by the participants on the board. Then initiate a group discussion on the following topic:

Why these obstacles exist? Why it is difficult for the victim to leave the abusive relationship? The individual situation of every victim must be taken into consideration.

The trainer points to the following aspects:

What a woman is at risk for³⁰⁷:

- She may lose her home.
- She may lose or put her children at risk.
- She may lose her relationship.
- She may lose her status, and she may be economically dependent on the perpetrator. Therefore, she could put herself and her children at risk of poverty.
- She may lose her legal status.

Source: Cited from Logar, R. et al.2015, p.39

³⁰⁷ Logar, R., and Marganova-Vargova, B. (2015). *Effective Multi-agency Co-operation for Preventing and Combating Violence: Training of Trainers Manual*. Strasbourg: Council of Europe

Hand-out: Why victim stays or leaves

Reasons why a woman stays	Reasons why a woman leaves

Activity 9: How it is expressed

Aim: To increase the understanding of the professionals for actions and statements that could harm the victim

Duration: Total 20 minutes: individual work – 5 min., group discussion – 15 min.

Resources: Hand-out: How it is expressed

Method: Individual work, group discussion (in which the whole group participates)

Instruction: The trainer asks the participants individually to fill in the Hand-out: How it is expressed.

Group discussion: The trainer asks several participants to share with the group an example of expressing statements and behaviours that could lead to secondary victimisation. Following the discussion, the trainer explains that the victim must be addressed with respect and dignity, the language used should be simple and concise, provide information to victims, make sure that the victims understand, police officers should express empathy and be patient, prioritising respect for the victim's privacy, ensure the victim participate in the decision-making by asking her opinion, provide safe and trusting atmosphere (see Box 8: Minimum standards on communication with victims)

Hand-out: How it is expressed

Please fill in the hand-out. In each column in the table, write the statements and behaviours (gestures, body movement, voice intonation) that reflect the following:

Secondary victimisation	How (specify an example)
1. Disrespect for the victim	
2. Blaming	
3. Pity	
4. Patronising	

5. Seeking guilt at victim for the violence she suffers
6. Justification of the perpetrator
7. Tolerance of violence
8. Abuse of position
9. Corruption
10. Threats
11.

Source: Adapted from Brankovic and Mirceva, 2016.

The victim should never be blamed or held responsible for domestic violence. The responsibility for violent behaviour lies solely with the perpetrator of the violence.

Box 8: Minimum standards on communication with victims

- **Environment** – Make sure privacy can be maintained, that the victim/survivor is safe and secure, that there will be no interruptions, ideally in a victim/survivor-friendly room or building, and where she will not come into contact with the alleged perpetrator. The victim/survivor must be handled with care and respect;
- **Staffing levels** – Having just one officer present when the victim/survivor is spoken to is ideal, unless the investigating officer is not of the same gender, in which case a chaperone may be required.
- **Free narrative** – Allow the victim/survivor to recall the incident without interrupting them;
- **Active Listening** – Use positive non-verbal communication (NVC) or body language - eye contact, posture, facial expressions such as smiling where appropriate, nodding of head to show empathy;
- **Avoid negative body language** – such as lack of eye contact, folding of arms, looking away or past victim/survivor, shaking of the head, negative facial expressions, e.g., frowning;
- **Use of language** – positive expressions describe possibilities, options, choices and alternatives; negative expressions describe what cannot be achieved. Use open questions, who what, when, where, and how - to encourage them to provide further information following the ‘free narrative;’
- **Adapt communication style according to the age and/or ability of the victim/survivor;**

Children, particularly if they are young, should not be considered as ‘small adults’, so speak and behave in a way they understand.

- **Undertake a risk assessment centred on the victim/survivor** and any vulnerable family members, such as children, and consider what needs to be included in a safety plan;
- **DO NOT**
 - Commence any form of mediation, as this is not the role of the police. The responsibility of the police is to gather all evidence through a thorough investigation and present the facts for a prosecution to be considered.
 - Interrupt the victim/witness;
 - Press on and repeat questions over and over again;
 - Make the victim/witness repeat her/his story of abuse to different people;
 - Become angry or force the victims/witness to speak;
 - Stare at the victim/witness;
 - Express disbelief, disgust, disapprobation, exasperation or shock;
 - Assume you know what the victim/witness wants to say;
 - Rush the interview or the closing phase of the interview.
- **Secure and preserve** any potential evidence at the earliest opportunity. This includes the manner in which any evidence is obtained, e.g., recording the victim's/survivor's statement in a way that increases the chances of a successful prosecution without victim testimony. A video-recorded interview, where facilities permit, can often be appropriate, but this is not always possible.

Source: Cited from Fernandez, M., Townsley, J., 2021, p.89 and 271³⁰⁸

³⁰⁸ from Fernandez, M., Townsley, J., 2021, "Handbook on gender-responsive police services for women and girls subject to violence: for women and girls subject to violence". UN Women, United Nations Office on Drugs and Crime (UNODC) and the International Association of Women Police (IAWP).

5. POLICE RESPONSE: RISK, IDENTIFICATION, ASSESSMENT AND SAFETY PLANNING

Goal:

Police officers provide effective safety to the victims of domestic violence that enables them to make informed decisions. Key learning points:

- Understand the risk factors in domestic violence and how to identify them;- Risk assessment, safety planning and review must be an on-going process from the first contact with the police;
- Safety plans have a preventive goal and are developed together with victims and are contextually informed;
- Provision of well-informed protection measures to the victims independent of initiation of a criminal or civil law case;
- Understand risk assessment as a process that must be reviewed and evaluated;
- Perpetrators are held accountable and face legal consequences when they commit violence.

Concerns for the victim's safety must lie at the heart of any intervention in cases of all forms of violence. The Article 51 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence establishes the obligation to ensure that all relevant authorities, not limited to the police, effectively assess and devise a plan to manage the safety risks a particular victim faces on a case-by-case basis, according to the standardised procedure and in cooperation and coordination with each other. Many perpetrators threaten their victims with serious violence, including death, and have subjected their victims to serious violence in the past. Therefore, it is essential that any risk assessment and risk management consider the probability of repeated violence, notably deadly violence, and adequately assess the seriousness of the situation³⁰⁹.

The ECtHR has established positive obligations for states to protect citizens from human rights violations committed by non-state actors, including in the private sphere. Specifically, Articles 2 and 3, protecting the right to life and the prohibition on ill-treatment, respectively, require "the State to take appropriate steps to safeguard the lives of those within its jurisdiction" and "to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual"³¹⁰.

³⁰⁹ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, para 260.

³¹⁰ Case of Branko Tomašić and Others v. Croatia, Application no. 46598/06, 2009, paras 49, 50; see also, Mudric v. The Republic of Moldova, Application no. 74839/10, 2013, para 40.

The ECtHR has developed a two-pronged standard for assessing whether states have met their positive obligations under Articles 2 and 3:

- a) whether the authorities knew or ought to have known of the violence to which the victim had been subjected and the risk of further violence³¹¹;
- b) if so, whether all reasonable measures had been taken to protect her and to punish the perpetrator³¹².

In this respect, risk assessments constitute a practical tool for determining “the existence of a real and immediate risk”³¹³.

Ensuring the safety and security of the victim of domestic violence (mostly women and their children) must start from the first contact with the victim and continue as long as there is a risk to the safety of the victim. It is a process that often covers a longer period and is not only related to the initial intervention, such as in court proceedings before a scheduled hearing, when imposing a temporary measure, seeing children, guardianship proceedings, divorce or alimony payments. The primary task of police officers in cases of domestic violence is to provide safety and protection to the victim³¹⁴.

This process includes:

1. identification of risks,
2. effective assessment of risks, and
3. safety planning and risk management aimed to provide the safety of the victim and her children.

³¹¹ Case of B. v. the Republic of Moldova, Application No. 61382/09, 2013, para 51.

³¹² Ibid.

³¹³ Good Practices in Responding to Domestic Violence: A Comparative Study, Sarajevo 2019: https://www.16dana.ba/wp-content/uploads/2019/11/4.-Good-practices_ENG_final.pdf

³¹⁴ Brankovic, B., Mirceva, S. “Training of Trainers Module for professionals in providing gender sensitive support services to DV survivors in FYR Macedonia”, 2016

5.1. IDENTIFICATION OF RISKS, RISK FACTORS: HOW TO IDENTIFY RISK FACTORS

Risk identification and assessment is the responsibility and task of every police officer. This task of police officers includes having the knowledge and skill to identify risk factors and their severity, as well as taking measures to reduce the risk to the life of the victim.

Box 9: Key elements in policing cases of domestic violence

- To protect the human rights of the woman and her children
- To provide their safety
- To prevent further violence
- To empower the woman to identify and understands the risks

Source: Cited from WAVE (2012). *Protect II* ³¹⁵

5.1.1. RISK IDENTIFICATION³¹⁶

In order to identify risks, we need to clarify what is a risk, range and type of risk factors and what risk factors influence men's violent behaviour. The broadest definition of risk refers to the probability of occurrence of harmful consequences or the expectation that the threat of inflicting harm can be realised.

Box 10: Understanding a risk³¹⁷

- Risk refers to the possibility for the victim to suffer immediate and severe injury or damage, for the violence to escalate or recur, or for the victim to be killed.
- "Injury or damage" means psychological, physical, sexual or economic violence of the victim.
 - "Serious injury" refers to a situation in which the victim's life may be potentially endangered and/or severe trauma (psychological and/or physical) may occur.

Therefore, a risk assessment evaluates the immediate and serious danger to the life and physical integrity of the victim by the particular perpetrator.

³¹⁵ WAVE (2012). *Protect II: Capacity Building in Risk Assessment and Safety Management to Protect High Risk Victims*. Vienna: WAVE. Available at: http://files.wave-network.org/trainingmanuals/PROTECTII_Risk_Assessment_and_Safety_2012_English.pdf

³¹⁶ Adapted from Brankovic, B., Mirceva, S. "Training of Trainers Module for professionals in providing gender sensitive support services to DV survivors in FYR Macedonia", 2016

³¹⁷ Adapted from: Kemshall, H. (1996). *Reviewing Risk: A review of research on the assessment and management of risk and dangerousness: Implications for policy and practice in the Probation Service (A Report for the Home Office Research and Statistics Directorate)*. Home Office.

The existence of risk is not absolute but is a contextual and dynamic process and can be determined with a certain probability. Worth mentioning is that risk factors rarely occur in isolation rather, they are mutually connected and may exacerbate each other. Furthermore, assessing the existence of risks in cases of domestic violence against women need to adopt a gendered understanding of violence against women. Namely, numerous research studies have indicated and contributed to commonly recognised risk factors in domestic violence. This suggests that although some of the risk factors may not constitute a danger or threat on their own, when they are identified as part of domestic violence and in combination with other risk factors may, they represent an indication for a high risk of serious harm. For example, unemployment, or mental health problem, or release from prison, or alcohol abuse is not a risk factor on its own, but in relation to violent behaviour, they become risk factors³¹⁸. Furthermore, the risk of harm to a victim or reoccurrence of violence must be assessed, taking into consideration the individual situation of the victim and surrounding peculiarities. In particular, it is essential to understand that some situations may increase the risk, such as a moment of separation, initiating divorce or criminal procedure, reporting to the police, child contacts and perpetrator's release from a prison.

5.1.2. Understanding the Risk Factors Associated With Domestic Violence

Domestic violence is learned intentional behaviour rather than the consequence of stress, individual pathology, substance abuse, or a 'dysfunctional' relationship. Perpetrators of domestic violence frequently avoid taking responsibility for their behaviour by blaming their violence on someone or something else, denying it took place at all or minimising their behaviour³¹⁹. Nevertheless, there are factors that can increase the risk of committing domestic violence. It is important to note that a risk factor is not a cause but can rather be seen as a factor that either lessens the inhibitions of the perpetrator (e.g. drugs/alcohol) or provides a justification for their abuse (stress, unemployment, loss of temper). The following are a number of factors that have **previously been used to explain the occurrence of domestic violence but are now recognised as risk factors for perpetration:**

³¹⁸ WAVE (2012). Protect II: Capacity Building in Risk Assessment and Safety Management to Protect High Risk Victims. Vienna: WAVE.

³¹⁹ Practice Guide: Domestic Violence, Addendum to the Judicial Bench-book: Considerations for Domestic Violence Case Evaluation in Bosnia and Herzegovina Sarajevo, 2016: https://www.dcaf.ch/sites/default/files/publications/documents/Practice-Guide-Domestic-Violence_Eng-Final.pdf

Box 11: Explanation of factors that in relation to violent behaviour may become risk factors for domestic violence

Drug and alcohol use/addiction is associated with an increased risk for both domestic violence, perpetration, and victimisation. Drug/alcohol addiction does NOT cause domestic violence – if alcohol and drug use caused violence, then everyone who consumed alcohol or used drugs would become violent. However, not all perpetrators drink or use drugs, and most people who drink or use drugs do not perpetrate domestic violence (or other kinds of violence). For example, a study of 200 perpetrators found that a substantial proportion of perpetrators did not abuse alcohol or drugs. Even of those who were abusing substances, their use of violence was not limited to times when they were intoxicated. They also found that “alcohol and drug intoxication may lower inhibitions, but they also make for [good] rationalisations”³²⁰. For those perpetrators who do use alcohol and drugs, it may increase the frequency and severity of domestic violence³²¹. Moreover, for some perpetrators, both substance abuse and domestic violence appear to be linked to an underlying need for power and control related to gender-based distortions and insecurities³²².

Economic stress and poverty are associated with increased risk for both domestic violence perpetration and victimisation – but it does not cause domestic violence to occur. While there is a correlation between income levels and domestic violence, there is more to the analysis; for example, a number of studies have linked the profile of lower socio-economic status men, who are not successful in the role of breadwinner, with a motivation to assert dominance through violence, including violence against women, as a means to achieve masculine status³²³. This research suggests that sexual conquest and asserting social and physical control over women may be a source of power and a measure of success for men who feel unsuccessful by traditional markers such as wealth. Moreover, some studies indicate that economically disenfranchised men often associate with one another in male peer support networks that collectively devalue women and regard them as legitimate victims

³²⁰ Jacobson, N. & Gottman, J., *When Men Batter Women*, New York: Simon & Schuster.

³²¹ Fals-Stewart, W. & Kennedy, C., “Addressing intimate partner violence in substance-abuse treatment,” *Journal of Substance Abuse Treatment* 29, no. 11 (2005): 5-17.

³²² Gondolf, E.W., “Alcohol abuse, wife assault, and power needs,” *Social Service Review*, 69, no. 2 (1995): 275-283.

³²³ Anderson, E., *Streetwise: Race, class, and change in an urban community*. Chicago: University of Chicago Press (1990); Benson, M.L., & Fox, G.L., *When violence hits home: How economics and neighbourhood play a role*. Washington, DC: U.S. Department of Justice, National Institute of Justice (2004); Miller, J., *Getting played: African American girls, urban inequality, and gendered violence*. New York: New York University Press (2008); Raghavan, C., Mennerich, A., Sexton, E., & James, S.E., “Community violence and its direct, indirect, and mediating effects on intimate partner violence,” *Violence Against Women*, 12 (2006): 1132-1149. Some studies indicate that economically disenfranchised men often associate with one another in male peer support networks that collectively devalue women and regard them as legitimate victims who deserve physical and sexual abuse (Bourgeois, P., *In search of respect: Selling crack in El Barrio*. New York: Cambridge University Press (1999); DeKeseredy, W.S., Alvi, S., Schwartz, M.D., & Tomaszewski, E.A., *Under siege: Poverty and crime in a public housing community*. Lanham, MD: Lexington Books (2003).

who deserve physical and sexual abuse³²⁴. Nonetheless, there is also considerable research that shows similar attitudes and behaviours among more privileged men, including within the male student body [among athletes, in fraternities and the like]³²⁵.

Mental illness is associated with increased risk for domestic violence perpetration and, in particular, victimisation. Early studies with domestic violence perpetrators revealed that they often have no mental illness³²⁶ despite their need for control and the presence of defensiveness, anger, a lack of empathy for mother or children, and a denial of abuse³²⁷. However, it should be noted that in domestic violence cases, the psychiatrist evaluated the batterer as having more severe character disorders than the woman. Both of his “diagnoses” appear to have been based purely on his interviews with them; no particular tests were administered. Studies examining the relationship between PTSD (**post-traumatic stress disorder**) and domestic violence in male veterans have consistently found veterans with greater PTSD symptomology to have higher levels of anger, hostility, aggressiveness, anger reactivity, and domestic violence perpetration³²⁸. Notably, this anger, aggression, and violence are not solely directed within the family, suggesting that PTSD does not cause domestic violence but can contribute to aggressive and violent behaviour more generally – and not limited to within the family. Perhaps most notable, mentally ill people are *more likely to be victims* than perpetrators of violent crime³²⁹ and more likely to have experienced intimate partner violence than the general population³³⁰.

The existence of risk factors indicates that the safety of the victim is endangered or the likelihood that an event may be expected that will again endanger or impose harm to the victim of domestic violence. On the other hand, the absence of some risk factor does not mean that there is no risk for the safety of the women victim; instead, it means that the risk to safety is less probably to occur. Police officers need to gather sufficient information on the existence of risks, assess their relevance, analyse, evaluate, and effectively manage the risks by implementing measures in close cooperation with the victim.

³²⁴ Bourgois, P., *In search of respect: Selling crack in El Barrio*, New York: Cambridge University Press (1999); DeKeseredy, W.S., Alvi, S., Schwartz, M.D., & Tomaszewski, E.A., *Under siege: Poverty and crime in a public housing community*, Lanham, MD: Lexington Books (2003).

³²⁵ Sanday, P.R., *Fraternity gang rape: Sex, brotherhood, and privilege on campus* (2nd ed.). New York: New York University Press (2007).

³²⁶ Evan Stark, *Framing and Reframing Battered Women*, in *Domestic Violence: The Criminal Justice Response 287*, eds., Eve Buzawa. “NOTES FROM THE UNDERGROUND: INTEGRATING PSYCHOLOGICAL AND LEGAL PERSPECTIVES ON DOMESTIC VIOLENCE IN THEORY AND PRACTICE”, Joan S. Meier, page 8.

³²⁷ Evan Stark, *Framing and Reframing Battered Women*, in *Domestic Violence: The Criminal Justice Response 287*, eds., Eve Buzawa.

³²⁸ K. Bell and Orcutt, H., “PTSD and male perpetrated IPV,” *Journal of American Medical Association*, 302, no. 5 (2009).

³²⁹ Linda A. Teplin, McClelland, G., Abram, K., and Weiner, D., “Crime Victimization in Adults with Severe Mental Illness,” *Arch Gen Psychiatry*; 62, no. 8 (August 2005): 911–921.

³³⁰ K. Trevillion, Oram, S., Feder, G., Howard, L.M., “Experiences of Domestic Violence and Mental Disorders: A Systematic Review and Meta-Analysis,” *PLOS ONE* 7, no. 12 (2012): e51740.

Of utmost importance is to remember that **a good risk assessment can save the lives of women who are at risk of partner violence**. Analyses and research have shown that many women who are killed in cases of intimate partner violence have reported violent incidents to institutions (police, social centres or specialised women's organisations) even before the fatal outcome.

Activity 10: Understanding the risks

Aim: Raising awareness about the different approaches to the notion of risks and pointing out the differences in the understanding of risks.

Duration: 5- 10 minutes

Method: Demonstration, group discussion (in which the whole group participates)

Resources: 1 chair

Instruction:

The trainer takes the chair and stands on it. While standing on the chair, the trainer asks the participants about the types of risk that can be identified from different perspectives. Another trainer can facilitate the discussion with questions such as:

“If I am a doctor, I will see a risk of falling from the chair and injury.”

“If I am a housekeeper, I will see a risk that the chair may break, or the floor may be destroyed, scratched...”

Encouraging the participants to look at risk from different perspectives.

Guidelines - group discussion

This exercise helps all participants to understand the different perceptions of risk and different approaches to risk. Trainers should emphasise that although all participants observe the same situation, different individuals may pay more attention to different aspects of the risk. For successful collaboration and joint work, it is crucial for participants to understand their own point of view on risk and that they find a common approach to addressing it.

Source: Cited from Logar, R., and Marganova-Vargova, B. 2015, p. 48³³¹.

The research on domestic violence across Europe reveals that **previous violence is the simplest and most important indicator of risk: how previous incidents of violence are more frequent and more severe; the violence is more likely to recur³³²**.

Another important risk factor is **separation from the perpetrator** - in the moments when the victim runs away from the abuser, is the highest risk of being killed. Research also shows

³³¹ Logar, R., and Marganova-Vargova, B. (2015). Effective Multi-agency Co-operation for Preventing and Combating Violence: Training of Trainers Manual. Strasbourg: Council of Europe.

³³² Brankovic, B., Mirceva, S. “Training of Trainers Module for professionals in providing gender sensitive support services to DV survivors in FYR Macedonia”, 2016.

that women who did not dare to report violence do so when they run away and fear for their lives. In situations where they are separated from the abuser, **more frequent contacts between the perpetrator with children may increase the risk, as it increases the chances of the violence continuing or even escalating.**

Risk is a dynamic category - continually changing, sometimes even in a brief period, depending on the individual situation of the victim. However, we can identify aggravating factors that can increase the level of risk in a particular period, such as: running away from the perpetrator, holding court hearings, contact between the perpetrator and children, unemployment, etc. Therefore, **we cannot assess the risk once, but systematically and continuously, and in cooperation with the victim**³³³.

Activity 11: RISK FACTORS³³⁴

Aim: This exercise aims to raise awareness among participants about risk factors

Duration: 45 min

Method: Individual work (10 min), whole group discussion (35 min).

Resources: Hand-out: Risk factors and categories, Hand-out: List of risk factors, flipchart, markers

Instructions:

The trainer distributes Hand-out: Risk factors and categories to the participants and asks them to write the risk factors that correspond to the written categories.

Instructions group discussion:

When the participants completed filling in the Hand-out: Risk factors and categories, the trainer asks the participants to share their ideas with the group and write their ideas on a flipchart. The trainer comments on all categories. The trainer distributes the Hand-out: List of risk factors and begins a discussion of all the listed risk factors. Participants should be informed that this list is not a complete list of all potential risk factors but that that list is based on experiences and research and should be considered (although not as a single and/or exclusive source) during the identification of risk factors and risk assessment.

Source: Cited from Logar, R., and Marganova-Vargova, B. 2015, p. 49.

³³³ Logar, R., and Marganova-Vargova, B. (2015)

³³⁴ Ibid.

Hand-out: Risk factors and categories

Risk categories	Risk factors
<u>I THE HISTORY OF VIOLENT BEHAVIOR</u>	
<u>II FORMS AND PATTERNS OF VIOLENCE</u>	
<u>III RISK FACTORS RELATED TO THE ATTITUDES AND BEHAVIOR OF THE PERPETRATOR</u>	
<u>IV AGGRAVATING FACTORS</u>	
<u>V. VICTIM'S PERCEPTION OF RISK</u>	
Notes	

Source: Cited from Logar, R., and Marganova-Vargova, B. 2015, p. 51.

Hand-out: List of risk factors

CATEGORY OF RISK	RISK FACTORS (results from the research)
<u>I THE HISTORY OF VIOLENT BEHAVIOR</u>	
1. Previous violence against women	Numerous researches conducted around the world have shown that previous violent behaviour against women is the most common risk factor. (Kropp, R. and Hart, S.,2000; Grann and Wedin, 2002; Snider et al., 2009; Campbell et al., 2009)
2. Violence towards children and other family members.	The perpetrators of partner and domestic violence often treat children as violently as other family members. That is why we must always be careful when it comes to endangering children! Domestic violence is based on complicated patterns. For example, perpetrators often manipulate children or use children to control their

partner (as research has shown in the Duluth Model in the USA, as well as by many others, such as Paymar and Barnes, 2004). Research also indicates that the risk exposed to children who survive domestic violence is not considered serious enough (Mullender et al., 2002). Along with the assessment of the risk to which the woman is exposed, the rights of the child and the measures for the protection of children should be considered.

3. Generally, violent behaviour

The perpetrators of partner violence also frequently exhibit anti-social attitudes and behaviours and use violence outside of the domestic sphere (Hester, 2006; Dutton and Knopp, 2000). Such violent behaviour mostly indicates the perpetrator`s general tendency to resort to violence and may increase the risk for the current victim - partner/wife - but also poses a risk to other people, including professionals involved in solving the case.

4. Violation of protective orders

Violation of protective orders (imposed by the court or the police and depending on the legal system in a particular country) is associated with an increased risk of further violence. (Kropp and Hart, 2000; Grann and Wedin, 2002).

II FORMS AND PATTERNS OF VIOLENCE

5. Severity and frequency of violent acts

The escalation of violence, the more frequent and more serious violent behaviour, is one of the most important factors that can indicate serious and potentially fatal consequences (Snider et al., 2009)

6. Use of weapons/tools or threats by weapons/tools

The use of or threats to use weapons are a significant risk factor for serious and lethal violence. In domestic violence, all weapons, including firearms, knives, and dangerous objects that could be used as an instrument to hurt the victim, must be considered. (Snider et al., 2009; Echeburua et al., 2009; Humphreys I sar., 2005; Campbell and others, 2003; Bailey and others, 1997)

7. Control behaviour and isolation of the victim	If the perpetrator controls the partner/wife, it is an important risk factor for repeated violence and potentially fatal violence (Decker, Martin and Moracco, 2004; Humphreys et al., 2005; Echeburua et al., 2009). Isolation of the partner/wife is a common control strategy and can take extreme forms, such as a deprivation of liberty (for example: locking women up).
8. Stalking	Stalking is associated with serious forms of violence against women, including lethal violence. If it is combined with physical violence, it is considered as a significant factor associated with murder and attempted murder of the current or former partner (McFarlane et al., 1999).
9. Sexual violence	Sexual violence is often an integral part of partner violence (Howarth et al., 2009). Women who are sexually assaulted are more likely to be subjected to more serious injury and serial abuse in domestic violence (Humphreys et al., 2005).
10. Threats to kill, threats to harm, coercion	Practical experience has shown that threats often precede severe violence. Coercion can take on different severe forms, including forced marriage (Robinson, 2010)
11. Strangulation and choking	Strangulation and choking are perilous forms of violence; approximately half of the victims of homicide face a strangulation attempt in the year before their death (Glass, 2008; Block et al., 2000; Snider et al., 2009).
<u>III. RISK FACTORS RELATED TO ATTITUDES AND BEHAVIOR OF THE PERPETRATOR</u>	
12. Issues related to alcohol and drug use	Whilst drug and alcohol use is not a cause or an excuse for domestic violence against women, a perpetrator's alcohol and drug use is associated with an increased risk of homicide and more severe violence (Decker, Martin I Moracco, 2004; Bailey et al., 1997).

13. Possessiveness, extreme jealousy, and other forms of harmful attitudes	Extreme possessiveness and jealousy are associated with severe/serious violence (Robinson, 2006; Snider et al., 2009). Also, the patriarchal attitudes expressed by the perpetrators, such as very rigid concepts of male and female honour and a sense of ownership of women, can impact risk (Dutton and Knopp, 2000; Hilton and Harris, 2001).
14. Issues related to poor mental health, including threats and attempts to commit suicide	Perpetrator mental health problems, including depression, are associated with an increased risk of repeat and severe violence. Threats to commit suicide and a perpetrator's poor mental health are risk factors for homicide-suicide cases. In 32% of homicide cases, the perpetrator committed suicide afterwards. (Randall and Hart, 2000; Regan et al., 2007; Campbell et al., 2003).
15. Economic Stress	Changes in the perpetrator's financial status and unemployment are decisive risk factors in homicide cases related to domestic violence and link to concepts of masculinity and gender roles. (Campbell et al. 2009)
<u>IV AGGRAVATING FACTORS</u>	
16. Separation (the victim left the perpetrator)	In the literature (for example, Humphreys and Thiara, 2003), separation is a significant and common risk factor for serious/severe violence or homicide.
17. Contacts between the perpetrator and (common) children	Child contact following from separation often poses a risk of repeat violence for both women and children (Humphreys and Thiara, 2003).
18. Stepchild living in the family	Risks factors of domestic violence between partners or spouses include any of the perpetrator's stepchildren living in the home (Campbell et al., 2003)

19. Violence during pregnancy

About 30% of domestic violence starts in pregnancy. Violence during pregnancy is a risk factor for severe and lethal violence. Pregnant women have a greater risk of both minor and severe violence than non-pregnant women. (Humphreys et al., 2005; Snider, Webster, O'Sullivan, Campbell, 2009; Lewis, Drife et al., 2001; McWilliams and McKiernan, 1993; Gelles, 1988).

V. VICTIM'S PERCEPTION OF RISK

Do you think that the perception of risk by the victim can be significant in the process of risk assessment? Why?

20. Victim fears for her safety and the safety of children / other persons

Studies have shown that there is a strong correlation between the victim's self-assessment of risk and the actual violent behaviour of the perpetrator. However, some victims may also minimise the risk and underestimate the possibility of escalating violence. In a study of femicide by Campbell et al. (2003), approximately half of the victims did not perceive there to be any risk that the perpetrator would kill them. (Roehl, et al., 2005; Weisz, Tolman, and Saunders, 2000; Gecolf and Heckert, 2003; Heckert and Gondolf, 2004; Campbell et al., 2003)

Notes

Source: Cited from Logar, R., and Marganova-Vargova, B. 2015, p. 53.

5.3. RISK ASSESSMENT

The risk assessment in domestic violence cases aims to prevent endangerment of the life and physical integrity of the victim and recurrence of violence by identifying risk factors for violence, assessing the severity of the threat, and predicting the possible consequences. The risk assessment is a continuous process and is carried out from the first contact with the victim as long as there is a risk of recurrence of violence or endangering the life and body of the victim. It is equally important to protect children affected by domestic violence and to provide for measures to protect them in possible court proceedings. Risk assessment and management often lasts after the completion of a possible criminal procedure or other court procedure and could be needed sometimes in connection with the perpetrator's release from prison.³³⁵

Risk assessment includes³³⁶:

- **What is the possibility of such an act/event occurring?**
- **What is the potential effect of such an act/event?**
- **Which individuals can be potentially affected by such an act/event?**

Risk assessment and management is a continuous process that should be followed by the following steps:

- 1. Risk assessment;**
- 2. Risk management and safety planning,** creating a safety plan for each victim individually;
- 3. Analysis of the effectiveness of the risk management mechanism and reassessment of the risk.**

The safety of both children and adult victims is increased through effective risk assessment and safety planning. Accordingly, risk assessment and safety planning are of critical importance in domestic violence situations and should be modified from evaluations carried out in other areas of crime prevention. However, well-intended and executed criminal justice interventions are limited in their ability to keep victims and children safe.

³³⁵ Adapted from Brankovic and Mirceva (2016), Ibid.

³³⁶ Ibid.

Box 12: Distinctiveness in assessing risks in domestic violence cases

The following considerations are necessary for evaluating risk in domestic violence situations:

1. Broaden the perception of the concept of risk to include the complexity of risks within the intimate relationship:

The multifaceted and complex relationship between the victim and perpetrator in domestic violence is the host to a range of risks that do not typically characterise violence committed by a stranger. The perpetrator's increased access to, knowledge of and relationship with the victim enable dimensions of their intimacy to be used to control and harm the victim (e.g. sexual relationship, children). As a result, assessment of risk must look beyond assaultive behaviour to include analysis of physical, legal, economic, familial, social, cultural, and emotional risks faced by the victim and the perpetrator whom the victim may feel compelled to protect.

2. Identify and use the context within which the violent incident occurred to facilitate decision-making³³⁷:

The risk to adult victims and their children and the strategies needed to reduce risk are influenced by the general context in which the act of domestic violence occurred. Accordingly, the criminal justice system must go beyond the incident and understand the general context in which a given act occurs to determine the level of risk and possible intervention strategies. The context for a given domestic violence act is determined by the intent of the offender, the meaning of the act to the victim, the effect of the violence on the victim, as well as other relevant factors (e.g., how much violence, coercion or intimidation surrounded the criminal act).

