

# **The Response by States to Domestic Violence with a Focus on Georgia**

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## **Executive summary**

This thesis focuses on one of the most pervasive human rights violations of our time, and one of the biggest world problems – domestic violence against women. Although there have been a lot of achievements at the international level to overcome domestic violence and the inequality which it is linked to, the implementation of those standards at the national level is often lagging. This thesis aims to examine the extent of Georgia’s compliance with its international obligations on domestic violence against women. In particular, this thesis provides a comparative and critical analyzes of the standards available under the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter “Istanbul Convention”), the European Convention on Human Rights (hereinafter “ECHR”) and the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”) on domestic violence.

The thesis first explores the scope and the nature of domestic violence with a focus on Georgia. The thesis challenges the traditional view that the state cannot be held responsible for the acts of violence inflicted by private actors. It confronts a number of myths and stereotypes about the victims of domestic violence, which is necessary in order to ensure the adequate protection for the female victims of domestic violence. The first chapter sends a message that domestic violence is a complex phenomenon that continues to have devastating consequences for a significant number of women around the world. Given the extent and complexity of domestic violence, the next chapter examines four main groups of states’ response to domestic violence under international and regional human rights instruments. These groups include the criminal law response, civil law response, social support services and awareness raising campaigns.

Along with the approaches of the Istanbul Convention, the ECHR, and the CEDAW to the issue of domestic violence, the chapter also analyzes the opinions of the academic commentators and provides examples of good practices. The third chapter scrutinizes the implementation of the standards discussed in the second chapter at the national level, using Georgia as a case study.

The submission of this thesis is that to a great extent Georgia fails to comply with its international obligations on the issue of domestic violence, which includes the failure to recognize domestic violence as a gender-based violence directed against women.

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As Sir Isaak Newton rightly noted we all “stand on the shoulders of giants,” but to rise there we need support and assistance. This thesis is the result of the support I have received in various forms throughout my studies at the Central European University (CEU). I wish to acknowledge some of the help along this journey.

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## **List of Abbreviations**

**CEDAW Convention** – The Convention on the Elimination of All Forms of Discrimination against Women

**DEVAW** – The Declaration on the Elimination of Violence against Women

**Istanbul Convention** - The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence

**ECtHR** – The European Court of Human Rights

**ECHR** – The European Convention on Human Rights

**WHO** – The World Health Organization

**FRA** - The European Union Agency for Fundamental Rights

**UDHR** – The Universal Declaration of Human Rights

**ICCPR** – The International Covenant on Civil and Political Rights

**Domestic Violence Law** – The Law of Georgia, on Elimination of Domestic Violence, Protection of and Support to Its Victims

*Every time we liberate a woman, we liberate a man.*

Margaret Mead  
(1901-1978)

## Introduction

Violence against women remains one of the most pervasive violations of human rights.<sup>1</sup> Violence against women leads to more deaths and disabilities among women aged 15-40 than war, cancer, malaria, and transport accidents worldwide.<sup>2</sup> More than half of the world's women suffer from domestic violence.<sup>3</sup> Domestic violence is often so extreme and severe that it results in devastating consequences for millions of women and girls, but also for children, families and communities.<sup>4</sup> Yet, this issue has long been neglected or disproportionately addressed under the realm of both national and international law. As of today, it is widely acknowledged that the main cause of domestic violence is due to the inequality between men and women.<sup>5</sup> There are a number of standards under the international and regional instruments that tackle the issue of domestic violence, but their implementation at the national level to a great extent lags behind.<sup>6</sup>

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<sup>1</sup> UN Secretary-General, *Violence against Women "Most Shameful" Pervasive Human Rights Violation, Says Secretary-General in Remarks on International Women's day*, (Press Release, SG/SM/6919, WOM/1113, New York: United Nations, 1999), accessed February 2, 2011, <http://www.un.org/News/Press/docs/1999/19990308.sgsm6919.html>

<sup>2</sup> Human Rights Watch, *World Report 2000*, (Report, United States of America: Human Rights Watch, 2000), accessed February 2, 2011, <http://www.hrw.org/wr2k/>

<sup>3</sup> Bonita Meyersfeld, "Domestic Violence, Health, and International Law," *Emory International Law Review* 22 (2008): 62

<sup>4</sup> Taskforce on the Health Aspects of Violence Against Women and Children, *Responding to violence against women and children – the role of the NHS*, (Report, 2010), accessed November 10, 2015, [http://www.health.org.uk/sites/default/files/RespondingtoViolenceAgainstWomenAndChildrenTheRoleofTheNHS\\_guide.pdf](http://www.health.org.uk/sites/default/files/RespondingtoViolenceAgainstWomenAndChildrenTheRoleofTheNHS_guide.pdf)

<sup>5</sup> Amnesty International, *It's in our hands- Stop Violence against Women*, (Report, London: Amnesty International, 2004):1

<sup>6</sup> Human Rights Watch, *World Report 2015 - Events of 2014*, (Report, ISBN-13: 978-1-4473-2548-2, United States of America: Human Rights Watch, 2015):108



Much has been written about international standards on domestic violence.<sup>7</sup> However, there is a limited amount of scholarly work on the implementation of international and regional standards at the national level. In particular, although most international standards, including the standards available under the Istanbul Convention, the ECHR the CEDAW have already been a subject of scholarly reflection, they have not been fully analyzed in relation to Georgia's general compliance with them. The role of the national systems in providing support for the victims of domestic violence is vital. Hence, it is critical to address this literature gap. This will be achieved through synthesizing previous scholarly work and using it as a starting point in scrutinizing Georgia's response to the issue of domestic violence.

The main reason for conducting the research on his topic is due to the complex nature of domestic violence, especially in patriarchal societies like Georgia, where a significant portion of society still justifies or considers domestic violence to be a private matter outside the state's protection. The purpose of this thesis is to analyze Georgia's response to the issue of domestic violence. The main research question of the thesis is to reveal to what extent the available protection for women victims of domestic violence in Georgia complies with international standards. The compliance of Georgia's response to domestic violence is scrutinized through the analyses of the standards available under the Istanbul Convention, the ECHR and the CEDAW. This thesis demonstrates that the Georgian legal and justice system lacks full and effective protection for women victims of domestic violence, due to its failure to comply with the available international and regional standards in this respect.

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<sup>7</sup> See, Bonita Meyersfield, *Domestic Violence and International Law*, (United Kingdom: Hart Publishing Ltd, 2012); Ronagh J.A. McQuigg, *International Human Rights Law and Domestic Violence: The Effectiveness of International Human Rights Law*, (London: Taylor & Francis, 2011)

In terms of methodology, this thesis is based on qualitative legal research,<sup>8</sup> and uses Georgia as a case study, which ensures problem-based oriented research by analyzing the lack of the state's compliance with the main international standards on domestic violence. In order to examine the question of Georgia's compliance with international standards, the thesis provides an analysis of the jurisprudence of the Istanbul Convention, the ECHR and the CEDAW. The thesis also illustrates that in order to overcome the problem of domestic violence in Georgia the state should comply with its international and regional obligations.

The thesis analyzes both primary sources (case-law, relevant international, regional and national legislation), and secondary sources (books, journal articles, reports of non-governmental organizations, international organizations, and governmental documents) that have been carefully selected to ensure a thorough and systematic approach. When examining the nature of domestic violence, and the beneficial social support measures for the victims of domestic violence, in addition to the strictly legal academic material, the opinions of the academic commentators, sociologists and official websites of women human rights organizations have been used.

For the purpose of this thesis, the analysis of all three main jurisdictions (the Istanbul Convention, the ECHR and the CEDAW) bears particular importance due to the following reasons. During the last few years, the issue of domestic violence has been mainstreamed in the work of the European Court of Human Rights (hereinafter, "ECtHR") and the Committee on the Elimination of Discrimination against Women (hereinafter, "CEDAW Committee"). As a party to both of these instruments, Georgia has an obligation to act with due diligence to prevent and

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<sup>8</sup>Gerald F. Hess, "Qualitative Research on Legal Education: Studying Outstanding Law Teachers, 51 *Alta. L. Rev.* 925 (2013-2014): 926-927; Ian Dobinson, and Johns Francis, "Qualitative legal research" in McConville, Mike and Chui, Wing Hong (eds), *Research Methods for Law*, (Edinburgh University Press, 2007):16-46

investigate acts of domestic violence against women, and to punish the perpetrators. While the existence of this positive obligation is just one side of the coin, the assessment of the state's response in this respect is another.<sup>9</sup> By analyzing standard tests that the CEDAW Committee and the ECtHR have employed with respect to domestic violence, this thesis determines the extent of the state's responsibility on domestic violence. In addition, the thesis analyzes all three state reports submitted by Georgian authorities to the CEDAW Committee in order to examine to what extent measures taken by the Georgian authorities comply with the recommendations issued by the CEDAW Committee toward Georgia. As for the Istanbul Convention, Georgia signed the Istanbul Convention in June 2014, and the parliament of Georgia is now in the process of ratifying it.<sup>10</sup> Hence, for the effective implementation of the Istanbul Convention, it is of the utmost important to analyze Georgia's existing legal framework on domestic violence with respect to the Istanbul Convention.

The main body of the thesis has three chapters. The first chapter elaborates in brief how domestic violence is defined and how it has evolved over time. It illustrates that domestic violence is mainly perpetrated against women by men, and explains the causes and consequences of the issue. It reveals that domestic violence is characterized by a gender power imbalance, which engenders a circle that is hard to break. This discussion is followed by information aiming to confront the myths and stereotypes on the victims of domestic violence, which is one of the main steps to ensuring adequate protection to the victims of domestic violence. The final section of the first chapter analyzes the extent of domestic violence with a focus on Europe and Georgia. It sends a message that the extent of domestic violence against women cannot be overlooked.

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<sup>9</sup>Nenad Calic, "States Positive obligation to protect victims against Domestic violence: comparative analysis of Austria, Hungary and Croatia's take on the Due Diligence," (LL.M. thesis, Central European University, 2011):29

<sup>10</sup>The Council of Europe, Chart of signatures and Ratification of the treaty, Status as of November 13, 2015, accessed November 13, 2015, <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>

The second chapter analyzes the states' response to domestic violence under international and regional human rights standards. The first section of the chapter traces the brief history of global developments with respect to the issue of domestic violence. The next section then analyzes the approaches of the ECtHR and the CEDAW Committee to domestic violence. The third section of the chapter examines the four main types of state's response to domestic violence with regard to international standards, which includes criminal law response, civil law responses, social support services for the victims and awareness-raising campaigns on domestic violence.

The third and final chapter illustrates how international standards can be implemented at the national level, using Georgia as a case study. It assesses the extent of Georgia's compliance with the main international standards discussed in the second chapter. The first section of the chapter analyzes the comments made by the CEDAW Committee with respect to domestic violence in Georgia. The second section then scrutinizes the specific measures of implementation taken by Georgian authorities on domestic violence, with a particular emphasis on the standards established under the jurisdiction of the CEDAW Convention, the ECHR and the Istanbul Convention.

# Chapter 1: Scope and Nature of Domestic Violence

## Introduction

The first section of the present chapter elaborates in brief how domestic violence is defined and how it has evolved over time. The second section explains the causes and consequences of domestic violence and reveals that the use of domestic violence engenders a circle that is hard to break. This discussion is followed by information aiming to confront myths on victims of domestic violence, which is one of the main steps to ensure adequate victims protection. The final section provides analysis of the extent of domestic violence in Europe and Georgia.

### 1.1 Definitional Issues

The term Domestic Violence is just one phrase that is being used in the specialized literature to describe violence within intimate relationship. Similar terms include: “intimate partner violence” “spouse abuse”, “marital assault”, “women abuse” or “battery.”<sup>11</sup> For the purpose of this thesis, I employ the term “domestic violence” because it is most commonly used term. Due to the same reasons, I use the term “victim,” as opposed to “survivor.”<sup>12</sup>

Although the term domestic violence is in itself gender neutral, numerous studies reveal that domestic violence is mainly perpetrated against women by men and is characterized by a gender

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<sup>11</sup>Bearice Manu, “*The Victimization of Women in Family Space Profiles of Women Victims of Domestic Violence*,” *Journal of Research in Gender Studies*, Vol. 4 (1), (2014):1091

<sup>12</sup> For specificities of both terms see also, United Nations, “*Ending Violence against Women: From Word to Action*,” (Study of the UN Secretary-General, 2006), accessed October 16, 2015, [http://www.un.org/womenwatch/daw/public/VAW\\_Study/VAWstudyE.pdf](http://www.un.org/womenwatch/daw/public/VAW_Study/VAWstudyE.pdf)

power imbalance, as will be illustrated in the next two sections of this chapter.<sup>13</sup> Due to the fact that domestic violence affects women disproportionately, this thesis employs the term of domestic violence as a form of gendered violence committed by men against women.<sup>14</sup> Therefore, the focus of the thesis is primarily on the protection of female victims of domestic violence in the heterosexual relationships. However, this is not to disregard or trivialize the fact that domestic violence is perpetrated by both genders against children, by women against men, by women against women, or by men against men. They simply fall outside the particular scope of this thesis.

Prior to discussing the extent and particularities of domestic violence, it is necessary to engage with a number of definitional issues. This section is divided into two parts. The first part provides a brief definition of domestic violence and how it has evolved over time, while the second part analyzes the nature of domestic violence and the various forms that it may take. The aim of this section is to provide clear understanding of the terminology and the nature of domestic violence, which serves as a basis for the next three sections.