3. Carry out the assessment of risks and safety planning in collaboration with the victim:

However, well-intended and executed criminal justice interventions are limited in their ability to keep victims and children safe. Victims manage the daily burden of attending to their safety and that of their children. Effective risk assessment, risk reduction and safety planning must therefore be a collaborative, ongoing process to which the victim is central.

4. Give priority to the victim's understanding of past, present and future risks for self and children in the analysis of the totality of risk:

On average, victims engage in survival strategies for some time before law enforcement authorities are involved. They have lived with the risk and are in a position to appreciate how the current situation compares to previous situations. They can also provide pertinent information on less evident risks related to their complex relationship with the perpetrator (e.g., economics, children). The safety of victims and children, however, requires that this view be con-

³³⁷ Frederick, Loretta and Tilley, Julie. *Effective Interventions in Domestic Violence Cases: Context is Everything*, 2001.

sidered within the context of the victim's direct experience and understanding of all risks. The trained, external view provided by police officers is significant, too, especially when risk may be underestimated by the victim.

5. Consider the possible strategies for safety planning in collaboration with the victim. Evaluate the potentially serious risks or costs that may occur within the safety plan in addition to expected benefits:

The complexity of the relationship factors, and the related dynamics of domestic violence, necessitate that each risk reduction strategy and safety plan be evaluated in a holistic manner and that the evaluation includes the victim's perception. Risk reduction that targets one factor in an isolated way may not be effective.

In the risk assessment process, we need to consider **the existing factors that characterise the situation** of each particular victim and answer the following questions³³⁸:

- **Is there a serious risk of the victim being injured/endangered, the violence escalating, or the victim being killed?**
- **Is the perpetrator potentially dangerous to the victim? Can he seriously endanger, injure, or kill her? How do we assess what the perpetrator is capable of?**
- **What effect will the risk assessment have on the victim and her children? What are the chances of a serious crime occurring?**
- **In what period of time can the crime take place - can it happen soon? Can it happen as soon as circumstances allow/permit it, or if the institutional system and social control give up (fail)?**

Source: Adapted from Logar, R., and Marganova-Vargova, B. (2015).

Box: 13: Examples of relevant questions

The presence of these factors can indicate an elevated risk of serious injury or lethality. The absence of these factors is not, however, evidence of the absence of risk of lethality³³⁹.

1. Does the alleged perpetrator have access to a firearm, or is there a firearm in the home?
2. Has the alleged perpetrator ever used or threatened to use a weapon against the victim?
3. Has the alleged perpetrator ever attempted to strangle or choke the victim?

³³⁸ Logar, R., and Marganova-Vargova, B. (2015). *Effective Multi-agency Co-operation for Preventing and Combating Violence: Training of Trainers Manual*. Strasbourg: Council of Europe.

³³⁹ Minnesota Supreme Court, Gender Fairness Implementation Committee (Committee for Equality and Justice), *Domestic Violence Risk Assessment Bench Guide*, (2009).

4. Has the alleged perpetrator ever threatened or tried to kill the victim?
5. Has the physical violence increased in frequency or severity over the past year?
6. Has the alleged perpetrator forced the victim to have sex?
7. Does the alleged perpetrator try to control most or all of the victim's daily activities?
8. Is the alleged perpetrator constantly or violently jealous?
9. Has the alleged perpetrator ever threatened or tried to commit suicide?
10. Does the victim believe that the alleged perpetrator will re-assault or attempt to kill the victim? Note: A "No" answer does not indicate a low level of risk, but a "Yes" answer is significant.
11. Are there any pending or prior protective orders, criminal, or civil cases involving the alleged perpetrator?

Police services may have their own protocols for risk assessment that may or may not include the use of specific assessment tools. Assessment instruments assist officers to identify and focus on critical elements of a particular case and compare them to known cases that resulted in serious injury or death. While these tools do not enable the behaviour of a given individual to be predicted, they are helpful in evaluating comparative risk and guiding plans to safeguard victims and children against identified dangers.

A risk assessment should not be limited to a checklist of items. If an initial risk assessment by a police officer indicates concern, then a more comprehensive risk assessment may be warranted. A comprehensive risk assessment will incorporate multiple methods of assessment and multiple sources for data collection, including the following:

- ▶ interviews with victims, abuser, and any neighbours or family friends who may have information regarding the abuse
- ▶ measures of physical and emotional abuse; drug and alcohol use, etc.;
- ▶ review of records; e.g., police reports, victim statements, criminal record, psychological or psychiatric reports;
- ▶ contextually based information concerning threat or actual violence³⁴⁰.

During the risk assessment, many tools, guidance, and knowledge on risk factors may be used to assess the situation and provide measures to prevent harm. However, it is essential to understand that "checklists do not provide a definitive assessment of risk...rather they structure and guide professional assessment, they help practitioners to focus on the "right things"³⁴¹. All risk assessment tools should be considered primarily as an important aid to support and facilitate the dialogue with the victim and achieve effective risk assessment and safety of the victim. Risk assessment is less effective where professionals rely solely on a risk assessment checklist and do not use their professional judgment and skills³⁴².

³⁴⁰ A Review of Domestic Violence Risk Instruments. Donald G. Dutton, p. Randall Kropp, 2000.

³⁴¹ WAVE (2012). Protect II: Capacity Building in Risk Assessment and Safety Management to Protect High Risk Victims. Vienna: WAVE. P.

³⁴² Robinson, A. (2011). "Risk and Intimate Partner Violence", in Kemshall, H., and Wilkinson, B. (eds). Good Practice in Assessing Risk. London. Jessica Kingsley Publishers.

Professional judgment, in particular structured professional judgment, requires using the knowledge, experience and expertise in order to make an objective risk judgment based on well-validated standards and methods, looking at those risk factors which are known to be related to risk. Elements of structured professional judgment include 1. Knowledge about most accurate risk factors; 2. It is grounded on proved methods for collecting information on risks; 3. Information is collected from multiple sources; 4. It is based on training and in-service guidance/by-laws that follow research-based knowledge; 5. Always include the victim's perspective and her fears; 6. It is clear, sound and free from prejudice; 7. It is easily accessible and usable for professionals from various institutions that are part of the victim support system³⁴³.

RISK ASSESSMENT WITH CHILDREN AND ADOLESCENTS

A risk assessment with children may be conducted to determine the level of risk to the children themselves. Consideration should be given to:

- ▶ custody and access agreements
- ▶ abusive or neglectful parenting styles
- ▶ threats made directly to the children regarding themselves or their mother
- ▶ threat of abduction
- ▶ risk of physical or sexual abuse of the child by the abuser
- ▶ relationship to the abuser (biological or non-biological child)
- ▶ potential to become an unintended victim of physical violence if the child tries to intervene
- ▶ presence or absence of social supports.

When considering the long-term safety, health and well-being of children and adolescents exposed to family violence, it is important to consider the impact that any current or previous exposure has had on the children. One might also consider a risk assessment with children in terms of their health and well-being, including the impact that continued exposure to family violence may have on them psychologically, socially, and behaviourally.

³⁴³ Adapted from, Baldry, A.C. (2016). Training of Trainers Manual: Enhancing the Professional Capacity of the Bulgarian Police to Deal with Cases of Domestic Violence and Violence Against Women. Strasbourg: Council of Europe. p. 40.

³⁴⁴ Adapted from, Logar, R., and Marganova-Vargov (2015).

5.3.1. The Benefits of Risk Assessment³³⁴

- If properly applied, the risk assessment can contribute to concretise police's professional concerns for a potential threat to the victim and to come up with measures and steps to prevent (further) violence.
- Provides better creation of an institutional response to violence - helps to reduce the possibility of violence escalating.
- Provides the safety plan developed in cooperation with the victim to better match the level and nature of the risk to which she is exposed.
- Provides coordinated response from various institutions that should be involved in solving complex cases of violence.
- Contributes to improving the safety and increasing the protection of the victim and her children.
- Can increase the victim's awareness of the dangers to which she is exposed - to help her assess the danger to her safety and the safety of her children more realistically. Many research findings show that women can often estimate that they are in a high-risk situation.

The risk assessment identifies the risk and formulates the identified risk, the reasons for which it occurs, as well as the possible consequences of a recurrence of violence.

Activity 12: Identification and risk assessment

Aim: To raise awareness among professionals about the important risk factors that pose a danger to the victim that can lead to serious injury/harm to the victim, as well as an escalation of violence or murder.

Duration: Total 70 minutes

Method: Group work (30 min), whole group discussion (40 min).

Resources: Hand-out: Risk factors and categories, Hand-out: Case descriptions (2 case descriptions for each group), flipchart, markers

Instruction: The trainer divides the participants into groups of 4-5 participants and asks each of them to read the case description individually. The groups work independently. Each group fills in Hand-out: Risk factors and categories - list all risk factors that can be identified based on the case description.

Notes for group discussion: The trainer will ask one member from each group to list and discuss the risk factors identified by the group and then write down all the identified factors on the flipchart. Do you think that the perception of the risk by the victim can be important in the risk assessment process? Why?

³⁴⁴ Adapted from, Logar, R., and Marganova-Vargov (2015).

The trainer, in particular, links the identified risk factors with Anna's perceptions according to particular circumstances as given in the case descriptions. The same applies to the proposed measure.

Upon completion of the Hand-out: Risk factors and categories, participants are asked to fill a Hand-out: List of official measures and actions to be taken and to prepare appropriate official documents. The trainer will ask one member from each group to present which official materials/forms have been completed and which steps have been taken. The whole group then participates in a discussion on what measures and activities the police must take and how they must not act.

Source: Adapted from Logar, R., and Marganova-Vargov (2015).

Hand-out: Identification and risk assessment - 1

CASE DESCRIPTION 1

Anna and Sargis have been married for 11 years. They have two children, 10 years old Armen and 5.5 years old Karo. After they got married, they built a family house on a plot owned by Sargis. He owns a company where Anna also works.

Anna asked for police protection from the police one afternoon when Sargis started beating Karo and threw him down the stairs. Armen (the older child) suffered beatings from his father for many years, and the harassment and beatings started when he was four years old. His father has not beaten him. The physical harassment of Karo began at about the same age as that of Armen.

Anna did not report Sargis for Armen's beating. She thought she could protect Armen from Sargis. However, when Sargis threw Karo down the stairs, Anna was terrified that he would kill him and called the police.

When Anna grabbed the phone and called the police, Sargis went out in the yard. After 15 minutes, two uniformed police officers enter the house together with Sargis. The uniformed police officer asks Armen with which toys he threw at his father and hit him on the head. The child runs to his mother and hides. Anna reacts that Armen is the one who was beaten by his father Sargis, and not the other way around. Police officers point out that Sargis just told them that the children beat him and threw toys at his head. Anna is shocked, she tells the officers that she called them, and she is speechless. Sargis continues to talk to the officers, that all three have joined forces against him and is asking for help. He points out: "See what she looks like, with tight leggings and a T-shirt that does not even cover her belly. She goes out on the street like that and walks in front of the children. Moreover, she opened her mouth against me, I feed them, pay the bills and work all day, and she incites the children against me so that she can spend on clothes and make-up and pretend to be a girl. I have never risen hand on her."

Anna and the children are clustered in the corner of the living room. The officer addresses Anna: "Is what your husband say true? Why are you doing this nonsense? Calm down. Next time if you call us and still want to file an application, you should come to the police station and sign." Anna is considering leaving the house with her children and initiating a divorce. Her parents are not alive, and she does not know where to turn and where to go.

Hand-out - Identification and risk assessment - 2

CASE DESCRIPTION 2

Anna and Sargis have been married for 11 years. They have two children, 10 years old Armen and 5.5 years old Karo. After they got married, they built a family house on a plot owned by Sargis. He owns a company where Anna also works.

Anna asked for police protection from the police one afternoon when Sargis started beating Karo and threw him down the stairs. Armen (the older child) suffered beatings from his father for many years, and the harassment and beatings started when he was four years old. His father has not beaten him. The physical harassment of Karo began at about the same age as that of Armen.

Anna did not report Sargis for Armen's beating. She thought she could protect Armen from Sargis. Nevertheless, when Sargis threw Karo down the stairs, Anna was terrified that he would kill him and called the police.

When Anna grabbed the phone and called the police, Sargis went out in the yard. After 15 minutes, two uniformed police officers enter the house together with Sargis. The uniformed police officer asks Armen with which toys he threw at his father and hit him on the head. The child runs to his mother and hides. Anna reacts that Armen is the one who was beaten by his father Sargis, and not the other way around. Police officers point out that Sargis just told them that the children beat him and threw toys at his head. Anna is shocked, she tells the officers that she called them, and she is speechless. Sargis continues to talk to the officers, that all three have joined forces against him and is asking for help. Anna reacts that what Sargis is doing is part of his harassment that she has been suffering for years. Anna addresses the officers and says that "Yes, he never physically attacked me, but he continually calls me a self-absorbed whore, who is your boyfriend now, you made up for the boyfriend again, how much money did you spend on the lipsticks and skirts not covering your ass. "He has never been satisfied with the way I dress and make-up, he continually criticises me for spending much money on make-up and clothes, and that is why in recent years all the money is in his wallet, and for every purchase, I have to ask him because he pays me a minimum salary, which is not enough for bread and milk. He finds flaws in everybody who is my friend

and claims that my friends have spoiled me, and he also rebukes me for talking to my friends on the phone.”

Anna and the children are clustered in the corner of the living room. Anna is considering leaving the house with her children and initiating a divorce. Her parents are not alive, and she does not know where to turn and where to go.

Hand-out: List of official measures and actions to be taken ³⁴⁵

Identified risk factors	Risk reduction measures	Type of official documents to be filled in.

³⁴⁵ Adated from, Logar, R., and Marganova-Vargova, B. (2015), p.56

5.3.2 Armenian Context: Risk Assessment

According to Article 15(1) (3) of the Domestic Violence Law, the Police shall develop criteria to assess the imminent threat specified in article 7 of this law.

The Head of Police Order 18-L approved the criteria for assessing the imminent threat of recurrence or continuation of violence in the family on 17 June 2019, which is amended on 12 August 2020 by the Police Head Order 30-L. Competent officer of specialised subdivision of the Police shall assess the existence of an imminent threat of recurrence or continuation of violence on the basis of the following criteria:

1. Victim's views and report on violence.
2. Views and report of a person having committed the violence (if the person is at the scene of the incident).
3. Views and report of other persons present at the scene of the incident.
4. Whether the person having committed the violence had a weapon at his (her) disposal.
5. Threats uttered by the person having committed the violence and the behaviour thereof.
6. Prima facie traces of violence on the bodies or clothes of the person having been subjected to violence and persons under the care.
7. Description of inflicted injuries (where it is possible to do so without expert examination), quantity, location and the tools (means) used to inflict injuries.
8. The behaviour of a person having been subjected to violence and persons under the care (including fear, difficulties with breathing and swallowing, trembling).
9. Complaints and reports previously lodged against the person having committed the violence.
10. Nature of relations between the person having committed the violence and the person having been subjected to violence, the existence of judicial disputes, including process related to divorce, custody of children.
11. The damage caused to the property belonging to the person having been subjected to violence.
12. Whether the person having been subjected to violence is a minor, pregnant, elderly, have a disability or other features making him (her) particularly vulnerable.
13. Whether the person having committed the violence is record-registered in psychiatric or narcological facilities.

14. Whether the person having committed the violence is prima facie under the influence of alcohol or narcotic drugs.
15. Whether the person having committed the violence has been convicted for a crime accompanied by violence, conditionally early released from serving the punishment and is under the period of probation.
16. Whether decision on warning, urgent interference or a protective decision has been delivered in relation to the person having committed the violence, including whether the decisions mentioned above have been revoked in case prescribed by law on the grounds of conciliation or because the person having been subjected to violence have obstructed the fulfilment of requirements of the protective decision (decision on warning, emergency barring order or protective decision).

According to the Order 18-L of the Head of Police, the following questions shall be addressed to the person allegedly having been subjected to violence (with the help of an interpreter where necessary):

Annexe

Question	Yes	No	I do not know	I refuse to answer
1. Did you receive an injury in a result of the present incident?				
2. Are you afraid that the person having committed the violence will harm you or persons under your care?				
3. Has the person having committed the violence threatened to harm you or persons under your care?				
4. Has the person having committed the violence ever physically ill-treated you?				
5. Has the person having committed the violence ever sexually ill-treated you?				
6. Has the person having committed the violence victimised you, exercised control over your actions, isolated you or deprived you of financial means?				
7. Does the person having committed the violence have a weapon at his (her) disposal?				
8. Has the person having committed the violence ever maltreated your pet?				
9. Have the violence and threats become more severe or frequent with time?				

Question	Yes	No	I do not know	I refuse to answer
10. Have you recently (during the last year) tried to get divorced from or split from the person having committed the violence, or is there a dispute concerning custody of children or other judicial dispute between you?				
11. Has there ever been a decision on warning, emergency barring order or a protective decision, or a judgement of conviction for violence delivered in relation to the person having committed the violence?				
12. Has the person having committed the violence ever violated the requirements of the protective decision?				
13. Has the person having committed the violence ever been convicted for committing a crime accompanied by violence?				
14. Has the person having committed the violence been conditionally early released from further serving the punishment, and is he (she) under the period of probation?				
15. Is the person having committed the violence suffering from alcohol addiction, drug addiction, toxicomania or gambling addiction?				
16. Is the person, having committed the violence, record-registered in psychiatric or narcological facilities				
17. Has the person having committed the violence used violence during your pregnancy (where he (she) knew about the pregnancy)?				
18. Have the family members of the person having committed the violence ever threatened or harmed you?				
19. Has the person having committed the violence uttered a threat when you reported to the police or other law enforcement body?				
20. Are you pregnant, or did you give birth during the last year, or do you have disabilities?				
21. Have you previously reconciled with the person having committed the violence with regard to criminal, civil case, or application of any of the protective measures against violence in the family?				

Positive answers to 10 questions out of the above-listed ones shall be indicative of the existence of an imminent threat of recurrence or continuation of violence in the family.

According to Order 18-L of the RA Head of Police, the following questions shall be addressed to the person who committed the violence:

1. Whether he (she) has used violence.
2. If yes, the reason and circumstances.
3. If no, how can he (she) explain the traces of violence on the body and clothes of the person allegedly having been subjected to violence in the family and at the scene of the incident?
4. Whether a warning decision, urgent interference or a protective decision, a judgement of conviction for crime accompanied with violence has ever been delivered in relation to him (her), and whether he (she) is record-registered for using violence in the family.
5. What is his (her) relationship to the person allegedly having been subjected to violence, is there any judicial dispute between them?
6. Does he (she) have a weapon at his (her) disposal?

If allegedly mutual violence has been used, the competent police officer shall decide:

1. Which party has acted in self-defence?
2. Where *prima facie* none of the parties has acted in the limits of self-defence, then which party is more likely to have continued or repeated the violence, based on the type, quantity, location of injuries of each of them, tools and means used, and the like.

5.3.3 Challenges of Risk Assessments

Risk assessment and safety planning is a core activity in protecting women victims from domestic violence. The practice should be based on quality standards outlined in policy documents and guidelines for risk assessment, safety planning and risk management. Standardised practice should include:

- Clearly defined roles and responsibilities,
- Defined procedures that are focused on the needs of the victim, and
- The safety of the victim and her children, as well as the prevention of further violence, should be the focus of any intervention ³⁴⁶.

In the process of risk assessment and management, police officers may face overlooking

³⁴⁶ Logar, R., and Marganova-Vargova, B. (2015).

the warning signs and underestimating the risk severity. The main challenges to efficient risk assessment and management process is lack of gendered understanding of domestic violence against women coupled with insufficient knowledge and experience on domestic violence as well as with gender stereotypes and prejudices. Standardised practice should increase the woman victim's safety and minimise the potential for a lethal outcome. In this regard, it is essential to understand the term femicide.

5.3.4 Femicide³⁴⁷

The terms “femicide” and “gender-based killings of women” are often used simultaneously in UN documents to emphasise the gender-based nature of this violence, as opposed to the common public and media perception that the killings of women in the context of domestic violence are understood falsely as a so-called “crime of passion”.

Diana Russell introduced the term femicide in 1976, and she defined it as follows: femicide refers to the killing of women by men simply because they are women³⁴⁸.

The Vienna Declaration on Femicide³⁴⁹ recognises that femicide is “killing of women and girls because of their gender, which can take the form of, inter alia:

- (1) the murder of women as a result of intimate partner violence;
- (2) the torture and misogynist slaying of women;
- (3) the killing of women and girls in the name of “honour”;
- (5) targeted killing of women and girls in the context of armed conflict;
- (5) dowry-related killings of women;
- (6) the killing of women and girls because of their sexual orientation and gender identity;
- (7) the killing of aboriginal and indigenous women and girls because of their gender;
- (8) female infanticide and sex-based sex selection foeticide;
- (9) genital mutilation related deaths;
- (10) accusations of witchcraft; and
- (11) other femicides connected with gangs, organised crime, drug dealers, human trafficking, and the proliferation of small arms.

³⁴⁷ Brankovic, 2017

³⁴⁸ Russell, D. (2013). “Femicide” – the Power of a Name, in: *Femicide: A Global Issue that Demands Action*. Vienna: Academic Council of the United Nations System (ACUNS).

³⁴⁹ ECOSOC. Vienna Declaration on Femicide, (2013), E/CN.15/2013/NGO/1.

It is important to emphasise that the phenomenon of femicide is a problem of global human security, as evidenced by alarming new data on the prevalence of femicide in the world collected by the UN Office on Drugs and Crime. A comparison of the total number of victims of femicide with the total number of people killed by terrorists in 2012 reveals the following: “In 2012, more than 43,000 women worldwide have been killed by an intimate partner or family member - it is almost four times more of the number of people killed in terrorist attacks worldwide that year, according to the UN Office on Drugs and Crime (UNODC). These shocking figures underscore the importance of addressing femicide and gender-based violence in general, likewise the global security concerns³⁵⁰”.

In the European context, the term femicide usually refers to the murder of women by an intimate partner or family member, including crimes committed in the name of the so-called “honour” (killings in the name of so-called “honour”). The term “femicide” is not used in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence but it uses the term “physical violence resulting in the death of the victim”³⁵¹. The Explanatory Memorandum of the convention explains that: “The term “physical violence” refers to bodily harm suffered as a result of the application of immediate and unlawful physical force. It also encompasses violence resulting in the death of the victim³⁵²”.

5.3.5 Femicide in Armenia

There are six provisions on murder in the RA Criminal Code. Article 104(1) prohibits murder and five involving deprivation of life: Article 105 prohibits murder in the state of strong temporary insanity, Article 106 murder of a newly born child by the mother, Article 108 murder by exceeding necessary defence and Article 109 causing death by negligence.

The provision of Article 105 reads in full: “murder committed in the state of sudden insanity caused by violence, mockery, heavy insults or other illegal, immoral actions (inaction) of the victim as well as in the state of a sudden affect arising from a long-term psychologically depressive situation caused by the regular illegal and immoral behaviour of the victim”. Article 105 mitigates criminal liability based on *inter alia*, immoral behaviour on the part of the victim and offences to the dignity or honour of the perpetrator. **As a result, in some cases, a woman’s sexual history or an accusation of adultery served to justify men being “in a state of insanity” that resulted in murder.** In addition to being based on stereotypical and gendered concepts of “immoral” behaviour, the provision remains vague and thus raises issues of legal uncertainty with respect to its application³⁵³. This leads to the impunity of perpetrators, whereas women lack access to justice.

³⁵⁰ Bekkers, 2016.

³⁵¹ CETS 210 – Violence against women and domestic violence, 11.V.2011, Article 35.

³⁵² Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, para 188.

³⁵³ Lori Mann “Gap analysis and recommendations on the Armenian Law on Prevention of Violence within the Family, protections of victims of violence within the family and restoration of peace within the family and related police orders”, 19 February 2019, Council of Europe.

The lack of disaggregated statistics on intimate-partner femicide and the use of inexact categories for the classification of murders result in misidentification and underreporting of femicides. Thus, the actual number of women in Armenia killed by intimate partners and family members each year remains unknown. There were 30 documented cases of femicide from 2010-2015³⁵⁴, and member organisations of the Coalition to Stop Violence Against Women have documented at least 14 additional cases to date (2017) in Armenia³⁵⁵.

5.4. EMERGENCY BARRING ORDERS AND PROTECTION ORDERS

5.4.1. INTERNATIONAL STANDARDS

The Article 52 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence provides: Parties shall take the necessary legislative or other measures to ensure that **the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim** or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk³⁵⁶.

As aptly described by this convention, the concept of **emergency barring orders (EBOs)** requires a “paradigm shift”. Rather than asking victims to seek a place of safety from violence. It shifts that burden to the perpetrator, who is ordered to leave the residence of the victim or person at risk and not to contact her or him³⁵⁷. Although Article 52 requires the adoption of such measures, it leaves the modalities to the state’s discretion. EBOs are not intended to function as a replacement for an array of other measures, such as arrest, detention and prosecution. At the same time, Article 52 must be read in conjunction with Articles 50, 51 and 53, which require immediate response by law enforcement, risk assessments and the availability of longer-term protection.

Emergency barring orders can be characterised by their immediate application and their short-term duration. As defined in the Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter “Explanatory Report”), the term “immediate danger” in Article 52 refers to situations in which harm is imminent, has materialised and is likely to reoccur.

³⁵⁴ Coalition to Stop Violence Against Women, “Femicide in Armenia: A Silent Epidemic”, 2016.

³⁵⁵ Coalition to Stop Violence Against Women, Regional Conference “Combating Violence against Women in Armenia and Georgia: Sharing experience and strategizing on further cooperation.” Conference outcome paper, 2017.

³⁵⁶ Council of Europe Convention on preventing and combating violence against women and domestic violence, CETS 210, 2011, Article 52.

³⁵⁷ Council of Europe, Emergency Barring Orders in Situations of Domestic Violence: Article 52, 2017, p. 43.

EBOs are to be imposed for “a sufficient period of time,” which generally ranges in other states from 10 days to 4 weeks. Within at least ten days, the victim will be able to distance herself from the vicious circle of violence and decide whether she needs further judicial protection by issuing court orders. After the necessary period, in which it is considered that the victim will be able to receive immediate help and support without psychological pressure, the victim can make the decision and regain control over the further need for protection. During this period, other institutions of the system should be involved and provide assistance and support to the victim.

An EBO constitutes a protective measure, and thus its issuance should not be contingent upon the commission of an offence nor linked to proof of criminal responsibility³⁵⁸. As the Explanatory Report details, the convention obliges states “to ensure the possibility for victims to obtain a restraining or protection order whether or not they choose to set in motion any other legal proceedings”³⁵⁹. EBOs can be issued by the police, a court or another designated authority. The EBO can also be qualified under civil, criminal or administrative law.

The Council of Europe convention does not specify which institution should be responsible for the issuance of the EBO, though in most countries, it falls to the police, given their protection mandate, and that they are operational 24/7. The issuance of an EBO should not require that an application be initiated by the victim. EBOs should be issued at no cost to the victim.

Police respond to prevent danger or to a recurrence of the threat. This means that the immediate protection of the victim from violence includes ordering emergency barring orders aimed at achieving physical distance that prevent the possibility of new violence. Protection from immediate danger from the perpetrator in the form of a ban on approaching and communicating also allows the victim to make decisions about her own life without psychological pressure from the danger of new violence. At the same time, the police intervention that seeks to be effective and strengthen the victim does not depend on her will. This means that the police are equipped with the power to remove the perpetrator from home and to ban him/her from returning or contacting the victim³⁶⁰.

At the same time, effective police intervention sends a clear message to the perpetrator. Namely, the perpetrator must understand that the state does not tolerate his violence as a private quarrel or family problem that the perpetrator and the victim will solve themselves but approaches the violent behaviour in the private sphere as a serious form of crime. At the same time, the responsibility lies exclusively with the perpetrator, and he faces the consequences.

The police intervention must not take the form of advisory and therapeutic assistance to the perpetrator and defocus from his responsibility. The intervention that removes the perpetrator

³⁵⁸ Council of Europe, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, CETS 210, 2011, para 265.

³⁵⁹ Ibid, para 273.

³⁶⁰ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, 11.V.2011, para 264.

from home sends a clear message that the community has no tolerance for domestic violence, that it has mechanisms and will to protect the victim. At the same time, the discomfort and pressure of police intervention by removing the perpetrator are borne by himself. Advising the victim to leave home and temporarily move to a safe place in some instances can be unproductive and often a new risk of violence. It only confirms the dominance of the perpetrator and the powerlessness and reluctance of the state to deal with the violent attitude in the home.

A police intervention, which does not affect the essence of the problem, and in case of domestic violence, to initiate a resolving the violence, leaves room for the continuation of the vicious circle in which the victim is ³⁶¹. If the police do not protect the victim, then the signal that the perpetrator receives is that the authorities and police accept violence, and victims will not trust the police to report violence. Rather than placing the burden of hurriedly seeking safety in a shelter or elsewhere on the victim, who is often accompanied by dependent children, often with very few personal affairs and for an indefinite period, it is important to ensure the removal of the perpetrator to allow the victim to remain in the home³⁶².

As the CEDAW Committee held in the *A.T. v. Hungary* case: “Women’s human rights to life and physical and mental integrity cannot be superseded by other rights, including the right to property and the right to privacy”³⁶³. In the *Yildirim v. Austria* case, the CEDAW Committee also found that the Prosecutor’s decision not to detain the perpetrator who had threatened to kill the victim on multiple occasions because it had seemed “too invasive” at the time, violated the State’s due diligence obligations³⁶⁴.

Article 53 of the Council of Europe convention³⁶⁵ defines the **restraining or protection orders**. This provision sets out the obligation to ensure that national legislation provides for restraining and/or protection orders for victims of all forms of violence. Furthermore, it establishes a number of criteria for such orders to ensure that they serve the purpose of offering protection from further acts of violence. A restraining or protection order may be considered complementary to a short-term emergency barring order. Its purpose is to offer a fast-legal remedy to protect persons at risk of any of the forms of violence by prohibiting, restraining, or prescribing a certain behaviour by the perpetrator³⁶⁶.

³⁶¹ Mirceva, S., Caceva, V. 2013.

³⁶² Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, para 264. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a>

³⁶³ Communication No. 2/2003, CEDAW/C/36/D/2/2003, para 9.3.

³⁶⁴ Communication No. 06/2005, CEDAW/C/39/D/6/2005, para 12.1.5.

³⁶⁵ Ibid.

³⁶⁶ Ibid, paras 268, 269.

Box 14: Examples of practices from other countries

AUSTRIA³⁶⁷

Austria was the first country in Europe to introduce EBOs in 1997. It adopted a gender-neutral approach to ensure that an EBO can be issued for every person in immediate danger of violence, men and women. However, a gendered approach is reportedly adopted in the law's implementation, given that victims are predominantly women. The law covers same-sex relationships. The Violence Protection Act provides that emergency barring and restraining orders can be issued in response to a physical attack, the threat of a physical attack or any behaviour that "seriously impairs the psychological integrity of another person"³⁶⁸. If the life, health or freedom of a person is threatened, the police must effect the eviction; there should be no scope for discretion in this regard. It covers current and former spouses and partners, as well as family members, irrespective of cohabitation.

Police issue EBOs in Austria as an administrative measure. They are for 14 days³⁶⁹. Notably, the duration of the barring order is fixed and does not depend upon the decision of the individual police officer in each case. EBOs are issued ex officio in the acute phase of immediate risk. This policy aims to relieve the victim from the burden of having to consent to the measure. As a preventive measure, EBOs are issued when facts indicate imminent danger to the life, health, or freedom of a person.

In Austria, the EBO issuance remains completely separate from the criminal investigation process. EBOs are thus issued even if there is no solid evidence of a crime. However, if a violent act has occurred, the police are additionally required to file a report for the purpose of prosecution, as all incidents of physical injury must be prosecuted pursuant to the Criminal Code.

In Austria, the EBO can apply to the victim's home, or a shelter, and the surrounding area. It also covers schools and childcare facilities if children are endangered. It does not contemplate general contact bans nor protection for the victim at his/her workplace.

The duration of the police issued EBO can be extended from two to four weeks if the victim applies for a civil law protection order, which can last up to 12 months³⁷⁰. Civil courts deliver a decision on the victim's application within four weeks to ensure no gap in protection. The longer-term civil protection order allows for the possibility of issuing a general contact ban unless this runs counter to "the profound interests" of the perpetrator³⁷¹. As noted, longer-term

³⁶⁷ Good Practices in Responding to Domestic Violence: A Comparative Study, Sarajevo 2019: https://www.16dana.ba/wp-content/uploads/2019/11/4.-Good-practices_ENG_final.pdf

³⁶⁸ Article I, Violence Protection Act, paras 1, 2.

³⁶⁹ At the outset, the EBO was issued for seven days, the law was later changed to extend the EBO to 10 days. It was revised again to the current 14-day period.

³⁷⁰ Provincial intervention centres provide assistance to victims in applying for the civil law protection order. (Provincial intervention centres are discussed in more detail, below).

civil law protection orders can be requested by the victim to extend beyond the two-week period covered by EBOs or can be issued independently of an EBO. Both EBOs and civil protection orders are cost-free³⁷². Civil protection orders can be extended until the termination of any related proceedings, including divorce. The extension of longer-term civil protection orders is left to the decision of the victim, fostering his or her agency. However, if the victim is a minor, the non-violent parent or the Youth Welfare Office can make an application on his or her behalf. Reporting violence to the police by professional service providers is mandatory, including for adults.

Multi-agency case conferences can be held for particularly serious or repeated cases. Police provide victims with a document explaining their right to apply for a judicial protection order within two weeks of the issuance of the EBO. They are also informed about where to get help. Police notify the provincial intervention centre within 24 hours of all incidents involving violence against women, domestic violence, and stalking. Police also submit a report on the EBO to the family/civil court, along with any key to the residence confiscated from the perpetrator. Conversely, the court informs the police if a civil law protection order is issued, given the police's role in enforcement. The police are also required to inform the Youth Welfare Office whenever children are involved in the violence.

The EBO is subject to review by an administrative, legal service within 48 hours. Perpetrators barred from a joint residence have a right to collect their personal belongings. They are provided with a leaflet informing them of their rights. It includes the following information:

- the content of the barring order, delineating the prohibited area;
- sanctions for violations of the order;
- emergency accommodation options if s/he does not have a place to stay;
- contact information for seeking help;
- his/her obligation to provide an address where a judicial order can be served, and the consequences for not doing so (namely, that a judicial order will come into force without him or her being notified).

Perpetrators have the right to appeal the order administratively, with no suspensive effect. A successful appeal can result in compensation. Victims do not have the right to appeal and are not a party to the perpetrator's appeal. EBOs automatically cover children under the age of 14 living in a family home from which a perpetrator is barred, whether directly or indirectly affected by the violence. Police are required to actively monitor compliance with the EBO, specifically checking within the first three days to ensure that the perpetrator has

³⁷¹ GREVIO, Report submitted by Austria pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Assessment Report: Austria), 2016, para 172, (noting that the "profound interests" of the perpetrator have not been defined).

³⁷² Austrian law also contemplates criminal protection orders, which

not returned to the victim's home. Breaches of the EBO result in an administrative fine of up to 500€. Repeated violations can result in arrest. Citizens have the right to file a complaint about police measures with an independent authority or court. Police have specialized domestic violence units, as well as specialised units at the managerial level to monitor and evaluate interventions³⁷³.

SPAIN

Spain has established advanced normative frameworks in the world for addressing gender-based violence. In 2004, Spain established a comprehensive, gender-specific legal framework for addressing intimate partner violence³⁷⁴, which entailed, inter alia, the creation of specialized gender-based violence courts. These specialized courts are located in all regions of Spain, are operational 24/7, and enable the judge to impose a wide range of protection measures: criminal, civil (including family law) and social protection. Applications for protective measures are filed ex officio by police and prosecution authorities. They are automatically issued in cases involving criminal gender-based violence convictions. The issuance of the order lies exclusively within the competence of the special court judge, who can also issue an order sua sponte, that is, on his/her own motion, without the filing of a request.

Victims, family members of the victim, the police, social support organizations (public and private) and specialized prosecutors within the public prosecutor's office can all request a protection order³⁷⁵. Social welfare, health and other professionals are under a mandatory obligation to report incidents of violence to police or prosecution authorities.

Protection orders³⁷⁶ must be issued within 72 hours of a request. Within 72 hours, the judge summons the parties for a hearing with the public prosecutor.

³⁷³ While Austria's system for issuing EBOs constitutes a model in Europe, it faces several challenges. Protection linked to places, rather than to the victim creates the potential for gaps, and the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) has indicated its preference for no-contact bans. It further appears that emergency barring and protection orders are not de facto issued on the basis of psychological violence, due to evidentiary difficulties (GREVIO, Baseline Assessment Report: Austria, 2017, para 174). GREVIO has also observed that while the "highly developed system of protection orders" keeps women safe, it "masks the lack of an effective criminal justice response to domestic violence cases" (GREVIO, Baseline Assessment Report: Austria, 2017, p. 7.). Criminalization could enable the police to intervene more quickly, although the consequent arrest and incarceration (and potential stigmatization) could impede reporting of the violation by the victim. While cooperation is strong between the police, intervention centres, family/civil courts and the Youth Welfare Office, cooperation with the health and criminal justice sectors could be strengthened. Mandatory reporting for services providers contravenes international standards. Regarding the civil penalties for a violation, fines are not recommended as they are usually drawn from the family budget, thus penalizing the victim and other family members as well. Administrative fines do not have a strong deterrent effect, especially as the fines are imposed long after the violation has occurred (Austrian NGO Shadow Report to GREVIO, 2016, p. 82).

³⁷⁴ Act 1/2004 of comprehensive protection measures against gender violence. Article 1 states: "The object of this Act is to act against the violence which, as a manifestation of discrimination, the situation of inequality and the relations of power of men over women, is carried out against the latter by their spouses or ex-spouses or who are or have been their partners by means of a similar relation of affection, even though they have not lived together". All forms of domestic violence were criminalized in the Penal Code in 1989.

³⁷⁵ In practice, the highest percentage of cases, 72.9%, is reported by the victims themselves; 13.8% are initiated by the police. The lowest percentage of complaints (2%) is initiated by healthcare professionals.

³⁷⁶ Act 27/2003 of 31 July.

As an in-court protection measure for victims, hearings with the perpetrator and victim(s) are conducted separately. Affected children are also heard separately³⁷⁷.

While the perpetrator should be present at the hearing for the protection order, the proceedings can be conducted in absentia if he cannot be found³⁷⁸. If the perpetrator fails to appear, the judge can turn the summons into an arrest warrant. In situations involving immediate risk to the victim, police are obliged to arrest the perpetrator and to maintain him in custody until the order is issued (within the 72-hour period).

In contrast to Austria's gender-neutral framework, the orders are issued to protect women from intimate partner violence, that is, by spouses, ex-spouses, or men with whom they have had romantic relations, irrespective of cohabitation. The law does not cover intimate partner violence occurring in same-sex relationships. Protection orders are issued at no cost to the victim. The law contemplates two types of protection orders: criminal and civil.

Protection orders linked to criminal proceedings can include:

- Prison;
- Restraining orders;
- Prohibition to communicate;
- Prohibition to return to the scene of a crime or the victim's residence;
- Seizure of weapons or other dangerous objects³⁷⁹.

Civil protection orders provide for:

- Awarding the use and enjoyment of the dwelling;
- Restrictions on the conditions of custody, visits, and communication with children;
- Provision of maintenance³⁸⁰;
- Child protection measures to avoid danger or injury³⁸¹.

Protection orders can thus consist of a general no-contact ban, barring the perpetrator from the victim's home, preventive custody of the perpetrator, granting the victim preliminary custody of the children, suspending the alleged perpetrator's parental authority, custody, guardianship and visitation rights and ordering maintenance payments to ensure children's well-being, among other dispositions. In general, criminal measures are applied more often than civil measures.

³⁷⁷ Article 544 ter.4, Code of Criminal Procedure. The Code of Criminal Procedure also contemplates video conferencing as an in-court protection measure.

³⁷⁸ Three conditions must be met to issue a protection order in absentia: a) the urgency of the matter is justified; b) the alleged person can challenge the order either by appeal or at the subsequent hearing; and, c) the subsequent hearing is held within a short delay.

³⁷⁹ Article 2(6), Act 27/2003 on protection orders.

³⁸⁰ In cases where gender-based violence is alleged and a child maintenance order has been issued but no payments are made, the government guarantees payment of the allowance out of the social benefits guarantee fund. Article 19, Organic Act 1/2004.

³⁸¹ Article 2(7), Act 27/2003 on protection orders.

The geographical scope of the order remains at the discretion of the judge and, in contrast to Austria, can include the victim's workplace³⁸². A minimum of a 500-meter ban is suggested in order to facilitate swift police response and to avoid visual contact between the parties as well. Electronic monitoring enables immediate notification of a violation and is frequently used for perpetrators who have breached an order. Violations of protection orders constitute a criminal offence in Spain. Significantly, the Criminal Code punishes the infringement of the protection order by the aggressor, not by the victim³⁸³. At the same time, the judge may adopt new measures that impose greater limitations on the aggressor. Prior protection orders are taken into consideration in all relevant criminal or civil proceedings³⁸⁴. Interim protective measures remain in effect for up to 30 days until a final decision is taken by the judge to affirm, amend or revoke the order³⁸⁵. Protection orders may be maintained beyond the issuing of a final judgment in a case and during the process of any appeals lodged³⁸⁶.

Criminal protection measures can last up to five years for minor crimes, ten years for serious crimes and six months for petty offences.

A simplified standard application form is available in municipal and social services offices, police stations, special courts, and NGOs. It is available in Spanish, the other official languages in Spain (Basque, Catalán), English and French. As noted above, Spain allows limited third-party applications, such as by the victim's family, which can be submitted to diverse social service organizations or governmental bodies, in addition to the police or the specialized court, fostering the accessibility of the procedure. As noted above, the law mandates that social protection agencies and civil society organizations with information concerning incidents of violence report them to the police or specialized court, which is then obliged to issue, *ex officio*, a protection order.

The victim has the right to be heard by the court, which is not bound by her requests. A significant percentage (approximately 30%) of victims' applications for protection orders are denied each year. Perpetrators have the right to appeal an order and the right to be heard by the court on the matter. The appeal does not have a suspensive effect³⁸⁷.

The victim is notified of the issuance of a protection order and of the conditions it imposes by the judge, who also notifies the perpetrator and the relevant implementing authorities³⁸⁸. Within 24 hours of its issuance, the notification is

³⁸² Action and Coordination Protocol of the Security Forces and the Judicial Bodies for the protection of victims of domestic and gender-based violence [Protocolo de Actuación de las Fuerzas y Cuerpos de Seguridad y de Coordinación con los Órganos Judiciales para la protección de las víctimas de violencia doméstica y de género].

³⁸³ Art. 468 of the Spanish Criminal Code criminalizes the infringement of a protection order and is punishable by 6 months to one year of prison. Specifically for domestic violence cases the law foresees prison from 3 months to one year, or community work from 90 to 180 days. The consent of the victim is not relevant when determining the sanction for the infringement.

³⁸⁴ Article 61, Organic Act 1/2004.

³⁸⁵ Article 2(7), Act 27/2003 on protection orders. The interim protective measures can be prolonged at the request of the victim.

³⁸⁶ Article 69, Organic Act 1/2004 on Comprehensive Protection Measures against Gender Violence, (such extended measures must be explicitly set forth in the judgment).

³⁸⁷ Article 44, Organic Act 1/2004 on Comprehensive Protection Measures against Gender Violence.

transmitted electronically, by fax or express mail. In addition to security bodies, social assistance, legal, health and psychological support services are also notified, depending on the needs of victims in a specific case. An integrated system of administrative coordination has thus been established in order to facilitate these communications. (Inter-agency coordination is described in more detail below).

The victim's receipt of comprehensive assistance³⁸⁹ (psycho-social support, legal assistance and representation, and expert witness support, financial aid³⁹⁰, educational and vocational skills training, and housing) is conditioned upon her reporting the violence to the authorities³⁹¹. It is the court that informs the relevant service providers of the protection order and the victim's right to access services. The services offered to victims of intimate partner violence are compatible with those provided to victims of sexual violence, in line with the standard set forth in the Council of Europe Convention³⁹².

The protection order is recorded in the Central Register for the Protection of Victims of Domestic Violence, which is managed by the Ministry of Justice. It can be accessed by family and criminal courts, the public prosecutor's office, the police, Government delegations and sub-delegations, and autonomous communities through designated points of contact in order to ensure effective implementation throughout the State for both temporary and final orders³⁹³. The Central Register is also used for monitoring purposes. A Monitoring Committee³⁹⁴ on the implementation of the law governing protection orders was established, which has prepared several protocols to guide the implementation of protective orders as well as mechanisms for inter-agency cooperation and the application form.

The Protocol for the implementation of the protection order for victims of domestic violence sets forth the criteria for coordination between the judiciary, law enforcement and other government bodies in the security, legal, psycho-

³⁸⁸ Article 1(8), Act 27/2003 on protection orders.

³⁸⁹ Article 19(2), Organic Act 1/2004 of 28 December.

³⁹⁰ Article 3(5), Act 1/1996 on Free Legal Aid exempts victims from paying legal fees if they otherwise qualify for free legal aid. They can be assisted at the outset for free in urgent matters, and if they do not qualify, will have to subsequently pay the attorney's fees. The Action and Coordination Protocol of the Security Forces and the Judicial Bodies for the protection of victims of domestic and gender-based violence requires bar associations to establish on-call duties to ensure that lawyers are available 24/7 for urgent representation needs

³⁹¹ Article 2(5), Act 27/2003 on protection orders. The conditioned access to assistance has been a subject of debate in Spain, and in some regions the laws have been amended to provide access to those rights without requiring criminal intervention.

³⁹² Act 35/1995 of 11 December on Aid and Assistance to Victims of Violent Crimes and Crimes against Sexual Liberty.

³⁹³ Article 1(10), Act 27/2003 on protection orders. Royal Decree 513/2005 provides access to autonomous communities, Government delegations and sub-delegations. The General Council of the Judiciary maintains an updated list of the designated coordination points and provides full information with their modifications or updates to the Ministries of Justice, Employment and Social Affairs and the Interior, as well as to the Public Prosecutor's Office and the High Court of Justice, the Central Registry and the investigating courts of the relevant autonomous community

³⁹⁴ The Monitoring Committee includes participation by representatives of the General Council of the Judiciary, the Ministries of Justice, Labour and Social Affairs, and Interior, autonomous communities with competence in the field of justice, the Public Prosecutor's Office, the General Council of Lawyers, the National Bar Association, and the Federation of Municipalities and Provinces.

logical, health and social areas as requested by the victim.

The Action Protocol for the Security Forces, including coordination with the Judicial Bodies, covers the communication and coordination system between police and judicial bodies to ensure effective victim protection. The Protocol requires police to intervene upon learning about facts that could constitute domestic violence. It requires that they:

- Inform the victim of her right to legal assistance in accordance with Annex 1 of the Protocol;
- Immediately and exhaustively take the victim's statement and witnesses where relevant;
- In the event that there are indications of a criminal offence, urgently collect information from the neighbours, family members, co-workers, classmates, social services, victim care offices, and the like. On the existence of any previous maltreatment by the suspect, as well as his personality and possible addictions;
- Check the existence of prior police interventions and/or complaints in relation with the victim or the suspect, any antecedents of the latter and possible injuries of the victim reported by the medical services; and,
- Check the existence of protection measures ordered previously by the judicial authorities in relation to the persons involved. For that purpose, and in all cases, the existing data recorded in the Central Register for the Protection of Victims of Domestic Violence is to be consulted.

Once the facts and the risks are assessed, a decision is made on the necessity to adopt specific measures aimed at the protection of life, physical integrity and the rights and legitimate interests of the victim(s) and their relatives. In this respect, the police may adopt the following measures in cases of extreme urgency:

- Personal protection that, depending on the level of risk, may include permanent protection, 24 hours per day, by the police;
- Information/training on the adoption of self-protection measures;
- Ensuring that the victim is informed in a clear and accessible manner of the content, implementation and effects of the protection order, as well as of the social services, victim care offices and coordination points that she may have at her/his disposal.

The Action Protocol further provides for accessible and continuous communication between the victim(s) and the corresponding security corps, as well as their immediate access to all the necessary data to assess the risk at any moment. For that purpose and whenever possible:

- The implementation of protection orders will be assigned to personnel specially trained in assistance and protection of the victims of domestic violence;
- The victim will have access to a direct and permanent phone number in order to reach the assigned personnel to obtain individualized attention;

- The victim will benefit from technical mechanisms that allow swift, fluent, and permanent communication with the corresponding security forces and bodies whenever the circumstances of the case and of the victim so require. It also regulates how protection orders are monitored. The police and the judiciary actively monitor protection orders. In practice, specialized police units within the National Police, the Guardia Civil and the police in the autonomous provinces of Catalonia, the Basque Country and Navarra³⁹⁵ monitor the effectiveness of protection orders. However, these specialized units are only available in major cities. Any incident that affects one of the components of the system, such as the entry of the aggressor in the exclusion zone or his getting closer to the victim and the zone of exclusion while losing signal, are considered serious incidents. The police protection mechanism is activated whenever the bracelet is broken, taken off or separated from its GPS, as well as when the battery dies. The victim is informed of any incident that may occur during the validity of the protection order. She is always able to push the “panic” button whenever she thinks that the aggressor is acting illegitimately. In these cases, the Control Centre immediately contacts the victim to assess the situation and adopt the relevant measures³⁹⁶.

The Protocol for coordination between civil and criminal jurisdictions for the protection of victims of domestic violence establishes criteria for the effective coordination between both jurisdictions, which is intended to:

- Provide the victim with a comprehensive framework of protection, preventing the existence of conflicting resolutions;
- Provide family courts with adequate knowledge of the actions taken by pre-trial investigation courts in matters of domestic violence;
- Enable the family court to adopt a resolution within the legal time limit on the ratification, modification or revocation of the civil measures agreed in a protection order³⁹⁷.

³⁹⁵ Autonomous communities coordinate the police at all levels, including the local police in smaller cities and villages.

³⁹⁶ Control Centres are operational 24 hours a day, 365 days a year.

³⁹⁷ Despite its highly advanced normative framework, in practice the Spanish system continues to face several challenges. The mandatory reporting requirement for social service and health professions in Spain conflicts with the UN Guidelines on Essential Services Package, which prohibits mandatory reporting of individual cases between coordinating agencies, except in cases of imminent danger, child victims or particularly vulnerable victims (UN Essential Services Package for Women and Girls Subject to Violence, Module 5, Coordination and Governance of Coordination, Chapter 3, Essential Action 1.2.). Furthermore, conditioning access to services and assistance to the criminal justice process contravenes international standards. Some of the judges in the specialized courts reportedly lack the necessary gender sensitivity and specialized training. The courts are highly formalized, characterized by distance between the victims and judicial actors. Victims are not always treated as protagonists in the process. In contrast with the process in Austria, they are not given as much agency. Women who request protection orders are required to establish proof of the abuse, and the evidence provided is not always sufficient, including the production of medical certificates. Thus, due to evidentiary issues and limited investigations, ongoing violence is explicitly recognized in less than 5% of the cases; in almost 60%, the case is treated as a single incident of abuse. In approximately 30% of the cases, perpetrators are acquitted, most often due to the victims' refusal to provide evidence (Article 416 of the Criminal Procedure Code provides the right to not give evidence against a family member). The victim's withdrawal of participation is common to the cycle of violence and should also be considered in light of the mandatory, ex officio prosecution policy.

5.4.2. Armenian Context

Article 5 of the Domestic Violence Law provides three actions to be taken by police to protect the victims: i) the issuance of a warning; ii) an emergency intervention order; and, iii) a protection order. It provides that the application of one of these three measures shall not impede the institution of a criminal case, nor criminal prosecution.

Pursuant to Article 6, **warnings** are to be issued upon the first police response, if there are no elements of a criminal offence, nor grounds for an emergency intervention. This is in violation of the Istanbul Convention, as explained above, which requires that the issuance of a protection order without reference to the commission of an offence.³⁹⁸

Furthermore, Article 7(6) of the Domestic Violence Law provides that the decision to give a warning may be appealed within a month of giving the notice on a warning. Considering that decisions of the Police are administrative acts, appeals are regulated by the RA Law on the Foundations of Administration and Administrative Proceedings, which provides that an appeal shall suspend the execution of the act³⁹⁹. The suspending impact of the appeal on the decision to give a warning may be dangerous because during such suspension, the perpetrator of violence may breach the warning, and the breach will not be treated as a breach, reducing the adequate protection granted to the victim⁴⁰⁰. Article 6 of the Domestic Violence Law requires that the perpetrator be notified and provides a right to appeal. No mention is made of ensuring that the victim has a formal notification of the warning, nor is explicit mention made of the victim's right to appeal, which can be filed under the general rules of administrative procedure. In this regard, the current provision is not sufficiently victim-centred⁴⁰¹.

Under Article 7 of the Domestic Violence Law, the scope of the **emergency barring order** foresees the following:

- Removal from the family residence,
- Barred from victim's residence, workplace, children's school, places of leisure, other venues frequented by the victim,
- No-contact ban, with distance specified, no communication (phone, email, etc.),
- Immediate confiscation of firearms,
- A perpetrator can collect personal belongings from home accompanied by police.

³⁹⁸ The Council of Europe and the RA Academy of Justice: Training manual on Preventing and combating Violence against Women and Domestic Violence in Armenia, 2018, L. Mann and L. Sargsyan.

³⁹⁹ Article 74 of the RA Law on the Foundations of Administration and Administrative Proceedings provides: "Lodging an administrative complaint shall suspend the execution of the challenged administrative act, save for cases provided by law when the administrative act is subject to immediate execution, and when immediate execution is needed in the public interests.

⁴⁰⁰ Human Rights Defender Annual Report-2020, Section 14:
<https://www.ombuds.am/images/files/c2ab53b11485412b39407e62ce598379.pdf>

⁴⁰¹ A.T. v. Hungary, Communication No. 2/2003, CEDAW/C/36/D/2/2003

One or more of these measures can be applied, each with varying duration. No mention is made regarding the need for any interim measures with respect to custody and visitation rights, although the no-contact ban covers children in the care of the victim. The perpetrator is to be notified of the issuance of an emergency intervention order in person or via registered mail, email, or phone. The victim shall be notified by mail (not registered) at his/her residence or temporary shelter. The law does not provide for the victim to receive official notification in-person at the time of the issuance of the order or via registered mail, again reflecting its perpetrator-centred approach. The perpetrator has five days to appeal. The appeal has no suspensive effect.

According to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, emergency barring orders are to be issued and to enter into force immediately as there is a situation of immediate danger. Article 7 (7) of the Domestic Violence Law does not allow an immediate effect of emergency barring orders, since they only enter into force after notifying the perpetrator by telephone or by delivery to his formal address or e-mail or by registered mail, and as they are subject to delivery confirmation by the signature of the recipient. Moreover, the formal address can be the house in which the perpetrator may not be allowed to stay. Consequently, the requirement for the perpetrator to be at the same residence as the victim to receive the notice puts the victim in danger and undermine her safety. In other words, the time of entry into force of this order in Armenia is uncertain rather than immediate⁴⁰².

The procedure mentioned above can be time-consuming and, what makes it more problematic, is that the perpetrator's procedural rights thereunder supersede the victim's right to life and physical integrity, in breach of international standards. Continuous steps to get in touch with the victim will not be considered to breach the emergency barring orders because the orders will not have entered into force due to procedural delays. Finally, delays in the execution of emergency intervention orders may cause violations of those orders⁴⁰³.

Under Article 8, a **protection order** can be issued by a court upon the victim's application. The protection order can be issued for up to 6 months, with the possibility of obtaining a 3-month extension twice. Questions remain concerning the protection to be applied to victims for whom the threat of violence extends longer than one year.

Under Article 8(5), the scope of the protection order includes:

- ▶ Immediately remove perpetrator or victim from the home
- ▶ Ban from the victim's home, workplace, school, leisure, and other venues frequented by the victim
- ▶ No-contact ban (distance & communication)
- ▶ Confiscation of firearms
- ▶ Alimony & child support
- ▶ No visitation or custody
- ▶ Mandatory rehabilitation programmes.

⁴⁰² Human Rights Defender Annual Report-2020, Section 14:

<https://www.ombuds.am/images/files/c2ab53b11485412b39407e62ce598379.pdf>

⁴⁰³ "Preventing and combating Violence against Women and Domestic Violence in Armenia" 2018, L. Mann and L. Sargsyan, page 59.

Like the emergency intervention orders, any combination of these protection measures can be applied, with varied duration periods. The perpetrator is entitled to remove his/her personal effects from a joint residence accompanied by the police once every two months during a protection order. Although Articles 7 and 8 enable police to confiscate firearms from the perpetrator upon the issuance of an emergency intervention or protection order, they are reportedly returned to him upon the expiry of the order, thus recreating the threat of lethal danger for the victim⁴⁰⁴.

For the first measure, Article 8(5)(1) states that the protection order may apply the following restrictions: immediately and forcibly remove the perpetrator of violence within the family from the residence of the victim of violence within the family and prohibit his return until the deadline established in the order. When establishing the deadline of this measure, the court shall take into consideration the possibility and expediency of moving the victim of violence within the family and persons under her care to shelter and availability of other places of residence for the perpetrator of violence within the family. While the judge is best placed to evaluate the specific facts in any given case, by foreseeing the removal of the victim from home, Article 8(5) fails to make the “paradigm shift” required by the Council of Europe convention. As cited above: rather than asking victims to seek a place of safety from violence. It shifts that burden to the perpetrator, who is ordered to leave the residence of the victim or person at risk and not to contact her or him⁴⁰⁵.

According to Articles 7(11), 8(9) of the Domestic Violence Law, **the police shall supervise the implementation of the emergency intervention and protection orders** by the perpetrator of violence. According to Article 11 of the Domestic Violence Law, the perpetrator against whom a warning, an emergency intervention or protection order is issued, as well as an adult with a criminal record involving domestic violence, shall be registered by the police for preventive purposes. A social worker from the local centre providing social services shall, in the scope of preventive registration, carry out monitoring to prevent acts of violence by adults pursuant to the Law on Social Assistance. For minors, the monitoring shall be carried out in the manner established by the Head of the Competent Authority or the Head of Police.

Moreover, Article 11(3) stipulates that within the scope of preventive registration, the police officer and the social worker from the local social centre shall have at least monthly meetings with the registered person and the victim of violence within the family to raise awareness. It does not specify whether these monthly meetings are to be held with the victim and perpetrator together or separately⁴⁰⁶. Either way, this provision does not appear to be dependent upon the consent of the parties and thus would appear to function as de facto mandatory efforts at reconciliation. The social worker from the local centre shall immediately notify the police if a risk of repeated violence is identified during the monitoring. Perpetrators are reg-

⁴⁰⁴ The Council of Europe Convention on preventing and combating violence against women and domestic violence, Article 51: <https://rm.coe.int/168008482e>

⁴⁰⁵ Rosa Logar, Johanna Niemi, “EMERGENCY BARRING ORDERS IN SITUATIONS OF DOMESTIC VIOLENCE: ARTICLE 52 OF THE COUNCIL OF EUROPE CONVENTION”, Council of Europe, 2017, page 43.

⁴⁰⁶ This gap exists in the Police Head Order No. 15-L on 17 July 2019 (amended on 3 March 2020). This issue is risen by practitioners during personal conversations (Malatia division of Yerevan City Department).

istered for one year unless a new emergency intervention, protection order or criminal conviction has been issued during that period. If no additional protection order or criminal conviction occurs during the year, the perpetrator is de-registered.

In sum, in contrast to the “paradigm shift” required by the Council of Europe convention deemed necessary to ensure the protection of the victim, the Domestic Violence Law can be characterised by their almost exclusive attention to the rights and needs of the perpetrator, rather than to the victim. In reality, the “gender-neutral” approach taken by Armenia to the adoption of the Domestic Violence Law reflects a preferential focus on the perpetrator, which in the vast majority of cases will be men⁴⁰⁷.

Article 7 provides that an emergency protection order can be revoked if violated, but no instruction is provided concerning its replacement with a stricter order, nor the need to arrest and detain the perpetrator⁴⁰⁸. Similarly, Article 8 provides for “liability” for a breach, without reference to criminal, civil or administrative liability. However, 2017 amendments to the Criminal and Administrative Offences Codes fill in this gap, foreseeing imprisonment and fines for breaching protection orders. However, these amendments do not apply to all of the forms of protection set forth in Articles 7 and 8, as detailed below. An amendment to the Criminal Code (Article 353.1) stipulates sanctions for the breach of the emergency intervention and protection orders involving: the removal of the perpetrator from the victim’s residence; bans from the victim’s workplace, schools, leisure venues and home; bans prohibiting the perpetrator from approaching the victim from within a specified distance, and the surrendering of firearms⁴⁰⁹. The sanctions contemplated include:

- ▶ a fine in the amount of 300 to 500 minimal salaries⁴¹⁰,
- ▶ arrest and detention from one to three months,
- ▶ imprisonment for up to 6 months⁴¹¹.

In this regard, on 14 April 2020, the RA Constitutional Court issued the **ՍԴՈ-1522** decision on determining the issue of compliance with the Constitution Article 353.1 of the RA Criminal Code and interconnected with the sub-provisions 1 and 3 of Article 7(3) of Domestic Violence Law.

The RA Constitutional Court final decision was as follows: “The sub-provision 1 of Article 7(3) of the RA Domestic Violence Law complies with the interpretation of the Constitution, according to which the restrictions provided for therein may apply to a person who has committed domestic violence only if the availability of another place of residence is taken into account, as well as the possibility of moving the abused person, his/her dependents to another safe place”⁴¹².

⁴⁰⁷ “Preventing and combating Violence against Women and Domestic Violence in Armenia” 2018, L. Mann and L. Sargsyan, page 62.

⁴⁰⁸ Ibid, page 66.

⁴⁰⁹ These restrictions are provided for both emergency barring and protection orders, pursuant to Article 7(3)(1)-(4) and Article 8(5) (1)-(4) of the Domestic Violence Law, respectively.

⁴¹⁰ According to the RA Law on Minimum Monthly Salary, one minimal salary constitutes 1000 Armenian Dram.

⁴¹¹ Article 353.1, the RA Criminal Code.

⁴¹² <http://www.concourt.am/armenian/decisions/common/2020/pdf/sdv-1522.pdf?fbclid=IwAR2wKjeJoJzy1huRrCrMVC14S5qfXou52o3Q3rnLX2cw0j7xcAc2UfinZ5w>

The Code of Administrative Offences was also amended in 2017 to foresee sanctions for the violation of emergency intervention and protection orders. Specifically, it provides for fines from 80-100 minimal salaries for violating the no-contact bans, bans on child visitation and failure to attend rehabilitation programs⁴¹³.

As noted above, fines do not constitute an effective deterrent nor preventive measure, and they are often taken from the family budget. Nevertheless, they constitute the principal form of sanction for the violation of protection and emergency barring orders.

Critically, no sanctions are foreseen for violating orders to provide alimony and child maintenance to ensure that the perpetrator provides for his share of the living expenses, as set forth in Article 8(5)(5). This gap thus entitles perpetrators to commit economic violence and violate protection orders to prevent such violence with complete impunity. Both the emergency barring and the protection order can be suspended if the perpetrator is detained or is committed to a medical facility or if the victim is relocated or undergoes a change of identity. It remains unclear how a change of identity would reduce a threat to the victim⁴¹⁴.

Order No. 17-L of the Head of Police from 17 July 2019 has approved the blank forms of warning and emergency barring order for the perpetrator of domestic violence.

According to Article 15(1)(5) of the Domestic Violence Law, Police issue emergency barring orders as stipulated in article 7 of this law, oversee the implementation of relevant provisions in the emergency barring and protection orders following the procedure set forth by the Head of Police.