### **1.1.1 What is Domestic Violence?**

Establishing an accurate definition of domestic violence is the first step towards proper assessment of the issue of domestic violence that traditionally has been hidden, neglected and

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<sup>13</sup> Karla Digirolamo, "Domestic Violence and the law Symposium Myths and Misconceptions about Domestic Violence," *Pace Law Review* 41, (1995): 41-8

<sup>14</sup> Similar approach has been suggested by the Special Rapporteur on Violence against Women (SRVAW), Radhika Coomaraswamy. See also, Ertürk.Yakin, *"15 Years of the United Nations SR on Violence against Women, Its Causes and Consequences (1994-2009):a Critical Review,"* (report to the UN Human Rights Council, 2009)

tolerated under at international as well as national level.<sup>15</sup> Domestic violence can be generally defined as the pattern of behaviors that aims to achieve or affirm power and control over another person.<sup>16</sup> Although, the legal definition of domestic violence may vary from narrow to more encompassing terms, a growing body of literature now adopts the wide definition of domestic violence that is not limited to marital relationships and includes four main types of violence.<sup>17</sup>

The Istanbul Convention<sup>18</sup> provides the first and explicit legally binding definition of domestic violence.<sup>19</sup> It 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.*<sup>20</sup>

In contrast to this definition, initially the concept of domestic violence was limited to its narrow definition. In other words, the term of domestic violence only addressed two types of violence: sexual and psychological within current marriages.<sup>21</sup>

For the purpose of domestic violence, the definition of “family” and “family members” has also evolved over time and ultimately expanded its conventional meaning. Under the broad definition of family, domestic violence also covers situations within family members (other than former or current spouses or partners) in which the victim and the perpetrator do not share or

<sup>15</sup> Claudia García-Moreno, et al. "Addressing violence against women: a call to action," the Lancet, Vol. 385, No. 9978, (2015):1685, accessed October 16, 2015, DOI: [http://dx.doi.org/10.1016/S0140-6736\(14\)61830-4](http://dx.doi.org/10.1016/S0140-6736(14)61830-4)

<sup>16</sup> Laure Watson and Julie Ancis, "Power and Control in the Legal System: From Marriage/Relationship to Divorce and Custody," Violence Against Women 19(2), (2013):166–7 citing Lyn Shipway, Domestic Violence: A Handbook for health Professionals, (London: Routledge, 2004)

<sup>17</sup> The UN General Assembly, In-depth Study on All Forms of Violence against Women, (Report of the Secretary-General, A/61/122/Add.1, UN General Assembly, 2006):para 112, accessed March 24, 2015, <http://www.refworld.org/docid/484e58702.html>

<sup>18</sup> Council of Europe, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, (Istanbul, 2011)

<sup>19</sup> Dubravka Šimonovi, "Global and Regional Standards on Violence Against Women: The Evolution and Synergy of the CEDAW and Istanbul Conventions." Human Rights Quarterly. Vol. 36, 2014 p. 604-6, accessed October 16, 2015, DOI: 10.1353/hrq.2014.0040

<sup>20</sup> Council of Europe, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, (Istanbul, 2011), Article 3 (b)

<sup>21</sup> Nisha Giridhar, *The Global Spread of Domestic Violence Legislation: Causes and Effect*, (Thesis, New York: New York University, 2012):5

have never shared the same residence.<sup>22</sup> Thus, according to the wide definition, perpetrators of domestic violence could be “individuals who are related through blood or intimacy.”<sup>23</sup>

The above provided definition of domestic violence is not gender-specific, because it is uncontested that perpetrators of domestic violence can be women as well as men. However, since the thesis focuses primarily on the issue of domestic violence against women, it is useful to also provide a more gender-specific definition of the term. A gender-specific definition of domestic violence includes all acts of sexual, psychological, physical and/or economic violence perpetrated against adult or adolescent women, without their consent, both in public and private, by a current or former intimate male partner.<sup>24</sup>

In practice there can be a problem of defining “violence” itself. Thereby, in order to fully understand what domestic violence means, it is important to first also define the constituent element of violence in itself and then distinguish above-mentioned four different types of violence. According to the World Health Organization (hereinafter, “WHO”) violence is defined as *the intentional use of force or power, threatened or actual, against oneself, another person, or against*

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<sup>22</sup> See, Ronagh J.A. McQuigg, "What Potential does the Council of Europe Convention on Violence against Women Hold as Regards Domestic Violence?" *The International Journal of Human Rights*. Vol. 16, No. 7, (2012): 94 accessed October 16, 2015 DOI: 10.1080/13642987.2011.638288. The United Nations Special Rapporteur on Violence against Women, its Causes and Consequences, *15 Years of the United Nations Special Rapporteur on Violence Against Women, Its Causes And Consequences (1994-2009)*:10-11, accessed March 24, 2015 A/HRC/11/6/Add.5

<sup>23</sup> United Nations General Assembly, Resolution 58/147 on Elimination of Domestic Violence against Women, A/RES/58/147, (2003):1(a), accessed October 18, 2015 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/503/40/PDF/N0350340.pdf?OpenElement>

<sup>24</sup> See, Ronagh J.A. McQuigg, "What Potential does the Council of Europe Convention on Violence against Women Hold as Regards Domestic Violence?" *The International Journal of Human Rights*. Vol. 16, No. 7, (2012) and The UN General Assembly, In-depth Study on All Forms of Violence against Women, (Report of the Secretary-General, A/61/122/Add.1, 2006), para 113, citing Alison Osattin and Lynn M., Short, Intimate Partner Violence and Sexual Assault: A guide to Training Materials and Programs for Health Care Providers (Atlanta, Centers for Disease Control, National Center for Injury Prevention and Control, 1998)



*a group or community, which either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation.*<sup>25</sup>

As noted above, domestic violence against women can take different forms, which includes physical, psychological, sexual and economic violence. Physical violence involves deliberate use of force, strength or weapon in order to harm/injure the women.<sup>26</sup> Physical violence can range from slapping to murder or attempted murder<sup>27</sup> Psychological violence encompasses, control or isolation, humiliation, insults and death threats including towards others who are important for the woman.<sup>28</sup> Economic violence incorporates denial of access to and control over basic resources of a woman.<sup>29</sup> Sexual violence usually includes force or threat of force and an act of sexual intercourse or other acts of sexual nature with an absence of consent from the side of the women.<sup>30</sup>

Usually the actual occurrence of domestic violence includes two or three of these (psychological, physical, sexual) forms. For example, psychological assault often includes threats of physical or sexual violence, and similarly physical violence is often combined with threats of sexual violations.<sup>31</sup> However, psychological violence has received less attention in

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<sup>25</sup> Garcia-Moreno, Jansen HA, Ellsberg et.al., "Prevalence of intimate partner violence: findings from the WHO multi-country study on women's health and domestic violence," *The Lancet, England*, (2006):1260-9

<sup>26</sup> The UN General Assembly, In-depth Study on All Forms of Violence against Women, (Report of the Secretary-General, A/61/122/Add.1, 2006), 37-8, citing Saltzman, Fanslow, McMahon, and Shelley, G. A., Intimate partner violence surveillance: Uniform definitions and recommended data elements, version 1.0. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, (Atlanta, 2002)

<sup>27</sup> Women against Violence Europe, "What is Domestic Violence against Women," information brochure, accessed October 19, 2015 :[http://www.wave-network.org/sites/default/files/what\\_is\\_vaw.pdf](http://www.wave-network.org/sites/default/files/what_is_vaw.pdf)

<sup>28</sup> Ibid.

<sup>29</sup> The UN General Assembly, In-depth Study on All Forms of Violence against Women, (Report of the Secretary-General, A/61/122/Add.1, 2006):para 113 citing Saltzman, Fanslow, McMahon, and Shelley, G. A., Intimate partner violence surveillance: Uniform definitions and recommended data elements, version 1.0. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, (Atlanta, 2002)

<sup>30</sup> Mary Ann Dutton, "Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome," *Hofstra Law Review*, Vol. 21 No4, (1993): 1204, accessed November 12, 2015, <http://scholarlycommons.law.hofstra.edu/hlr/vol21/iss4/2>.

<sup>31</sup> Amnesty International, Men's Violence against Women in Intimate Relationships: An account of the situation in Sweden, (Sweden, 2004):6, accessed March 24, 2015, [http://www2.amnesty.se/svaw.nsf/mvaw/\\$File/mvaw.pdf](http://www2.amnesty.se/svaw.nsf/mvaw/$File/mvaw.pdf)

research, because its fully encompassing definition has not been yet commonly adopted.<sup>32</sup> Moreover, psychological violence is hard to prove.<sup>33</sup> Hence, in practice it can be difficult to draw a demarcation line between these four forms of violation.<sup>34</sup>

Finally, it is also useful to see how domestic violence is defined in sociological literature. Sociologist Michael Johnson differentiates three types of domestic violence: intimate terrorism, violent resistance and situational couple violence.<sup>35</sup> First, he describes intimate “terrorism” as husbands’ “terroristic” control over their wives, which includes permanent use of violence, as well as other control tactics such as threats, isolation, and economic subordination. He argues that this form of violence is the result of patriarchal traditions.<sup>36</sup> Second, Johnson argues that violent resistance is the type of violence that arises when the victim of intimate terrorism answers ongoing violence of her partner with violence of her own.<sup>37</sup> Third, he claims that the most common type of domestic violence is so called situational couple violence. This type of violence occurs when sometimes a couple conflicts get “out of hand.” According to him, such violence rarely reaches a serious - life-threatening form of violence.<sup>38</sup> As Johnson rightly

<sup>32</sup> The UN General Assembly, In-depth Study on All Forms of Violence against Women, (Report of the Secretary-General, A/61/122/Add.1, 2006):38, citing WHO Multi-Country Study on Women’s Health and Domestic Violence Against Women: Initial Results on Prevalence, Health Outcomes and Women’s Responses, (Geneva, 2005) and WHO, World report on violence and health (Geneva, 2002): 36

<sup>33</sup> Department of Economic and Social Affairs Division for Advancement of Women, *Handbook for Legislation on Violence against Women*, Handbook, (New York, 2009):25, accessed October 16, 2015, <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>

<sup>34</sup> Amnesty International, Men’s Violence against Women in Intimate Relationships: An account of the situation in Sweden, (Sweden, 2004):6

<sup>35</sup> Michael Johnson, *Distinguishing Among Types of Domestic Violence*. Invited presentation at the Second International Conference on Violence Against Women, Penn State Personal, (Quebec, 2011)

<sup>36</sup> Michael Johnson, “Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence against Women.” *Journal of Marriage and Family*, Vol. 57, No. 2, (1995):283-294, accessed March 24, 2015, <http://www.jstor.org/stable/353683284-5>

<sup>37</sup> Michael Johnson, Interview on Domestic Violence, *The National Council on Family Relations*, (2011) accessed October 16, 2015, <https://goo.gl/GB5dIa>

<sup>38</sup> Michael Johnson, “Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence against Women.” *Journal of Marriage and Family*, Vol. 57, No. 2, (1995):283-294, accessed March 24, 2015, <http://www.jstor.org/stable/353683284-5>

concludes, most agency studies are primarily dominated by the male-perpetrated type of violence, such as intimate terrorism. Hence, this type of violence could be considered as a defining factor for domestic violence.<sup>39</sup>

### 1.1.2 The Nature of Domestic Violence

Domestic Violence is a specific and complex type of violent act. This is primarily so due to the following two main reasons: First, the victims of domestic violence are in a close emotional relationship with their abusers. Second, domestic violence is usually carried out at home, behind closed doors.<sup>40</sup> Historically, both, the hidden nature of domestic violence and the intimate relationship between parties were underpinned by the concept of “private” matter.<sup>41</sup>

Domestic violence is often described as a continuing process in which both the perpetrator and the victim start to consider violence as a “normal” state of affairs.<sup>42</sup> For the man, as sociologist Eva Lundgren describes the initial phase of violence is used as a tool to maintain and strengthen his control over the woman.<sup>43</sup> While he makes various excuses and begs to be forgiven after the first incidents of violence, step by step, he starts to justify the violence by insisting that there is something wrong with the woman.<sup>44</sup> A man who deems that the relationship is not “proper” may start to affirm his masculinity through using violence to

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<sup>39</sup> Michael Johnson, Interview on Domestic Violence, *The National Council on Family Relation*, (2011) accessed October 16, 2015, <https://goo.gl/GB5dIa>

<sup>40</sup> Amnesty International, *Men’s Violence against Women in Intimate Relationships: An account of the situation in Sweden*, (Sweden, 2004):8

<sup>41</sup> Andrea Coomber, Written Submission of Interights to the European Court of Human Rights on the Application No. 33401/02 *Nahide Opuz v. Turkey*, (2007):2

<sup>42</sup> Amnesty International, *Men’s Violence against Women in Intimate Relationships: An account of the situation in Sweden*, (Sweden, 2004):6

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

maintain control over the woman. According to Lundgren, gradually the man gains control over a significant part of the woman's life.<sup>45</sup> The superiority of the man is then eroticized, which becomes the actual trigger of the violence.<sup>46</sup>

For the woman, the process of normalization means removing her own limits and adjusting herself to fit into the man's ideas of what the relationship ought to be like or what it means to be a woman and a man.<sup>47</sup> Over the course of multiple violent incidents, the woman's sense of reality becomes blurred and she actually starts to blame herself for the acts of the perpetrator.<sup>48</sup> The woman becomes isolated from her family or friends and is left in front of the perpetrator alone.<sup>49</sup> Furthermore, the situation is complicated by the fact that the perpetrator takes turns being caring and loving to threatening and violent.<sup>50</sup> While at first the woman tries to adjust in order to end the violence, steadily such adjustment becomes a precondition for survival.<sup>51</sup> Finally, the woman starts to accept, as well as rationalize male violence.<sup>52</sup>

Domestic violence is considered to be universal as well as particular. Firstly, it is universal because the issue of violence against women exists in all countries and cultures.<sup>53</sup> Various studies reveal that domestic violence is not limited to any particular culture or geographical location.<sup>54</sup> Secondly, it is particular, because the forms of violation and gender-based

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<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> The UN General Assembly, In-depth Study on All Forms of Violence against Women (Report of the Secretary-General, A/61/122/Add.1, UN General Assembly, 2006), para 28

<sup>54</sup> See, United Nations Children's Fund (UNICEF), *Domestic Violence Against Women and Girls*, No.6, United Nations Children's Fund, Innocenti Research Centre, Florence, (2000), accessed March 24, 2015, <http://www.unicef-irc.org/publications/pdf/digest6e.pdf>

subordination of women varies in different contexts.<sup>55</sup> In this respect, ethnical, religious, class, sexual orientation and disability may play a certain role in shaping the violence.<sup>56</sup>

Finally, the nature of domestic violence should be understood in light of the broad social perspective. Up until the 1970s the public regarded the issue of domestic violence as “a private matter.” Such perception of the problem strengthened the patriarchal culture at home and deteriorated the problem.<sup>57</sup> It is now uncontested that public perceptions and attitudes towards violence against women has significant influence on the continuing occurrence of domestic violence.<sup>58</sup>

## **1.2 Understanding Domestic Violence against Women**

Domestic violence is a particular type of violence with physical and emotional consequences for many female victims, families and society. Before analyzing the issue of domestic violence against women from the human rights perspective in the next two chapters, this chapter takes a different analytic approach. Namely, in the following two sub-sections I first illustrate what the main distinct characteristics of domestic violence are that makes it worthy of international

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<sup>55</sup> The UN General Assembly, In-depth Study on All Forms of Violence against Women (Report of the Secretary-General, A/61/122/Add.1, UN General Assembly, 2006), para 28

<sup>56</sup> Human Rights Watch, *“He Loves You, He Beats You” Family Violence in Turkey and Access to Protection*. Report, ISBN: 1-56432-765-5, (United States of America: Human Rights Watch, 2011):8 citing Equality Division Directorate General of Human Rights Council of Europe. *Combating violence against Women: Stocktaking study on the measures and actions taken in Council of Europe member States*. Report, (Strasbourg: Council of Europe, 2006)

<sup>57</sup> Songül Sallan Gül, “The role of the State in protecting women against domestic violence and women's shelters in Turkey,” *Women's Studies International Forum* vol. 38, (2013): 107–8

<sup>58</sup> Enrique Gracia, *Intimate partner violence against women and victim-blaming attitudes among Europeans*. Bulletin. World Health Organization, (Valencia, 2014), accessed November 11, 2015, DOI: <http://dx.doi.org/10.2471/BLT.13.131391>, citing Gracia E, Herrero J. “Acceptability of domestic violence against women in the European Union: a multilevel analysis,” *J Epidemiol Community Health* (2006); 60:123–9; Flood M, Pease B. “Factors influencing attitudes to violence against women,” *Trauma Violence Abuse* (2009):125–42. Waltermaurer E. Public justification of intimate partner violence: a review of the literature. *Trauma Violence Abuse* (2012):167–75

human rights protection and then look at the causes and consequences of this violence. After analyzing various theories that provide explanations for the occurrence of domestic violence, I conclude that the roots of domestic violence should be seen primarily in the existing gender imbalance. The aim of this section is to distinguish and understand the nature of domestic violence, which is an important element in ensuring an effective state's response to domestic violence.