Police Head Order No. 14-L from 17 July 2019 approves the Procedure for Exercising Supervision over the Fulfilment of Relevant Requirements of Decisions on Emergency Barring and Protective Orders. Supervision over the fulfilment of relevant requirements of decisions on emergency barring and protective orders shall be exercised by the Department for Prevention of Juvenile Crime and Domestic Violence of the General Department of Public Order Protection of the Police (hereinafter referred to as “competent subdivision”).

Supervision by the competent subdivision shall be exercised by visiting victims of domestic violence and recording information on a violation of emergency barring order and protective decisions.

Upon receiving, from any source, information on violation of emergency barring order and protective decisions applied towards the perpetrator, the officer (officers) of competent subdivision of the police needs to visit the actual location of the victim.

Supervision of emergency barring order and protective decisions includes two visits of the officer of competent subdivision to the victim’s actual location within five days following the day of taking the decision, and relevant record shall be compiled, which shall be signed by

⁴¹³ These restrictions are provided for both emergency barring and protection orders, pursuant to Article 7(3)(5) and Article 8(5) (6)-(8) of the Domestic Violence Law, respectively.

⁴¹⁴ “Preventing and combating Violence against Women and Domestic Violence in Armenia” 2018, L. Mann and L. Sargsyan, page 67.

the victim. Where the latter refuses to sign the record, a note shall be made in the record. Officers of the competent subdivision shall compile a record on violation of emergency barring order and protective decisions.

After drawing up a report on the violation, the officer of the competent subdivision prepares materials or initiates a criminal case. The drawn-up documents shall be handed with the reporting notice to the officer of the competent subdivision exercising supervision over the decision.

The officer of competent subdivision exercising supervision shall immediately send the copy of the record with the notice to the support centre. Supervision of emergency barring order and protective decisions shall not be exercised by the officer of a competent subdivision where the person having been subjected to violence in the family is in shelter during the operation period of decisions on urgent interference and protective decisions.

Assessment of imminent threat of recurrence or continuation of violence shall be formulated in the decision on emergency barring order which shall comprise the following:

1. Address of the scene of the incident, information on report, name, surname, patronymic, address of the place of residence and place of record-registration of the person allegedly having committed the violence and the person allegedly having been subjected to violence, as well as of persons present at the scene of the incident and giving explanations, name, surname, patronymic, rank, the position of the competent officer drawing up the record.
2. Summary of the assessment of the imminent threat of recurrence or continuation of violence in the family by the person allegedly having been subjected to violence in accordance with questionnaire provided for by point 2 of this Annex, which is completed by a person over 16 years of age.
3. Description of harm caused to the person(s) allegedly having been subjected to violence, features characterising the behaviour and vulnerability thereof in accordance with criteria provided for by points 5-7 and 11 of this Annex.
4. Description of behaviour of person allegedly having committed the violence and record of features characterising the personality in accordance with criteria provided for by points 3-4, 11 and 13-18 of this Annex.
5. Description of relations between the person allegedly having committed the violence and the person allegedly having been subjected to violence in accordance with criterion provided for by point 6 of this Annex.
6. Description of traces of violence at the scene of the incident and damage caused to the property.
7. Restriction(s) and term(s) of effectiveness thereof provided for by Article 7 of the Law of the Republic of Armenia "On prevention of violence in the family, protection of persons having been subjected to violence in the family and restoration of solidarity in the family".

8. Term of appealing the decision and appeal body, including court to which the decision may be appealed, as well as sanctions for the violation thereof provided for by law.
9. Signatures and date of drawing up the decision.

The decision shall be signed by the competent officer who has written the report. Persons (victim, perpetrator, witnesses) providing information shall also sign under the decision, and in case of minors and legally incapable persons — it shall be signed by the parents or legal representatives, where they are present when taking the decision. Where the person who has committed the violence is not at the scene of the incident, a note shall be made in the record. If any other person refuses to sign it, a corresponding note shall be made. The person who has refused to sign the decision must be allowed to explain the reasons for refusal or the refusal to explain the reasons, whereof a note shall be made as well.

Where the competent officer, in the result of the assessment of criteria provided for by this Annex, concludes that there is no imminent threat of recurrence or continuation of violence in the family, he (she) still needs to compile a record on the incidence.

Activity 13: Police duties for the protection of women victim of domestic violence

Aim: This exercise aims to allow participants to apply the acquired knowledge on policing domestic violence and police powers to their practical experience.

Duration: 45 min

Method: Small group exercise (10 min), whole group discussion (25 min), summary and input by the trainer (10 min).

Resources: Hand-out X, flipchart, markers.

Case study: B's husband is a police officer in Erevan, where they live together. B's husband constantly abuses her and their daughter. The last time he beat B, he broke her nose and jaw. He also tied her up several times to prevent her from running away from home. One day B finally managed to escape with her children and take shelter.

Nevertheless, they are worried because they think her husband will find them. They think they need to move to another house. The shelter manager also believes they should leave the shelter, as their presence there could be dangerous to other members of the shelter.

Instructions:

Step 1. The trainer asks participants to form smaller groups of four-five participants and asks them to read the case study individually. In the group, the participants will fill out Hand-out X by writing down the answers to the questions.

Step 2. The trainer asks one person from each group to present the measures and activities they have identified, crimes, and particularly how they react to

a fellow police officer who is a perpetrator. The trainer then writes the suggested measures and activities down on the flipchart.

Step 3. A summary by the trainer consists of marking the common observed measures and activities by the participants while focusing on the following

- If a similar situation is reported to you, what would you do?
- What is expected by the police in similar situations?
- What is the possible damage and danger for the victims from that particular situation?
- What type of institutional reaction can further harm the victim?
- What is your response to the fellow police officer who is reported as a persistent perpetrator?

In the end, the trainer answers questions, summarise the examples and supplements them with her/his input.

Hand-out: Police duties for the protection of women victim of domestic violence

Case study: Ms B's husband is a police officer in Erevan, where they live together. Her husband constantly abuses her and their daughter. The last time he beat B, he broke her nose and jaw. He also tied her up several times to prevent her from running away from home. One day B finally managed to escape with her children and take shelter.

Nevertheless, they are worried because they think her husband will find them. They think they need to move to another house. The shelter manager also believes they should leave the shelter, as their presence there could be dangerous to other members of the shelter.

1. What would you do as a police officer after learning about the case?

2. List what activities and measures you will take?

3. What crimes did her husband commit?

4. How do you feel knowing that the perpetrator is a fellow police officer?

5.7. SAFETY PLANNING

Risk assessment, management and safety planning are indivisibly connected since the genuine aim is providing safety to the victim by addressing or minimising the risks. The safety plan follows the assessment of the risk level and potential for further harm and needs to be constantly revised. Therefore, the initial step is to provide safety in order for women victim to recover.

Safety planning always must be done in cooperation with the victim. The victim must not be left out and isolated from the process. We should not forget that the victim knows the perpetrator best, and by the time she seeks help from the institutions, she has probably already “tried” different strategies to reduce the risk and danger to herself and the children. It is crucial to understand which strategies have been significant and beneficial to the victim and which only need to be developed and improved⁴¹⁵.

Some of the victims decide to stay in a violent relationship/marriage with the perpetrator or are forced to stay because they have no other alternative. It is important that the safety plan is adapted to the current situation of the victim. The safety plan should be different depending on whether the victim stays with the perpetrator, plans to leave him immediately after the separation, or in a situation where they are separated and the perpetrator contacts the child/children. In order to create a safety plan that will be effective and efficient, we must keep in mind that most women have repeatedly left the perpetrator temporarily, for some time, before leaving him permanently and being safe. We must also keep in mind that not all victims benefit from the arrest of the perpetrator or protection orders⁴¹⁶.

According to Article 51 of the Council of Europe convention⁴¹⁷, state authorities, including law enforcement, are responsible for assessing and managing the risk of violence in cooperation with all relevant authorities. Ensuring safety and security is the responsibility of state institutions, not the victim. Whenever possible, a detailed safety plan should be developed in collaboration with specialised women’s NGOs that provide assistance to victims⁴¹⁸.

It is necessary to constantly monitor and evaluate the effectiveness of the interventions of individual institutions, as well as processes of cooperation between institutions. Also, when the victim goes to seek help in other institutions, safety measures are essential. To ensure the safety of the victim and her children, it is necessary to apply all available measures arising from legal and institutional procedures. Victims must be ensured that they are safe when they arrive at the institutions, while they are in the institutions and after they leave the institution. Particularly critical are situations where the victim can meet with the perpetrator

⁴¹⁵ Logar, R., and Marganova-Vargova, B. (2015).

⁴¹⁶ Ibid

⁴¹⁷ The Council of Europe Convention on preventing and combating violence against women and domestic violence, Article 51: <https://rm.coe.int/168008482e>

⁴¹⁸ WAVE (2012). Protect II: Capacity Building in Risk Assessment and Safety Management to Protect High Risk Victims. Vienna: WAVE.

on the premises of the institution. Whenever possible, the victim should avoid meeting the perpetrator in the offices, so professionals should schedule a meeting with the victim at a different time to avoid the victim and the perpetrator meeting on arrival or departure.

Box 15: Elements of safety planning

- **Victim-centred**, which include that needs, fears and expectations of women victims are heard and discussed with her. The measures envisaged in the safety plan should be discussed and explained to the women. Besides good listening skills, the professionals involved must start their work from understanding that a woman victim does not necessarily know the available safety measures, and they need detailed explanation in a language and manner they understand. Also, some women victim may employ a strategy of minimisation of risks, and therefore the professionals must help her to understand risks to her safety and their level fully.
- **Individualised**, that all safety plan measures must be tailored to the particular woman's needs and situation. Furthermore, the victim actively participates in identification and risk assessment. All measures must be safe, and women victims need to consider them safe.
- **Comprehensive** includes systematic and methodical approach in the whole process of safety planning.
- **Open, approachable, and sensitive**, meaning that involved professionals fully understand the woman's position and obstacles she is often facing to talk about intimate issues with strangers. The main message that professionals must send to the victim is that she is not responsible for the violence she suffers.
- **Confidentiality** is a core principle in providing support to women victims. All information needs to be handled in accordance with the national data protection legislation and safety guidance.
- **Responsive to diversity** refers to understanding that intersectional vulnerabilities such as age, economic status, mental health, disabilities, ethnic minority status and other factors influence the violence and risks but also impact how women victims seek help and support.
- **Guided by specialised domestic violence support services** means that women's NGO is specialised in providing support services to women victims. Although all professionals in the support and protection system should know about safety planning, specialised women's NGOs should be involved in safety planning.

Source: Adapted from WAVE, 2012⁴¹⁹.

⁴¹⁹ WAVE (2012). Protect II: Capacity Building in Risk Assessment and Safety Management to Protect High Risk Victims. Vienna: WAVE.

Activity 14: Safety planning and risk management

Aim: Encouraging participants to apply the acquired knowledge about risk factors and risk assessment in a specific situation from their practice.

Duration: Total 45-60 minutes (depending on the size of the group)

Method: Small group work (20-30min), whole group discussion (25 min), summary and input by a trainer (15 min).

Resources: Hand-out: Case descriptions 1 and 2 from the previous exercise, the product obtained in the previous exercise (Hand-out: Risk factors and categories, and list of official measures and actions drafted in the previous exercise, Hand-out: Structured safety planning, and Hand-out: Steps in developing a safety plan).

Instructions:

Participants remain in the same groups. Participants use case descriptions from the previous workshop as well as products from the previous workshop. Then the trainer asks participants to complete and to review any risk factors they have identified. Participants are also asked to fill in the Hand-out: Structured safety planning.

During this exercise, the process itself is as important as the product/result

Guidance for group discussion

The trainer supports discussion on the identified risk and their assessment, in particular the process of identification and what is crucial for assessing the level of risk. The discussion furthers with reporting on the safety measures each group is proposing, as well as elaborating the safety plan. Participants are encouraged to elaborate implementation of the safety plan. See the hand-out Steps in developing a safety plan

Questions

What are the risk factors associated with the perpetrator?

- What are the sources of information about the risk factors?
- What is the significance of the victim's will to remove the perpetrator from home?
- What are the challenges in risk assessment and management?

Source: Cited from Logar, R., and Marganova-Vargova, B. (2015), p.50

Hand-out: Structured safety planning⁴²⁰

Identified risk factors	Risk reduction measures	Who is responsible for implementing risk reduction measure/ measures? ⁴²¹	Deadline for implementation of the measures (until when the measure should be applied)	Comments and remarks

Hand-out: Steps in developing a safety plan

1. Identifying the needs and fears of the victim

- It may be helpful to start a conversation about how the victim is feeling and what she needs from you (as a representative of the institution).
- Start a conversation with the victim about her biggest fears/worries. It can refer to a variety of problems but try to identify those that appear continuously (for example, economic dependence on the perpetrator, problems associated with watching the children and custody of children, etc.).
- What has the victim done before to overcome those fears and worries? Did those actions have an effect? If not, what other options are available?
- What are the possible outcomes (positive and negative) of these new strategies on the victim’s safety?
- What does the victim think - how will her partner react to the measures she is taking?⁴²²

2. Identifying current (actual) risk factors

- The list of potential risk factors should be used systematically, say in the form of a “checklist” for risk assessment.

⁴²⁰ Logar, R., and Marganova-Vargova, B. (2015), p.56

⁴²¹ Only the first two columns are filled in for this exercise.

⁴²² Ohio Domestic Violence Network, 2007.

- Special attention should be paid to the so-called aggravating circumstances (see Hand-our: List of risk factors)
- If the violence is primarily psychological, try to find out what the victim is most afraid of (what threats does the perpetrator use, what form of psychological violence does he use) and what are the primary tactics of the perpetrator (isolation, restriction of liberty, economic violence, threats)

3. Identifying the strategy and the safety measures used by the victim in the past

- What strategies did the victim use earlier to avoid violence and what options were available in the previous period (for example: could she reach the phone to call the police during the violent incident or after the violence, did she leave the perpetrator, did she have a place to go, could she go somewhere with the children?)
- How did the perpetrator react to the steps taken by the victim before?
- Which of these strategies were effective, and which could put the victim and her children in even greater danger?

4. Identifying possible options

- What options and measures are now available to the victim?
- What measures will your institution take, and what measures can be applied?
- When analysing possible options, it is essential to ask the victim if those options are available (from the perspective of the victim) and whether the victim thinks those measures could increase her chances of safety. It may be useful along with her to discuss some of the following questions:
 - Are the proposed options available for her?
 - What will the process look like, step by step?
 - What to do in the meantime until one of the options becomes feasible?
 - What will she need to access these options (financial aid, transportation, telephone)?
 - What obstacles exist?
 - What can she do to overcome those obstacles?

5. Writing the final safety plan

The final safety plan should include specific steps, measures and interventions that will be taken by concrete institutions and organisations, as well as steps that the victim will take if she is at risk.

Source: Cited from Logar, R., and Marganova-Vargova, B. (2015), p.58

Box 16: Creating a personal safety plan

In creating a personal safety plan, considering safety support factors can include:

- Level of personal support available to the victim/survivor;
- Their personal living situation;
- Level of fear;
- Barriers to safety created by personal attitudes and beliefs, and the attitudes and beliefs of the extended family, community or culture;
- Health impacts of the abuse;
- Employment status or financial problems;
- Child-related concerns;
- Personal substance use/abuse issues (alcohol and/or drugs, both licit and illicit);
- Access to and availability of local services and their responsiveness to the needs of the victim/survivors;
- Access to and availability of needed information;
- Coordination of support services.

Source: Handbook on Effective Police Responses to Violence Against Women (UNODC, 2010).

5.8 PREVENTIVE RECORD REGISTERING

Head of Police Order 15-L from July 17, 2019, has been amended on March 9, 2020. It approves the procedure violence in units (groups) for juvenile cases and prevention of domestic violence of territorial subdivisions of the Police of the Republic of Armenia for preventive record-registration of persons having committed domestic violence.

Supervision over the preventive work, including the supervision of emergency barring orders and protection orders, carried out by specialised subdivision towards persons having committed domestic violence and provision of guidance shall be implemented by the Department for Prevention of Juvenile Crime and Domestic Violence of the General Department of Public Order Protection of the Police (hereinafter referred to as “the Department”), head of the territorial division and deputy for operational matters.

The work prescribed by this Procedure shall be organised, managed, and coordinated by the deputy of the head of the territorial body of the Police for operational matters.

The person (adult and minor) record-registered in the medical institution, who does not realise the dangerous nature of his (her) actions due to chronic mental illness, temporary mental impairment, dementia or other diseased condition, shall not be record-registered in the specialised subdivision. Where domestic violence is committed by the persons record-registered in the medical institution, the officer of a specialised subdivision shall inform the community policy unit (group) within one working day through a reporting notice addressed to the head of the territorial body of the Police⁴²³.

The preventive record-registration shall be carried out by the police division of the actual place of residence of the perpetrator. The competent police officer for record-registration checks if the perpetrator is already registered or has previous convictions or current or previous protection orders by making a written inquest to the Department within one working

⁴²³ Under Paragraph 5 of the Order 15-L of the RA Police Head (2019), the specialised subdivision shall not maintain preventive records of persons (adult or minor) that do not comprehend the dangerousness of their acts due to a chronic mental illness, temporary impairment of mental activity, dementia, or other mental disorder, if such persons are already recorded in a medical institution. Besides, Paragraph 45(1) of the same Annex provides that a record card compiled on a minor shall be discontinued if the minor while being in the records, has acquired a mental illness and become recorded in the relevant medical institution.

Paragraph 5 of the 15-L Order above contradicts Article 12 of the Law because the content of the Annex is inconsistent with the term “legally incompetent.” Moreover, the wording in the Annex is based on the notion of inculpability prescribed by the Criminal Code. During technical discussions, representatives of the Police said that preventive record-keeping on such persons is not effective in combatting domestic violence and that for defensive purposes, they keep records of persons that are recorded in health care institutions due to having a mental disorder posing a danger to the surroundings until such time when their record in health care authorities is discontinued, under Paragraph 26 of RA Government Decree 1254-N dated 6 November 2014. However, this argument is unacceptable, and the records kept on domestic violence cases cannot be considered a means of preventing such cases.

Keeping records of domestic violence perpetrators pursues a preventive aim, and there shall be monitoring to prevent the commission of domestic violence by adult members of the family. The record-keeping function is significant for monitoring the person’s behaviour, which per se has a preventive and protective purpose. However, the problem is that preventive record-keeping and monitoring of perpetrators are not performed adequately in practice. Besides, the Order mentioned above of the RA Police Head directly obstructs the record-keeping of persons for preventing domestic violence cases. Human Rights Defender Annual Report-2020, Section 14:

<https://www.ombuds.am/images/files/c2ab53b11485412b39407e62ce598379.pdf>

day following the act of violence. In case the person having committed domestic violence is not record-registered, the reporting notice concerning the compilation of the card on the preventive record-registration, together with the documents that have served as a basis for record-registration, such as EBO, shall be submitted to the head of the division. The head of the division shall permit or reject — by written notice — the record-registration after having studied the submitted reporting notice and the documents. In case of permission, the competent police officer shall register the card on the perpetrator, in the register of the persons having committed violence in the family (hereinafter referred to as “register”), with a reference number. The reference numbers of the cards on record-registration shall start with 01 every year, followed by a dash and with the indication of the two last numbers of the year of record-registration.

The number of the card on record-registration should match the reference number of the current year in the register.

Both adults and juveniles who have committed domestic violence are included in the preventive registration⁴²⁴. The purpose of the record-registration in the specialised subdivisions of the adult having committed violence shall be the preclusion of committing new offences, as well as further prevention of domestic violence. Domestic violence often continues for years and decades. The police should be able to see the whole history of violence.

The preventive record-registration shall be carried out under the card on the preventive record-registration concerning the person having committed violence in the family (Annex 6). The grounds for compiling a card on the preventive record-registration shall be:

- (1) the decision of the competent police officer to issue a warning to a person who has committed domestic violence;
- (2) the decision on emergency barring order applied by the competent police officer;
- (3) the protective decision delivered by the court of general jurisdiction, in relation to the person having committed violence in the family;
- (4) the previous conviction for the crime related to the violence in the family.

The competent officer of the specialised subdivision shall compile the card on the preventive record-registration within two working days after the delivery of any of the above-mentioned decisions, or the receipt of the information indicating the previous conviction of the person and information from the department that the person is not registered.

In case of recurrence of violence or violation of the protection order applied to the perpetrator, the competent officer submits a relevant report to the head of the territorial division of the Police, who informs the General Department of Public Security of the Police of the Republic of Armenia immediately. The department is examining the preventive registration card for

⁴²⁴ The RA Head of Police Order 15-L on approving the Procedure for Preventive Record-registration of persons having committed Violence within Family in Units (groups) for Juvenile cases and Prevention of Violence in the Family of the Police of the Republic of Armenia, 9 March 2020.

the perpetrator, and in case of breaches of protection orders, submits a report to the Head of Police or competent Deputy Head of Police and conducts an official investigation based on the instructions of the latter.

The social worker of the territorial body providing social services (hereinafter referred to as “the social worker”) shall, within the framework of the preventive record-registration, carry out separate monitoring over the prevention of committing violence in the family by the adult as prescribed by law.

Before the record-registration of the person having committed violence, he or she shall be called to the territorial body of the police or shall be notified — by means of telephone, official electronic mail or the registered post — on being record-registered, the grounds for record-registration will be provided, a relevant statement of information on notification shall be drawn up, signed by the person being record-registered, and in case of refusal from signing, a relevant note on the reasons of refusal shall be made, and the statement of information shall be attached to the card on record-registration. The police officer shall notify in writing, within three working days, the inspector of the community police of the police subdivision at the administrative territory of the perpetrator’s place of residence, and the social worker, on the record-registration in the specialised subdivision of the Police of the person having committed violence in the family.

The competent police officer shall, within the cooperation with the social worker, hold at least one meeting in a month with the persons under record-registration and the victims of domestic violence and shall become familiar with the domestic violence situation in the family and shall make a relevant statement of information⁴²⁵. Bringing victim and perpetrator in the same meeting, especially if there is a valid EBO or protection order, poses a tremendous risk to victims and their children, and can induce a breach of the order by the perpetrator. It is highly recommended to organise meetings separately and in separate times, avoiding any potential contacts between the perpetrator and the victim.

The competent police officer shall, within the framework of cooperation with the social worker, hold one meeting in a month, during which the behaviour of the person under the record-registration and the current problems are studied and analysed, and the further actions to be implemented are decided upon, and a relevant statement of information is made and attached to the card on the record-registration.

In case the perpetrator has moved, the competent officer shall undertake searching actions to identify the new place of residence of the person under the record-registration. In case the place of residence of the perpetrator cannot be found, the competent officer shall make a note in the card on the preventive record-registration and inform the Department within three working days, and the preventive record-registration shall be suspended. The preventive registration card is suspended within five days in case of a search for a person who has committed domestic violence. Upon the expiry of the term (up to 1 year), the person under the record-registration shall be removed from there. The person is removed from the preventive record-registration on the basis of a reasoned report, for example if the perpetrator’s

⁴²⁵ It does not specify whether these monthly meetings are to be held with the victim and perpetrator together or separately.

residence is unknown, of a competent police officer, with permission of the head of division about which a corresponding note is made in the register. Deregistered cards are kept for one year by the head of a specialised unit, after which they are handed over to the Secretariat of the Territorial Police Division and destroyed in the prescribed manner.

The purpose of the preventive record-registration in the specialised subdivisions of the **juvenile having committed domestic violence** shall be the identification of the criminal behaviour of the juvenile to prevent the juvenile from committing further violence, offences, and crimes against the family members. The preventive record-registration shall be carried out under the card on the preventive record-registration concerning the person having committed domestic violence. The card on record-registration shall be compiled within three working days after the juvenile having attained the age of 11 and having committed violent acts against the family members.

Prior to the record-registration of the juvenile, the juvenile, together with the parent or the legal representative, shall be called to the territorial body of the Police or shall be notified — by means of telephone, the official electronic mail or the registered post — on record-registration of the juvenile, the grounds for record-registration will be provided, a relevant statement of information on notification shall be drawn up, being signed by the parent or the legal representative, and in case of refusal from signing, a relevant note on the reasons of refusal shall be made, which shall be attached to the card on record-registration.

The monitoring of the behaviour of the juvenile with the view to prevent further committing of violence in the family, as well as committing other offences, shall be carried out within the framework of the preventive record-registration by the specialised subdivision of the Police.

The competent police officer shall notify in writing, within three working days, on the record-registration of the juvenile having committed violence in the family, to the inspector of the community police of the Police subdivision and the senior school inspector at the administrative territory of the place of residence of the juvenile. The competent police officer shall submit, within one working day, a reporting notice on the record-registration of the juvenile to the deputy of the head of the territorial body of the Police for operational matters. The deputy for operational matters shall assign the operations officer of the specialised subdivision to inform any changes and updates (juvenile's new orders, offences, etc.) to the competent officer to update the record-registration. The preventive activities with the juveniles shall be carried out in the places of residence and study, and where necessary — the person being record-registered shall be called to the police subdivision.

The competent officer shall notify in writing, within three working days, on the record-registration of the juvenile having committed violence in the family, to the staff of the places of study, work and residence of the person being record-registered, the local self-government body, the unit for protection of rights of the family, women and children, as well as the territorial body providing social services, and shall cooperate with persons responsible in the community and state centres of rehabilitation. In case the juvenile is a male having attained the age of 16, the territorial military commissariat of the place of record-registration of the juvenile shall be notified in writing within three working days.

The competent police officer shall hold, at least once a month, private conversations of preventive nature with the juvenile under the record-registration, by involving the parents or other legal representatives, as well as the teachers of the person being record-registered.

The competent officer shall periodically hold meetings and conversations with the parents of the juvenile being record-registered, the family member having been subjected to violence in the family by the juvenile, a statement of information is made being signed by the parent of the juvenile and the person having been subjected to violence.

The juvenile who has committed violence in the family shall be directed by the Police to relevant community and state centres of rehabilitation programmes in case there are no elements of corpus delicti of the crime. A copy of the letter for directing the juvenile to the community and state centres shall be attached to the card on the preventive record-registration.

In case the juvenile having committed domestic violence and being under the preventive record-registration is moved to specialise (military and war) education institutions or special institutions of general education (for children having demonstrated an anti-social behaviour), the card on the preventive record-registration shall be sent within three working days to the territorial body of the Police of the place the mentioned education institutions are located, with the view to establish further control over the behaviour of the person being record-registered.

Keeping of the card concerning the juvenile under the record-registration shall be terminated where:

- (1) the juvenile has obtained mental disease while being under the record-registration and has been record-registered in a medical institution;
- (2) the juvenile has been residing outside the Republic of Armenia for a period exceeding one year;
- (3) the term of keeping the card on the preventive record-registration has expired;
- (4) in case of death;
- (5) in other cases, prescribed by law.

The juvenile, the parents or legal representatives, the staffs of the places of study, work and residence, the inspector of the community police of the Police subdivision within the scope of competence at the administrative territory of the place of residence of the juvenile, the local self-government body, the unit for protection of rights of the family, women and children, as well as the territorial body providing social services and the community and state centres of rehabilitation shall be notified, within three working days, on the removal of the juvenile from the record-registration. In case the juvenile is a male having attained the age of 16, the territorial military commissariat of the place of record-registration of the juvenile shall be notified in writing within three working days.

According to the Order 15-L of the Head of Police (June 17, 2019), amended on March 3, 2020, the competent officer of the specialised subdivisions shall have the right to:

- (1) visit the places of residence and study of the persons having committed violence in the family and being under the record-registration, hold conversations with the person being record-registered (in case of a juvenile — with the parents or other legal representatives and other persons as well);
- (2) request and receive the necessary information from organisations and educational institutions;
- (3) direct the juvenile under record-registration to community and state centres of rehabilitation;
- (4) cooperate with the local self-government bodies, the units for protection of rights of the family, women and children, the services providing social support, NGOs and receive the necessary information from them.

The competent officer shall be obliged to:

- (1) respect — while carrying out duties with the persons under record-registration — the rights, honour, and dignity of the person;
- (2) clarify to the persons having applied to the police with the report on committing violence in the family, the rights and the opportunity to make use of the services available;
- (3) protect the privacy of personal data;
- (4) be guided by this Procedure, the laws of the Republic of Armenia and other legal acts.

6. POLICE RESPONSE: INVESTIGATION, EVIDENCE AND INTERACTION WITH PARTICIPANTS

Goal: Police builds victims' trust due to effective police intervention strategies based on a gendered understanding of VAW and commitment to the victims' safety and perpetrators' accountability. The police contribute to building trust in dealing efficiently domestic violence cases from the first call of victims to ensuring sufficient evidence collected for prosecution.

Key learning points:

- Understand the steps when receiving the first call from the victim
- Effective execution of police duties in a gender-sensitive manner and compliance with police protocols
- Professionally conduct gender responsive investigation and evidence gathering
- Interviewing tactics of victims and witnesses is anchored in the victim empowerment approach- Intervention is focused on stopping the violence and holding the perpetrator accountable

6.1. INTRODUCTION TO POLICING GENDER-BASED VIOLENCE

Victims often contact the authorities as a last resort when violence has escalated and/or continued for some time. The effectiveness of protection is determined by how the police respond and what constitutes the police response to reported GBV, including domestic violence. Furthermore, the nature of the police response may determine the different approach of the entire criminal justice system.

Under its legal powers, the police are obliged to respond as soon as possible and provide assistance and protection to victims of violence. The mandate of the police is not to resolve the reasons for certain criminal behaviour. Police do not have such a mandate, nor does anyone expect the police to dismiss the reasons that led to certain criminal behaviours. Nevertheless, without recognising the root cause of the individual act of domestic violence, there can be no effective police intervention. If there is a lack of understanding that police intervention is aimed at enabling the conditions for tackling the causes of the behaviour that caused the intervention, then police intervention contributes to the multiplication of violent behaviour.

Victims who report violence to the police, and especially women - victims of domestic violence, seek to be protected to prevent the perpetrator from committing further violence. Considering the powers of the police to intervene when violence is reported and to protect on the spot the victim and the attacked property by the perpetrator, the police have an essential role in providing safety. On the other hand, the way victims are treated at the time they are reporting violence, as well as the further treatment of victims in the justice system, affects not only the victim's ability to deal with the consequences of violence but also determines the will of the victim to participate in further criminal or civil proceedings. The police must introduce, as a primary task, fair treatment of victims, in order to ensure respect and realisation of their rights. In particular, when dealing with domestic violence cases, the specifics of domestic violence against women need to be understood.

Essential for effective police intervention is the understanding that domestic violence is not an individual act of violence. Hence, the goal of police intervention must be precisely the violent attitude, and not just the individual act of violence. Cases of domestic violence against women must acquire meaning and treatment of conditions of intimidation, violence and control that are repeated and last for a certain period of time. Hence, police intervention is not limited to the result of the intervention itself but should be considered as an aspect of the more comprehensive social intervention that offers the best protection to the victim. Hence, the first reaction of the police in case of domestic violence has a specific significance for the effectiveness of the overall system of protection and support of the victim⁴²⁶.

Five general rules for police intervention in cases of domestic violence have been differentiated among scholars and police professionals:

Police intervention must start from the view that domestic violence is a public issue;
That the reported act of domestic violence is not solely an individual act of violence, but the result of a pattern of power and control between the perpetrator and the victim;
The police intervention must reflect the lack of social tolerance for violence in the private sphere;
The responsibility must be clearly located with the perpetrator; and
Effective police intervention cannot exist outside of society's comprehensive and multidisciplinary approach to domestic violence⁴²⁷.

The legislator provides special powers in order to enable police officers to perform their duties. The use of police power requires violation or a threat for violation of a legal norm. Those special powers, called police powers, are duties of a police officer since, in many cases, police officers do not decide whether to exercise or not the police powers, rather, which power to exercise in proportion to the goal to be achieved. The use of police powers must always comply with the conditions and procedure prescribed by law.