### **1.2.1. Domestic Violence against Women is Different from Other Violent Crimes**

The discussion around domestic violence gives rise to the question whether or not there is any difference between domestic violence and any other crimes. And if so, what is so special about this violence that is not present in other forms of social harm, such as i.e. theft.<sup>59</sup> The answer to this question is that there is a difference. It is true that there could be certain similarities between domestic violence and theft at the hand of a private person, because both crimes concern the private sphere.<sup>60</sup> However, domestic violence is different from nondomestic or so called generic violence in numerous ways, some of which is discussed below.<sup>61</sup>

While comparing domestic violence to other crimes three main elements can be distinguished. These elements are: violence, domesticity, and structural inequality.<sup>62</sup> First, violence- the meaning of violence is often seen as incorporating a strong notion of illegitimacy.<sup>63</sup>

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<sup>59</sup> Bonita Meyersfield, *Domestic Violence and International Law*, Hart Publishing, (London, 2012):108-109

<sup>60</sup> Ibid.

<sup>61</sup> These differences might not particularly apply to other forms of domestic violence that fall outside the ambit of this paper.

<sup>62</sup> Michelle Madden Dempsey, "What Counts as Domestic Violence? A Conceptual Analysis," *William and Mary Journal of Women and the Law*, (2006): 306

<sup>63</sup> Ibid.

Second, domesticity - the notion of domesticity encompasses two characteristics: location and relationship of partners.<sup>64</sup> This is so because unlike other violent crimes, almost all incidents of domestic violence occur at home behind closed doors, where the perpetrator is in an intimate relationship with the victim and has continuing “access” to her.<sup>65</sup> Third, structural inequality is underlined by two main concepts: power, the ability to exercise control over another person, and actual control.<sup>66</sup> The element of control is so significant in the cases of domestic violence that as studies suggest, there is a higher risk of increased violence after the woman decides to leave the relationship because the abusing man perceives that he will lose supremacy and control over the woman if she leaves.<sup>67</sup> Hence, domestic violence is usually “intentional and functional” because the ultimate purpose of the abuser’s behavior is to sustain masculine authority.<sup>68</sup> Furthermore, Meyersfeld notes that certain (extreme) forms of domestic violence have the following number of distinct elements.<sup>69</sup> Firstly, she argues that extreme forms of domestic violence are systematic in a way that other forms of social harm are not.<sup>70</sup> Secondly, extreme forms of domestic violence mainly harm a discrete and vulnerable group of society – women.<sup>71</sup>

In assessing the particular nature of domestic violence, it is also important to highlight the meaning, motivation, and the impact of violence. The findings suggest that it is not merely the acts of violence itself that make women feel endangered, but rather the context and meaning of

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<sup>64</sup> Ibid.

<sup>65</sup> Amnesty International, *Men’s Violence against Women in Intimate Relationships: An account of the situation in Sweden*, (Sweden, 2004):7

<sup>66</sup> Michelle Madden Dempsey, "What Counts as Domestic Violence? A Conceptual Analysis," *William and Mary Journal of Women and the Law*, (2006): 314

<sup>67</sup> Amnesty International, *Men’s Violence against Women in Intimate Relationships: An account of the situation in Sweden*, (Sweden, 2004):7

<sup>68</sup> Ibid. p.8

<sup>69</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (London: Hart Publishing, 2012):108-109

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

violence.<sup>72</sup> The abuser's continuous access to the victim underlines victim's vulnerability and low visibility of the crime.<sup>73</sup> The abuser systematically and gradually destroys the victim's sense of self-esteem in order to establish fear and full control. That is why domestic violence is often referred to as "a crime of control."<sup>74</sup>

In the light of above analyzes, domestic violence is different from other crimes and thereby, requires different approach of the risk assessment. For instance, in the case of domestic violence possession of weapon or previous criminal records of the perpetrator might not always be appropriate indicators.<sup>75</sup> In fact, in some cases of domestic violence, no indicators of the perpetrator's capacity for violence may exist since "the perpetrators of domestic violence are not necessarily social deviants or criminal-minded."<sup>76</sup> Although some researcher suggests that there might be a close link between domestic violence and social violence, in the sense that systematic domestic violence can be the starting point of a lifelong pattern of social delinquencies, in most cases there is no direct correlation between domestic violence and other violence.<sup>77</sup> Thus, domestic violence requires particular assessment of risks, which is only possible when there is an active communication between various state institutions, such as police, public prosecutors, health, housing or child welfare authorities.<sup>78</sup>

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<sup>72</sup> Melissa E. Dichter and Richard J. Gelles, "Women's Perceptions of Safety and Risk Following Police Intervention for Intimate Partner Violence," *Violence Against Women*, (2012):57, accessed October 29, 2015, DOI: 10.1177/1077801212437016

<sup>73</sup> Bearice Manu, "The Victimization of Women in Family Space Profiles of Women Victims of Domestic Violence," *Journal of Research in Gender Studies*, Vol. 4 (1), (2014):1091

<sup>74</sup> Rebecca Licavoli Adams, "California Eviction Protections for Victims of Domestic Violence: Additional Protections or Additional Problems?" *Hastings Race & Poverty Law Journal L. J. 1*, 14, (2012):4 citing John C. Nelson et al., *Domestic Violence in the Adult Years*, 33 J.L. MED. & ETHICS 28, 29, (2005)

<sup>75</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (London: Hart Publishing, 2012):51-2

<sup>76</sup> Ibid.

<sup>77</sup> The UN General Assembly, In-depth Study on All Forms of Violence against Women, (Report of the Secretary-General, A/61/122/Add.1, UN General Assembly, 2006), para 68

<sup>78</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (London: Hart Publishing, 2012): 51-2



### 1.2.2. Causes and Consequences of Domestic Violence

Understanding the main causes of domestic violence remains complex and controversial. There are four main theories that can be distinguished in this respect. First, structural theory—which considers domestic violence as a result of the prevalent gender power structure that spreads throughout society at all levels, including private relationships.<sup>79</sup> Second, individually oriented theory— this theory concentrates on factors like childhood, social and economic conditions or any other conditions affecting the lives of the victim or the perpetrator.<sup>80</sup> Third, systemic approach— this theory emphasizes the lack of balance within the individual family.<sup>81</sup> Fourth, so called ecological mode— this theory explains violence on the basis of numerous features within the structure/society, the relationship and the individual interact.<sup>82</sup>

Although there are numerous theories that provide different explanation for the occurrence of domestic violence, gender inequality is considered to be the key characteristic in explaining the causes of domestic violence.<sup>83</sup> Feminist theory argues that power imbalance between men and women and in particular male supremacy in society, influences interpersonal relationships.<sup>84</sup> Similarly patriarchal theory emphasizes the notion of patriarchy, which propagates absolute power of the one in power over the others through the means of violence, in fostering domestic

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<sup>79</sup> Amnesty International, *Men's Violence against Women in Intimate Relationships: An account of the situation in Sweden*, (Sweden, 2004):6

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Gender inequality might not be a particular characteristic for other forms of domestic violence that fall outside the scope of this paper. See, Rhonda Copelon, *Understanding Domestic violence as torture*, in Rebecca J. Cook, *Human Rights of Women: National and International Perspectives*, (Pennsylvania: University of Pennsylvania Press, 1994):120

<sup>84</sup> Emily R Rothman, Alexander Butchart, and Magdalena Cerdá, *Intervening with Perpetrators of Intimate Partner Violence: A Global Perspective*, (Report, Switzerland: World Health Organization, 2003):1

violence.<sup>85</sup> The same approach is also shared by the Amnesty International as it finds the roots of domestic violence in the prevailing male power structure in society along with existing stereotypes concerning masculinity and femininity.<sup>86</sup>

It is important to note that while most cases of domestic violence share the underlying theme of gender-inequality, certain groups of women are considered to be more at risk of suffering from domestic violence than others. These categories of women include elderly women, women with low education, women with disabilities or women living in rural areas.<sup>87</sup> However, this is not to disregard that domestic violence is universal in the sense that its pervasiveness is not contingent on a particular social, political, economic, religious or cultural structure of a country.<sup>88</sup> Domestic violence as gender-based violence exists in every society, regardless of the level of education of its victims or the level of economic development of the country.<sup>89</sup>

It is well accepted that the consequences of domestic violence places the heaviest toll on women who suffer from it directly.<sup>90</sup> For them domestic violence usually results in serious short- and long-term health consequences starting “from injuries to unwanted pregnancies, sexually transmitted infections, depression and chronic diseases.”<sup>91</sup> In 2005, the WHO Multi-country Study on Women’s Health and Domestic Violence against Women illustrated that up to 50% of

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<sup>85</sup> Bearice Manu, “*The Victimization of Women in Family Space Profiles of Women Victims of Domestic Violence*,” *Journal of Research in Gender Studies*, Vol. 4 (1), (2014):1090

<sup>86</sup> Amnesty International, *Men’s Violence against Women in Intimate Relationships: An account of the situation in Sweden*, (Sweden, 2004):11-2

<sup>87</sup> Ronaph J.A. McQuigg, *International Human Rights Law and Domestic Violence: The Effectiveness of International Human Rights Law*, Taylor & Francis, (London , 2011): 87

Bearice Manu, “*The Victimization of Women in Family Space Profiles of Women Victims of Domestic Violence*,” *Journal of Research in Gender Studies*, Vol. 4 (1), (2014): 28

<sup>89</sup> Netkova Bistra, “Access to justice for women victims of domestic violence in the Republic of Macedonia,” *International Review of Law*, (2013): 1-13

<sup>90</sup> Amnesty International, *Men’s Violence against Women in Intimate Relationships: An account of the situation in Sweden*, (Sweden, 2004):8

<sup>91</sup> World Health Organization, 10 facts on Women’s Health, accessed November 23, 2014, [http://www.who.int/gender/documents/10facts\\_womens\\_health\\_en.pdf?ua=1](http://www.who.int/gender/documents/10facts_womens_health_en.pdf?ua=1)

women had suffered physical injuries as a result of domestic violence.<sup>92</sup> Studies indicate that domestic violence has a significant effect on the mental and physical health of women, particularly for those who suffer a combination of physical, sexual, and psychological abuse.<sup>93</sup> However, the consequences of domestic violence can often go beyond health care problems.<sup>94</sup> The most severe forms of domestic violence lead to death. As the parliamentary Assembly of the Council of Europe acknowledged, domestic violence is the major cause of death and disability of women between the ages of 16 and 44.<sup>95</sup> Furthermore, the continuation of domestic violence breaches the victim's confidence in her surroundings and in the worst case, in herself. As studies suggest, suicide rates are higher among women who suffer from domestic violence than among those who do not experience violence.<sup>96</sup> Thus, domestic violence destroys women's physical integrity along with her self-esteem – it is intimidating, degrading and humiliating.<sup>97</sup>

Yet, the issue of domestic violence should not be looked at as “just a women's problem” because this toll is not limited to women alone, it also falls heavily on children, friends, families, and societies at large.<sup>98</sup> Studies showed that children, friends and family members of a woman subjected to domestic violence are exposed to increased threats or attacks from the perpetrator often leading to the destruction of the woman's relationship with them.<sup>99</sup> The wide range of

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<sup>92</sup> WHO, Department of Reproductive Health and Research, London School of Hygiene and Tropical Medicine, South African Medical Research Council. *Global and regional estimates of violence against women*, (Report, Switzerland: World Health Organization, 2013) accessed November 23, 2014, [http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625\\_eng.pdf#sthash.lpZ4WmUH.dpuf](http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf#sthash.lpZ4WmUH.dpuf)

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Council of Europe, Parliamentary Assembly, Recommendation 1582 on Domestic violence against women, (2002)

<sup>96</sup> Amnesty International, *Men's Violence against Women in Intimate Relationships: An account of the situation in Sweden*, (Sweden, 2004):7-8

<sup>97</sup> Amnesty International, *Broken Bodies, Shattered Minds: Torture and Ill-Treatment of Women*, (Report, Oxford: Alden Press, 2001)

<sup>98</sup> Women's Aid, "IWD 2014: Toll of domestic violence too high for society to bear," *Thomson Reuters Foundation*. (March 7, 2014), accessed October 17, 2015, <http://www.trust.org/item/20140307105218-gztx7/?source=search>

<sup>99</sup> Ibid.

criminological and sociological literature shows that witnessing domestic violence as a child may result in subsequent victimization or offending.<sup>100</sup> Last but not least, for general society, domestic violence means an increased financial burden. This is so for two main reasons. Firstly, victims of domestic violence demand more medical and mental health care services, which are directly borne by tax payers.<sup>101</sup> Secondly, valuable staff members of private businesses might be lost as a result of domestic violence, which causes lost productivity in addition to greater use of social-services.<sup>102</sup> Third, studies suggest that women subjected to domestic violence face increased risk of poverty, and unemployment.<sup>103</sup>

### **1.3 Confronting Myths on Victims of Domestic Violence**

There are a number of myths and stereotypes about the victims of domestic violence. Perhaps the most damaging myth around domestic violence and the most frequently asked question about the victim of domestic violence is, why she not just leave the abusive relationship. This blameworthy question wrongly assumes that victims of domestic violence always have the choice to leave the relationship and if they choose to stay, they become responsible for the consequences, while in practice, victims of domestic violence might have a number of valid reasons for remaining in the relationship.<sup>104</sup> These reasons include: economic dependence on the abuser, fear of retaliation, the concern for her children, emotional attachment to her abuser, lack

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<sup>100</sup> Brian K. Payne, Ruth A. Triplett, George E. Higgins, "The Relationship Between Self-Control, Witnessing Domestic Violence, and Subsequent Violence," *Deviant Behavior*, 32:9 (2010):770, accessed November 11, 2015, DOI: 10.1080/01639625.2010.538317

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> Ortiz-Barreda, Vives-Cases. "Legislation on violence against women: overview of key components." *Rev Panam Salud Publica*, Vol 33(1), (2013):62

<sup>104</sup> Rebecca Licavoli Adams, "California Eviction Protections for Victims of Domestic Violence: Additional Protections or Additional Problems?" *Hastings Race & Poverty Law Journal L. J. 1*, 14, (2012):6

of alternative accommodation or, simply a feeling of powerlessness.<sup>105</sup> The sub-sections below analyze why women remain in the abusive relationship and confront a number of myths on domestic violence, which is necessary step to ensure adequate protection for female victims of domestic violence.

### 1.3.1 Victim Blaming for Remaining in the Abusive Relationship

Frequently, women are blamed by the significant portion of societies for domestic violence and in particular, for remaining in the abusive relationship, while the perpetrators are mostly left uncriticized.<sup>106</sup> Unfortunately, victim blaming attitudes sometimes also find reflection in the language of national legislations. For example, domestic violence laws in Ukraine and Armenia make direct reference to “victim behavior” or behavior that “provokes, results in or creates conditions” for the violence.<sup>107</sup> Domestic violence advocates have long highlighted victim blaming ideology as a major obstacle for resolving the issue, because it wrongly puts responsibility on women, rather than on men as a perpetrator.<sup>108</sup> Victim-blaming attitudes often deprive women of their right. For example, the 2006 report of the Special Rapporteur on adequate housing states that

*some of the pervasive cultural assumptions about a woman’s need to ‘leave’ a violent household - as opposed to the need to remove a violent partner - undermine women’s enjoyment of the right to adequate housing.*<sup>109</sup>

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<sup>105</sup> Ibid.

<sup>106</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (London: Hart Publishing, 2012):32

<sup>107</sup> United Nations Office on Drugs and Crime United Nations Division for the Advancement of Women, Expert Group Meeting on Good Practices in Legislation on Violence Against Women, EGM/GPLVAW/2008/EP.01, (Austria: United Nations Office, 2008):7

<sup>108</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (London: Hart Publishing, 2012):36

<sup>109</sup> The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, Miloon Kothari, *Economic and Cultural Rights: Women and Adequate housing*, E/CN.4/2006/118, Economic and Social Council: Commission on Human Rights, (2006): para.3

Victim blaming by society also hinders victim's self-blaming, which can decrease the probability of her seeking help.<sup>110</sup> Often, adherence of victim-blaming attitudes also functions as a form of second victimization leading to further mental health complications for the women<sup>111</sup> and exoneration of the perpetrator.<sup>112</sup> Most importantly, victim blaming attitudes remove attention from the real issue, which is providing necessary resources for women in order to enable her to leave the violent relationship.<sup>113</sup> Domestic violence advocates rightfully argue that adequate social support measures are vital for victims in order to empower them to leave the abusive relationship.<sup>114</sup> Along with providing women with a number of necessary support services, they should be reassured that the domestic violence is not their responsibility.<sup>115</sup>

There is a wide range of literature that tries to analyze the "psychology" of victims of domestic violence. Walker's concept of "learned helplessness" is perhaps the best known explanation in this respect.<sup>116</sup> In particular, Walker explains the phenomena of remaining in the abusive relationship as a form of fatalism where women learn that their cognitive actions do not make much difference in what happens to them, which often result in feelings of learned helplessness.<sup>117</sup> Other commentators regard Walker's theory as stereotypical.<sup>118</sup> For instance, contrary to Walker's theory, Mullender and Morley suggest that victims of domestic violence

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<sup>110</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (London: Hart Publishing, 2012):36

<sup>111</sup> Enrique Gracia, *Intimate partner violence against women and victim-blaming attitudes among Europeans*. (Bulletin, Spain: World Health Organization, 2014) accessed November 7, 2015, DOI: <http://dx.doi.org/10.2471/BLT.13.131391>

<sup>112</sup> Enrique Gracia, *Intimate partner violence against women and victim-blaming attitudes among Europeans*. (Bulletin, Spain: World Health Organization, 2014) accessed November 7, 2015, DOI: <http://dx.doi.org/10.2471/BLT.13.131391>

<sup>113</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (London: Hart Publishing, 2012):36

<sup>114</sup> Ronagh J.A. McQuigg, *International Human Rights Law and Domestic Violence: The Effectiveness of International Human Rights Law*, London: Taylor & Francis, (2011):33

<sup>115</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (London: Hart Publishing, 2012):36

<sup>116</sup> *Ibid.* p.34-5

<sup>117</sup> Matthew E. Egharevba, Idowu A. Chiazor, and Barnabas M. Suleiman, "Protecting Women against Domestic Violence: Current Debates and Future Directions." *Gender & Behaviour* 11(2), (2013):5659

<sup>118</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (London: Hart Publishing, 2012):34-5

usually engage in a number of strategies to cope with and resist the violence. Women remain in the relationship not due to some sociological incapacity, but rather due to practical reasons, such as protecting their children.<sup>119</sup>

### **1.3.2 Victim's Recantation of Domestic Violence Allegations**

Women react to domestic violence differently. While some may engage in criminal procedures against perpetrators, others are reluctant to file reports for help with the police.<sup>120</sup> Victim's recantation of the initial domestic violence allegations is the most common victim behavior, for which they frequently get blamed. This is when the victim recants her initial decision to cooperate with the law enforcement bodies, refuses to testify against the perpetrator and instead often continues to live with him.<sup>121</sup> An example of such behavior is illustrated in the next chapter in the case of *Goekce (deceased) v. Austria*.<sup>122</sup> As Meyersfeld rightly notes, in such cases, while the frustration of the authorities, who fail to intervene due to the victim's refusal to engage with the criminal justice system, might be understandable, it is important to remember that domestic violence is of a particular nature compared to other violent crimes.<sup>123</sup>

Although the victim's decision to withdraw charges against the perpetrator does not always take precedence, their cooperation with the police is important in order to address the issue of

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<sup>119</sup> Ibid.

<sup>120</sup> Hoan N. Bui, "Domestic Violence Victims' Behavior in Favor of Prosecution Prosecution," *Women and Criminal Justice Vol.12 (4)* (2008):54, accessed October 19, 2015, DOI:10.1300/J012v12n04\_03.

<sup>121</sup> Rebecca Licavoli Adams, "California Eviction Protections for Victims of Domestic Violence: Additional Protections or Additional Problems?" *Hastings Race & Poverty Law Journal L. J. 1*, 14, (2012):7

<sup>122</sup> CEDAW Committee, *Goekce (deceased) v. Austria*, Communication No. 5/2005, CEDAW/C/39/D/5/2005

<sup>123</sup> Bonita Meyersfeld, *Domestic Violence and International Law*, (United Kingdom: Hart 2010):46

domestic violence effectively.<sup>124</sup> Hence, it is importance to confront the main factors that nourish the victims' ambivalence.<sup>125</sup> There are a number of reasons for a victim's ambivalence. Scholars widely agree that a victim's economic dependence on the perpetrator can have a strong effect on her decision to leave the violent relationship or to cooperate with law enforcement bodies e.g. for some victims of domestic violence the prosecution of their perpetrator may lead to the removal of their family financial provider.<sup>126</sup> The phenomenon of a victim showing loyalty towards the perpetrator is a form of Stockholm syndrome and it is indicative of the enhanced emotional tie between victim and abuser.<sup>127</sup> Furthermore, gender scholars rightly argue that "women's experiences are the products of social interactions and unequal gender relations."<sup>128</sup>

Finally, it is important to note that leaving an abusive relationship is no guarantee of safety.<sup>129</sup> As an EU-wide survey revealed, a considerable number of women continue to be at risk of abuse even in the aftermath of a violent relationship.<sup>130</sup> Thereby, as Mullender and Morley rightly argue, a victim's recantation of allegations and returning to the relationship should be considered as a part of a strategy, rather than as a sign of weakness.<sup>131</sup> This is why, to

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<sup>124</sup> Hoan N. Bui, "Domestic Violence Victims' Behavior in Favor of Prosecution Prosecution," *Women and Criminal Justice Vol.12 (4)* (2008):54, accessed October 19, 2015 DOI:10.1300/J012v12n04\_03

<sup>125</sup> Laurie S Kohn, "The Justice System and Domestic Violence: Engaging the Case but Divorcing the Victim", N.Y.U. Review of Law and Social Change, Vol. 32, (2008): 245

<sup>126</sup> Hoan N. Bui, "Domestic Violence Victims' Behavior in Favor of Prosecution Prosecution," *Women and Criminal Justice Vol.12 (4)* (2008):55, accessed October 19, 2015 DOI:10.1300/J012v12n04\_03

<sup>127</sup> Manning Li, Richards Deborah, Stephen Smith, and Yang and Xu, "An Online Advisory System to Empower Victims of Domestic Violence," *Communications of the Association for Information Systems Vol. 30 (1)*, (2012): 38

<sup>128</sup> Hoan N. Bui, "Domestic Violence Victims' Behavior in Favor of Prosecution Prosecution," *Women and Criminal Justice Vol.12 (4)* (2008):54, accessed October 19, 2015 DOI:10.1300/J012v12n04\_03

<sup>129</sup> Dichter P, Melissa E., and Richard J. Gelles, "Women's Perceptions of Safety and Risk Following Police Intervention for Intimate Partner Violence," *Violence Against Women*, (2012):58

<sup>130</sup> European Union Agency for Fundamental Rights, *Violence against women:an EU-wide survey*, (Report: result at a glance, Belgium: Publications Office of the European Union, 2014):10

<sup>131</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (London: Hart Publishing, 2012):34-5



some extent and with certain exceptions, a state needs to respect a victim's choice, which is also considered to be a part of women's empowerment.<sup>132</sup>

In light of the above analysis, the effective legal system on domestic violence should be sufficiently nuanced to address violence, as well as complex human relationships.<sup>133</sup> Recanting and remaining in the relationship is a result of a cumulative decision, based on her knowledge about the abuser, violence and safety.<sup>134</sup> Understanding why victims of domestic violence refuse to cooperate with law enforcement bodies is of utmost importance for establishing effective protective and support measure for the victims of domestic violence.<sup>135</sup>

#### ***1.4 The Extent of Domestic Violence***

Domestic violence is an ugly reality for an overwhelming number of women around the globe.<sup>136</sup> Statistics on the extent of domestic violence are staggering. Studies suggest that globally between 15 (Japan) and 71 percent (e.g. Bangladesh, Ethiopia, Peru, and the United Republic of Tanzania) of women have suffered physical or sexual violence at the hand of their intimate male partners at some point in their life.<sup>137</sup> Although domestic violence is widespread in all countries, this wide variation between Japan and other provincial settings suggests that

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<sup>132</sup> Mandy Morgan and Coombes Leigh, "Empowerment and Advocacy for Domestic Violence Victims," *Social and Personality Psychology Compass* Vol. 7 Issue 8, (2013) 529

<sup>133</sup> Elizabeth Schneider, "Domestic Violence Law Reform in the Twenty-First Century: Looking Back and Looking Forward," *Family Law Quarterly*, Vol. 42, (2008): 363

<sup>134</sup> Rebecca Licavoli Adams, "California Eviction Protections for Victims of Domestic Violence: Additional Protections or Additional Problems?" *Hastings Race & Poverty Law Journal* L. J. 1, 14, (2012): 7

<sup>135</sup> Hoan N. Bui, "Domestic Violence Victims' Behavior in Favor of Prosecution Prosecution," *Women and Criminal Justice* Vol. 12 (4) (2008): 53, accessed October 19, 2015 DOI:10.1300/J012v12n04\_03

<sup>136</sup> See, e.g., *Statement by Rashida Manjoo, Special Rapporteur on violence against women, its causes and consequences*. (New York: United Nations, 2010): 7, accessed October 19, 2015, <http://www.un.org/womenwatch/daw/documents/ga65/vaw.pdf>

<sup>137</sup> WHO, London School of Hygiene and Tropical Medicine, South African Medical Research Council, *Global and regional estimates of violence against women*, (Report, Switzerland: WHO, 2013), accessed 23 November, 2014, [http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625\\_eng.pdf#sthash.lpZ4WmUH.dpuf](http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf#sthash.lpZ4WmUH.dpuf)

violence against women can be prevented.<sup>138</sup> However, the variation may also be considered as a reflection of the different approaches of collecting data.<sup>139</sup> Notably, the 2013 WHO report showed that lifetime extent of domestic violence against women is lower (19.3 %) in high-income countries of Western Europe compared to Central and Eastern Europe (27 %).<sup>140</sup> The following sub-sections analyze the scope of domestic violence in Europe and in Georgia– a country at the crossroads of Western- Asia and Eastern Europe. The aim of this section is to emphasize that the extent of domestic violence in Europe and particularly in Georgia is so big that it should not be overlooked.

#### **1.4.1.The Situation Concerning Domestic violence in Europe**

Depending on the survey, from 9.6 % to 67.8 % women in Europe stated that they have been subject to some form of physical or sexual violence throughout their lifetime, by either an intimate partner or another person.<sup>141</sup> However, in Europe, like in many other parts of the world, there is a continuous lack of comprehensive, robust and comparable data on the nature and extent of domestic violence against women.<sup>142</sup> This is partially due to the “hidden” nature of domestic

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<sup>138</sup> WHO, *Multi-country Study on Women's Health and Domestic Violence against Women: Summary Report of Initial Results on Prevalence, Health Outcomes and Women's Response*, (Geneva: WHO, 2005):5-7 “Japan also had the lowest level of sexual violence at 6%, with the highest figure of 59% being reported in Ethiopia. Whereas there was variation by age, by marital status and by educational status, these socio demographic factors did not account for the differences found between settings.”

<sup>139</sup> UN Division for the Advancement of Women, Economic Commission for Europe (ECE), World Health Organization, *Violence against women: a statistical overview, challenges and gaps in data collection and methodology and approaches for overcoming them*, (Report of the Expert Group Meeting, Switzerland, 2005)

<sup>140</sup> Ibid.

<sup>141</sup> European Union Agency for Fundamental Rights, *Violence against women:an EU-wide survey*, (Report, Belgium: Publications Office of the European Union, 2014):15

<sup>142</sup> Ibid., p.7

violence, and also due to the lack of the state's proper response to domestic violence.<sup>143</sup> Deficiencies in data collection on domestic violence have been numerous pointed out by the international community,<sup>144</sup> including by the European Parliament, which in 2009 issued the Resolution on the elimination of violence against women leading to first EU-wide survey on violence against women.<sup>145</sup>

In 2014 the European Union Agency for Fundamental Rights (hereinafter, "FRA") released the most comprehensive and the first EU-wide survey of its kind on the extent, nature and consequences of violence against women.<sup>146</sup> The main findings of the survey revealed that physical and sexual violence against women is a significant issue in Europe,<sup>147</sup> which "the EU cannot afford to overlook."<sup>148</sup> The survey was based on interviews with 42, 000 women across 28 European Union Member States.<sup>149</sup> As of today, such population-based victimization survey is considered to be the most reliable and comprehensive method of collecting information on the extent of domestic violence.<sup>150</sup>

According to the main findings of the FRA survey, since the age of 15, one in ten women has experienced some form of sexual violence, and one in five women has experienced physical and/or sexual violence from their current or previous male partner.<sup>151</sup> The most common physical violence, irrespective of the perpetrator, included pushing, grabbing or pulling a woman's hair. Furthermore, one in ten women indicated that before the age of 15 they had experienced some

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<sup>143</sup> Ibid.

<sup>144</sup> Ibid., p.12

<sup>145</sup> Ibid., citing European Parliament, Resolution on the elimination of violence against women, P7\_TA (Brussels, 2009)

<sup>146</sup> Ibid.

<sup>147</sup> Ibid., p.15

<sup>148</sup> Ibid., Results at a Glance p.3

<sup>149</sup> Ibid.