⁴²⁶ Mirceva, S., Caceva V., (2013), "Itni merki za zastita na zrtvite na domasno nasilstvo: Istanbulska konvencija", [Emergency barring order for protection of victims of domestic violence: Council of Europe Convention] Makedonska revija za kazneno pravo i kriminologija, god.20, br.1, pp.31-51. Zdruzenie za krivicno pravo i kriminologija na Makedonija. Skopje.

⁴²⁷ Dearing, A. (2002). "Austriski zakon o zastiti od nasilja u porodici", TEMIDA: Journal on victimization, gender and human rights, Issue 2, September 2002, p.12-22. Available at: <http://www.vds.rs/File/Tem0210ID.pdf>

6.2. POLICING DOMESTIC VIOLENCE IN ARMENIA

The Domestic Violence Law and the Criminal Procedure Code establishes the framework of police powers, which governs the conduct of the agencies in the procedure of prevention, detection, protection, and reporting. The Law on Police regulates further elaboration of the functions and organisation of the Police, the powers, and responsibilities of police officers.

The place of police intervention for cases of domestic violence is usually the home of the perpetrator and the victim. The first attribute of police intervention must be urgency. Precisely because of the place where the violence most often takes place, the privacy of the home, the police must react as soon as possible after learning about the case. In doing so, ending the violence and the protection of women victims, including the protection of children who may not be directly endangered, are primary.

Prompt response to a report of violence is paramount, and the primary goal of the police is to ensure the safety of the victim. If the police fail to prevent, protect, and respond appropriately to violence against women, given that the police knew or should have known about the actions of the perpetrator, the police fail to fulfil their due diligence standard and their duties.

6.2.1. The First Call of Victima

According to UN Essential Services Package for Women and Girls, Subject to Violence guides as follows: “Initial contact includes reporting to the police, documentation of the report, registration of a criminal case, advisory services provided by lawyers, civil cases registered, or administrative applications made to state compensation schemes, and applications made for separation, custody, and/or urgent/emergency protection measures through criminal, civil, family courts or administrative bodies/mechanisms⁴²⁸”.

Understanding the dynamics of domestic violence as well as the situation of the victim is critical to create positive initial contact. Particularly, it is worth being aware of why the victim is reluctant to report the violence. According to the data from OSCE Survey⁴²⁹, the typical barriers include:

- Shame, including shame associated with certain types of violence and with divorce;
- Financial reasons, including concerns that the woman cannot support herself and her children financially and would not receive support from her family;

⁴²⁸ United Nations Joint Global Programme on Essential Services for Women and Girls Subject to Violence, (2015). “Module 3: Justice and Policing, Essential Services Package for Women and Girls Subject to Violence: Core Elements and Quality Guidelines”

⁴²⁹ OSCE-Led survey on violence against women. (2019). “Main report”. Organisation for the Security and Co-operation in Europe. Vienna.

- Lack of trust in institutions: women do not expect an effective response from the police or fear that they will not be believed;
- Lack of awareness of specialist services: women do not know where they can go to get help;
- Fear of retribution on the part of the alleged perpetrator: women are afraid that the violence could escalate.

Irrespective of how broad you define the initial contact, it might be very helpful to bear in mind the following list of important elements of initial contact.

Checklist: Important elements of the initial contact (the list is not exhaustive)

- Be available to all women who report violence
- Apply the principle, 'help, not judge' (particularly avoid gender bias)
- Arrange for medical treatment, if needed
- On arrival at the scene, separate the victim from the alleged perpetrator
- Identify if there is any weapon and secure it
- Show the victim that the system is committed to her safety
- Ascertain what has happened
- Identify all present (if you are at the scene of DV)
- Contact victim services
- Take her complaint seriously
- Ensure that victim can speak freely in the privacy
- Hear, believe her story, and keep the information confidential
- Use positive language
- Undertake a risk assessment
- Provide for trained female police officers (if possible)
- Look beyond the scene (what you see at the scene may not be what happened or what expected)
- Understand the barriers the victim is facing (due to trauma, victims may not behave as expected)
- Treat the victim with empathy and sensitivity
- Be patient with the victim
- Do not make false promises
- Secure and preserve evidence
- Conduct interviews

- Arrange for forensic examination
- Comply with protocols

Box 17: Signs and symptoms of trauma in a victim/survivor⁴³⁰

- | | |
|---|--|
| • Hypervigilance | • Generalised anxiety/panic attacks |
| • Mistrust | • Numbing |
| • Decreased concentration | • Loss of interest |
| • Chronic pain/headaches | • Dissociation |
| • Substance abuse | • Depression |
| • Eating disorders | • Little or no memories |
| • Feeling unreal or out of body | • Emotionally overwhelmed |
| • Self-destructive behaviour | • Nightmares and flashbacks |
| • Loss of sense of ‘who I am’ | • Shame and worthlessness |
| • Loss of sense of future – hopelessness | |

The first contact with the police is crucial to the victim’s experience of law enforcement and the justice system. A negative or judgmental attitude by police may discourage victims from seeking help from the police or the justice system in the future⁴³¹. The key is that the police are committed to ensuring the safety and protection of the victim and take her complaint seriously.

KEY CONCEPTS

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

The Armenian Police emergency number is 1-02. Since August 8, 2020, the Police helpline is available to aid on issues related to the problems of minors and domestic violence. At the same time, every working day from July 15, from 11 am to 12 pm, parents can apply to the General Department of Public Security of the Police of the Republic of Armenia via Skype for advice on legal assistance related to their children. The assistance will be led by the Head of the Department for Prevention of Juvenile Crime and Domestic Violence⁴³².

⁴³⁰ Gender-Based Violence Training Manual for Judicial Officers in Uganda (UN Women, unpublished 2019) as quoted in Fernandez, M., Townsley, J.(2021). “Handbook on gender-responsive police services for women and girls subject to violence: for women and girls subject to violence”. UN Women, United Nations Office on Drugs and Crime (UNODC) and the International Association of Women Police (IAWP).

⁴³¹ T.K. Logan, et al., Women and Victimization: Contributing

⁴³² The Republic of Armenia Police Department for Prevention of the Juvenile Crime and Domestic Violence has been established in 2018.

The RA Government Decision 1495-N of November 23, 2017, approves the procedure for receiving, registering, recording, and processing the reports on crimes, administrative offences, accidents by the Police of the Republic of Armenia, according to which the reports, regardless of the place of occurrence of the offences or the occurrence of the incidents, the time, as well as the completeness of the information contained in them, are subjected to acceptance in the territorial bodies of the police and to registration in the territorial bodies with duty units.

The duty units of the territorial police bodies ensure the round-the-clock reception and registration of reports. Receipt and registration of reports can also be carried out by the General Department for Combatting Organised Crime of the Police, the Department of Internal Security, and the Traffic Police.

Reports received electronically are registered if they were sent to the police e-mail address dimum@police.am or press@police.am.

All calls, as well as outgoing calls to the competent police subdivisions, the operative control centre of Yerevan city administration, duty units of territorial police bodies and duty services, are recorded if the relevant division, duty unit or duty service is provided with sufficient technical means for recording telephone conversations. Recordings are stored for three months and are subject to automatic destruction.

The police officer inspecting the reports is obliged to check and complete the data on reporting. In the case of data is missing, the police officer should take measures to verify and complete the data within the competence of the police.

After registering the report with the territorial police body, in case of need to check it on the spot, the senior shift sends an operative group to the scene of the offence or accident, as well as takes measures to prevent or deter the offences, to seek mutual assistance from other state bodies, for example the Ministry of Emergency Situation, and medical staff, and reports about it to the head or the person in charge of the territorial police body, who, if necessary, organise the departure of the operative group to the scene.

The results of measures taken during the inspection shall be reported to the head of the competent department to make the decisions defined by the procedure.

The Police Head Order No. 2121-Ս dated June 20, 2014, approves the procedure for organising the activities of the duty units of the police subdivisions, which regulates the responsibilities of the shift in different situations. Pursuant to Order 2121-A of the Head of the Police of the Republic of Armenia, the on-duty shift shall, upon receiving reports on crimes and offences, irrespective of territorial jurisdiction, be obliged to immediately — **no later than within 10 minutes** — organise arrival at the crime scene of the operative-investigative, first-response groups, police officers servicing the relevant area, squads of the Patrol-Guard Service and the Road Patrol Service for the purpose of preventing, disrupting and disclosing the crime through hot pursuit, apprehending offenders, responding to victims' needs, take immediate actions, and so forth.

KEY GUIDANCE FOR POLICE DISPATCHER OF DUTY UNIT

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

- ▶ **Step 1: Give priority** regardless of whether there is clear evidence that lives are in danger; a police car/motorbike and at least two officers should intervene.
- ▶ **Step 2: Gather information:** The dispatcher should not ask the victim on the phone what she wants to do, press charges, or not, but instead gather as quickly as possible **relevant information** by posing **clear and firm questions on:**
 - place of the emergency, address, apartment number, other information to find the location, contact number,
 - who is on the phone, name, age,
 - what happened,
 - presence of injured people. If so, call an ambulance at the same time; if not already done so,
 - presence of children,
 - use or threats of use of firearms or knives or any objects,
 - whether the perpetrator is under the effect of drugs or alcohol,
 - whether the alleged perpetrator is still at that address. If not, ask where he could be, if known,
 - whether the police have been called other times,
 - presence of a restraining/protection order issued by the court.
- ▶ **Step 3: Find background information.** The police dispatcher should be able to find out information from the police files (usually in electronic format) and provide the intervening officers with information about any prior calls and interventions at the same address, same victim/perpetrator, when and a summary of what happened (regardless of what the person says on the phone) and the recorded presence of firearms.

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

The dispatcher who is handling the phone call should try to calm the victim down but also communicate to her that someone is arriving at

the given/provided address. The dispatcher officers should recommend the victim, if feasible, wait at a neighbour house or stay on the phone until the police arrive⁴³³.

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

The response of the police at the scene of domestic violence lays the foundations for the criminal case and can have a huge impact on the victim's safety. Applying a victim-centred approach increases the safety of the victim, and it is a clear message for the perpetrator that his behaviour is not acceptable. Prompt intervention is required by the Council of Europe convention⁴³⁴.

According to the Order No. 16-L of the Head of Police, when the police receive a report, information on crimes and incidents which contain elements of domestic violence, they should include the officer(s) of the police unit (group) for juvenile cases and prevention of domestic violence in the operative group arriving at the scene of the incident. This order ensures that specialised police officers deal with domestic violence cases and the domestic violence victims invited to the police subdivision will be taken to a separate, calm room at a police station.

According to Article 56 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, states must: take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by:

- Enabling victims, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;
- Ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible;
- Providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence;
- Enabling victims to testify, according to the rules provided by their internal law, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available.

⁴³³ "Improving the Effectiveness of Law Enforcement and Justice officers in Combating Violence against Women and Domestic Violence". Anna Costanza Baldry and Elisabeth Duban, 2016.

⁴³⁴ CETS 210 – Violence against women and domestic violence, 11.V.2011, Article 52.

A child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child⁴³⁵.

6.2.2. At the Scene of Domestic Violence

The Council of Europe convention gives special attention to the role and responsibility of the police in all stages of involvement. According to Article 50, the police have to “respond promptly and appropriately by offering adequate and immediate protection to victims” and also by promptly and appropriately providing “preventive operational measures and the collection of evidence”. Practical and useful examples of what this means for the police are the following:

- Having the right to enter the place where a person at risk is present;
- Treating and giving advice to victims in an appropriate manner;
- Hearing victims without delay by specially trained, and where an appropriate female, staff in premises that are designed to establish a relationship of trust between the victim and the law enforcement personnel.

In order for the police to act on the spot, they need to have access to the place where the domestic violence took place. The Constitution of the Republic of Armenia (Art. 32), the Criminal Code (Art 147(3)) and the Criminal Procedure Code (Art 12) guarantee the inviolability of the home. However, the right to privacy and family life, as well as the inviolability of the home, are not absolute rights. This is recognised by the RA Constitution, and Article 32 (2) sets out the limits of the inviolability of the home: “the right to inviolability of the home may be restricted only by law, for the purpose of state security, economic welfare of the country, preventing or disclosing crimes, protecting public order, health and morals or the fundamental rights and freedoms of others”.

The Armenian Constitution and law also require the existence of a court decision or an arrest warrant to enter a home. However, when the homeowner where domestic violence takes place **does not oppose the entry of the Police or agrees with the Police entering the home, there are no obstacles for police intervention.** According to Article 12 (2) of the RA Criminal Procedure Code, in the course of criminal proceedings, the examination of a residence, conduct of other procedural actions, and entrance into the residence using technical means against the will of the persons occupying it can be done by the bodies of the inquest, the investigator by a decision of the Prosecutor. Article 20 of the Law on Police stipulates the **rights of police in detecting and disclosing crimes, where police have a right to enter unimpededly apartments, constructions, areas, lots, also by breaking obstacles, while pursuing persons suspected of commission of a crime, as well as upon availability of**

⁴³⁵ CETS 210 – Violence against women and domestic violence, 11.V.2011, Article 56.

sufficient data about a crime being committed or having been already committed, mishaps, also in cases of protection of citizens and ensuring of public safety during accidents, epidemics, riots, as well as in other urgent cases.

The homeowner will be immediately issued a certificate stating the reason for entering the home and any remarks made by the homeowner. In case if the actions of the police are performed against the will of the citizens and officials, the police shall inform so the prosecutor within 24 hours.

As domestic violence incidents often take place in private, the complainant may be the only witness. Giving evidence may be exceedingly difficult for them or may cause additional difficulties, for example, due to fear of reprisals; safety of their children; increased family pressures or serious financial repercussions; fear of being 'outed'; fear of a lack of support by the criminal justice system, or specialist support organisations; or an emotional attachment or loyalty towards the defendant, leading to uncertainty about the course of action they should take. The police understanding of the nature of domestic violence and the relationship between the victim and perpetrator is central to the delivery of the best response provided⁴³⁶.

Victims will be making a difficult choice in reporting the abuse to the police in the first place; it is, therefore, important that they are handled with appropriate care and support through the lifecycle of any proceedings.

Overall, police officers should have a reassuring approach in handling domestic violence reports but also one that reflects the understanding of the severity of the offence and the impact on other people. Irrelevant, intimidating, and ironic questions should be avoided as these may lead to the victim feeling frustrated, disbelieved, or scared, and as a result, will be less collaborative⁴³⁷.

6.2.3. Investigation and Gathering Evidence

According to the RA Criminal Procedure Code, police is one of the bodies of an inquest.

The body of inquest executes the following:

- 1) Undertakes the necessary operative-investigatory and criminal procedure measures for detection of the crime and the persons who conducted it, for prevention and the suppression of the crime;
- 2) Prior to the institution of the criminal case, implements examination of the crime site based on prepared materials, and appoints expert inquest.
- 3) Institutes a criminal case, undertakes the proceeding of the case or sends it by subordination, or rejects the institution of the criminal case, as envisaged in the CPC. The copy of the decision to institute or reject the case is for-

⁴³⁶ Domestic Abuse Guidelines for Prosecutors: <https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors>

⁴³⁷ Enhancing the professional capacity of the Bulgarian Police to deal with cases of Domestic violence and Violence against women. A.C. Baldry, 2016.

warded to the Prosecutor within 24 hours.

- 4) Immediately informs the Prosecutor or the investigator about the revealed crime and the initiated inquest;
- 5) After having instituted the criminal case, to discover the criminal, the traces of the crime, implement urgent actions, examination, searches, monitoring of correspondence, mail, telegrams, and the like, wire-tapping, seizures, investigation, arrest of the suspect and interrogation, and questioning of the injured and the witness, cross-examination, appoint an expert to inquire;
 - a) in the case provided for in Article 53, Part 3, Clause 5 of this Code, the results of the decision seizure of correspondence, mail, telegrams, and the like, and the monitoring of the telephone conversations are sent directly to the preliminary investigation body and immediately informing the Prosecutor about that;
- 6) Within ten days after the institution of the criminal case, and in the case of the discovery of the criminal act(s) and impleading, the case is forwarded to the investigator;
- 7) The instructions of the Prosecutor are carried out based on the cases under consideration of the investigator;
- 8) Registers statements made about committed crimes;
- 9) Brings to the investigation the persons suspected in the crime, examines, and searches them, and sets free the persons detained without sufficient grounds;
- 10) Allows the Prosecutor to inspect the activities of the body of inquest;
- 11) Provides the prosecutor and the investigator within their authority, necessary information demanded by them;
- 12) Takes measures to compensate the damages inflicted by the crime;
- 13) Interviews the witnesses of the case, familiarise himself with the circumstances of the case, and the documents and cases which can contain information on the incident and persons related to it;
- 14) Demands contain information on the incident and persons related to it;
- 15) Demands to conduct checks, inventory, other inspection operations;
- 16) Organises the implementation of the legitimate instructions of the court;
- 17) Carries out other actions to which is authorised by this Code.

An inquest at the Police of the Republic of Armenia shall be conducted under the following main procedures:

- 1) Acceptance, registration, record-registration, examination and addressing of reports and other information on crimes and incidents;

- 2) Preparation of materials based on reports, incidents, and other information received, delivery of a decision on thereof;
- 3) Institution of a criminal case based on the reports accepted, taking immediate investigative and other procedural actions.

Officer conducting inquest (hereinafter referred to as “the inquest officer”) shall, after accepting a report on crime, be obliged to immediately plan his or her further actions for the purpose of disclosing the crime through hot pursuit, identifying the offenders, obtaining and documenting evidence and other information of probative value, as well as, based on the nature of the crime, must choose the appropriate tactics, determine priorities of the urgent investigative and other procedural actions under the given case and proceed with the implementation.

Crime scene investigation

Though crime scene investigation is not included in the types of examinations listed in Article 217 of the Criminal Procedure Code of the Republic of Armenia, it is widely spread in practice, and taking into account its exceptional significance, the law allows for performing this investigative action before instituting a criminal case (part 2 of Article 180 of the Criminal Procedure Code of the Republic of Armenia), prescribing a relevant provision also among the powers of the inquest body (point 2 of part 2 of Article 57 of the Criminal Procedure Code of the Republic of Armenia).

“Crime scene” includes a building, premise, any other establishment, or a part of the locality where the incident in question took place, or another place that is preliminarily accepted as the scene of commission of the crime. Crime scene investigation shall be conducted for the purpose of detecting trace evidence of a crime or other material evidence, as well as documenting data on the circumstances being relevant for the case. Crime scene investigation has exceptional importance for disclosure and solving of crimes; therefore, it must be conducted without delay and with high quality, in compliance with all the procedural rules.

Main objectives of crime scene investigation shall be as follows:

- examining and recording the situation and circumstances of the incident, conditions and characteristics of separate objects, changes made by the criminal;
- detecting and recording traces and other objects;
- identifying other sources of information of probative value;
- establishing a causal relationship between the facts upon the traces registered, and so forth.

Tactics of crime scene investigation may be divided into **three main sequential phases**.

1. Preparatory;
2. Procedural;
3. Final.

1. The preparatory phase includes actions that are taken before and upon arrival at the crime scene.

Head of the inquest body and inquest officer must, **before and upon arrival at the crime scene**, carry out the following preparatory actions:

- collect preliminary data on details of the incident that occurred, as well as the offender/offenders and the victims;
- take measures to secure the crime scene;
- check the uninterrupted operation of the technical equipment;
- take measures to carry out necessary operative measures at the crime scene;
- take measures to exclude entrance of unauthorised persons to the crime scene and to remove them there;
- ensure the presence of the expert, participants of the scene search and at-testing witnesses;
- take measures to improve the scene search conditions. Where it gets dark during crime scene investigation or it coincides with unfavourable weather conditions, the head of the inquest body and inquest officer shall, after consultation with the expert, take a decision on postponing crime scene investigation until it becomes possible to conduct it simultaneously taking measures to control and secure the crime scene;
- hold interviews with witnesses to clarify where the crime scene has been altered or not;
- take measures to prevent destruction or damage of traces of the crime, i.e., alteration of their appearance, position, characteristics, and so forth.

2. The procedural phase includes the inquest officer's actions just at the crime scene.

During the examination, the inquest officer shall observe the crime scene, detect the traces available and determine, based on the information collected, the scope of the scene, as well as decide where the examination must be started and what video or photo recordings must be made during the examination. The inquest officer shall draw the sketch /scheme/ of the crime scene and take the mid-range and close-up photographs.

Traces, instruments, and objects detected during the examination which may have related to the crime concerned shall be examined, photographed, seized, packaged, numbered, sealed and documented in the report of crime scene investigation in the presence of attesting witnesses and with the participation of the expert. As a rule, the report on crime scene investigation is drawn up at the crime scene, while where it is impossible due to some circumstances, the inquest officer shall perform it in his or her office in the presence of the same participants.

3. Final stage of crime scene investigation/recording of results/

Results of crime scene investigation shall be recorded in a report drawn up in the prescribed form, where to the sketch and photographs of the crime scene shall also be attached. The report of the crime scene investigation is considered as a source of evidence. It is necessary to follow the below-mentioned main rules when drawing up a report:

- write in simple language, using commonly used and comprehensible terminology;
- describe each object starting from its general description to the specific features;
- distances between objects shall be indicated upon accurate measurements;
- proceed to the description of the next object only after fully completing the description of one object;
- objects of the same category shall be named by the same term, adding identification features.
- Inquest officer shall make an examination of visible objects accessible thereto unless it violates the rights of individuals.

Where necessary, the inquest officer shall make measurements of the scene and separate objects being examined, draw plans, sketches, schemes and, when possible, take photographs, video recording and other types of recording, which is included in the report.

Taking statements during the preliminary inspection (preparation of materials)

Guided by Article 57 of the Criminal Procedure Code of the Republic of Armenia, after completing crime scene investigation, inquest officer shall, before instituting a criminal case and for the purpose of detecting the crime committed and the offender (offenders), take statements from the person having reported the crime and other persons possessing information on the circumstances of the incident, which may be relevant for accurately determining the course of the events.

According to point 35 of Article 6 of the Criminal Procedure Code of the Republic of Armenia, “**statements**” shall mean oral or written arguments brought by participants in proceedings and applicants to substantiate their own claims or those of the person presented thereby, as well as other persons’ oral and written reports being submitted before instituting a criminal case. Statements have their unique role and significance in the preparation of materials, without which almost no materials are prepared in practice.

In case of interrogation (taking statements) of a minor **under the age of 16**, a pedagogue shall, as prescribed by the requirements of Articles 6, 207 and 441 of the Criminal Procedure Code of the Republic of Armenia, be mandatorily involved in it, as well as the legal representative of the minor may be present. An **interpreter** shall be guided by the requirements of Articles 83 and 208 of the Criminal Procedure Code of the Republic of Armenia, be mandatorily involved in the interrogation/receiving statements of persons who are **deaf, mute, blind or do not understand or speak the language of the criminal proceedings**,

When making a statement, it shall be necessary to establish the following:

- a) an incident of the crime (time, place, method of commission, etc.);
- b) relation of the suspect to the incident;
- c) availability of the elements provided for by the Criminal Code in the offence;
- d) the person's guilt in the commission of the act prohibited by criminal law;
- e) mitigating or aggravating circumstances provided for by criminal law;
- f) circumstances contributing to the commission of the offence:
 - circumstances contributing to the detection of evidence;
 - circumstances necessary for the verification and assessment of evidence;
 - circumstances of no probative value, which may, however, have a tactical significance;
 - circumstances serving reasons and conditions for generating crime and contributing to it.

When making statements, it shall be necessary to comply with the following four phases:

- Initial phase of taking of statements includes reducing the anxiety, the conscious blocks, as well as tension of the person giving a statement, and building trust. Based on his or her attitude towards the act committed and the persons involved in the case shall be determined, further tactics for taking of statements shall be chosen. Victim and perpetrator should be always separated for taking statements in a calm place without the other one hearing;
- Telling phase: By using open-ended questions, the tactical techniques of which shall be aimed at receiving new data of probative value, restoring whatever forgotten in the memory of the person giving statements, etc.;
- Question-and-answer phase, where all the techniques aimed at receiving objective and complete information from the person giving statements, clarifying the information received, correcting contradictions in the materials shall be applied, which shall be carried out through direct questioning, submission of the evidence available, use of operational intelligence data and through other techniques;
- Final stage of taking statements, where the statement shall be analysed and summarised, the circumstances mentioned and objectivity of it shall be assessed, after which the statement shall be closed with signatures of the person giving the statement and the one taking it.

Taking a decision based on the preliminary examination materials

Reports on crimes must be examined and addressed immediately, while in case there is a necessity to verify the lawfulness of the reasons and sufficiency of grounds for instituting a criminal case — within **10 days** from the moment of receipt of reports on crime (Article 180 of the Criminal Procedure Code of the Republic of Armenia).

Pursuant to Article 181 of the Criminal Procedure Code of the Republic of Armenia, by examining the preliminary examination materials and assessing the evidence obtained, the inquest officer shall, in each case of receiving information on a crime, take one of the following decisions:

1. on instituting a criminal case;
2. on rejecting the institution of a criminal case;
3. on transferring the report according to jurisdiction.

Pursuant to the requirements of part 4 of Article 182 of the Criminal Procedure Code of the Republic of Armenia, in case of taking a decision on instituting a criminal case, the copy of the decision shall be forwarded to the natural or legal person having reported the crime (part 4 of Article 182 of the Criminal Procedure Code of the Republic of Armenia).

During the preliminary examination (preparation of materials) carried out on the basis of the reports on crime, where circumstances excluding institution of a criminal case or criminal prosecution are detected (when the reason for instituting a criminal case is unlawful or there are no grounds for instituting a criminal case), pursuant to the requirements of Article 35 and 185 of the Criminal Procedure Code of the Republic of Armenia, a decision shall be taken on rejecting the institution of a criminal case, and the copy of the decision, along with a written clarification on the procedure for appealing against it, shall be immediately forwarded to the natural or legal person having reported the crime.

When making a decision on rejecting the institution of a criminal case, it is necessary to ensure the completeness and comprehensiveness of the prepared materials in the first place, as well as to verify clearly a number of circumstances:

1. whether the act was committed or not;
2. whether there are elements of crime in the act or not;
3. the person having committed the act;
4. whether the person having committed the act is subject to criminal prosecution or not.

Only after verifying the mentioned circumstances, it shall be possible to decide which ground prescribed by Article 35 of the Criminal Procedure Code to be guided by when taking a decision on rejecting the institution of a criminal case. Other unlawful acts revealed during the investigation must also be given a legal assessment by the decision taken.

After making a decision on rejecting the institution of a criminal case under points 4, 6, 10, 12 and 13 of part 1 of Article 35 of the Criminal Procedure Code of the Republic of Armenia, statistical cards of Forms No 1, 1.1, 2 and 1A shall be filled in and sent to the Information Centre of the Police of the Republic of Armenia pursuant to Joint Order of the Prosecutor General of the Republic of Armenia and the Minister of Internal Affairs No 11/251 of May 27, 2002, and Order of the Head of the Police of the Republic of Armenia No 468-A of February 26 2009.

Pursuant to the requirements of Articles 186 and 190 of the Criminal Procedure Code of the Republic of Armenia, when it is necessary to perform incident-related preliminary actions at the crime scene for resolving the issue of instituting a criminal case, or the materials must be transferred according to investigative jurisdiction, a decision shall be adopted on transferring the report according to jurisdiction (point 3 of Article 181 of the Criminal Procedure Code of the Republic of Armenia).

Competences of the officer conducting inquest when instituting a criminal case

Pursuant to Article 27 of the Criminal Procedure Code of the Republic of Armenia, in each case of detecting elements of crime, **the inquest body**, the investigator and the prosecutor shall be obliged to institute a criminal case within the limits of their competence, as well as undertake all the measures provided for by law for identifying the offenders or the circumstances of the crime.

According to point 3 of part 2 of Article 57 of the Criminal Procedure Code of the Republic of Armenia, the inquest body institutes a criminal case, accepts the case for its proceedings or transfers it according to jurisdiction. Moreover, after instituting a criminal case, the inquest body shall, for the purpose of detecting the offender, revealing and recording the traces of the crime, take urgent investigative actions — examination, search, interception of correspondence, postal, telegraphic and other communications, wire-tapping, seizure, examination, **arrest and interrogation of a suspect**, interrogation of victims and witnesses, confrontation, as well as shall call for an expert examination and forward the case to the investigator within 10 days after initiating a criminal case, and immediately upon detecting the offender or completing immediate investigative activities, as well as after involvement of the investigator (point 6 of part 2 of Article 57).

It is also necessary to pay attention to the fact that the decisions adopted by the inquest officer on instituting a criminal case, on refusing to institute a criminal case, on applying to the court with motions **to arrest the suspect or to apply a measure of restraint thereto**, to lift or to change it, to carry out relevant investigative actions and operational intelligence measures, to forward the case to the investigator shall be approved by the head of the inquest body. That is, the inquest body shall be authorised to conduct investigative actions that have not been conducted by the inquest officers in practice (except for certain sub-divisions).

Where a witness appears for interrogation **with an advocate** invited by him or her for the purpose of representing him or her, the advocate shall have the right to be present at the interrogation but shall not be entitled to ask questions to the witness or interpret his or her answers. In cases of asking questions or performing actions that violate the rights of a witness provided for in part 5 of Article 86 of this Code, the advocate shall have the right to make statements that shall be included in the record of the interrogation.

According to part 2 of Article 188 of the Criminal Procedure Code of the Republic of Armenia, an inquest may, as an initial stage of an investigation, take place within ten days after instituting a criminal case.

Pursuant to part 2 of Article 196 of the Criminal Procedure Code of the Republic of Armenia, the head of the inquest body shall, after completing the inquest, forward the case to an investigator, where a relevant decision shall be adopted.

Inquest shall be completed when:

1. the time limit for the inquest expires;
2. the person having committed the criminal offence is detected before the time limit for the inquest expires;
3. the prosecutor, for the purpose of conducting the investigation, transfers the case being investigated under the inquest body to an investigator or an investigator who is involved in the investigation into the case.

The RA Criminal Procedure Code also defines the concept of **evidence**. According to Article 104, in criminal cases, any facts are evidence, based on which, and as provided by law, the inquest body, the investigator, the Prosecutor and the court can determine whether or not a crime has been committed, whether or not the crime has been committed by the accused, or whether or not the accused is guilty or innocent as well as other circumstances relevant to the case.

The following can be considered as evidence in criminal proceedings⁴³⁸:

1. testimony of the suspect
2. testimony of the accused
3. testimony of the injured
4. testimony of the witness
- 4.1. testimony of the suspect or the accused or the accused in another criminal case related to the accusation to the given case
5. the convict's testimony
6. expert's report
7. material/demonstrative evidence
8. records of the court and investigative proceedings
9. other documents

Only facts and evidentiary materials obtained according to the requirements and in the manner prescribed by this Code are to be heard at criminal proceedings.

When gathering evidence, the police officials need to keep in mind that the victims may withdraw their complaints and refuse to take part or help in the investigation. It could be due to fear of threat, coercion, fear of re-victimisation by police, loss of family support or economic dependency. Irrespective of the cause, police officials are confronted with the challenge to build a case without victims' accounts. In most cases, domestic violence crimes are committed in private places without any direct eyewitnesses. However, the police can collect and use various types of evidence such as testimonies of witnesses (e.g. friends, neighbours, relatives, children, etc.), broken furniture/mobiles, expert's report on injuries of the victim, etc.

⁴³⁸ Article 104(2) of the RA Criminal Procedure Code of Armenia.

While inspecting the case, the police should note down any reactions, words or behaviour of a victim, a perpetrator or witnesses that might have significance as to what happened. For instance, if the perpetrator says, after being informed of his rights: “She deserved to be hit! You should have seen the way she provoked me!”. These remarks may later be used along with other pieces of evidence at the trial, including if the victim refuses to make a statement. Such spontaneous statements may also be used as corroborating evidence if the victim’s credibility is questioned. Spontaneous comments made by other witnesses at the scene should also be recorded⁴³⁹.