<sup>150</sup> Ibid., Full Report p.14

<sup>151</sup> Ibid., p. 21

form of sexual violence by an adult.<sup>152</sup> In total, 43% of women stated that they have experienced some form of psychological violence by their current or previous intimate partner, including controlling behavior, economic violence or blackmail.<sup>153</sup> The survey draws particular attention to the issue of marital rape. It confirmed that marital rape is a significant issue for a number of women in the EU by revealing that women who have been raped by their current partner, around 31% experience six or more incidents of rape by their partners.<sup>154</sup>

Finally, despite the wide-scale of the issue, the report also revealed that only 13%-14% of these women reported their most serious incident of domestic violence to the police.<sup>155</sup> With the publication of these data, it is clear that domestic violence remains systematically underreported. Consequently, the needs and the rights of the victims of domestic violence are not being ensured in practice.<sup>156</sup>

#### **1.4.2. Impact and Extent of Domestic Violence in Independent Georgia (1991-2015)**

Georgia is a former communist country in the region of Eurasia with a population of 3.75 million.<sup>157</sup> For many years the issue of domestic violence was considered to be a “private matter” worthy of no public attention. However, in 1992, after Georgia emerged as an Independent state from the collapsed Soviet Union, the long hidden issues of domestic violence against women

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<sup>152</sup> Ibid.

<sup>153</sup> Ibid., Results at a Glance p.23

<sup>154</sup> Ibid. p.10

<sup>155</sup> Ibid., p.3

<sup>156</sup> Ibid., p.167

<sup>157</sup> National Statistics Office of Georgia, access 12 May 2015, <http://www.geostat.ge/index.php?action=0&lang=eng> unfortunately, currently Georgia has no effective control over its full territory (69 700 square kilometers) due to the fact that two breakaway regions of South Ossetia and Abkhazia are occupied by the Russian military forces and controlled by local de facto governments. Hence, figures in this section do not include the occupied regions, unless otherwise noted.

started to become a topic of public discussion.<sup>158</sup> Since then there have been a number of studies that tackled the issue of domestic violence. Different sources suggest that the reported rate of domestic violence in Georgia varies from 5% to 31%.<sup>159</sup> This variety of data is commonly explained by the absence of comprehensive and comparable data at the state level and due to the hidden nature of domestic violence. The majority of available studies rely on mixed methodology, a combination of qualitative and quantitative methods while some of them use human rights methodology.<sup>160</sup>

Extent of domestic violence against women became particularly visible in the years of 2013-2014, when a number of incidents of femicide were broadcasted through the local media outlets.<sup>161</sup> According to the available information, in the year of 2013, 21 cases of femicide were reported, while in 2014- around 10 domestic violence incidents were identified.<sup>162</sup> All reported female victims of the femicide were killed as a result of domestic violence at the hand of their male husbands or male partners.<sup>163</sup> The primary motivation of the crime was “jealousy or protection of male dignity.”<sup>164</sup>

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<sup>158</sup> The United Nations Population Fund Georgia, *National Research on Domestic Violence against Women in Georgia*. National Research, (Tbilisi: LTD Fountain Georgia, 2010):13-4, accessed November 23, 2014, <http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/GeorgiaAnnexX.pdf>

<sup>159</sup> Ibid., p.16 citing The Institute for Policy Studies, *Perception of violence against women and domestic violence in Tbilisi, Kakheti and Zemo Svaneti*, (2013)

<sup>160</sup> Minnesota Advocates for Human Rights and Institute for Policy Studies, *Domestic Violence and Children Abuse in Georgia: An Assessment of Current Standings of Law and Practice Regarding Domestic Violence and Child Abuse in Georgia, and Recommendations for Future United Nations Country Team Involvement*, (Report, Tbilisi, 2006):3, accessed October 17, 2015 [http://www.theadvocatesforhumanrights.org/uploads/domestic\\_violence\\_and\\_child\\_abuse\\_in\\_georgia\\_-\\_web\\_version\\_2.pdf](http://www.theadvocatesforhumanrights.org/uploads/domestic_violence_and_child_abuse_in_georgia_-_web_version_2.pdf)

<sup>161</sup> Public Defender of Georgia, *The Situation of Human Rights and Freedoms in Georgia*, (Annual report, Tbilisi, 2013):270, accessed November 23, 2014, <http://www.ombudsman.ge/uploads/other/1/1934.pdf>

<sup>162</sup> Public Defender of Georgia, *Written submission to the 58th Session of the Committee on the Elimination of Discrimination Against*, (Report, Tbilisi: Public Defender of Georgia, 2015):5

<sup>163</sup> Ibid.

<sup>164</sup> Public Defender of Georgia, *Violence against Women and Domestic Violence in Georgia*, (Special Report, Tbilisi: Public Defender of Georgia, 2015):34

One of the most comprehensive and large-scale recent studies on the issue of domestic violence in Georgia is considered to be the National Survey on Domestic Violence against.<sup>165</sup> The main findings of the survey suggest that every eleventh married woman in Georgia is subject to domestic violence.<sup>166</sup> This means that 9.1% of women who have ever been married/or had an intimate partner in Georgia had experienced domestic violence at some point in their lives.<sup>167</sup>

Despite the prevalence of domestic violence in Georgia, reported rates of domestic violence remains rather low.<sup>168</sup> It is widely understood that reporting domestic violence requires a complex decision-making process from its victims.<sup>169</sup> In order to understand the full extent of domestic violence in Georgia, it is important to discuss why victims remain reluctant to report the long-hidden issue of domestic violence. Available literature suggests a number of reasons in this respect: first, distrust towards relevant agencies (38%); second, embarrassment related to the disclosure of the information (32%) and third, reasons such as family reputation (10%), a fear of escalating the violence (5%), and a fear of marriage dissolution (3%).<sup>170</sup> According to the 2008 survey, 81% of police officers suggest that the main reason for domestic violence victims' reluctance to report is their willingness to keep the incident as a secret and consequently preserve

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<sup>165</sup> The United Nations Population Fund Georgia, *National Research on Domestic Violence against Women in Georgia*, (National Research, Tbilisi: LTD Fountain Georgia, 2010):33, accessed November 23, 2014, <http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/GeorgiaAnnexX.pdf>

<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

<sup>168</sup> The CEDAW Committee, Concluding observations on the combined fourth and fifth periodic reports of Georgia, CEDAW/C/GEO/CO/4-5, (2014)para 20 (ab)

<sup>169</sup> Angela R. Gover, Pau Dagmar Pudrzynskal, and Dodge Mary, "Law Enforcement Officers' Attitudes About Domestic Violence," *Violence Against Women Vol.17*(5),(2011):619-20, accessed September 23, 2015, DOI: 10.1177/1077801211407477

<sup>170</sup> Minnesota Advocates for Human Rights and Institute for Policy Studies, "Domestic Violence and Children Abuse in Georgia:An Assessment of Current Standings of Law and Practice Regarding Domestic Violence and Child Abuse in Georgia, and Recommendations for Future United Nations Country Team Involvement," (Report, Tbilisi, 2006):4, citing Serbanescu F., Goodwin M., "Domestic Violence in Eastern Europe: Levels, Risk Factors and Selected Reproductive Health Consequences," (Paper, France: the European Conference on Interpersonal Violence, 2005)

the image of a happy relationship.<sup>171</sup> Other important reasons include: compassion for the abuser, unwillingness to put him in jail, embarrassment for being the victim, protecting child for trauma of police intervention and subsequent trial and fear for the abuser's revenge.<sup>172</sup> Finally, 64 % of interviewed police officers suggest that women's lack of awareness on the issue of domestic violence prevented them from reporting, because they considered violence as a normal aspect of marital life and sometimes even blame themselves for having provoked the husband's violence.<sup>173</sup>

As for the public perception, various studies reveal that a significant part of the patriarchal Georgian society perceives domestic violence as a "private matter" and in certain cases even justifying it. For instance, in the 2005 survey around 90% of women who were interviewed noted that the "woman should be more modest and try not to provoke violence," while around 60% of women stated that "no matter what, whatever happens in the family should stay within [the] family."<sup>174</sup> According to the 2006 baseline research, 75.7% of interviewed individuals stated that the issue of domestic violence should not be discussed publicly because it was taboo, 26.7% noted that talking openly about domestic violence contradicted Georgian mentality, while 20.5% proclaimed that they found it useless to disclose family issues believing that it would not eliminate the problem.<sup>175</sup> Furthermore, 34% of women did not consider domestic violence as a

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<sup>171</sup> Estonian Institute for Open Society, Anti -Violence Network of Georgia, *Interviews with Georgian Police Personnel on Domestic Abuse and Violence against Women*, (Report, Tbilisi, 2008):10-1

<sup>172</sup> Ibid.

<sup>173</sup> Ibid.

<sup>174</sup> Minnesota Advocates for Human Rights and Institute for Policy Studies, "Domestic Violence and Children Abuse in Georgia: An Assessment of Current Standings of Law and Practice Regarding Domestic Violence and Child Abuse in Georgia, and Recommendations for Future United Nations Country Team Involvement," (Report, Tbilisi, 2006):3 *citing* N. Tsikhistavi. (ed.), *Family Violence on Women: Multi-Component Research*, The Caucasus Women's Research and Consulting Network (CWN), (Tbilisi, 2005)

<sup>175</sup> The United Nations Population Fund Georgia, *Domestic Violence against Women in Georgia*, (National Research, Tbilisi: LTD Fountain Georgia, 2010):17-8, accessed November 23, 2014, <http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/GeorgiaAnnexX.pdf> *citing* Aladashvili I.,

violation of law in certain cases, including when the wife failed to pay attention to the child.<sup>176</sup> Notably, in the 2006 study on the attitudes toward domestic violence revealed gender-related asymmetry. Namely, 89% of men stated that there was no excuse for a woman to use force against her husband, while only 54% of them acknowledged that same rule should be applied toward their wives.<sup>177</sup> 38% of male respondents claimed that using physical force against their wives is justified if she is unfaithful to them.<sup>178</sup>

According to more recent studies, the tolerance towards domestic violence among Georgian population is decreasing. For example, according to the study of the Perceptions and Attitudes towards Violence against Women and Domestic Violence (2013), only 25% of respondents consider domestic violence a “family matter” and 17% believe it can be justified in certain cases, while 69% of respondents acknowledge domestic violence as a crime.<sup>179</sup> Finally, it is also important to analyze police officers’ attitudes towards domestic violence and clarify whether society’s view towards domestic violence coincided with changes in the law enforcement officer’s perceptions on the issue of domestic violence. Available survey on the perception of Georgian police officers reveals that 92% of police officers consider that physical abuse is one of the most problematic issue along with physiological violence in Georgia (82% consider it as an issue).<sup>180</sup>

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Chkheidze K. Monitoring of Implementation of the Action Plan on Elimination of Domestic Violence and Protection and Support to its Victims (2008)

<sup>176</sup> Ibid., p.7

<sup>177</sup> Minnesota Advocates for Human Rights and Institute for Policy Studies, "Domestic Violence and Children Abuse in Georgia: An Assessment of Current Standings of Law and Practice Regarding Domestic Violence and Child Abuse in Georgia, and Recommendations for Future United Nations Country Team Involvement," (Report, Tbilisi, 2006):4

<sup>178</sup> Ibid.

<sup>179</sup> Institute for Policy Studies. , *Study of the Perceptions and Attitudes towards Violence against Women and Domestic Violence in Tbilisi, Kakheti and Samegrelo-Zemo Svaneti*. Report, Tbilisi: UN Women, 2014. (2013):7

<sup>180</sup> Estonian Institute for Open Society, Anti -Violence Network of Georgia, *Interviews with Georgian Police Personnel on Domestic Abuse and Violence against Women*, (Report, Tbilisi, 2008):5



Despite the positive developments in the societal perception of domestic violence, a substantial number of Georgian women continue to suffer from this issue. A continued widespread practice of domestic violence in Georgia raises the question whether the measures taking against domestic violence at the national level are effective and in line with the international standards. Next chapters tackle this question more specifically.

## **Conclusion**

In light of the analysis in the first chapter, it is now possible to conclude that domestic violence is a complex phenomenon, which continues to have devastating consequences for a significant number of women in Europe and more specifically in Georgia. In addition to direct victim, domestic violence imposes considerable costs on children, families and communities. Notably, it is a gender inequality that not only causes, but also feeds the issue of domestic violence. Given the gravity and extent of domestic violence, the next chapters analyze state's response to domestic violence under the international and regional human rights standards and their implementation at the national level, using Georgia as a case study.

## **Chapter 2: The Responsibility of the State to Address Domestic Violence**

### **Introduction**

Over the last twenty years, the notion of the state having a positive obligation to protect women from domestic violence has become increasingly widespread and has been encoded in a variety of international legal instruments. The first section of this chapter traces the brief history of global developments with respect to the issue of domestic violence. The second section analyzes the approaches of the ECtHR and the Committee on the CEDAW Committee to domestic violence. The third section analyzes four main type of states' response to domestic violence under the international standards. These measures include criminal law response, civil responses, social support services for the victim and awareness raising campaigns. Along with international standards, the section also examines the opinions of the academic commentators particularly with respect to beneficial social support measures for the victims of domestic violence.

### **2.1. Domestic Violence: Human Rights Violation and a Form of Discrimination against Women**

Although suffering is often the unavoidable part of the human condition, it is widely believed that all human beings are entitled to live free from what is considered to be preventable suffering.<sup>181</sup> Yet, recognition of domestic violence as a public matter over which the state has

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<sup>181</sup> Barbara Burton, Nata Duvvury, and Nisha Varia, *Activities, Justice, Change, and Human Rights: International Research and Responses to Domestic Violence*, (Synthesis paper, Washington: International Center for Research on Women and The Centre for Development and Population Activities, 2000):8 accessed November 23, 2014,

certain obligations is a relatively recent global development. It was only in the early 1980s, when the issue of domestic violence started to emerge as a subject of international human rights discourse.<sup>182</sup> In particular, the international women's movement claimed that violence at home was not a private or cultural problem, but rather a breach of fundamental human rights for which states can be held responsible.<sup>183</sup> Although at that time there was no specific human rights treaty on women's human rights, in broad terms, domestic violence could have been seen as covered by a number of instruments, including the Universal Declaration of Human Rights (hereinafter, "UDHR") 1948<sup>184</sup> and the International Covenant on Civil and Political Rights (hereinafter, "ICCPR") 1966.<sup>185</sup> Both of these instruments had significant potential to be applied towards the victims of domestic violence. However, they were not treated so, mostly due to the narrow reading of the Convention<sup>186</sup> and also due to practical obstacles since it had to interact with gender biased national laws and social structures.<sup>187</sup> Moreover, not much actual attempts were made by the victims or their organizations to make use of these instruments. This applies to more recent human rights instruments as well. For example, until 2007 there had been only one admissibility decisions on domestic violence in the case of *Myszk v Poland* under the ECtHR.<sup>188</sup>

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<http://www.icrw.org/sites/default/files/publications/Justice-Change-and-Human-Rights-International-Research-and-Responses-to-Domestic-Violence.pdf>

<sup>182</sup> Katalin Fabian (ed.), "Domestic Violence in Post communist States: Local Activism, National Policies, and Global Forces" (Bloomington: Indiana University Press, 2010):8

<sup>183</sup> Ibid.

<sup>184</sup> The Universal Declaration of Human Rights, Article 3 provides that "everyone has the right to life, liberty and security of person." Article 5 states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

<sup>185</sup> The International Covenant on Civil and Political Rights, Article 6 enshrines, "every human being has the inherent right to life"; Article 7 notes, "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"

<sup>186</sup> Kenneth Roth, "Domestic violence as an international human rights issue" in Rebecca J. Cook ed. *Human Rights of Women: National and International Perspective* (University of Pennsylvania press 1994):327

<sup>187</sup> Dorothy Q. Thomas and Miche E. Baesley, "Domestic Violence as a Human Rights Issue," *Human Rights Quarterly* 15, no. 1 (1993):38-9

<sup>188</sup> The European Commission of Human Rights, *Violetta Myszk v. Poland*, Application no. 28244.95, 1 July 1989, The Commission found the application to be ill-founded. Later developments are discussed in the following section.

Taking into consideration that the issue of domestic violence affects vast numbers of women throughout Europe, this number seems to be relatively low.<sup>189</sup>

The first International body that specifically tackled women's human rights was the Commission on the Status of Women (1946).<sup>190</sup> Later, the UN General Assembly proclaimed 1975 as the International Women's Year, which was then expanded to the UN Decade for Women (1975-1985). During this period, three World Conferences were held respectively in Mexico (1975), Copenhagen (1980), and Nairobi (1985). The Fourth and the most important World Conference with respect to the issue of domestic violence was held in Beijing in 1996.<sup>191</sup> Most importantly, in 1979 the so called "International bill of rights for women" - the CEDAW was adopted by the UN General Assembly.<sup>192</sup> The CEDAW Convention prohibited all forms of discrimination against women<sup>193</sup> and set out a range of important obligations for states to protect women's human rights both in public and in private sphere.<sup>194</sup> However, it did not explicitly mention domestic violence or any other type of violence against women.<sup>195</sup> Dubravka Šimonovi, the former member of CEDAW Committee suggests that such "omission" "reflects the endemic reluctance to address the issue of violence against women at the time the treaty was adopted."<sup>196</sup>

<sup>189</sup> See., The United Nations Secretary-General, UNiTe to End Violence against women campaign, factsheet, DPI/2498 (2008), Accessed March 6, 2015, <http://www.un.org/en/women/endviolence/pdf/VAW.pdf>

<sup>190</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (United Kingdom: Hart Publishing, 2012):24-5

<sup>191</sup> Ibid., 8

<sup>192</sup> General Assembly Resolution 34/180, Convention on the Elimination of All Forms of Discrimination Against Women, (1979), Article 1 cited in Lee Hasselbacher, *State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, And International Legal Minimums of Protection*, 8 Nw. J. Int'l Hum. Rts. 190 (2010), p. 192, accessed March 2015, <http://scholarlycommons.law.northwestern.edu/njihr/vol8/iss2/3>

<sup>193</sup> Ibid., Article 2

<sup>194</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (United Kingdom: Hart Publishing, 2012):154 citing CEDAW Convention, Art 2 (a,b,c,f,d) 3,6,11(3),15(1) ; 4, 16 (1)f and 2, 18

<sup>195</sup> Ibid., p.27 citing Sally Engle Merry, "Constructing a Global Law – Violence against Women and the Human Rights System," American Bar Foundation, (2003)

<sup>196</sup> Dubravka Šimonovi, "Global and Regional Standards on Violence Against Women: The Evolution and Synergy of the CEDAW and Istanbul Convention," Human Rights Quarterly, Vol. 36, Number 3, 590-606, (August 2014),599

13 years later in 1992 the CEDAW Committee responded this so called “endemic reluctance” in its General Recommendation No 19 by pointing out that there is a direct link between gender discrimination and violence against women, including domestic violence.<sup>197</sup>

Meanwhile, in the mid-1980s, the U.N. Economic and Social Council, the U.N. General Assembly and U.N. Expert Group Meeting on Violence in the Family issued Statements and resolutions on domestic violence.<sup>198</sup> The following developments included the Resolution on Battered Women and Violence in the Family (1984), the UN Economic and Social Council Resolution 1984/14 on Violence in the Family,<sup>199</sup> Resolution 40/36 on Domestic Violence (1985),<sup>200</sup> and the UN Report on Violence against Women in the Family (1989). These documents, *inter alia*, noted that domestic violence was “associated with inequality between women and men” and that a change was needed in the existing approach of the international human rights protection system.<sup>201</sup> In 1990, the UN General Assembly passed General Resolution 45/114 on Domestic Violence, which along with 1985 Resolution played a significant role in the development of women’s right to be free from domestic violence, however, neither of them tackled the issue as a violation of women’s human rights.<sup>202</sup> In 1990 the UN General Assembly passed General Resolution 45/114 on Domestic Violence, which further identified the need for “common policies” and specialized approaches.” It “urged” states to take preventive and

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<sup>197</sup> The Committee on the Elimination of Discrimination against Women, General recommendations No. 19, (1992): para 23

<sup>198</sup> Lee Hasselbacher, "State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, And International legal Minimums of Protection," *Nw. J. Int'l Hum. Rts.* Vol. 8. Issue 2, (2010) accessed March 24, 2015, <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1098&context=njihr>

<sup>199</sup> *Ibid.*, p. 193, citing Bonita Meyersfeld, “Domestic Violence, Health, and International Law,” *Emory International Law Review* (2008),79

<sup>200</sup> United Nations General Assembly, Resolution A/RES/40/36 Domestic Violence, Article 2, (29 November 1985), accessed March 24, 2015, <http://www.un.org/documents/ga/res/40/a40r036.htm>

<sup>201</sup> Bonita Meyersfeld, *Domestic Violence and International Law*, (United Kingdom: Hart Publishing, 2012):19

<sup>202</sup> *Ibid.*, p.33

protective measures and to cooperate in exchanging information and experience.<sup>203</sup> Hence, the Resolution moved the issue of domestic violence into the mainstream area of international justice and public affairs.’<sup>204</sup>

The World Conference on Human Rights in Vienna in 1993 was another important arena for the recognition of domestic violence as the international human rights violation. The Vienna Declaration and Program of Action have incorporated the human rights of women.<sup>205</sup> In 1994 the General Assembly adopted one of the most explicit international documents on domestic violence – the Declaration on the Elimination of Violence against Women (hereinafter “DEVAW”), which was largely based on the provisions of General Recommendation No 19 to the CEDAW.<sup>206</sup> During the same year, the UN Commission on Human Rights appointed the Special Rapporteur on Violence against Women, its Causes and Consequences.<sup>207</sup> The mandate of the Special Rapporteur was to secure information on violence against women and to issue corresponding recommendations towards member states.<sup>208</sup> The Special Rapporteur’s work on domestic violence had an enormous impact on the international level.<sup>209</sup> In 1995 the fourth World Conference of Women became “a turning point in international women’s rights law.”<sup>210</sup> By demonstrating the global perverseness of violence against women, women’s right advocates managed to alter the general perception of violence against women as a private issue at the

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<sup>203</sup> United Nations General Assembly, General Resolution 45/114 on Domestic Violence, A/RES/45/114 (1990) Article 1 (a,b)

<sup>204</sup> Ibid., Articles 3 and Article 4

<sup>205</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (United Kingdom: Hart Publishing, 2012):21

<sup>206</sup> Ibid., p.37-38

<sup>207</sup> Ibid.

<sup>208</sup> Ibid., p.63; See also, Ronagh J.A. McQuigg, *International Human Rights law and Domestic violence: Effectiveness of international human rights law* (2011):80

<sup>209</sup> Ibid.

<sup>210</sup> Ibid., p.39

Conference.<sup>211</sup> The Beijing Declaration further reaffirmed states' commitment to "[p]revent and eliminate all forms of violence against women and girls."<sup>212</sup> In 1996 the Special Rapporteur confirmed the global nature of domestic violence by pointing out in her report that domestic violence was not "a mere domestic criminal justice concern."<sup>213</sup>

The Istanbul Convention adopted by the Committee of Ministers of the Council of Europe in April 2011, is the most recent development in the area of human rights and domestic violence.<sup>214</sup> The Istanbul Convention explicitly defines violence against women as a human rights violation and a form of discrimination against women.<sup>215</sup> The adoption of the convention demonstrates the acknowledgement of the issue of domestic violence in Europe and in this respect has a significant symbolic meaning.<sup>216</sup>

In conclusion, the history of development of specific international standards on domestic violence reveals that for the most part, domestic violence was considered a private matter outside the scope of state responsibility.<sup>217</sup> However, relatively recent global developments led to the growing international standards on domestic violence. Although, there is no global treaty on violence against women or specifically on domestic violence, it is now widely accepted that

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<sup>211</sup> Ibid., p.39

<sup>212</sup> Fourth World Conference on Women. *Beijing Declaration and Platform for Action*. (Beijing, 1995) para 29

<sup>213</sup> The Special Rapporteur on Violence against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy, A Framework for Model Legislation on Domestic Violence, E/CN.4/1996/53, (5 February, 1996) para 29,

<sup>214</sup> The Committee of Ministers of the Council of Europe, The Council of Europe Convention on preventing and combating violence against women and domestic violence, (Istanbul, 2011)

<sup>215</sup> Ibid., Article 3 (a)

<sup>216</sup> Although the CEDAW is a legally binding instrument, it does not explicitly mention domestic violence. The CEDAW Committee did issue General Recommendation no. 19 in 1992, which officially interpreted the CEDAW as prohibiting violence against women, including domestic violence, but it is still arguably whether the recommendation constitutes a strong legal basis. Ronagh J.A. McQuigg, "What Potential does the Council of Europe Convention on Violence against Women Hold as Regards Domestic Violence?" *The International Journal of Human Rights*. Vol. 16, No. 7, (2012): 956

<sup>217</sup> It should be mentioned that certain important steps have been taken by the African Union or the Organization of American States with respect to domestic violence. For example, the Organization of American states created the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women and African Union adopted the Protocol on the Rights of Women. However, since the research is primarily focused on Europe and particularly on Georgia, these documents are not included in this analysis.

domestic violence constitutes a violation of fundamental human rights and a form of discrimination.

## **2.2. Analysis of the Approach of Human Rights Bodies to Domestic Violence**

During the last few years, the issue of domestic violence has been mainstreamed in the work of the ECtHR and the CEDAW Committee. Both of these instruments stipulate that states have an obligation to act with due diligence to prevent and investigate acts of domestic violence against women and to punish perpetrators. While the existence of positive obligation is one side of the coin, the assessment of the state's response in this respect is yet another.<sup>218</sup> Both instruments developed considerable body of jurisprudence on the concept of states' responsibility towards domestic violence. This section analyzes standard tests that the CEDAW Committee<sup>219</sup> and the ECtHR<sup>220</sup> employ in order to determine states' responsibility with respect to domestic violence. The facts of the cases are relatively detailed in order to provide a full scenario under which states' responsibility to protect women from domestic violence arises.

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<sup>218</sup> Nenad Calic, *States Positive obligation to protect victims against Domestic violence: comparative analysis of Austria, Hungary and Croatia's take on the Due Diligence*, (LL.M. thesis, Central European University, 2011): 29

<sup>219</sup> See cases, *Eg Fatma Yildirim (deceased) v Austria*, Communication No 6/2005 (6 August 2007) CEDAW/C/39/D/6/2005, para 12.1.2; *Şahide Goecke v Austria*, Communication No 5/ 2005 (6 August 2007) CEDAW/C/39/D/5/2005, para 12.1.2; CEDAW, 'General Recommendation No 28' n 2, para 13

<sup>220</sup> See. ECtHR, *Opuz v. Turkey*, Application no. 33401/02 , 9 June 2009



### 2.2.1. Positive Obligation under the European Convention on Human Rights

Although the ECHR starts from the traditional negative rights approach,<sup>221</sup> certain articles, implicitly or explicitly, are considered to impose positive obligations.<sup>222</sup> Judge Martens defined these articles as “requiring member states to [...] take actions.”<sup>223</sup> Such extension of the states’ responsibility is an important factor that enabled analysis of domestic violence as a human rights violation.<sup>224</sup> Generally, under the ECHR the states’ positive obligations are rarely absolute.<sup>225</sup> Inherent limitations of positive obligations lie in states’ resources.<sup>226</sup> Thereby, the Court should not interpret positive obligation so as to impose “an impossible or disproportionate burden.”<sup>227</sup> The extent of positive obligation also varies with respect to different Convention articles.<sup>228</sup> In order to decide whether states have taken action in accordance with their positive obligations the ECtHR applies a specific test,<sup>229</sup> which is further scrutinized in the analyzes below. However, the main theoretical basis for the positive obligations under ECHR are considered to be articles 1 and 13 and “the principle that Convention rights must be practical and effective”.<sup>230</sup>

<sup>221</sup> Ronagh J.A. McQuigg, *International Human Rights Law and Domestic Violence: The Effectiveness of International Human Rights Law*, (2011):43

<sup>222</sup> Feldman D, *Civil Liberties and Human Rights in England and Wales*, 2<sup>nd</sup> ed (2002)53 cited in Alastair Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights*, (2004)

<sup>223</sup> See the dissenting opinion of judge Martens in *Gül v. Switzerland*, ECtHR, Application No. 23218/94, (1996)

<sup>224</sup> Dorothy Q. Thomas and Michele E. Beasley, “Domestic Violence as a Human Rights Issue” *Human Rights Quarterly*, Vol. 15, No. 1 (1993) p. 42, accessed March 4, 2015 <http://www.jstor.org/stable/762650>

<sup>225</sup> Michael O’Boyle, David Harris, Edward Bates, and Carla Buckley, *Law of the European Convention on Human Rights*, 3<sup>rd</sup> ed., (United Kingdom: Oxford University Press, 2014):591

<sup>226</sup> *Ibid.*

<sup>227</sup> Dimitris Xenos, *The Positive Obligations of the State under the European Convention of Human Rights* (New York: Routledge, 2012):100-1

<sup>228</sup> Philip leach, *Taking a Case to the European Court of Human rights*, 3<sup>rd</sup> ed., (New York: Oxford University Press, 2011):164

<sup>229</sup> Dorothy Q. Thomas and Michele E. Beasley, “Domestic Violence as a Human Rights Issue” *Human Rights Quarterly*, Vol. 15, No. 1 (1993) 42, Accessed March 4, 2015 <http://www.jstor.org/stable/762650>

<sup>230</sup> Alastair Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights*, (Oxford: Hart Publication, 2004)

Since 2007 the ECtHR has addressed a number of cases on the issue of domestic violence with respect to right to life (Article 2), prohibition of torture, inhuman and degrading treatment (Article 3) and right to privacy and family life (Article 8).<sup>231</sup> This section analyzes three major cases decided by the ECtHR concerning the liability of the state for failure to protect women against domestic violence at the hand of their husbands. By analyzing these cases in depth, fully comprehensive scenarios are provided under which the states' positive obligation arises. As a result of the analysis, the sub-section ascertains the scope of positive obligations that has been required by the ECtHR with respect to domestic violence. Consequently, the sub-section outlines a number of factors that may trigger problems as regards the effectiveness of the court's approach to the victims of domestic violence.