After the police have gathered preliminary evidence and a criminal case is initiated, the drawn-up documents are transferred to the preliminary investigation body. The investigation stage implies gathering proof and any elements to support the investigation of the alleged crime and actions. This includes any background information related to prior violent attacks, presence of weapons, witnesses (friends, relatives, co-workers, neighbours, children living in the house), the existence of an emergency barring order, restraining/ protection order or warning, prior access to the emergency services. Some of this information can also be retrieved from police records, and others will have to be gathered from interviews.

According to the Instruction No. 5-Յ of the First Deputy Chief of the RA Police dated March 15, 2019, police officers from the Department for Prevention of Juvenile Crime and Domestic Violence are involved in the preparation of the case and organisation of investigations in the police territorial subdivisions pursuant to Articles 180-181 of the RA Criminal Procedure Code.

Pursuant to Instruction No. 5-Յ of the First Deputy Head of the Police of the Republic of Armenia, officers of the Criminal Intelligence Sub-Divisions, Subdivisions for Juvenile Affairs and Prevention of Violence in the Family, as well as community police officers also shall, in addition to inquest inspectors, be engaged in the process of adopting decisions and preparation of materials following examination of reports on crimes as prescribed by Articles 180 **Procedure for examination/analyses of reports on crimes** and 181 **Decisions adopted following examination of reports on crimes** of the Criminal Procedure Code of the Republic of Armenia.

Conditioned by specifics of criminal investigative actions, cases of crimes of minor gravity committed by minors or domestic violence cases are assigned to the officers of the Sub-Divisions for Juvenile Affairs and Prevention of Violence in the Family.

Protection of persons participating in criminal proceedings

In addition to emergency barring orders and protection orders (see chapter 5), victims can be entitled to a protection for persons participating in criminal case proceedings based on the Chapter 12 of the Criminal Procedure Code. According to Article 98, participants in criminal proceedings (witnesses, experts, victims, and the like) and persons who report a crime, whose testimony or disclosure may endanger the life, health, property, rights and legitimate

⁴³⁹ *Nachova and Others v. Bulgaria*, Application Nos. 43577/98 and 43579/98, 2005, concerning the fatal shooting of two unarmed Roma conscripts by automatic weapons in daylight in a Roma neighbourhood. Immediately after the killing, a military police officer allegedly yelled at one of the town residents, "You damn Gypsies!" while pointing a gun at him. The Court found the spontaneous statements by the military officer to indicate discriminatory motives in violation of Article 14 of the ECHR.

interests of the person under protection or a member of his family, close relative, or close associate has the right to protection. Accordingly, the person participating in the criminal proceedings or reporting the crime, as well as his/her family members, close relatives, and friends, have a right to be protected. Moreover, law enforcement officials must apply such protective measures of victims and witnesses ex officio, as well as upon the request by the persons in question. Protection measures are mandatory if the persons participating in the criminal proceedings or their close relatives were physically threatened in connection with their participation in the proceedings⁴⁴⁰.

Therefore, Article 98. 1 the RA Criminal Procedure Code envisages measures of protection, including:

- official warning by the court or prosecution to the person who has engaged in threats of potential criminal liability;
- the protection of the personal data of the person under protection;
- the provision of security for the person under protection, and of his/her flat or other property;
- providing the person under protection the means of individualised protection, including warnings of existing threats;
- the use of means of control, wire-tapping of telephone and other communications technology;
- the provision of personal security for the person under protection when visiting the body conducting criminal proceedings;
- choosing a measure of restraint against a suspect or an accused that will exclude the possibility of committing a crime or other offence against a person under protection;
- changing the residency of the person under protection;
- changing the identity documents or the appearance of the person under protection;
- changing the place of work, education, or services of the person under protection;
- the removal of some persons from the courtroom or closing the proceedings to the public;
- questioning the person under protection in the courtroom without disclosing information about his/her identity.

If necessary, more than one protection measure can be implemented⁴⁴¹. By the decision of the Government of the Republic of Armenia N 1474-N of September 3, 2020, has been established the “Procedure for the implementation of protection measures by the police against the persons subject to protection”.

⁴⁴⁰ Article 98(1), the RA Criminal Procedure Code.

⁴⁴¹ Article 98(1), the RA Criminal Procedure Code.

6.2.4. Interviewing Victims, Witnesses, and Perpetrators

Victims' reactions to investigations and the justice system

In Armenia, both violence against women and domestic violence are mostly latent crimes, which often take place domestic contexts or between people in a relationship, and most incidents are not ever reported to the authorities. A survey conducted by the European Union Agency for Fundamental Rights (FRA) (which included interviews with 42 000 women) asked women who had experienced physical and sexual violence by partners and non-partners why they did not contact the police following the most serious incident of violence, and some of the most prevalent answers included the following: I dealt with it myself; I thought it was not serious enough/never occurred to me; shame and embarrassment; I did not want anyone to know/kept it private; fear of offender or reprisals⁴⁴².

Due to their experiences, victims of domestic violence may be in shock and are generally under stress. Some have experienced severe trauma. There are significant psychological consequences to victims of violence perpetrated by a partner (physical, sexual, or psychological violence), such as high levels of depression, anxiety, feelings of vulnerability, loss of confidence and panic attacks⁴⁴³. Victims may well find it difficult to sleep and to concentrate. All of these emotional and psychological reactions can impact how a victim interacts with the police and the justice system and her ability to make decisions about her case. There is no 'typical' victim, and each person has different coping mechanisms. Some victims are very emotional (they may cry during interviews), while others appear ambivalent or detached. Victims can seem to be uncooperative, but others may be active and engaged in investigations and legal proceedings. No assumptions should be based on how the victim behaves. Her apparent ambivalence should not be interpreted to mean that the incident did not take place or the case is not serious. Nor should a victim's engagement in legal proceedings be taken to mean she is 'too eager' and is trying to gain something for herself⁴⁴⁴.

Keep in mind that a fair number of domestic violence victims will have had previous negative experiences dealing with the law enforcement and justice systems. For example, it is not an uncommon situation for a victim to have reported incidents previously, but the police did not take actions, or a protective order could have been issued, but the perpetrator was not prosecuted for violating the terms of the orders⁴⁴⁵.

Victims face a very high risk of repeated violence when they attempt to end the relationship, and this, as well as other important factors (such as financial or other dependencies on the perpetrator, pressure from family and the community, feelings of shame, stigmatisation and the like), are powerful motivators for women to remain in abusive relationships and not to report incidents of violence. In fact, victims tend to report violence when it is most severe,

⁴⁴² FRA, European Union Agency for Fundamental Rights. 2014. Violence against women: an EU-wide survey, Main Results. p. 64.

⁴⁴³ FRA, European Union Agency for Fundamental Rights. 2014. Violence against women: an EU-wide survey, Main Results. p. 57.

⁴⁴⁴ Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice, Council of Europe, page 48.

⁴⁴⁵ Ibid, page 49.

and they feel most in danger. Victims are also the most likely to cooperate with police when they feel themselves in safety⁴⁴⁶.

KEY CONCEPTS

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

Victims of VAW and DV are in a very vulnerable and unstable psychological state, which is a strong signal for the police officer to be more sensitive to them. In this situation, any wrong expression, inappropriate attitude to the situation can lead to the victim's confinement, deepening of internal psychological conflicts. The most controversial are the cases when the unprofessional behaviour of a police officer can lead to a secondary victimisation (see chapter 4).

DV victims can be women or men, children, the elderly and persons with disabilities. Women, children, and persons with disabilities can be in especially vulnerable positions. Therefore, a thorough and well-founded choice of methods used in work with the victim or witnesses, as well as their possible impact on the victim-witness mental state, is particularly important. Lack of thorough analysis of the situation, improperly chosen tactics can lead to victims avoiding reporting. Moreover, sometimes even backing down from their testimony, or especially victim's personal visits to a local police station, can be incredibly stressful situations. Therefore, the reporting officer should personally take an emphatic and supportive attitude in referring the victim to a competent police officer.

The competent police officer should consider the following when selecting the physical environment for interviewing the victim:

⁴⁴⁶ In 2019, the Armenian Human Rights Defender office received a complaint from the aunt of domestic violence 21 years old victim on police response. The victim who was beaten by husband, seek help in Central District of Police, and was sent to the psychiatry. After Human Rights Defender office immediate response and visit to the psychiatry the victim was released from psychiatric hospital and got appropriate aid.

1. whether the perpetrator accompanies him or not;
2. whether the person accompanying the victim is the perpetrator of the violence or not,
3. the victim's desire to be alone during the interview or, if available, with an escort;
4. whether the interview room is the safest environment in the victim's opinion or not;
5. to conduct interviews with the victim of a special interview and interrogation quiet room, without disturbing factors.

The RA Head of Police Order No. 18-L (31 March 2020) approves the guidelines for video recording of interrogations in police divisions, which include police officers involved in investigations, criminal investigations, juvenile cases, domestic violence prevention units, as well as community police officers. The scope of application includes the investigation of the victim, the witness or the suspect from the investigative actions carried out after the initiation of a criminal case.

By-Law No. HO-310-N of December 13, 2019, the Law on the Police was supplemented with Article 5.1, according to which the entrances and exits of the administrative buildings of the police subdivisions for the purpose of prevention and detection of possible cases of protection of human rights, torture, inhuman or degrading treatment. The areas (offices) used for interrogation in the administrative buildings of the police subdivisions are equipped with video recording systems. Video recorders should be installed in such a way that it is possible to record the time of the entry of persons entering the administrative buildings of police units, to videotape the interrogations conducted by police officers in accordance with the Criminal Procedure Code of the Republic of Armenia.

Videos and video recordings are provided:

1. the interrogated person, as well as his / her representative;
2. the body conducting the criminal proceedings;
3. The Human Rights Defender within the framework of the discussion initiated within his / her competencies;
4. Members of the group of public observers in the places where detainees are detained by the police system.

Video recordings (videos) containing preliminary investigation data are provided in accordance with the Criminal Procedure Code of the Republic of Armenia, only with the written permission of the body conducting the proceedings. The police are responsible for obtaining the written permission of the body conducting the proceedings.

Pursuant to Article 5.1 of the Law on Police, Order No. 17-L of the Head of Police of the Republic of Armenia of March 31, 2020, established the technical equipment for video recording and video recording systems installed in police departments to prevent and detect possible cases of human rights protection, torture, inhuman or degrading treatment. The character-

istics, the procedure for storing and using videotapes and videotapes, as well as the range of police officers who have access to videotaping online, videotapes and videotapes. From April 1, 2020, the interrogation of the victim, witness and suspect by the officers conducting police investigation functions will be carried out under video recording in the following sections:

- ▶ Yerevan City Department of the RA Police.
- ▶ Central Division of Yerevan City Department of the RA Police.
- ▶ Erebuni division of Yerevan City Department of the RA Police.
- ▶ Sehgavit division of Yerevan City Department of the RA Police.
- ▶ Arabkir division of Yerevan City Department of the RA Police.
- ▶ Kumayri division of Gyumri City Police of Shirak Regional Department.
- ▶ Mush Division of Gyumri City Police of Shirak Regional Department.
- ▶ Ashtarak Division of Aragatsotn Regional Department.
- ▶ Bazum Division of Lori Regional Department.
- ▶ Kotayk Division of the Kotayk Regional Department.

The video recording system of the interrogations has been operating since May 1, 2020.

When choosing the interview methodology, the competent police officer must:

1. Ask the victim about the expediency of conducting an interview with a person of the same sex;
2. Inform about the need to involve a psychologist;
3. Inform the victim about the possibility of providing translation services if he/she is a foreigner;
4. Show tenderness and compassion;
5. Use a victim-centred approach;
6. If the victim is a minor, show a child-centred approach⁴⁴⁷;

⁴⁴⁷ The term 'child-centred approach' requires some clarification as its connotations vary in the literature and across different policy contexts. In pedagogy and areas related to early child development, it is used to describe teaching and caring processes in which children's needs and interests are given the highest priority. It recognises a child as a unique individual who is treated with respect and consideration in regard to age, gender, culture, temperament, and so forth. (Morrison, 2009) This concept of the child-centred approach is also applied in child protection, particularly in reference to safeguarding practices. There it is understood as the system in which everyone recognises children and young people as individuals with rights – including the right to participate in the process of making decisions about them – in line with their age and stage of development (Munro, 2011). Thus, it draws more explicitly on the rights of the child as formulated by the Convention on the Rights of the Child, underlying children's agency and their roles in their families and communities, including rights as well as responsibilities. More specifically, the child-centred protection framework should "examine how social workers understand the child's journey from needing to receiving help; to explore how the rights, wishes, feelings and experiences of children and young people inform and shape the provision of services, and look at the effectiveness of the help provided to children, young people and their families". Bruckauf, Z. and Cook, S. (2017). Child-centred Approach to Sustainable Development Goals in High-income Countries: Conceptual Issues and Monitoring Approaches, Innocent Working Paper 2017-06, UNICEF Office of Research - Innocent, Florence.

7. Inform the victim about his/her rights and responsibilities;
8. Justify the need to ask narrow personal questions;
9. Exclude the occurrence of self-reproach by the victim;
10. Avoid evaluative attitude towards the victims what he/she said;
11. Refrain from using professional terminology;
12. Give the victim the necessary time and patiently listen to what he/she has to say;
13. Ask more detailed questions that require longer answers.
14. Try to get as much information as possible about the person, the details of the case;
15. Give the victim an opportunity to tell their story and describe the impact of violence on them;
16. Make accurate notes of what the victim has said as they listen;
17. Show a polite and positive attitude;
18. Involve interpreter if needed⁴⁴⁸
19. Interview a victim in the absence of the perpetrator⁴⁴⁹.

Box 18: Useful tips for the police officer

When choosing the methodology of the interview, the police officer may consider using the following to help put the woman at ease:

- ▶ **“I am here to help, not to judge or accuse.”**
- ▶ **“If I misunderstand something you say, please tell me. I want to know, and I want to get it right.”**
- ▶ **“If you do not understand something I say, please tell me, and I will try again.”**
- ▶ **“If you feel uncomfortable at any time, please tell me or show me the ‘stop sign’ (one hand held up, palm facing the other person).”**
- ▶ **“Even if you think I already know something, tell me.”**

⁴⁴⁸ The Procedure for concluding service contract with specific persons, such as translators, specialist, expert, during the stages of initiation of a criminal case (preparation of materials) by the RA Police and during the investigation, as well as during the administrative proceedings, has been approved by Individual Order of the Head of Police.

⁴⁴⁹ In the case of *Y. v. Croatia* (Application No. 41107/10, 2015), the ECtHR noted that the Istanbul Convention required States to adopt legislative measures to protect the rights of victims. It recalled that: Such measures involve, inter alia, protection from intimidation and repeat victimisation, enabling victims to be heard and to have their views, needs and concerns presented and duly considered, and enabling them, if permitted by applicable domestic law, to testify in the absence of the alleged perpetrator. In addition, the EU Directive establishing minimum standards on the rights, support, and protection of victims of crime provides, inter alia, that interviews with victims are to be conducted without unjustified delay and that medical examinations are to be kept to a minimum.

- ▶ **“If you are not sure about an answer, please do not guess; tell me you are not sure before you say it.”**
- ▶ **“Please remember when you are describing something to me that I was not there when it happened. The more you can tell me about what happened, the more I will understand what happened.”**
- ▶ **“Please remember that I will not get angry or upset with you.”**
- ▶ **“Only talk about things that are true and really happened⁴⁵⁰”**

The range of permissible questions is used for figuring out in particular:

1. certain incidents that led to the situation and events;
2. presence of children
3. the presence of weapons;
4. description of cases/events preceding physical and psychological violence, control of behaviour;
5. description of the relationship between the abuser and the victim;
6. the impact of violence on the victim, including physical injuries, psychological trauma, financial impact, coping strategies - their impact.

In case of fear of the victim or not presenting the events conditioned by it in full, the police officer should try to find out the reasons. In order to conduct an interview, the victim needs to be given enough time to answer and take pauses.

The competent police officer should be able to effectively assess the safety risks of the victim, conduct a unique strategy in each case in cooperation with other bodies. Perpetrators of domestic violence can be manipulative towards the police and the victim. Perpetrators use violence to exercise power and control over the victim, and thus violence will often increase in severity and intensity once a case enters the legal system in an effort to regain control. Sometimes, neighbours who serve as witnesses often report that perpetrators “seem nice” or calm. Legal professionals must rely on accepted criteria to assess risks, such as evidence of prior abusive behaviour, evidence about the severity of the violence, abuse of drugs or alcohol, and the like (see chapter 5).

PROMISING PRACTICE EXAMPLE

In the United Kingdom of Great Britain and Northern Ireland, some towns have created “bail hostels” where alleged perpetrators of domestic violence must live while awaiting trial. This allows them to keep working and to help support their families, rather than holding them in jail prior to trial. The hostels also allow the victim, and her children, to remain in the home and be protected from further violence. Measures have also been undertaken to allow police to accept

⁴⁵⁰ Handbook on Effective Police Response to Violence against Women, UNODC, 2010: https://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_Effective_police_responses_to_violence_against_women_English.pdf

third-party reports of domestic violence in cases where the victim is too afraid or unwilling to provide a statement. A “cocoon watch” initiative has also been proposed that would encourage neighbours to report to the police suspected cases of domestic violence⁴⁵¹.

INTERVIEWING CHILDREN

This course manual mainly focuses on domestic violence against women. Violence against children and child abuse require a separate specialisation training, which is not covered in this manual. However, some main principles of child witnesses of domestic violence are introduced here.

According to UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime⁴⁵², “Child victims and witnesses” denotes children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or the prosecution of the alleged offender or groups of offenders. “Child-sensitive” denotes an approach that balances the child’s right to protection and that takes into account the child’s individual needs and views⁴⁵³.

As stated in international instruments and in particular, the Convention on the Rights of the Child as reflected in the work of the Committee on the Rights of the Child, and in order to ensure justice for child victims and witnesses of crime, professionals and others responsible for the well-being of those children must respect the following cross-cutting principles:

- (a) Dignity. Every child is a unique and valuable human being, and as such, his or her individual dignity, special needs, interests, and privacy should be respected and protected;
- (b) Non-discrimination. Every child has the right to be treated fairly and equally, regardless of his or her or the parent’s or legal guardian’s race, ethnicity, colour, gender, language, religion, political or other opinions, national, ethnic, or social origin, property, disability and birth or other status;
- (c) Best interests of the child. While the rights of accused and convicted offenders should be safeguarded, every child has the right to have his or her best interests given primary consideration. This includes the right to protection and a chance for harmonious development:
 - i Protection. Every child has the right to life and survival and to be shielded from any form of hardship, abuse, or neglect, including physical, psychological, mental, and emotional abuse and neglect;
 - ii Harmonious development. Every child has the right to a chance for harmonious development and to a standard of living adequate for

⁴⁵¹ Handbook on Effective Police Response to Violence against Women, UNODC, 2010: https://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_Effective_police_responses_to_violence_against_women_English.pdf

⁴⁵² ECOSOC Resolution 2005/20: <https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>

⁴⁵³ Ibid, para 9.

physical, mental, spiritual, moral, and social growth. In the case of a child who has been traumatised, every step should be taken to enable the child to enjoy healthy development;

- (d) Right to participation. Every child has, subject to national procedural law, the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity.

Every child should be treated as an individual with his or her individual needs, wishes and feelings. In order to avoid further hardship to the child, interviews, examinations, and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful, and thorough manner⁴⁵⁴.

Special attention should be dedicated by the police when interviewing children. Good coordination is also needed with services in charge of the protection of children⁴⁵⁵. Children themselves might want to talk and being actively involved, and feel useful. They might also want to protect their mother, or other people in the house, or even an animal. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence recognises that all professionals (including the police) will have to take special care and caution when dealing with children who are living in abusive domestic families. This implies taking the best interest of the children into account first.

When interviewing children, the police should bear in mind the following⁴⁵⁶:

- ▶ Interview the children in a safe and quiet room.
- ▶ Speak to the child at eye level by either bending down or sitting down, one next to each other.
- ▶ Explain to the child why they are there, avoiding making judgmental statements about the father and what has happened, but not minimising or saying they just came for a visit.
- ▶ Be friendly yet underline what they are there for. Children might likely be relieved that the police have arrived to protect them and their mother, and in most cases, children know exactly what has been going on. Children might have witnessed many other incidents in the past.
- ▶ Ask questions in a non-leading way, trying to gather information about what happened and also if it happened in the past⁴⁵⁷.

⁴⁵⁴ UN Guidelines on Justice in Matters involving Child Victims of a Crime: <https://archive.crin.org/en/library/legal-database/un-guidelines-justice-matters-involving-child-victims-and-witnesses-crime.html>

⁴⁵⁵ Children's Experience of Domestic Violence: Developing an Integrated Response from Police and Child Protection Services, N. Stanley, P. Miller, H. Richardson-Foster, G. Thomson, 2011.

⁴⁵⁶ Article 207 of the RA Criminal Procedure Code stipulates provisions on Interrogation of a witness under-age. According to Article 207, a witness under-age, regardless of age, can be interrogated provided he can relate information significant for the case.

⁴⁵⁷ Enhancing the professional capacity of the Bulgarian Police to deal with cases of Domestic violence and Violence against women. A.C. Baldry, 2016, page 35.

CHILDREN'S RELATIONSHIP TO THE VICTIM AND PERPETRATOR

Children exposed to domestic violence are also affected by its context of intimacy. They have emotional ties to and dependency on one or both of the adults involved. Because of their relationship to the non-offending parent, children are often used by the perpetrator to control the adult victim (e.g., engaging children in the abuse of the victim, holding children hostage, threatening to take or harm the children). Often the violence occurs on a long-term basis before the police become involved. Children are often threatened or coerced into keeping the abuse in the house a secret. While children want the violence to stop, they often experience ambivalent and confusing feelings toward one or both parental figures. Children's attitudes and feelings are influenced by a number of factors, including:

- Their view of who is responsible for the violence (e.g., the child blames self or blames the victim);
- Their sense of security in relation to a number of outcomes (e.g., How will we get money to eat if they take my dad away? Who will play with me if they take me from my parents? Who will look after my pet if we go to the shelter?);
- The nature of their relationships with the offending and non-offending parental figures;
- The pressure to keep the abuse secret from friends, family, and other support persons.

Children may also express ambivalence toward police authorities; immense relief that they stopped the violence but anger that they took the offending parent away, or anger that they were taken away from their home after the police came. This feeling may be exacerbated if the child was a witness to the arrest. It is important to work with or talk with the child to mitigate the impact of the entire experience.

CONSIDERATIONS WHEN CHILDREN ARE PRESENT

- **Ask about children:** Ask the non-offending parent where the children are now, where they were when the violence occurred, and if they are okay.
- **Seek out the children:** Despite the protests from the parents, police officers have the authority to ensure their safety and well-being.
- **Reassure children:** Talking to them let them know that someone outside of the family knows and cares (e.g., "That must have been scary for you. Are you okay?"). If the child was a witness to an arrest, reassure the child that the offending parent is in a safe place.
- **Determine if children are harmed or hurt:** Ask to see the children. Many victims underestimate the extent to which the child has been a witness to the violence and the impact it may have on the child. It is important for police officers to find out if the children are physically hurt or in extreme distress. Often parents are unaware that children may be hiding in another part of the

house. They may be sleeping or pretending to be asleep. Children have likely learned that what they are witnessing is a secret that should not be discussed with others. Threats may have been made to ensure their silence on this occasion and/or in the past. Many children learn that keeping quiet and out of the way are good survival strategies.

- **Remember – children are affected by more than the criminal act:** The majority of domestic violence crimes occur within an ongoing pattern of psychological and physical abuse. The abuse often involves using children to control the adult victim. By the time police arrive, children have often been exposed to violence for a substantial length of time and maybe experiencing the accumulated impacts of ongoing violence⁴⁵⁸.

WHY SHOULD POLICE OFFICERS TALK WITH CHILDREN?

The saying goes “children should be seen and not heard,” but when police officers are investigating cases of spousal violence, the saying should be “children should be seen AND heard.” There are many reasons why police officers should take time to talk to the children who are present at the time of the incident:

- To build rapport with the child — make him/her feel safe and assure the child that both parents are safe as well, even when one has been arrested
- To help children feel part of the solution — they want to see mommy and daddy get help. Police need to be seen as allies in the situation, not as adversaries
- To determine the level of risk the child has been subjected to during the incident
- To develop a safety plan with the child
- To offer counselling and referral services to child-based supports
- To help police officers gain information to inform decision-making further (e.g., risk assessment, safety planning, arrests, charges).

TIPS FOR TALKING WITH CHILDREN⁴⁵⁹

- Address the child at eye level
- Build rapport with the child before trying to get them to talk to police officers about contentious issues. Assure the child that he/she is not in trouble because they are talking to the police
- Assure the child that police officers talk with lots of children about things like this. Assure the child that he/she is not alone
- Use simple, direct, age-appropriate language
- If the child does not understand the police officer’s role, explain it in terms that are easily understood

⁴⁵⁸ A Handbook for Police Responding to Domestic Violence: Promoting Safer Communities by Integrating Research & Practice, 2004.

⁴⁵⁹ Developed by the Child Witness to Violence Project, Boston Medical Centre, One Boston Medical Centre Place, Mat. 5, Boston, MA 02118-2393

- Discuss confidentiality and its limits
- Honour a child's loyalty to an abusive parent. Do not criticise or demean the abusive parent
- Acknowledge a child's right not to speak. Do not coerce a child to talk if he/she is not comfortable doing so
- Offer the child an opportunity to say anything else that has not been asked yet
- Do not make promises you cannot keep
- Communicate your concern about the safety of the child
- Reassure the child that the arrested parent is safe and okay

INTERVIEWING CHILDREN

Interviews can be stressful and intimidating situations for children. Children who witness a violent event or who are victims of abuse may be frightened, upset and anxious. When children feel reassured and comfortable, they are more likely to be more confident and competent in their ability to communicate. By developing skills for interviewing children of different ages, police officers can increase their comfort and enhance the evidence gathered⁴⁶⁰.

In some circumstances, consideration may be given to videotaping⁴⁶¹ the interview with the child. Videotaping of interviews may be helpful in determining the strength of the evidence to pursue criminal proceedings as well as convincing some perpetrators that they should seek treatment for the sake of their children. Children may be concerned about the videotaping process. It is important to assure the child that the major purpose of the videotape is to keep the child safe.

KEY FACTORS IN INTERVIEWING CHILDREN

- ▶ Before meeting with the child, if possible, obtain information about the child's family situation, abilities, activities, and special needs.
- ▶ Select a non-threatening location to interview the child (e.g., a quiet room). If possible, also wear soft clothes (e.g., business casual vs suit and tie or uniform).
- ▶ Consider using two interviewers together, keeping in mind a gender balance.
- ▶ Introduce yourself and describe your role in simple terms.
- ▶ Encourage the child to talk about non-contentious material. Use this as an opportunity to get the child warmed up to speak in a free narrative fashion. Note the child's language and cognitive abilities. Look for barriers to disclosing fears, threats, and the like.
- ▶ Explain the purpose of the interview.
- ▶ Sit at the child's physical level.

⁴⁶⁰ A Handbook for Police Responding to Domestic Violence: Promoting Safer Communities by Integrating Research & Practice, 2004.

⁴⁶¹ There is a specially equipped interviewing room for juveniles in Central Division of the Yerevan City Police.

- ▶ Use the child's name.
- ▶ Explain that you were not present and need help to understand what happened.
- ▶ Give the child permission to tell when he/she does not know the answer or does not understand a word or question.
- ▶ Make no assumptions about a child's knowledge base or abilities.
- ▶ Use simple words and short sentences.
- ▶ Ask one question at a time.
- ▶ Avoid double negatives.
- ▶ Ensure the child understands your question (e.g., "I need to make sure you understand my question. What am I asking you?"). Give child permission to say: "I do not understand that word(s)."
- ▶ Listen to what the child is saying, and do not assume that you understand the child's language. Continually clarify your understanding of the child's responses (e.g., "What did you mean when you said...? Would you explain...? Tell me more?").
- ▶ Avoid rushing the child. Wait for him/her to listen to your question, think about it, and respond to it.
- ▶ Ask open-ended questions (e.g., "Tell me about...; What happened when ...? How did that make you feel?").
- ▶ Avoid using "why" questions. "Why" questions may imply blame.
- ▶ Observe a child's non-verbal communication.
- ▶ Limit the use of questions that require a yes/no answer.
- ▶ Ask how the child is feeling at the end of the interview and be prepared to deal with what you find out.

INTERVIEWING WITNESSES OF DOMESTIC VIOLENCE

In most cases of domestic violence persons subjected to the violence are not only victims but also witnesses. The purpose of interviewing witnesses is to ascertain the witness's account of the alleged event(s) and any other information that would assist the investigation.

Witnesses come from a wide range of backgrounds and each presents different challenges. They all have different needs and concerns, and levels of involvement in the investigation (e.g., you may have a witness who is a victim of the crime or a witness with no links to the victim whatsoever but who saw what has occurred). There can never be a "one size fits all" approach to the interaction with witnesses and individual circumstances should always be taken into consideration.

Principles of interviewing witnesses⁴⁶²

- Interviewing is at the heart of investigation.
- The aim of an interview is to discover the truth.
- Information must be complete, accurate and reliable.
- Keep an open mind.
- Act fairly.
- Questioning can be persistent.
- Some witnesses require special consideration.
- Suspects must be interviewed in accordance with the law.
- Special care must be taken to identify suspects requiring special consideration.
- Be sensitive to cultural background and religious beliefs.

According to Article 86 of the Criminal Procedure Code, witness is a person, summoned for giving evidences by the body, conducting the criminal trial, as a party, to which any circumstances might be known, subject to revealing upon the given case⁴⁶³. The witness can be interrogated about any aspect significant for the case, including, about the personality of the suspect, the accused, the injured person, and other witnesses. The witness is interrogated at the place the preliminary investigation is conducted, and when necessary, at the place where the latter finds himself/herself. The witness is interrogated apart from other witnesses.

The investigator takes measures to prevent communication between witnesses summoned for the same case before the end of interrogation. Prior to the interrogation the investigator ascertains her/himself in the identity of the witness, informs the latter for which case s/he has been summoned and warns about the duty to relate everything known about the case, as well as gives instructions against refusal or avoidance to testify, about the established criminal responsibility for perjury. The witness is advised that s/he is not bound to give incriminating testimony against her/himself, her/his spouse or close relatives. After that, the investigator clarifies the relations between the witness and the suspect, the accused, the injured person and starts the interrogation. The interrogation begins with a proposal to the witness to relate everything known to the witness about the case, after that questions can be asked⁴⁶⁴.

If a witness has been interrogated in the presence of an attorney invited by the witness to provide legal assistance, the attorney has the right to be present during the interrogation but is not authorised to ask questions or comment on the witness⁴⁶⁵. The Criminal Procedure Code also provides separate articles for interrogation of a witness under-age (Article 207) and interrogation of deaf, mute, blind or other severely ill person as a witness (Article 208).

⁴⁶² Investigative interviewing witness guide: <https://fyi.org.nz/request/244/response/2484/attach/6/Investigative%20interviewing%20witness%20guide.pdf>

⁴⁶³ Article 86, the RA Criminal Procedure Code.

⁴⁶⁴ Article 206, the RA Criminal Procedure Code.

⁴⁶⁵ Ibid.

INTERVIEWING PERPETRATORS OF DOMESTIC VIOLENCE

Perpetrators come from all socio-economic backgrounds. They include judges, doctors, engineers, lawyers, teachers, members of the clergy, law enforcement officers. They include rich, poor, middle class, educated, and uneducated. In some cases, the responding officers may be required to resort to calming techniques because the perpetrator may be angry that some strangers have intruded into a family matter. However, in some cases, the perpetrator may be agreeable or conciliatory to the officers. They may deny that abuse occurred or minimised the degree of abuse. They may also blame their partner and that they had no other option but to take violent action. The officers must be alert to any manipulative language or behaviour of the perpetrator when they question the perpetrator.

The officers should:

- Not make any accusatory statements while questioning the perpetrator. They should allow the perpetrator to tell his version of the incident before confronting the perpetrator with contradictory information.
- Not collude or support the suspect's statements as to the reasons for the abuse.
- Document all spontaneous statements by the batterer, even if the statements appear on their face to be self-serving.

Activity 15: Conversation with the perpetrator⁴⁶⁶

Aim: The aim of this exercise is to raise awareness among participants that the perpetrator does not act “out of the blue” but deliberately. The objective is to challenge the perpetrator’s excuse strategies.

Duration: 40 min

Method: Roleplay (20 min), whole group discussion (20 min).

Resources: Hand-out: Conversation confronting the perpetrator

Notes for the Trainers:

The trainer distributes Hand-out: Conversation with the perpetrator to the participants. Participants form groups of 3. In groups of 3, one takes the role of the man who attempts to find excuses for his behaviour. The second plays the police officer, with a third participant acting as an observer. Finally, the observer reports on their findings and the whole group discuss what has been learnt.

⁴⁶⁶ Adapted from WAVE Manual on Training and Sensitising Professionals, Vienna 2000, Source: Egger / Lercher / Logar / Spannring / Informationsstelle gegen Gewalt, Gegen Gewalt an Frauen – Wege zur Veränderung. Trainingsmappe zur Durchführung von Schulungen für verschiedene Berufsgruppen, Exercise 06, on behalf of MA 57, Vienna 1994.

Instructions group discussion:

The trainer begins a discussion pointing out that the perpetrator consciously decides on the violence. It is important for the participants to realise that explicit rejection of the violence will enable them to work effectively with perpetrators. It is useful to remind the participants of their objectives when interviewing the perpetrator: to halt the violence and to get the perpetrator to assume responsibility for his actions.

Useful tips for conversation with a man who committed acts of violence against his partner⁴⁶⁷:

- Never use terminology which plays down the seriousness of the violence (such as “argument” or “conflict”) but on the contrary, stress the gravity of what has happened;
- Counter all attempts at self-justification: the perpetrator will try to divert attention away from actions and point to alleged problems (e.g., jealousy, victim’s untidiness);
- Point out to the perpetrator the legal consequences of actions and explain the damage which violence inflicts on the psychological and physical health of victim and children;
- Reconstruct the violence: work with the perpetrator on reconstructing the history of violence, paying particular attention to the type and extent of the violence (If the perpetrator talks about violence at all, it will be described in the vaguest terms: “Then it happened ...” or “We had an argument ...”.)
- Pose the questions about the violence straight out “How many times did you hit your wife/partner/child, and how did you hit her?” “What did you feel?” “How did your wife/partner/child react?” “Did you injure her?”

Perpetrators frequently use different strategies to excuse their behaviour and conceal the truth, such as: finding reasons to justify their behaviour, denial of the problem, denial of the gravity of the abuse, denial of the responsibility for the problem, denial of the possibility that the violence might repeat itself.

Hand-out: Conversation with the perpetrator⁴⁶⁸

Police officer: Can you tell me when you last hit your wife?

Perpetrator: I cannot remember exactly. We were discussing something or other, and I lost control of myself.

⁴⁶⁷ Source: Federal Chancellery and Federal Ministry of Women’s Affairs, *Gegen Gewalt an Frauen handeln*, [information folder], Chapter 16, Vienna 1994.

⁴⁶⁸ Adapted from WAVE Manual on Training and Sensitising Professionals, Vienna 2000, p.113, Source: *Emerge Counselling Manual*, Boston, Massachusetts, USA, quoted in: Egger / Lercher / Logar / Spannring / Informationsstelle gegen Gewalt, *Gegen Gewalt an Frauen – Wege zur Veränderung*. Trainingsmappe zur Durchführung von Schulungen für verschiedene Berufsgruppen, Handout 05, on behalf of MA 57, Vienna 1994

Police officer: How often did you hit her?

Perpetrator: I do not remember. I had a black-out. I lost control.

Police officer: Why didn't you stab her?

Perpetrator: (looks shocked): I would never stab her – she is my wife.

Police officer: I thought you said you lost control. If you lost control, then anything could have happened, couldn't it?

Perpetrator: Okay, I lost control briefly, but I did not lose it completely.

Police officer: Let's try and establish how much of your control you were prepared to lose. Show me how you hit your wife. (Stands up). I am your wife.

Perpetrator: (hesitantly): I do not know. I just hit her. I do not recall the details.

Police officer: Show me how you hit her. Did you hit her with your fist or with the flat of your hand?

Perpetrator: (horrified): I slapped her. I would never assault her like she was a man.

Police officer: Okay. So, you decided to slap her instead of beating her up. Did you throw anything at her?

Perpetrator: No.

Police officer: Okay, so you slapped her and did not throw anything at her. Where did you hit her?

Perpetrator: I do not know. I do not think about where to hit her.

Police officer: Okay, let's go back over it. First, you hit her instead of stabbing her and throwing something at her. At that point, you still had yourself under control. Then you slapped her instead of beating her up. You did not want to treat her as if she was a man. Then you decided where to hit her. It sounds like you had more control over yourself than you thought.

7. INTER-AGENCY COLLABORATION AND COORDINATION

Goal:

Police officers know how to coordinate with other relevant authorities, institutions, and NGOs, they have knowledge on the implementation of multi-agency support for the empowerment and protection of the victim concerned. They enhance networking among service providers, and understand the needs of developing policies and protocols that enhance victim safety.

Key learning points:

- Understand how to coordinate with authorities and institutions
- Identify how to build a system of partnerships national level, including NGOs
- Understand inter-agency cooperation, including responsibility and accountability of the cooperation
- Understand how to create a supportive environment in multi-agency teams
- Evaluate jointly if the resulting measures are effective in stopping the violence

7.1 COOPERATION TO ENSURE EFFICIENCY FOR COMBATTING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

Inter-agency response refers to an intervention strategy involving the cooperation, communication, and collaboration of all disciplines involved in domestic violence to ensure a unified, consistent, and holistic approach. The disciplines involved include health professionals, police, judicial and legal services, prosecutors, social workers, shelters, NGOs and other relevant community groups.

KEY MESSAGES

- It is of utmost importance that institutions and agencies offering protection and support respect the right of victims to self-determination and do not exercise control or power over them.
- Exceptions to these principles should only be made in cases of immediate danger to the life, health, or freedom of a person; in such cases, the Police or other agencies need to act without the consent of the victim.

- Empowering support focuses on the resources and the strength of the victims, not on their weaknesses.
- Victims should never be judged or blamed for a particular behaviour.
- Empowering support implies that victims are:
 - o being understood and believed;
 - o being informed about their rights so that they can make informed decisions;
 - o being respected in their decisions and validated in their experiences;
 - o being actively supported in identifying and realising their rights and needs.

Holistic and coordinated support, the Council of Europe Convention on preventing and combating violence against women and domestic violence requires parties to “offer a holistic response to violence against women” (Article 7, paragraph 1). Holistic support means that all vital needs of the victim are met. This is necessary in order to be able to live a life free from violence. Such support includes social and economic rights, the right to permanent and affordable housing, the right to free health care, to education, access to justice, access to the labour market, the right to a residence permits independent of the spouse or partner, as well as political, cultural and other rights.

One of the multi-agency coordination examples is called a coordinated community response (CCR). It is one of the first models of such a response developed in the 1980s in Duluth, Minnesota, and it is called the Duluth Domestic Abuse Intervention Project (DAIP). Such Community Intervention Projects (CIPs) focus on reforming, improving, and coordinating institutional responses to domestic violence within a community.

DAIP has identified eight key components of CIPs:

- (1) creating a philosophical approach that centralises victim safety;
- (2) developing policies and protocols that enhance victim safety;
- (3) enhancing networking among service providers;
- (4) building monitoring and tracking systems that strengthen system accountability;
- (5) advocating for women victims of violence within the criminal justice system and the broader community to ensure a supportive infrastructure;
- (6) providing sanctions and rehabilitation opportunities for perpetrators;
- (7) undoing the harm violence against women does to children; and
- (8) evaluating the CCR for victim safety and perpetrators' accountability⁴⁶⁹.

⁴⁶⁹ Shepard, Melanie F., Pence, Ellen L. (Eds.) (1999). *Coordinating Community Response to Domestic Violence – Lessons from Duluth and Beyond*. London/New Delhi.: Thousand Oaks.

Article 10 of the Council of Europe Convention on preventing and combating violence against women and domestic violence⁴⁷⁰ requires states to establish one or more official bodies responsible for the coordination, implementation, monitoring and evaluation of policies to combat the forms of violence covered by the Convention. At the same time, Article 10 is to be read in conjunction with Article 9 (the requirement to establish effective cooperation with civil society organisations) and Article 11 (the requirement to collect disaggregated statistical data and to support research). Effective national coordination functions not only between the relevant ministries, bodies, civil society organisations and other stakeholders at the national level.

Depending on existing national governance structures, interagency cooperation is also necessary between local service providers and at the intermediate (provincial, regional or entity) level. Significantly, cooperation and coordination must also occur between the levels. That is to say, both horizontal and vertical collaboration is necessary. Effective sub-national involvement requires: 1) a clear mandate for coordination at the sub-national level; and 2) the creation of joint-steering committees inter-linking the national and sub-national levels.

Establishing an effective inter-agency coordination mechanism requires time, technical expertise, the early involvement of all key actors and political will. A dedicated body requires staffing and an adequate budget.

Effective inter-agency cooperation requires close cooperation and communication across sectors, necessitating the use of protocols, agreements, and memoranda of understanding. Shared protocols result in transparent standards of procedures and communication. Information sharing across agencies also can reduce the number of times a victim is required to tell her story, limiting the potential for re-traumatisation. Shared data systems support case management, ensuring the appropriate response in individual cases, and serve as a source of information for monitoring results and evaluating programmes.

The Council of Europe Convention on preventing and combating violence against women and domestic violence includes an obligation to ensure **civil society participation** in efforts to combat violence against women. In addition to, and based upon, their work providing direct services to victims, NGOs can offer important data and expertise to governmental actors on these issues. Their participation in coordination mechanisms offers policy-makers critical insight into the needs of victims. Conversely, it provides NGO actors with important access to public policy-makers as representatives of the needs and rights of this vulnerable constituency⁴⁷¹. Accordingly, they should be involved in both national coordination mechanisms as well as in the development, implementation, and evaluation of policies⁴⁷². NGOs commonly complain of pseudo participation as they are unable to see their efforts reflected in state policy, which can be due to the lack of transparency. In this regard,

⁴⁷⁰ CETS 210 – Violence against women and domestic violence, 11.V.2011, Article 10.

⁴⁷¹ The Explanatory Report emphasizes that in many States “the overwhelming majority of services for victims of domestic violence, and also services for victims of other various forms of violence against women, are run by non-governmental or civil society organisations. They have a long tradition of providing shelter, legal advice, medical and psychological counselling as well as running hotlines and other essential services.” Explanatory Report, para 68.

⁴⁷² Council of Europe, Implementing Article 10 of the Council of Europe Convention on preventing and combating violence against women and domestic violence—establishing national co-ordinating bodies, p. 8. The Explanatory Report notes that “Article 9 refers only to NGOs and civil society active in combating violence against women, this should not prevent Parties from going further and supporting the work that is carried out by NGOs and civil society focusing on domestic violence in its wider scope.” Explanatory Report, para 69.

the Council of Europe has issued a code on good practices for NGO participation in the decision-making process, which identifies four levels of participation: information sharing, consultation, dialogues, and partnerships. It highlights the principles of trust, accountability, and transparency⁴⁷³.

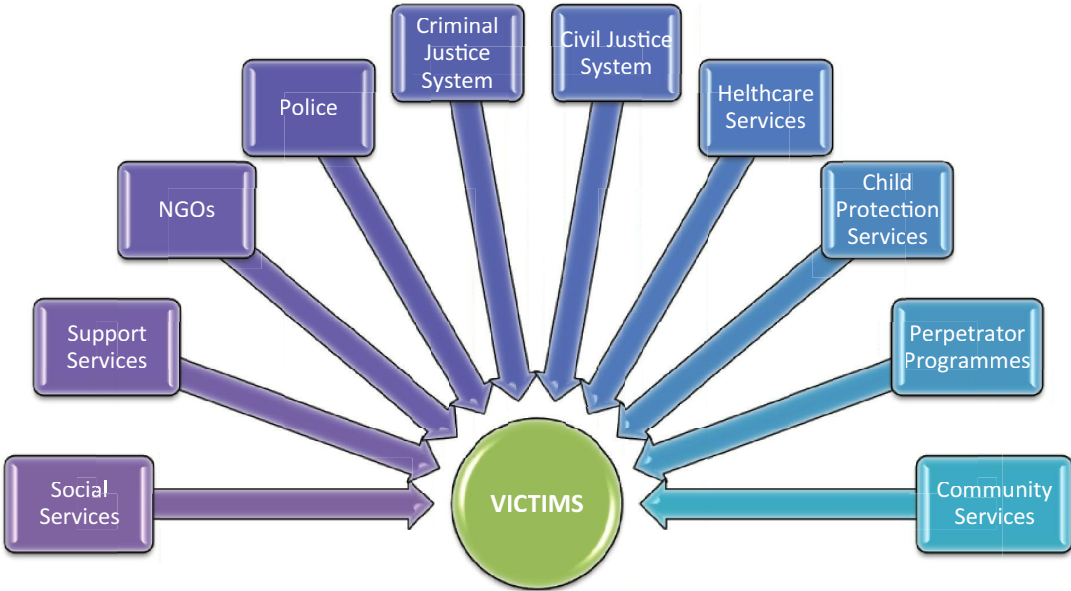
Coordinated work of institutions, as well as the cooperation of institutions and specialised women’s organisations, are the basis of the multi-sectoral approach to victim`s protection. That is one of the key requirements of the Council of Europe convention.

The state is obliged to provide three “cornerstones” for effective prevention of violence and support to victims:

- Specialised counselling and support services for all victims and their children provided by specialised women’s organisations
- General support services provided by state institutions, such as social work centres. The purpose of these services is to provide long-term assistance and recovery to the victim.
- Effective inter-agency cooperation in order to protect victims and prevent further violence (recurrence of violence) or to prevent re-victimisation

Source: Brankovic, B., Mirceva, S. 2016.

Table 3: Services and actors involved in the support and protection of victims



⁴⁷³ Council of Europe, Code of Good Practice for Civil Participation in the Decision-Making Process: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802eede1>

Agencies involved in preventing violence and protecting victims fulfil important tasks; it is, therefore, necessary that each agency establishes clear guidelines on how it relates to violence against women and domestic violence and on how to train and provide professional staff. Bi-lateral cooperation with other agencies and cooperation in multi-agency teams need to be part of the internal guidelines; only clear commitments can lead to effective cooperation⁴⁷⁴.

7.2 ACTIVITIES, FUNCTIONS, AND STRUCTURES OF MULTI-AGENCY WORK

Key principles on which victim support should be based are the following⁴⁷⁵:

- **Building the victim's trust in the institutional system:** it should not be “take for granted” that victims have confidence in institutions, rather be aware that the victim's trust can easily be lost;
- **Ensuring that the system truly responds to her needs:** the victim is heard, she is understood, informed, the support provided is based on empowering the victim;
- **Leaving “the door open”:** it is important to let the victim know that she is free to contact the professionals and that her choices will be respected, even if she missed the appointment or did not answer the calls from the professionals;
- **Dealing with power cautiously:** victim might be afraid of some institutions because of their power, and she might not share all her concerns, e.g., fear that social services have the power to remove the children from the family. It is very important to deal very carefully with the institutional powers and reflect on it regularly;
- **The gender-specific approach in multi-agency work:** all forms of victim support should be based on the following principles: understanding of violence against women and domestic violence from a gender perspective and focused on human rights and safety of the victim; based on an integrated approach, which takes into account the relationship between the victim, the perpetrator, the children and their wider social environment; aimed at avoiding secondary victimisation; aimed at strengthening and economic independence of women victim of violence; enabling, where appropriate, at the same premises providing of various services intended to protect and support the victim; appropriate to the specific needs of vulnerable persons, including child victims, and accessible to them.

⁴⁷⁴ WAVE (2012). Capacity Building in Risk Assessment and Safety Management to Protect High Risk Victims. A Learning Resource. EU DAPHNE project PROTECT II. Vienna: WAVE, Module 2.1.

⁴⁷⁵ Adapted from Logar, R., and Marganova-Vargova, B. (2015). Effective Multi-agency Co-operation for Preventing and Combating Violence: Training of Trainers Manual. Strasbourg: Council of Europe. p.59-60

- **The importance of unburdening the victim and providing care:** victims are suffering many consequences from the violence, they are afraid and in a situation of uncertainty, and sometimes ashamed. They have many concerns for their children. They need care and support.

Multi-agency work is most effective if it is based on clear goals and regulations and carried out at the state level as well as at the individual level.

Three areas of multi-agency work can be identified:

- (1) **Implementation of laws and procedures:** the work of multi-agency teams is usually based on national or regional laws and procedures. Clear guidelines for the implementation of laws and procedures are necessary in order for these teams to work effectively. Elements in laws and procedures that obstruct a victim-centred and human rights-based approach should be identified, reviewed, and improved.
- (2) **Provision of coordinated help for individual victims (individual advocacy):** case conferences, to discuss individual cases in multi-professional teams, should be limited to special cases such as the protection of victims in high-risk situations. It is not necessary to hold a case conference in all cases.
- (3) **Coordination and improvement of measures (institutional advocacy):** an important goal of multi-agency work is to coordinate better and to improve measures to prevent violence and protect victims - for instance, by promoting the establishment of specialist support services. Multi-agency work in this area should be carried out systematically, for instance, by regularly contributing to the evaluation and implementation of a regional action plan. Such a plan should be based on an evaluation of the status quo and should include concrete goals and targets. An essential function of institutional advocacy work is also to provide information and experiences of multi-agency work to the regional and the national level.

Multi-agency coordination needs to be managed well in order to contribute to effective interventions that will empower the victim and increase her safety. This can be ensured by the following:

- ▶ shared visions and goals with safety for victims as a priority;
- ▶ a commitment of all parties involved, clear procedures, and rules for cooperation;
- ▶ a coordinating structure to plan and convene the meetings (on individual cases or of the body responsible inter-agency coordination at a state level), to take notes and distribute them, and to make sure working procedures and goals are observed;
- ▶ effective chairing of work meetings and case conferences;
- ▶ chairing of meetings for institutional advocacy and individual advocacy are necessary.

KEY MESSAGE

Cooperation and prevention work between agencies need to happen on a day-to-day basis, especially in domestic violence cases of acute danger. Multi-agency case conferences⁴⁷⁶ are additional tools for more intensive support that victims need in particular situations, for instance, during times of high risk.

PROMISING PRACTICES ON MULTI-AGENCY CASE CONFERENCES

The United Kingdom's Multi-Agency Risk Assessment Conference (MARAC)

The MARAC model has helped the police in the UK to develop a comprehensive response to domestic violence. A MARAC is a monthly meeting of local agencies, including local Police, health and housing practitioners, shelter workers and other governmental and non-governmental specialists, including Independent Domestic Violence Advisors (IDVAs), which provide services to domestic violence victims identified as being most at risk. Having first been organised in 2003 in Cardiff, there are now over 200 MARACs across the UK.

MARACs are based on the working assumption that no single agency or individual can see the complete picture of the life of a victim, but all may have insights that are crucial to ensuring her safety. MARAC is not an agency – the responsibility to take appropriate action remains with individual agencies and is not transferred to the MARAC. The Conference operates at the local level, with meetings chaired by the Police. Each meeting deals with 20-30 high-risk cases at a time. Cases are referred for a one-off discussion to a MARAC. IDVAs are trained specialists responsible for managing all MARAC cases. They are responsible for representing the views of the victim at the meeting and liaising between the woman or girl and partner agencies to ensure that the proposed course of action is safe and appropriate. IDVAs secure important single-entry points to the process for victims, thus preventing secondary victimisation caused by having to retell their story multiple times.

The aims of MARACs are to share information, increase the safety, health and well-being of victims, and determine whether the perpetrator poses a significant risk to any individual or to the general community. MARACs provide a platform for working together to develop and implement a risk management plan that provides professional support to all those at risk and that reduces the risk of harm and repeat victimisation. Improving agency accountability and support for staff involved in high-risk domestic abuse cases is another purpose of a MARAC.

More research is needed to determine the contexts in which the MARAC is the most effective coordination mechanism, but other countries such as Austria have re-adapted the model. Practice so far confirms the strengths of the MARAC model but also shows a series of weaknesses. For example, it shows

⁴⁷⁶ For example, the Multi-Agency Risk Assessment Conference (MARAC) is used in the UK - it is an example of a multi-agency case conference. It is a regular meeting where agencies discuss high risk domestic abuse cases, and together develop a safety plan for the victim and his or her children. Agencies taking part can include Police, Independent Domestic Violence Advisors (IDVAs), Children's Social Services, Health Visitors and doctors, amongst others.

that consistent participation of members is critical for the MARAC to function effectively, that establishing focal points or designated representatives within each agency is good practice, and that, even if these conditions are fulfilled, domestic violence training is still needed for those who participate. Assessment has also pointed out that the victim-centred approach requires the participation of women's rights advocates in the process and consistent monitoring of practice. Lack of informed consent of victims whose cases are taken before MARACs is one of the main criticisms put forward, as well as the focus placed on extremely severe criminal cases and a lack of appropriate attention to other cases deemed less serious.⁴⁷⁷

Local coordination for sexual violence interventions in Northern Ireland (SARC)

Northern Ireland's first Sexual Assault Referral Centre (SARC) was established in 2013 to provide victims with a safe, secure and confidential environment with one point of entry. The service is jointly funded by the Department of Health, Social Services and Public Safety (DHSSPS) and the Police Service for Northern Ireland (PSNI). The centre, called "the Rowan", is located at Antrim Area Hospital, and its objective is to give comprehensive support to victims of rape and sexual violence under one roof. It delivers a 24/7 service, 365 days/year, by police referral or by self-referral.

The Rowan offers a range of services to victims, including comprehensive needs assessment, emotional and psychological support, forensic medical examinations, emergency contraception, screening and treatment for sexually transmitted infections, support for reporting to the police, referral for counselling and/or other support services, follow-up support and a 24-hour advice and information helpline. Special attention is given to the needs of child victims, disabled people, and migrant victims.

The Rowan was built on the SARC model that is relatively widely used in England and Wales. In 2012, there were 12 SARCs operating in England and Wales. SARC services are delivered by a range of public and civil society providers at premises owned by the Police or the national health authorities. The leadership of SARCs is provided by local steering groups, which feed into a national steering group. SARCs can be accessed through self-referral or through referral by Police or health or social services. SARCs ensure that treatment of sexual assault victims is coordinated and efficient, without unnecessary waiting times or repeat statements and examinations through a crisis worker in charge of the case. Crisis workers act as advocates of victims, thus ensuring proper coordination between different intervening actors. An Independent Sexual Violence Advisor takes over after the victim leaves the SARC and coordinates follow-up care and support. Although with SARCs, service providers do not meet to discuss each case, Harm Reduction Forums organ-

⁴⁷⁷ <http://www.standingtogether.org.uk/> UN Women Security Sector Module (2011). Case Study: The Multi-agency Risk Assessment Conference between London police, local authorities and service providers (United Kingdom). Available at: http://www.endvawnow.org/uploads/browser/files/security_marac_case_study.pdf

ised at regular intervals involving all concerned service providers afford the opportunity to discuss issues surrounding service provision and to develop strategies⁴⁷⁸.

Community Coordination in Albania

Albania's National Strategy on Gender Equality and for the Reduction of Gender-based Violence and Domestic Violence 2011–2015 includes as its objective, nation-wide effective, comprehensive and coordinated policies and measures to prevent and combat all forms of violence against women. Cooperation between State and non-state actors is provided for, and, for this purpose, inter-institutional coordinating mechanisms are established both at the local and the national levels. At the local level, community coordinated responses (CCR) are implemented in 24 municipalities, with a plan to extend this to 250 municipalities before 2020.

CCRs have been piloted since 2007, and are composed of representatives from municipalities, the Police, the courts, including prosecutors and bailiffs, health offices, employment offices, educational offices and non-governmental organisations specialised in gender-based violence. Victims must contact one of these representatives in order to initiate the process. The representative who has been contacted will initiate the process by informing at least the representatives of the health services, the Police and the municipality.

The services provided span both short-term and long-term solutions, including healthcare support, shelter, protection, including procedures for emergency protection orders. Long-term interventions include psychotherapy, assistance with children and with divorce procedures and reintegration. Albania's costing study for the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence notes weaknesses in the vitality of these CCRs as well as their limited coverage, extending to only 24 municipalities⁴⁷⁹.

Coordination of the responses among authorities (e.g., social workers, community police officers, and the like) who come into contact with domestic violence issues can significantly increase victim protection and batterer accountability. The primary goal of coordination should always be to increase victim's safety. Coordinating responses without focusing on victim safety can be harmful to victims.

Coordination based on increased victim's safety can be beneficial in four different ways.

- First, the effectiveness of many responses depends on the effectiveness of others.
- Second, different actors may encounter victims at different points and in different settings. Each has opportunities others may not have to help victims locate the resources they may need.

⁴⁷⁸ <http://www.nidirect.gov.uk/the-rowan-sexual-assault-referral-centre-sarc>

⁴⁷⁹ Implementing a Comprehensive and Coordinated approach, A. Krizsan and E. Pap, Council of Europe, April 2016.

- Third, reaching out to different members of the community to ask for their participation in a coordinated community response can increase the effectiveness of the response. The legal system is a critical part of any response. However, other community institutions (religious, economic, medical, media, education) may have a more powerful impact on “creating social norms” than the legal system⁴⁸⁰.
- Fourth, a comprehensive community response can address related social problems that work to prevent women from gaining protection. Emergency shelter and criminal prosecutions are not the only needs that battered women may have. Coordinated response programmes increasingly focus on related social problems that make it difficult for women to seek protection from abuse, such as poverty and unemployment or the lack of affordable housing.

7.3 MULTI-AGENCY COORDINATION IN ARMENIA

According to Article 13 of the Domestic Violence Law, the following entities shall prevent violence within the family and protect victims of violence within the family as part of their competencies:

- 1) National Competent Executive Authority for social issues (hereinafter referred to as “the Competent Authority”)⁴⁸¹;
- 2) Police;
- 3) National Competent Executive Authority for education⁴⁸²;
- 4) National Competent Executive Authority for healthcare⁴⁸³;
- 5) Guardianship and trusteeship bodies;
- 6) Special institutions providing support to victims of violence within the family:
 - a. support centres,
 - b. shelters.

State and local authorities within the scope of their competencies shall support the prevention of domestic violence and collaborate in this area with the Competent Authority. In this area, the aforementioned authorities also participate in creating public awareness and providing social and material assistance to victims of violence within the family.

⁴⁸⁰ Ellen L. Pence, Some Thoughts on Philosophy, in *Coordinating Community Responses to Domestic Violence: Lessons from the Duluth Model* 25, 33 (Melanie F. Shepard & Ellen L. Pence eds., 1999).

⁴⁸¹ The RA Ministry of Labour and Social Affairs. ⁴⁸² The RA Ministry of Education, Science, Culture and Sport.

⁴⁸³ The RA Ministry of Health.

The Council for Prevention of Domestic Violence (setting up by the RA Government Decision N-786-N, from 10.07.2018) consist of no more than 25 members from different State bodies, NGOs, support centres and shelters, discusses and makes proposals on policies on preventing and combating domestic violence. It also discusses issues, including urgent issues related to the prevention of domestic violence, and presents proposals on addressing them. The Council proposes activities to raise public awareness of domestic violence. It discusses the results of surveys conducted by local and international organisations and, based on them, present recommendations. The Council makes recommendations on programmes aimed at supporting victims and holding perpetrators accountable. The Council also studies and discusses the reports published by national executive authorities on programs aimed at preventing and combating domestic violence. It makes proposals to the Ministry of Labour and Social Issues on managing the account for temporary support to victims of domestic violence and providing temporary financial assistance.

At the individual case level, the police cooperate with the other state bodies as well, for instance, when receiving information about domestic violence cases from the Ministry of Healthcare; support centre applying to Police for checking with a relevant unit of the Police the presence of grounds for issuing a warning or an emergency barring order; cooperating with shelters on making a decision to accommodate the person at the shelter if there is a threat to life or health; collaborating with prosecutors, investigators, and the like.

According to the information from the Ministry of Labour and Social Affairs, since 2020, there have been two new state-funded shelters in the Republic of Armenia, where women who have been subjected to domestic violence and, if necessary, children under their care are provided with all the services prescribed by law.

COORDINATING ADMINISTRATIVE DATA

The Police provide data on domestic violence cases to the Ministry of Labour and Social Affairs in connection of which they have applied protection measures, or which have been checked in accordance with Articles 180, 181-183 of the Criminal Procedure Code of the Republic of Armenia, or with which a criminal case has been initiated⁴⁸⁴.

Paragraph 1(2) of Article 14 of the Domestic Violence Law provides that the RA Ministry of Labour and Social Issues, acting as the competent authority, shall carry out centralised record-keeping on domestic violence cases under the procedure defined by a Government decree and shall annually publish those statistics on its official website.

However, ever since the Law was adopted in 2017, unified statistics have not been compiled because the respective Government decree has not been adopted. On October 10, 2019, RA Government Decree 1381-N approving the Procedure of Centralised Record-Keeping on Domestic Violence Cases was adopted. Under the said Decree, the RA Ministry of Labour and Social Issues, acting as the competent authority, shall receive and aggregate information on domestic violence cases, and once every six months, shall publish a statistical report

⁴⁸⁴ The decision of the RA Government N-1381-N, from 10.10.2019.

on the relevant period on its official website (the information shall be published at least once every six months). According to data from the Ministry, the first set of comprehensive statistics will for published at the end of 2021.

Besides, domestic violence is known as a latent type of violence, i.e. the information and statistics do not entirely reflect the real picture. The accuracy of statistics is affected by other factors, as well, such as the public perception that these cases are a private-life matter and speaking up about them would be embarrassing or could be life-threatening. Therefore, many members of society avoid reporting the cases of violence that they know about. Nevertheless, the current statistics confirm the existence of the problem. Data provided by competent authorities show that domestic violence disproportionately affects women⁴⁸⁵.

According to Article 15 (1) (7) of the Domestic Violence Law, in the area of preventing violence within the family and protecting victims of violence within the family, the Police shall submit statistics it maintains on cases of domestic violence to the Competent Authority⁴⁸⁶. The Police Head Order No. 22-L, on September 24, 2019, approves the Police subdivisions reporting form on the domestic violence cases. According to Order 22-L, Yerevan City Department and Regional Departments, the reports shall be compiled every 3-months. The specialised Department ensures the summarising, analysis of statistics on cases of domestic violence, the maintenance of statistics the provision of practical-methodological assistance to the territorial subdivisions with their results, if necessary.

7.4 THE ROLE OF SPECIALISED WOMEN'S NGOS IN MULTI-SECTORAL WORK

Women's NGOs across Europe have well established specialised support services for women and children who suffer domestic violence. The women's NGOs are independent of state institutions. They are specialised and operate from a gender-sensitive and human rights-based approach. The key feature is that they have necessary services developed (helplines, safe houses, counselling, and crisis centres), with staff trained and specialised in empowering victims. The Council of Europe Convention on preventing and combating violence against women *and* domestic violence embraces the idea that victims of VAW are best supported in a concerted and coordinated manner by a number of agencies.

Law enforcement agencies which are often the first to be in contact with victims when called to a crime scene, need to be able to refer a victim to specialist support services, for example, a shelter or a rape crisis centre often run by NGOs⁴⁸⁷. Furthermore, the convention also recognises that specialist support services have specialised in providing support and assistance

⁴⁸⁵ Ibid.

⁴⁸⁶ <https://www.refworld.org/pdfid/5a6b2e274.pdf>

⁴⁸⁷ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, para 14.

tailored to the – often immediate – needs of victims of specific forms of violence against women or domestic violence and are not open to the general public. While these may be services run or funded by government authorities, the large majority of specialist services are offered by NGOs⁴⁷⁸. Ensuring the complex task of victim empowerment through optimal support tailored to the specific needs of victims of the different forms of violence against women is “best ensured by women’s organisations and the support services they provide that are composed of “specialised and experienced staff with in-depth knowledge of gender-based violence”, including among others counselling centres, shelters, rape crisis centres and sexual violence referral centres⁴⁷⁹.”