*Kontrova v Slovakia*<sup>232</sup> was one of the landmark decisions regarding domestic violence. According to the fact of the case, the applicant, Kontrova, had been subject to psychological and physical violence by her husband, who eventually carried out his threats to shoot their two children and then kill himself. Kontriva alleged that despite reports being made to the police, they failed to take appropriate actions to protect her children's lives (article 2) and her private and family life (article 8). The ECtHR held that the police indeed failed to observe "an array of specific obligations," which directly resulted in the death of the applicant's children.<sup>233</sup> The Court defined that these obligations included, accepting and registering the applicant's complaint, launching a criminal investigation and immediately commencing proceedings against

<sup>231</sup> ECtHR, *Kontrova v. Slovakia*, Application no. 7510/04, 31 May 2007; ECtHR, *Opuz v. Turkey*, Application no. 33401/02, 9 June 2009; ECtHR, *E.S. and others v. Slovakia*, Application no. 8227/04, 15 December 2009; ECtHR, *Bevacqua and S. v. Bulgaria*, Application no. 71127/01, 12 September 2008. Notable, inadmissible cases include the European Commission of Human Rights, *Violetta Myszk v. Poland*, Application no. 28244.95, 1 July 1989, The Commission found the application to be ill-founded. For further information see footnote no. 5, 49

<sup>232</sup> Notably, up until 2007, there has been only one admissibility decisions on the issue of domestic violence. See. ECtHR, *Myszk v Poland*, Application no. 28244/95, 1 July 1998; ECHR, *Kontrova v Slovakia*, Application no. 7510/04, 24 September 2007

<sup>233</sup> Ibid., para 52-54

her husband.<sup>234</sup> The Court reminded Slovakia, that under article 2 of the Convention it had positive obligation “to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.”<sup>235</sup> The Court interpreted the scope of positive obligation so as it “does not impose an impossible or disproportionate burden on the authorities.”<sup>236</sup> The court stated that positive obligation includes a duty to enact effective criminal-law provisions and to mobilize “law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions.”<sup>237</sup> In holding that the children’s right to life had been violated, the court applied a test under which:

[f]or a positive obligation to arise, it must be established that 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.<sup>238</sup>

Thus, it is essential to establish whether the state knew or should have known about the issue in question and if so, whether it took steps that could have reasonably prevented the act.<sup>239</sup> This principle has been confirmed by the Court in its subsequent decisions.<sup>240</sup> Furthermore, the court also found a violation of article 13 (right to an effective remedy), because the applicant was unable to obtain just compensation for non-pecuniary damages suffered in connection with the death of her children.<sup>241</sup> However, in light of finding the violation of article 2, the Court decided not to examine the case under article 8, leaving the abuse suffered by the applicant directly

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<sup>234</sup> Ibid., para 53

<sup>235</sup> Ibid., para 49

<sup>236</sup> Ibid., para 50

<sup>237</sup> Ibid. para 49

<sup>238</sup> Ibid. para 50

<sup>239</sup> International Law Discussion Group Summary, *The Principles of State Responsibility and Systemic Intimate Violence*, (Meeting Summary, London: Chatham House, 2010):7

<sup>240</sup> See the ECtHR, *Opuz v. Turkey*, Application no. 33401/02, 9 June 2009

<sup>241</sup> Ibid., para 64-65

unaddressed.<sup>242</sup> However, it was only after one year, when the Court assessed the issue of domestic violence under article 8 in the case of *Bevacqua and S v. Bulgaria*.<sup>243</sup>

The case of *Bevacqua and S v. Bulgaria* concerns an applicant who argued that authorities failed to provide an adequate legal protection against her ex-husband's violence and that the relevant Bulgarian law imposed the disproportionate and discriminatory effect on women.<sup>244</sup> She ultimately prevailed in her second claim as the Court decided not to examine the complaints under article 3. The court confirmed "that [the] concept of private life [under article 8] includes a person's physical and psychological integrity."<sup>245</sup> The Court affirmed that article 8 imposes positive obligations on the authorities "to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals."<sup>246</sup> Thus, it rejected the Government's arguments on the assumption that domestic violence was "a private matter" imposing no obligation on the state to assist a victim of domestic violence.<sup>247</sup> The Court established the state's failure "to provide the immediate assistance [that] the applicants needed."<sup>248</sup>

A positive novelty was that while addressing the case of *Bevacqua*, the Court largely employed international documents and cases on domestic violence.<sup>249</sup> It recognized the "particular vulnerability of the victims of domestic violence and the need for the active state involvement in their protection."<sup>250</sup> Thereby, the principle of positive obligation was particularly

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<sup>242</sup> Ronagh McQuigg, "The European Court of Human Rights and Domestic Violence," *The International Journal of Interdisciplinary Social Sciences*, vol. 5 (2010):434

<sup>243</sup> ECHR, *Bevacqua and S v. Bulgaria*, Application no. 71127/01, 12 September 2008

<sup>244</sup> *Ibid.*

<sup>245</sup> *Ibid.* para 65

<sup>246</sup> *Ibid.*

<sup>247</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (United Kingdom: Hart Publishing, 2012):245

<sup>248</sup> ECtHR, *Bevacqua and S v. Bulgaria*, Application no. 71127/01, 12 September 2008, para 83

<sup>249</sup> *Ibid.*, 49-53

<sup>250</sup> *Ibid.*, 65

recognized towards vulnerable groups.<sup>251</sup> The significance of this case lies also in the establishment of article 8 violations regarding the actual abuse suffered by the victim of domestic violence.<sup>252</sup>

Lastly, the case of *Opuz v. Turkey*<sup>253</sup> is considered to be one of the most authoritative cases under the ECtHR on the states' positive obligation to protect women from domestic violence.<sup>254</sup> The judgment of this case is an indication of a major turning point in the ECtHR jurisprudence towards a new approach to tackle the state's systematic failure in addressing domestic violence as a form of discrimination against women and a violation of article 3 under the ECHR.<sup>255</sup>

According to the facts of the case on eight different occasions between 1995 and 2002 the applicant and her mother were subject to physical, psychological and verbal abuse (including beating and stabbing) perpetrated by the applicant's then husband H.O. On the first occasion H.O. was convicted to 3 months imprisonment, which was later commuted to a fine,<sup>256</sup> for the second time he was fined, with payment to make it in eight installments.<sup>257</sup> On several other occasions criminal proceedings were also initiated for the threats, bodily harm and attempted murder, but due to the subsequent withdrawal of the complaint, criminal proceedings were discontinued in accordance with the domestic legislation.<sup>258</sup> In at least 3 separate occasions

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<sup>251</sup> Ibid., 64

<sup>252</sup> Ronagh McQuigg, "The European Court of Human Rights and Domestic Violence," *The International Journal of Interdisciplinary Social Sciences* Volume 5, (Number 4, 2010) 435

<sup>253</sup> ECtHR, *Opuz v. Turkey*, Application no. 33401/02, 9 June 2009

<sup>254</sup> Bonita Meyersfield, *Domestic Violence and International Law*, United Kingdom: Hart Publishing, (2012):220

<sup>255</sup> Nenad Calic, "States Positive obligation to protect victims against Domestic violence: comparative analysis of Austria, Hungary and Croatia's take on the Due Diligence" (LL.M. thesis, Central European University, 2011)53

<sup>256</sup> ECtHR, *Opuz v. Turkey*, Application no. 33401/02, 9 June 2009, para. 36

<sup>257</sup> Ibid., para 44

<sup>258</sup> Ibid., para 45-52

applicant filed complaints about the death threats from H.O. on which he was only questioned.<sup>259</sup> Ultimately, the mother of the applicant was shot and killed by H.O.<sup>260</sup> Six years after this incidence H.O. was sentenced to life in prison, but the change was later mitigated on the ground that the purpose of the crime was to protect his honor and finally he was released.<sup>261</sup> Notably, one month after his release, when the case was already under the Court's consideration, the abuse against the applicant continued.<sup>262</sup>

The applicant claimed violation of Article 2 (1) (Right to life), Article 3 (prohibition of torture), and Article 14 (prohibition of discrimination) in conjunction with Article 2 and 3 of the ECHR.<sup>263</sup> With respect to the death of the applicant's mother, the Court applied the test similar to the case of *Kontrova* and concluded that the criminal proceedings lacked an adequate deterrent effect.<sup>264</sup> It confirmed that under article 2, states have primary duty to take preventive measures in order to protect an individual whose life is at risk from the criminal acts of another individual.<sup>265</sup> The Court observed an "obvious" long lasting record of domestic violence,<sup>266</sup> from which it concluded that "the local authorities could have foreseen a lethal attack by HO."<sup>267</sup> However, they failed to "take reasonable measures which could have had a real prospect of altering the outcome or mitigating the harm [which was] sufficient to engage the responsibility of the state."<sup>268</sup>

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<sup>259</sup> Ibid.

<sup>260</sup> Ibid., para 54

<sup>261</sup> Ibid., para 55-8

<sup>262</sup> Ibid., para 59-64

<sup>263</sup> ECtHR, *Opuz v. Turkey*, Application no. 33401/02, 9 June 2009, par.3

<sup>264</sup> Ibid., para 153

<sup>265</sup> Ibid., para 49

<sup>266</sup> Ibid., para 134

<sup>267</sup> Ibid., para 136

<sup>268</sup> Ibid.

Irrespective of the victims' withdrawal of complaints, the court inferred that in the case in question the prosecution should have been continued in the public interest, taking into consideration the seriousness of the offence and the risk of further offences.<sup>269</sup> The Court further concluded the authorities failed to strike a balance between article 2 and article 8, by giving "exclusive weight to the need to refrain from interfering in what they perceive to be a "family matter."<sup>270</sup> Thereby, the Court emphasized the priority of victims' rights over the rights of perpetrators.<sup>271</sup> It confirmed its finding in the case of *Bevacqua* that in certain circumstances "interference with the private or family life of the individuals [by national authorities] might be necessary in order to protect the health and rights of others or to prevent commission of criminal acts."<sup>272</sup> In this respect, right to privacy is linked with right to liberty, autonomy and self-determination. It is the duty of a particular state to balance negative and positive protections.<sup>273</sup> Article 8 alone with article 2 is "undoubtedly a special area for the development of positive obligations."<sup>274</sup>

The Court's ruling with respect to the violation of article 3 is unprecedented in the context of domestic violence. Namely, it held that the level of the applicant's physical and psychological violence met the minimum level of severity that is required to qualify as an act of ill-treatment,<sup>275</sup> which confirms the extreme nature of domestic violence in certain circumstances. Here, the court once again, focused on the deficient legislative framework.<sup>276</sup>

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<sup>269</sup> Ibid., para 139

<sup>270</sup> Ibid., para 143

<sup>271</sup> Nenad Calic, "States Positive obligation to protect victims against Domestic violence: comparative analysis of Austria, Hungary and Croatia's take on the Due Diligence" (LL.M. thesis, Central European University, 2011), 65

<sup>272</sup> ECtHR, *Opuz v. Turkey*, Application no. 33401/02, 9 June 2009, para 144

<sup>273</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (United Kingdom: Hart Publishing, 2012):246

<sup>274</sup> Positive obligation under the European Convention on Human Rights, A guide to the implementation of the European Convention on Human Rights, Jean-Francois Akondji –kombe , Human rights handbooks, No7 (2007) 20

<sup>275</sup> ECtHR, *Opuz v. Turkey*, Application no. 33401/02, 9 June 2009, para.161

<sup>276</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (United Kingdom: Hart Publishing, 2012):223

For the first time in this case the Court recognized domestic violence as a form of discrimination which is similar to the position of the CEDAW Convention.<sup>277</sup> In particular, the Court held that Turkey's failure to provide adequate measures against gender based violence constituted a breach of Article 14 of the ECHR in conjunction with Article 2 and 3 of the Convention.<sup>278</sup> Although domestic violence was criminalized under the criminal law in Turkey, the ECtHR paid particular attention to the issue of its implementation. The Court noted that "general and discriminatory *judicial passivity* in Turkey, albeit unintentional, mainly affected women, the Court considers that the violence suffered by the applicant and her mother may be regarded as gender-based violence which is a form of discrimination against women."<sup>279</sup> The judgment of the case takes account of the position of the UN, Council of Europe and Inter-American system with regard to domestic violence and discrimination against women as well as references to a number of other relevant comparative materials emphasizing that domestic violence is an issue of public interest rather than a mere private matter.<sup>280</sup>

Overall, analysis of these three cases reveals that the Court is making increased use of the concept of positive obligations with respect to the issue of domestic violence. Firstly, the court has clearly established states' positive obligations to ensure that their criminal justice system meets minimum Convention standards. Moreover, the Court paid particular attention to the adequate response of the law enforcement bodies to domestic violence; States should ensure affirmative action to assist victims and should carry out effective investigation. Absolute no-

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<sup>277</sup> The CEDAW Committee, General recommendation no. 19 on Violence against Women (1992)

<sup>278</sup> ECtHR, *Opuz v. Turkey*, Application no. 33401/02, 9 June 2009, par. 201

<sup>279</sup> Ibid., para. 200

<sup>280</sup> Ibid., para. 80-90



interference in the cases of domestic violence, with an argument that it is “a private sphere” is not an acceptable option under the European Convention.<sup>281</sup>

### 2.2.2. Due Diligence Standard under the CEDAW Committee

In 2000, the UN General Assembly adopted the Optional Protocol to the CEDAW enabling any individual or group of individuals who claim to be the victim of the violation of the CEDAW Convention to submit complaints to the CEDAW Committee.<sup>282</sup> Complaints should also be submitted by or on behalf of victims, unless acting without consent might be justified.<sup>283</sup> Compared to that of the ECHR, this is can be seen as much wider test of standing for victims of domestic violence.<sup>284</sup> Importantly, the Optional Protocol also grants the CEDAW Committee with investigative power.<sup>285</sup> After finding that an individual’s complaint is justified, the CEDAW Committee recommends the state in question to take certain measures in order to remedy the situation.<sup>286</sup> Up until today the CEDAW Committee has examined three cases on the issue of domestic violence.<sup>287</sup> Notably, two cases -*Goekce v. Austria* and *Yildirim v. Austria*- have been brought on behalf of the family members of victims, who had been killed at the hands of their husbands.

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<sup>281</sup> Brice Dickson, “Positive obligations and the European Court of Human Rights” Northern Ireland Legal Quarterly, vol. 61 (3) (2010):203

<sup>282</sup> The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (A/RES/54/4), Article 2

<sup>283</sup> Ibid.