Specialist support services run by Women’s NGOs are important in guaranteeing that victims’ rights are always at the centre of all activities and that women receive empowering support. Their independence does not mean that the State has no obligation to fund their work. Sustainable and long-lasting funding is of utmost importance for maintaining the nature of the support services provided by women’s NGOs. The State must guarantee long-term funding through legal regulations.

According to the Council of Europe Convention on preventing and combating violence against women and domestic violence, provision of **general support services** such as health services or social work centre services are services that are available to the broader population, while **specialised support services** are available and designed for women and their children who survived acts of violence against women. The most optimal support to the victims is considered when multi-sectoral teams refer victims to specialised support services if they exist on a local level.

The Council of Europe Convention on preventing and combating violence against women and domestic violence⁴⁹⁰ calls for:

- Recognising, encouraging, and supporting the work of NGOs in combating violence against women and domestic violence.
- Establishing effective cooperation with NGOs.

It is very important and desirable for multi-sectoral teams to establish a system of referral and close cooperation with specialised services.

Promising practice example: victims’ advocates

In some countries, there are so-called advocates or counsellors for domestic violence - these are not lawyers in the classic sense of the word, but women are working in specialised victim support services, and their role is to represent the rights, interests and needs of the victim.

⁴⁸⁸ Ibid, para 25.

⁴⁸⁹ Ibid, para 132.

⁴⁹⁰ CETS 210 – Violence against women and domestic violence, 11.V.2011, Article 9.

The following principles and standards are crucial in the work of these “advocates/supporters”:

- All women victims of violence have the right to be supported by the “advocate” from specialist support service.
- Advocates or domestic violence counsellors should provide counselling to help the victim reflect on her situation, learn about her rights, and develop and carry out safety plans; they also provide practical support – accompanying the victim to the Police or to court and taking action on her behalf to realise her rights.
- The advocate should represent the victim in multi-agency case conferences.
- When the assigned advocate is not on duty, specialist support services need to provide support to the victim in acute situations; therefore, such services should be ideally available 24/7 or at least 12 hours a day (8.00 am to 8.00 pm).

Source: Cited from Logar, R., and Marganova-Vargova, B. (2015), p.62⁴⁹¹.

Activity 16: Operation of the multi-agency team⁴⁹²

Aim: To raise awareness among the professionals for urgent action and activation of the multi-agency team, as well as a method of operation of the multi-agency team in relation to risk factors that pose a serious threat to the victim and can lead to severe injuries or escalation of the violence and murder.

Target group: All participants at the training. Usually, training on multi-agency cooperation should involve all members of the multi-agency team, but if not possible, roles of other institutions such as social services, judiciary, NGOs, specialist victim support services, health and education services can be assigned to the present participants at the training.

Duration: Total 70 minutes

Resources: Hand-out: List of risk factors (as filled in during Safety planning activity), Hand-out - Identification and risk assessment: Case descriptions - 1 and 2, Hand-out: Structured safety planning (as filled in during Safety planning activity), flipchart, markers

Method: Roleplay (30 min), whole group discussion (40 min).

⁴⁹¹ Logar, R., and Marganova-Vargova, B. (2015). Effective Multi-agency Co-operation for Preventing and Combating Violence: Training of Trainers Manual. Strasbourg: Council of Europe. p.62

⁴⁹² Adapted from Brankovic, B and Mirceva, S., 2016

Instructions: The trainer asks the participants to create three groups.

First group is the multi-agency team, where the participants decide which institutions/organisations need to be present at the teamwork for the particular. Accordingly, the team might be composed of professionals from Police, social services, health and education services, specialised victim services and a victim. Each participant plays the role of each member of the team, including the victim. The participants are aimed to present the meeting of the multi-agency team and development of a safety plan.

Other participants create two groups. Group 1 monitors the operation of the multi-agency team and, from the shoes of a victim, analysis the proposed measures through the following questions: How do the proposed measures contribute to increasing the safety of the victim? Group 2 monitors the operation of the multi-agency team and, from the shoes of a victim, analysis the proposed measures through the following questions How will the proposed measures relieve the victim of worry and fear, or on the contrary - do quite the opposite (it burdens her even more)?

Activity: Development and review of a safety plan- (Hand-out: Structured safety planning (as filled in during Safety planning activity) and review of the proposed measures from the victim’s perspective (Hand-out: Review of the proposed measures from the victim’s perspective)

Guidance for activities and group discussion: The participant prepares their role and performs the role play. The teams of monitors take notes in the Hand-out Review of the proposed measures from the victim’s perspective. The trainer invites a reporter from each group to report on the safety measures each group is proposing, as well as elaborating the safety plan. The trainer then invites monitors from each team to share their observations of the proposed measures from the victim’s perspective. In the end, the trainer summarises the observations as to the extent to what measures will contribute to the victim’s safety and support.

Hand out: Review of the proposed measures from the victim’s perspective –1

Group 1 monitors the operation of the multi-agency team and, from the shoes of a victim, analysis the proposed measures through the following questions: **How do the proposed measures contribute to increasing the safety of the victim and her children?**

Measure	How does it contribute to the safety of the victim and children

ANNEXES

Annexe 1.
to Order of the Head of the Police
of the Republic of Armenia
24.09.2019
No. 22-L

REPORT

On the work performed by police departments of the Republic of Armenia over the cases of domestic violence

20

/Underline: 1st quarter, 1st half, 9 months, year/

/ name of police department /

1.	Cases of domestic violence registered during the reporting period, of which:	physical	psychological	sexual	economic	neglect				
Family Relationship										
	by a spouse	by a husband against his wife	by a wife against her husband	by a parent against his/her child	by a child against his/her parent	other members of the family				
2.	A person who has committed domestic violence, including:	male	female	Information about work activity		Education		Information about conviction		
employed				unemployed	higher	secondary	Con- victed	Not con- victed		
3.	A person who has committed domestic violence, including:	male	female	Information about work activity		Education		Information about conviction		
employed				unemployed	higher	secondary	Con- victed	Not con- victed		

4.	A juvenile who has committed domestic violence, including:	male	female	Juvenile, under 14	juvenile, aged 14-15	juvenile, aged 16-17
5.	A juvenile who has been subjected to domestic violence, including:	male	female	juvenile under 14	juvenile, aged 14-15	juvenile, aged 16-17
6.	Protection measures applied to domestic violence perpetrator, including:	warning	emergency barring order	order of protection/ handed over under control/		
7.	Restrictions applied by order of emergency barring, total, including:	Forcing the domestic violence perpetrator to immediately leave the territory of the victim of domestic violence and prohibit his / her return there before the expiration of the term set by the order.	Prohibit the perpetrator of domestic violence from visiting the victim of domestic violence who does not live in the area where he/she lives, and, if necessary, the persons under his/her care, their place of work, study, recreation, residence or other places.	Prohibit domestic violence perpetrator from approaching a victim of domestic violence at a distance that would reasonably cause the victim of domestic violence to have a reasonable fear of endangering his or her safety.	Keep the weapon in possession of the violence perpetrator person before the expiration of the term defined by the order	Prohibit the domestic violence perpetrator to communicate by telephone, correspondence, or other means of communication with the victim of domestic violence, and if necessary, with persons under his/her care

8.	Information about the violation of the means of protection by the perpetrator of violence, total, including:	emergency barring order	order of protection	Juvenile, under 14	Information on changes in the means of protection			
					a warning has changed to an emergency barring order	an emergency barring order has changed to an order of protection		
9.	Violence perpetrators registered, total, including:	male	female	juvenile				
				male	female	age		
						juvenile, under 14	juvenile, aged 14-15	juvenile, aged 16-17
10.	At the time of the violence, the domestic violence perpetrator was in a state of insanity under the influence of alcohol, drug, toxins, total, including:	state of insanity	under the influence of alcohol	under the influence of drugs	under the influence of toxins			
11.	Cases of domestic violence registered during the reporting period, including:	Registered during the reporting period	Deregistered during the reporting period	of which:				
				sent to police department of the place of residence	Directed to:			
					support centre	shelter		
12.	A total number of the persons deregistered during the reporting period, including:	For the following reasons:						
		If the person has acquired a mental illness while being registered and has been registered in the relevant medical institution	If the person has been living outside the Republic of Armenia for more than a year,	if the validity of the preventive registration card has expired,	in case of conscription,	in case of death,	in other cases prescribed by the law	

13.	Cases of domestic violence registered during the reporting period, of which:	Materials were prepared	A criminal case was initiated	The initiation of a criminal case on the basis of the prepared materials was rejected

..... chief of the police department The report was prepared

by:

/name of the police department/

/signature of JC & DVP* Department officer/

.....

/signature, surname, initials of the name and father's name / /title, rank, surname, initials of the name and father's name /

“ ” 201

** Department for Juveniles Cases and Domestic Violence Prevention*

REFERENCE CARD No

ON THE PREVENTIVE RECORD-REGISTRATION OF THE PERSON
HAVING COMMITTED VIOLENCE IN THE FAMILY

1. _____
/name, surname of the person under record-registration in the police subdivision/

2. _____
/place and year of birth/

3. _____
/address of residence and telephone number/

4. _____
/place of work or study, position, telephone number/

5. Grounds for record-registration

6. Personality characteristics

7. _____
/type of the violence in the family committed by the person having committed violence/

Card compiled by

/position, rank, name, surname/

.....
(name of the territorial body)

**STATEMENT OF INFORMATION
ON THE PREVENTIVE RECORD-REGISTRATION OF THE PERSON
HAVING COMMITTED VIOLENCE IN THE FAMILY**

..... No “ ” 201
/indicate the card registration number/ /day, month, year of record-registration/

.....
/grounds for record-registration/
1.
/surname, name, patronymic of person being record-registered/

2. Birth date, month, year “ ” 201

3.
/place of residence of person being record-registered/

Note: 1. This statement of information shall be filled in and sent to the General Department of Criminal Intelligence of the Police of the Republic of Armenia within three working days after the record-registration of the person.

2. The General Department of Criminal Intelligence of the Police of the Republic of Armenia shall be informed within three working days in case of the removal of the person from record-registration and other changes.

..... Head
/name of the Police territorial body/

of the Police
/rank/

.....
(name, surname, patronymic)

“ ” 201

.....
(name of the territorial body)

STATEMENT OF INFORMATION
ON REMOVAL OF THE PERSON HAVING COMMITTED VIOLENCE
IN THE FAMILY FROM THE PREVENTIVE RECORD-REGISTRATION

1.
/surname, name, patronymic of person being record-registered/
2. Birth date, month, year “.....” 201
3. “.....” 201
/date, month, year of removal from the record-registration/

.....
/grounds for removal from the record-registration/
.....

Note 1. The General Department of Criminal Intelligence of the Police of the Republic of Armenia shall be informed within three working days in case of the removal of the person being record-registered from the record-registration.

..... Head
/name of the Police territorial body/
of the Police
/rank/
.....
(name, surname, patronymic)

“.....” 201

Annexe 5.
to Order of the Head of the Police
of the Republic of Armenia of
17.07.2019
No.15.....-L

**THE POLICE OF
THE REPUBLIC OF ARMENIA**

.....
(name of the Police territorial body)

**REGISTER
ON RECORD-REGISTRATION OF PERSONS HAVING COMMITTED VIOLENCE IN THE
FAMILY**

No

Started “ ” 201

Finished “ ” 201

N/N	Name, surname, patronymic, day, month, year and place of birth	Address, telephone number of the place of residence	Place of work, position, place of study, telephone number	Grounds for record-registration and for compiling the card on the preventive record-registration	Day, month, year of compiling the card on the preventive record-registration	Position, rank, surname, name, patronymic of the person keeping the card on the preventive record-registration	When to whom and what type of act of violence in the family was committed	Day, month, year of removal from the preventive record-registration	Grounds for Dremoval from the record-registration	Note
1	2	3	4	5	6	7	8	9	10	11

THE POLICE OF THE REPUBLIC OF ARMENIA

.....
(name of the Police territorial body)

CARD ON THE PREVENTIVE RECORD-REGISTRATION No
CONCERNING THE PERSON HAVING COMMITTED VIOLENCE IN THE FAMILY

.....
(surname, name, patronymic of person being record-registered)

Born “ ”

.....
(address of residence)

.....
(indicate the grounds for preventive record-registration)

Started “ ” 201

Finished “ ” 201



The photo of the person being record-registered
(the date of placing the photo)

“ ” 201

⁴⁹⁴ The Annexe has been supplemented according to the Head of Police Order 15-L, dated 09.03.2020.

Notes:

According to the list of preventive registration card
is only bound and numbered

“ ” sheet

“ ” 202

.....
(Signature of the officer of the subdivision(unit) for Juveniles Cases and Domestic Violence Prevention)

.....
(Signature, surname, name, patronymic)

.....
(is filled in in case of deregistration of the person)

“ ” 202

International legal instruments

- ▷ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)
- ▷ UN Convention on the Elimination of All Forms of Discrimination Against Women, (CEDAW)
- ▷ European Convention on Human Rights and Fundamental Freedoms (ECHR)
- ▷ Declaration on the Elimination of Violence against Women, (DEVAW)
- ▷ UN. Secretary-General, In-depth study on all forms of violence against women, U.N. Doc. A/61/122/ Add.1 (July 6, 2006)
- ▷ CEDAW, General Recommendation No. 19
- ▷ CEDAW, General Recommendation No. 28
- ▷ CEDAW, General Recommendation No. 35
- ▷ Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, UN. Doc. E/CN.4/1995/42 (Nov. 22, 1994)
- ▷ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Series – No. 210
- ▷ Vienna Convention on the Law of Treaties
- ▷ Inter-American Convention on the prevention, punishment and eradication of violence against women
- ▷ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- ▷ International Covenant on Civil and Political Rights
- ▷ International Covenant on Economic, Social and Cultural Rights
- ▷ UN Convention on the Political Rights of Women
- ▷ Rights of Persons with Disabilities
- ▷ Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms
- ▷ The Revised European Social Charter
- ▷ Council of Europe Convention on Action against Trafficking in Human Beings
- ▷ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)
- ▷ Beijing Platform for Action (1995)
- ▷ Council of Europe Committee of Ministers Recommendation No. Rec (85)4 on Violence in the Family
- ▷ Council of Europe Committee of Ministers Recommendation No. Rec (96)5 on reconciling work and family life

- ▷ Council of Europe Committee of Ministers Recommendation No. Rec (2002)5 on the protection of women against Violence
- ▷ Council of Europe Committee of Ministers Recommendation No. Rec (2007)17 on gender equality standards and mechanisms
- ▷ Report of Human Rights Council Working Group the Universal Periodic Review Thirty-fifth session on 20-31 January 2020, in Compilation on Armenia
- ▷ UN Sustainable Development Goals, Goal 5.
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- ▷ ECOSOC Resolution 2005/20.

ECtHR jurisprudence

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- ▷ **Bevacqua and S. v. Bulgaria**, Application No. 71127/01, 2008.
- ▷ **Branko Tomašić and Others v. Croatia**, Application No. 46598/06, 2009.
- ▷ **Baslan v. Romania**, Application No. 49645/09, 2017.
- ▷ **Aydin v. Turkey**, Application No. 23178/94, 1997.
- ▷ **Kontrová v. Slovakia**, Application No. 7510/04, 2005.
- ▷ Factsheet – Violence against women:
https://www.echr.coe.int/Documents/FS_Violence_Woman_ENG.pdf
- ▷ Factsheet – Domestic violence:
https://www.echr.coe.int/Documents/FS_Domestic_violence_ENG.pdf

CEDAW jurisprudence

- ▷ **Yildirim v. Austria**, Communication No. 06/2005, CEDAW/C/39/D/6/2005.
- ▷ **X and Y v. Georgia**, Communication No. 24/2009, CEDAW/C/61/D/24/2009 (2015).
- ▷ **Goekce v. Austria**, Communication No. 5/ 2005, CEDAW/C/39/D/5/2005.
- ▷ **Angela González Carreño v. Spain**, Communication No 47/2012, CEDAW/C/58/D/47/2012 (2014).

National legal framework

- ▷ Constitution of the Republic of Armenia
- ▷ Family Code of the Republic of Armenia
- ▷ Criminal Code of the Republic of Armenia
- ▷ Criminal Procedure Code of the Republic of Armenia
- ▷ Administrative Procedure Code of the Republic of Armenia
- ▷ RA Code of Administrative Violations
- ▷ RA Administrative Procedure Code
- ▷ RA Civil Procedure Code
- ▷ RA Law on Advocacy
- ▷ RA Law on “Administration and Administrative Proceedings”
- ▷ RA Law on “Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family”
- ▷ RA Law on Providing Equal Rights and Equal Opportunities for Women and Men
- ▷ RA Law on International Treaties
- ▷ RA Constitutional Court decision No. ՍԴՈ-1522 on “Determining the issue of compliance with the Constitution “Article 353.1 of the RA Criminal Code and interconnected with the sub-provisions 1 and 3 of Article 7(3) of Law on the Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family.”
- ▷ RA Government Activities Programme for 2019-2023
- ▷ Strategy and Action Plan for Gender Policy Implementation in 2019-2023 in the Republic of Armenia
- ▷ National Strategy for Human Rights Protection and deriving Action Plan for 2020-2022
- ▷ Human Rights Defender Annual Report-2020
- ▷ The Republic of Armenia Human Rights Defender Ad Hoc Public Report. Armenia: status of commitments under the Convention on the Rights of the Child and its Optional Protocols, 2019.
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- ▷ The decision of the RA Government N-333-N, from 29.03.2019, “On Defining the Procedure for Managing the Temporary Assistance Account of the Persons Subjected to Domestic Violence.”
- ▷ The decision of the RA Government N-1381-N, from 10.10.2019, “On

Defining the Procedure for the Centralized Registration of Instances of Domestic Violence.”

- ▷ The decision of the RA Minister of Labour and Social Affairs N-119-N, from 13.11.2018, “On Approving the Plan of Rehabilitation of the Persons who Exercised Domestic Violence and the Procedure for Arrangement of such Rehabilitation.”
- ▷ The decision of the RA Minister of Labour and Social Affairs N-120-N, from 13.11.2018, “Approving the Procedure for Arrangement and Implementation of Reconciliation Between the Persons Subjected to Domestic Violence and the Persons who Exercised It.”
- ▷ The decision of the Cassation Court No. ԱՐԴ/0176/01/11, case of Arevik and Tsovinar Sahakyans.
- ▷ The decision of the Government of the Republic of Armenia N 1474-N of September 3, 2020, establishing the “Procedure for the implementation of protection measures by the police against the persons subject to protection”.
- ▷ Head of the Police Order No. 18-L on “Approving Criteria for Assessing Imminent Threat of Recurrence or Continuation of Violence in the Family.”
- ▷ Head of the Police Order No. 15-L on “Approving the procedure for preventive record-registration of persons having committed violence in the family in units (groups) for juvenile cases and prevention of violence within the family of territorial subdivisions of the Police of the Republic of Armenia.”
- ▷ Head of Police Order No. 14-L on “Approving the Procedure for Exercising Supervision over the fulfilment of Relevant requirements of Decisions on Emergency Barring and Protective orders.”
- ▷ Head of Police Order No. 14-L on “Approving the effectiveness of reaction to cases of violence in the family and work carried out with the persons having been subjected to violence in the family.”
- ▷ “Guideline for the implementation of part 4 of Article 183 of the Criminal Procedure Code of the Republic of Armenia” adopted by the General Prosecutor
- ▷ Head of Police Order No. 17-L on “Approving the blank forms for of warning and emergency barring order for the perpetrator of domestic violence.”
- ▷ Head of Police Order No. 22-L on “Approving the Police subdivisions reporting form on the work done in family violence cases.”
- ▷ Head of Police Order No. 2121-Ա on “approving the Procedure on organizing the activities of the duty units of the police subdivisions, which regulates the responsibilities of the shift in different situations, including when clarifying with the persons on duty in the police.”
- ▷ Instruction No. 5-Յ of the First Deputy Chief of the RA Police dated March 15, 2019

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Glossary

CONVENTION

- A **convention**, also known as a treaty or covenant, is a formal and binding agreement between States that outlines obligations which they have chosen to accept.
- When the UN General Assembly adopts a convention, the obligations in the convention become international law for the States that become parties to it.
- A convention is used synonymously with Treaty and Covenant; there is no legal difference in how they are treated international legal instruments.

(COUNTRY-SPECIFIC) RAPPORTEUR

- The UN Secretary-General can appoint rapporteurs on certain thematic issues or on the human rights situation of any specific country.
- **(Country) Rapporteurs** investigate and monitor human rights problems within specific countries (usually in conflict, transitional justice or post-conflict situations) and make recommendations.

COVENANT

- A **covenant**, like a treaty or convention, is a formal and binding agreement between States that outlines obligations which they have chosen to accept.
- The two main human rights covenants are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- Covenant is used synonymously with Treaty and Convention; there is no legal difference in how they are treated international legal instruments.

DECLARATION

- A declaration is a non-binding international agreement on matters related to a specific thematic issue.
- Although they are legally non-binding, declarations are often recognized as relevant to the normative framework for the issue concerned, including associated principles and standards.

DIRECT v. INDIRECT DISCRIMINATION OF WOMEN

- **Direct discrimination** explicitly and intentionally disadvantages women (or another group of persons).
- **Indirect discrimination** comes from gender-neutral laws and policies that seem to give equal access to opportunities for both women and men, but in fact, women are disadvantaged because of discrimination inherent in their current situation, caused by the patriarchal system.

DOMESTIC VIOLENCE

- **Domestic violence** includes acts of physical, sexual, psychological or economic violence that happens within a family or domestic unit.
- It does not matter whether the perpetrator shares the same residence as the victim(s), whether they are related, or whether they are partners, currently or formerly married, separated or divorced.
- Children can be victims of domestic violence even as witnesses to violence against someone else in the household.

DUE DILIGENCE

- **Due diligence** requires states to take a level of care or activity in the exercise of their duties to ensure the enjoyment of human rights, and to act in good faith. For instance, State parties to CEDAW must act with due diligence, which means that States are accountable for all discrimination against women, in both private and public spheres, including preventing, prohibiting, identifying, providing redress, imposing sanctions for discrimination, as well as promoting women's rights and accelerating de facto equality.

FEMALE GENITAL MUTILATION/CUTTING

- **Female genital mutilation/cutting (FGM/C)** is any procedure to remove or cut a part or the whole of women or girls' genitalia for non-medical reasons.
- In Article 38, the Istanbul Convention defines FGM/C as "the act of excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris," It defines the crime coercing, inciting or procuring a woman or girl to undergo that act.

GENDER v. BIOLOGICAL SEX

- **Gender** refers to the different characteristics, behaviours and activities that women and men learn and are expected to follow as members of society.
- Gender is tied to ideas about roles and values, relations between women and men, and inequalities that occur due to differences between genders. It varies across cultures and over time.
- Gender is often incorrectly considered to be synonymous with **biological sex**, which are the biological differences between women and men.

GENDER-BASED VIOLENCE

- **Gender-based violence (GBV)** is an umbrella term for harmful actions perpetrated against a person or a group of persons because of their gender or their social roles and the expectations their society or culture has for them.
- It is a serious human rights and gender equality issue that excessively impacts women and girls — which is why it is sometimes used interchangeably with violence against women. However, GBV can also include violence

against lesbian, bisexual, transgender and queer-identifying persons.

- These harmful acts can be physical, mental, sexual, economic or social violence (including coercion, manipulation, deception, cultural expectations, or economic deprivation).
- Forms of GBV include sexual violence, so-called “corrective” rape, sexual harassment or gender discrimination at work, abuse or exploitation, forced prostitution; forced or early marriage; harmful traditional practices such as female genital mutilation/cutting and honour killings; and withholding financial support from widows.

GENDER-BASED VIOLENCE AGAINST WOMEN

- Article 3d. of the Istanbul Convention: “Gender-based violence against women shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately”.

GENDER EQUALITY / EQUALITY BETWEEN WOMEN AND MEN

- Gender equality means an equal visibility, empowerment and participation of both sexes in all spheres of public and private life. Gender equality is the opposite of gender inequality, not of gender difference, and aims to promote the full participation of women and men in society. It means accepting and valuing equally the differences between women and men and the diverse roles they play in society. Gender equality includes the right to be different. This means taking into account the existing differences among women and men, which are related to class, political opinion, religion, ethnicity, race or sexual orientation. Gender equality means discussing how it is possible to go further, to change the structures in society which contribute to maintaining the unequal power relationships between women and men, and to reach a better balance in the various female and male values and priorities.

GENDER MAINSTREAMING

- **Gender mainstreaming** is a strategy to achieve gender equality.
- It aims to eliminate discrimination against women and create a more just world.
- It calls all states, intergovernmental organisations and domestic institutions to use a “gender lens” with all activities – while preparing, designing, implementing, monitoring and evaluating all levels of policies and programmes, including recruitment and promotion.
- It has been widely promoted as a goal of the UN and its agencies as a method of ensuring action to address gender inequalities, but despite many political commitments, there is still much more work to do.

GENDER NEUTRAL

- Having no differential positive or negative impact on gender relations or equality between women and men.

GENDER PERSPECTIVE

- An analysis from a gender perspective helps to see whether the needs of women and men are equally taken into account and served. It enables policy-makers to develop policies with an understanding of the socio-economic reality of women and men and allows for policies to take (gender) differences into account.

GENDER PROOFING

- A check carried out on any policy proposal to ensure that any potential gender-discriminatory effects arising from that policy have been avoided and that gender equality is promoted.

GENDER SENSITIVE

- Addressing and taking into account the gender dimension.

GENDER STEREOTYPES

- Gender stereotyping presents a serious obstacle to the achievement of real gender equality and feeds into gender discrimination. Gender stereotypes are preconceived ideas whereby males and females are arbitrarily assigned characteristics and roles determined and limited by their sex. Sex stereotyping can limit the development of the natural talents and abilities of boys and girls, women and men, their educational and professional experiences as well as life opportunities in general. Stereotypes about women both result from and are the cause of deeply ingrained attitudes, values, norms and prejudices against women. They are used to justify and maintain the historical relations of power of men over women as well as sexist attitudes which are holding back the advancement of women.

LEGALLY BINDING v. NON-BINDING

- A **legally binding** document, like a convention, carries with it formal legal obligations, meaning that the States who sign it agree to obey the obligations as law. Whether and how those obligations are enforced is a separate question.
- A **non-binding** document, like a declaration, does not in itself have legal obligations for the participants who sign it, but indicate an emerging rule of international human rights law, that is, it may have enough moral or political weight that the “soft law” can be used as an aspirational goal or to become a foundation for binding laws later.

RISK

- **Risk** refers to any risk of physical or psychological harm for victims in the context of domestic violence against women and their children.

RISK ASSESSMENT

- **Risk assessment** refers to the process of identifying and estimating the level of risk in a specific situation, using a systematic approach examining a series

of risk factors which may be assisted by the use of a risk assessment tool. Risk assessment should be reviewed at regular intervals and carried-out by trained practitioners together with victims of violence as “experts by experience”.

RISK MANAGEMENT

- Risk management - the process by which all relevant authorities manage the safety risks identified in a risk assessment. These activities may be directed towards victims (e.g. safety planning), towards perpetrators (e.g. using police powers to pursue, detect and disrupt offending behaviour) or towards victims and perpetrators in combination. The scope and type of activities undertaken should be informed by risk assessment, implemented within a multiagency framework and monitored for effectiveness. The aim of these activities is to try to reduce the threat posed by the perpetrator and protect the victim from further violence and abuse.

SEXISM

- Any act, gesture, visual representation, spoken or written words, practice or behaviour based upon the idea that a person or a group of persons is inferior because of their sex, which occurs in the public or private sphere, whether online or offline, with the purpose or effect of:
 - i. violating the inherent dignity or rights of a person or a group of persons; or
 - ii. resulting in physical, sexual, psychological or socio-economic harm or suffering to a person or a group of persons; or
 - iii. creating an intimidating, hostile, degrading, humiliating or offensive environment; or
 - iv. constituting a barrier to the autonomy and full realisation of human rights by a person or a group of persons; or
 - v. maintaining and reinforcing gender stereotypes.

SEXUAL EXPLOITATION AND ABUSE

- **Sexual exploitation and abuse (SEA)** is when someone takes advantage of a position of power, trust or vulnerability for sexual reasons, or to coerce or force sexual acts that the victim finds humiliating or degrading.

STRUCTURAL DISCRIMINATION

- **Structural discrimination** occurs when the norms, policies and behaviours of certain social structures — including the family, government bodies, the labour market, educational system, and the like – consistently disadvantage a particular group of persons.

TRAFFICKING IN HUMAN BEINGS

- The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

VIOLENCE AGAINST WOMEN

- Article 3A of the Istanbul Convention: “Violence against women’ 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 private life”.

WOMEN’S HUMAN RIGHTS

- The Council of Europe Committee of Ministers Recommendation (2007)17 on gender equality standards and mechanisms, establishes gender equality as “a principle of human rights” and women’s human rights as “an inalienable, integral and indivisible part of universal human rights”.

Case Study: Domestic Violence Case

This document does not have suggested word counts. First, try to familiarize yourself with the basic situation in the case. Keep this essential checklist of questions in mind during your reading:

- Who are the important actors in the case, and what are their objectives?
- What are the critical issues in dispute in the case? How do they bear on the decision?
- What specific decision do (or did) Police officers have to make?
- What are the police officers' objectives?
- What are the possible courses of action for the police officers?
- What are the likely consequences of each course of action?
- How can I use the information in the case to help me reach a recommendation?

Finally, search for legislative evidence that supports or undercuts the course(s) of action you are considering.

Case Comprehension

A.G. is married for about 25 years and have two minor children. A has been subjected to physical, psychological, economic, and sexual violence by her husband for many years. The woman tells that throughout her married life, she has been deprived of the opportunity to go out, communicate, go shopping, and participate in her children's education and upbringing. When the children grew up and got an education, A. decided to run away from home. She did not apply to the Police at the residence, as her husband often mentioned that he had great connections and was not afraid of the Police.

On foot and without money and phone, A. left the house in the early morning, asking questions, reached Yerevan on foot. Seeing the woman's desperate and excited condition, an unknown taxi driver helped her get the Police.

The Police issued a warning to the perpetrator while the woman stated that she had been abused for years and had not had the opportunity to contact the Police. At the same time, the police officer called to the Women Support Centre and mentioned that the woman could not return home because she is dangerous. To the question of why they issued a warning, the police officer answered that this woman had applied to them for the first time.

Why victim of Domestic Violence avoids contacting Police?

- She avoids contacting the Police because she did not have trust in it.
- Accusatory questions were addressed to the woman.
- Illegal use of the remedies provided by the DV Law.
- Inadequate awareness-raising about the DV law.

- The woman is not informed about the risk assessment questions provided by the DV law.

The copy of the protection measure provided by the DV law is not provided to the woman.

Identify the Issues	Describe the police officers' objectives	Identify the consequences of each course of action of police officers	Use the information in the case to reach a recommendation	Search for legislative evidence that supports or undercuts the course(s) of action you are considering

Recommend

Imagine you are in the role of advisor to the Head of Police of the Republic of Armenia. As an adviser, recommend how to overcome the issues. Be sure to consider the strengths and weaknesses of your recommendation. You may also wish to add to your justification the reasons why your recommendation is the best among other others. (75-150 words)

This manual is designed to provide the police officers with a solid understanding of the specific issues on combating gender-based violence against women throughout the daily police work. Particularly to understand the international and national laws, roles and tasks of the police in protecting women against women and domestic violence, recognise harmful gender stereotypes and how they are related to gender-based violence and unequal power relations between men and women. The participants will gain knowledge about the nature of gender-based violence and its constituent elements, understand the procedures and obligations for ensuring the protection and safety of victims as well as risk assessments and management from the aspect of gendered understanding of domestic violence. The manual familiarises with the basic principles of protecting the rights and freedoms as well as privacy and confidentiality of victims and children of domestic violence by using a victim centered approach.

ENG

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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