<sup>284</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (United Kingdom: Hart Publishing, 2012): 29

<sup>285</sup> The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (A/RES/54/4), Article 8

<sup>286</sup> Ibid., Article 7

<sup>287</sup> CEDAW Committee, *Ms. A.T. v. Hungary*; Communication no. 2/2003, CEDAW/C/32/D/2/2003 (2005); CEDAW Committee, *Goekce (deceased) v. Austria*, Communication No. 5/2005, CEDAW/C/39/D/5/2005 and CEDAW Committee, *Yildirim (deceased) v. Austria*, Communication No. 6/2005 CEDAW/C/39/D/6/2005

In *Ms A.T. v. Hungary*,<sup>288</sup> an author of communication was a victim of domestic violence from the hand of her former husband. During four years, which included a period of the consideration of the Communication by the CEDAW Committee, the husband continuously threatened his wife and on several occasions, he also battered her. Notably, at the time (2003) there was no protection or restraining order enacted in Hungary.<sup>289</sup> Hence, there was no legal or institutional system that could have prevented domestic violence.<sup>290</sup> As a consequence, the wife was unsuccessful to bar her husband from the apartment, where she resided together with their two children. She was also unable to flee to a shelter because they failed to provide accommodation for her children, one of whom had a disability.<sup>291</sup> Although criminal proceedings had been initiated against her husband, they were “irrationally” lengthy and provided no immediate protection for her.<sup>292</sup> The wife claimed, *inter alia*, that Hungary had failed to provide “effective and/or immediate protection” and thereby violated its positive obligation under the CEDAW Convention.<sup>293</sup>

The CEDAW Committee found that Hungary breached its obligation under Article 5 (a) (Sex Role Stereotyping and Prejudice) and Article 16 (Marriage and Family Life) of the Convention.<sup>294</sup> This decision is often referred to as authoritative for confirming the following three aspects: first, extreme and systemic forms of domestic violence contradict a victim’s human rights; second, the state has a corresponding obligation to protect; and third, the state will

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<sup>288</sup> CEDAW Committee, *Ms. A.T. v. Hungary*, Communication no. 2/2003, CEDAW/C/32/D/2/2003 (2005)

<sup>289</sup> CEDAW Committee, *Ms. A.T. v. Hungary*, Communication no. 2/2003, CEDAW/C/32/D/2/2003 (2005) para 2.1-2.7

<sup>290</sup> Bonita Meyersfield, *Domestic Violence and International Law*, United Kingdom: Hart Publishing, (2012): 44

<sup>291</sup> CEDAW Committee, *Ms. A.T. v. Hungary*, Communication no. 2/2003, CEDAW/C/32/D/2/2003 (2005) para 9.4

<sup>292</sup> *Ibid.*, para 3.2.

<sup>293</sup> *Ibid.*, para 3.1,3.2

<sup>294</sup> *Ibid.*, para 9.4

be in breach of international law, if it fails to protect the individual for this violence.<sup>295</sup> The case of *Ms A.T.* mirrors the approach of the ECtHR highlighted in the previous section with respect to effective enforcement of criminal law provisions regarding Article 2.<sup>296</sup> Hungary on the one hand, admitted that its legal system was not yet ready to fully comply with the “internationally expected, coordinated, comprehensive and effective protection and support for the victims of domestic violence” and on the other hand, expressed willingness to take appropriate steps to remedy the situation.<sup>297</sup> Following this communication, Hungary has made relevant amendments to its legislation, including integrating protection orders.<sup>298</sup>

The next communication regarding the issue of domestic violence to the CEDAW Committee, *Groekce (deceased) v. Austria*<sup>299</sup> concerned Şahide Goekce (deceased), who had been killed by her husband, Mustafa Goekce. The report of the first violent attack reveals that Mustafa Goekce had threatened to kill and tried to strangle the deceased.<sup>300</sup> According to Austrian law, the victim’s authorization was one of the main requirements to prosecute the offence.<sup>301</sup> However, the deceased refused to testify against her husband and consequently, the police was able to issue only (a 10 day) protection order.<sup>302</sup> The next violent incident was reported less than a year later.<sup>303</sup> The police granted further interim protection order and requested the Public Prosecutor to detain Mustafa Goekce for committing aggravated coercion.<sup>304</sup>

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<sup>295</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (United Kingdom: Hart Publishing, 2012): 45

<sup>296</sup> *Ibid.*, p. 232

<sup>297</sup> CEDAW Committee, *Ms. A.T. v. Hungary*, Communication no. 2/2003, CEDAW/C/32/D/2/2003 (2005) para 5.6., 5.7., 7.4.

<sup>298</sup> Bonita Meyersfield, *Domestic Violence and International Law*, United Kingdom: Hart Publishing, (2012):43

<sup>299</sup> CEDAW Committee, *Goekce (deceased) v. Austria*, Communication No. 5/2005, CEDAW/C/39/D/5/2005

<sup>300</sup> *Ibid.*, para. 2.1-2.12

<sup>301</sup> *Ibid.*, para. 2.1-2.12

<sup>302</sup> *Ibid.* para 2.2., 2.3

<sup>303</sup> *Ibid.*, para. 2.1-2.12

<sup>304</sup> *Ibid.*, para. 2.4

The request was denied.<sup>305</sup> In the following year, the police reported further disturbances and battering with respect to Goekce and requested the Public Prosecutor to detain Mustafa, which was again denied.<sup>306</sup> On two separate occasions police also issued temporary protection order, which Mustafa failed to obey the latter interim injunction.<sup>307</sup> In several occasions the police was reported that while remaining in the same apartment, Mustafa continued to threaten Şahide to kill.<sup>308</sup> They were also informed that Mustafa Goekce had a handgun unlawfully, but the police failed to react.<sup>309</sup> Eventually Mustafa shot Şahide with a handgun in front of their children.<sup>310</sup>

The authors of the communication claim violation of articles 1, 2, 3 and 5 of the CEDAW.<sup>311</sup> The state argued that the deceased's "choice" not to leave her husband and the refusal to testify against him, made it hard for the police to protect her.<sup>312</sup> The state further argued that it would have been impossible to prevent the fatal incident without interfering in the family life.<sup>313</sup> The case demonstrates the delicateness of finding a fair balance between the protection of the victims of domestic violence and the respect of their choices, autonomy and privacy.<sup>314</sup>

The CEDAW Committee reiterated its view from *A.T v. Hungary* that "the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity."<sup>315</sup> In view of the Committee, Mustafa Goekce's abuse (threats, intimidation and battering) against the deceased "crossed a high threshold of violence" and thereby, the prosecutor should have detained

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<sup>305</sup> Ibid. para 2.4

<sup>306</sup> Ibid., para. 2.5-2.12

<sup>307</sup> Ibid., para. 2.4-2.12

<sup>308</sup> Ibid., para. 2.4

<sup>309</sup> Ibid., para. 2.9

<sup>310</sup> Ibid., para 2.5 -2.11

<sup>311</sup> Ibid., para. 3.1

<sup>312</sup> Ibid., para 4.13-4.14

<sup>313</sup> Ibid., para 4.16

<sup>314</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (United Kingdom: Hart Publishing, 2012):46

<sup>315</sup> Ibid., para 12.1.5

him.<sup>316</sup> The Committee concluded that Austria violated rights of the deceased, Şahide Goekce, to life and physical and mental integrity contrary to article 2 (a) and (c) through (f), and article 3 of the Convention in conjunction with article 1 of the Convention and the General Recommendation 19.<sup>317</sup> The Committee reaffirmed that domestic violence may constitute a violation of a woman's right to equality under the CEDAW Convention.<sup>318</sup>

In the second domestic violence case against Austria, *Fatma Yildirim (deceased) v. Austria*,<sup>319</sup> the deceased had been physically and psychologically abused by her husband, Irfan Yildirim. The facts of the communication reveal that after Irfan became violent, she decided to divorce, but he opposed and threatened to kill her and her children.<sup>320</sup> Fearing Irfan's threats to kill, she move out of the family home, however, the threats and abuse continued.<sup>321</sup> Over the period of the next three month Fatma repeatedly reported to the police on her husband's assaults and "criminal dangerous threats."<sup>322</sup> As a result of these reports, the police used less severe measures than detention, such as issuing an order for "expulsion and prohibition to return."<sup>323</sup> However, on two occasions the deceased specifically requested to have her husband detained, both of which had been rejected by the Police.<sup>324</sup> On another occasion, the deceased applied for an interim injunction against her husband on behalf of her minor daughter.<sup>325</sup> On the same day Irfan Yildirim harassed the deceased at her workplace and later on, he threatened her adult son,

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<sup>316</sup> Ibid., para. 12.1.5

<sup>317</sup> Ibid., para 12.1.6-12.1.7

<sup>318</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (United Kingdom: Hart Publishing, 2012): 47

<sup>319</sup> CEDAW Committee, *Fatma Yildirim (deceased) v. Austria*, Communication No. 6/2005 CEDAW/C/39/D/6/2005

<sup>320</sup> Ibid. para 2.2-2.3

<sup>321</sup> Ibid. para 2.2-2.3

<sup>322</sup> Ibid. para 2.3

<sup>323</sup> Ibid. para 8.7

<sup>324</sup> Ibid. para 2.4

<sup>325</sup> Ibid. para 2.5

who reported the incident to the police.<sup>326</sup> On the following day the deceased reported further incidents of abuse and death threats at her workplace.<sup>327</sup> The Court issued an interim injunction for the duration of one month.<sup>328</sup> However, ten days after the interim injunction was issued Irfan followed Fatma on her way home and stabbed her fatally.<sup>329</sup> The author of the communication on behalf of the deceased and her family claimed violation of articles 1, 2, 3 and 5 of the CEDAW.<sup>330</sup>

As the details of the case reveal, Fatma remained consistent in her reports to the police and even instituted divorce proceedings against her husband, as opposed to the applicant of the case of *Goekce*. However, the police failed to assess adequately the necessity of Irfan's detention, which can be seen as a lack of understanding of the nature of domestic violence. Instead of looking at the issue of domestic violence as a particular type of violence, the state argued that it was the right decision not to detain Irfan "because — from an *ex ante* point of view — this would have been disproportionate."<sup>331</sup> Although the state rightly refers to the restriction of liberty as a last resort, it fails to look at the domestic violence as a particular crime contrary to the analysis of the previous chapter.

The Committee took the view that by failing to detain Irfan, Austria violated its due diligence obligation to protect Fatma.<sup>332</sup> The Committee reiterated its position in the case of *A.T. v. Hungary* that "the perpetrator's rights cannot supersede women's human rights to life and physical and mental integrity."<sup>333</sup> Following this conclusion, the Committee recommended

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<sup>326</sup> Ibid. para 2.6

<sup>327</sup> Ibid. para 2.6

<sup>328</sup> Ibid. para 2.12

<sup>329</sup> Ibid. para 2.13

<sup>330</sup> Ibid., para 2.3-3.1

<sup>331</sup> Ibid., para 4.5 notably, the husband was sentenced life imprisonment after the fatal incident

<sup>332</sup> Ibid. para 12.1.1

<sup>333</sup> Ibid., para 12.1.5

Austria to, *inter alia*, strengthen the implementation and monitoring of domestic violence legislation; prosecute perpetrators of domestic violence; ensure coordination between law enforcement and judicial officers and improve training of law enforcement officials.<sup>334</sup> These recommendations can be seen as a guideline for states' proper response to the issue of domestic violence.<sup>335</sup>

In conclusion, in all three cases the CEDAW Committee found the violation of the CEDAW Convention and pointed out the state's responsibilities with respect to domestic violence. The Committee further reiterated that the victims of domestic violence should have sufficient access to justice and the investigation should be conducted in a thorough manner.<sup>336</sup> The Committee has emphasized that in addition to an adequate legal framework, the state is under the obligation to ensure subjective and meaningful implementation.<sup>337</sup> Notably, the Committee's view expressed with respect to the cases against Austria are particularly relevant for those states that developed certain legal measures to address the issue of domestic violence, but fail to meet the due diligence standard to punish and prosecute perpetrators.<sup>338</sup>

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<sup>334</sup> Ibid., para 12.3

<sup>335</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (United Kingdom: Hart Publishing, 2012):52

<sup>336</sup> Rory Oconnel, "Human Rights Law and Domestic Violence," RightsNI, September 19, 2011, access November 23, 2014, <http://rightsni.org/2011/09/human-rights-law-and-domestic-violence/>

<sup>337</sup> Ronagh J.A. McQuigg, *International Human Rights law and Domestic violence: Effectiveness of international human rights law* (2011), 96

<sup>338</sup> Shazia Qureshi, "The Emergence/Extention of Due Diligence Standard to Assess the State Response towards Violence against Women/Domestic Violence," *A Research Journal of South Asian Studies Vol. 28, No. 1, (2013):57-8*

### **2.3. International Standards for the Response by States to Domestic Violence**

Under international standards, states' responses to domestic violence are commonly divided into four main groups. The first group primarily includes criminal remedies to punish a perpetrator and remove an on-going risk of domestic violence.<sup>339</sup> The second group includes protection measures such as civil as well as criminal remedies for the protection of victims. The third group includes various measures for the assistance of the victim of domestic violence, such as alternative accommodation, counseling or medical support.<sup>340</sup> The last, the fourth group, consists of awareness raising campaigns.<sup>341</sup>

Under the International standard states are, first and foremost, obliged to enact zero-tolerance policies on domestic violence.<sup>342</sup> Secondly, states should invalidate policies and laws that tolerate domestic violence and instead employ equality standards, particularly within family sphere.<sup>343</sup> According to the CEDAW Convention, states are obliged to, *inter alia*, adopt "basic anti-discrimination legislation or incorporate the equality principle into their legal systems" in order to eliminate discrimination against women by any person, organization or enterprise.<sup>344</sup>

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<sup>339</sup> Radhika Coomaraswamy, Report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/1996/53, (1996)

<sup>340</sup> Katja Filipic, "Legal Responses to Domestic Violence: Promises and Limits" in Antić Gaber, Milica (ed.), *Violence in the EU Examined: Policies on Violence against Women, Children and Youth in 2004 EU Accession Countries*, (Ljubljana: University of Ljubljana, 2009):115

<sup>341</sup> Ronagh J.A. McQuigg, *International Human Rights Law and Domestic Violence: The Effectiveness of International Human Rights Law*, London: Taylor & Francis, (2011):36

<sup>342</sup> Indira Jaising, Asmita Basu, and Brotiti Dutta, *Domestic Violence Legislation and its Implementation- An Analysis for ASEAN Countries Based on International Standards and Good Practices*, (Report, Bangkok: UN Development Fund for Women (UNIFEM), 2009)

<sup>343</sup> Ibid.

<sup>344</sup> General Assembly resolution 34/180, Convention on the Elimination of All Forms of Discrimination against Women, Articles 2 (a,b,c,f,d) 3,6,11(3),15(1) and 4, 16 (1)f and 2, 18



Thirdly, states should take special preventative measures, including measures to ensure access to speedy and effective justice system and support services.<sup>345</sup>

The sections below analyzes international standards and good practices towards domestic violence. The following sub-sections particularly focus on the potential that the Istanbul Convention holds with respect to addressing the issue of domestic violence. Notably, the Istanbul Convention sets out a number of new legally binding standards particularly in the area of awareness raising and social support of victims, while it also incorporates certain global standards, including the provisions that had previously been articulated by the CEDAW Convention.<sup>346</sup> For example, norms on substantive gender equality and women's empowerment reflect the CEDAW Convention.<sup>347</sup> Moreover, the Istanbul Convention contains most of the measures that were enshrined in the 1996 detailed framework for model legislation on domestic violence by the Special Rapporteur on Violence against Women.<sup>348</sup> Similar to the CEDAW Convention, the Istanbul Convention also establishes a reporting mechanism to monitor the implementation of the Convention.<sup>349</sup> The monitoring mechanism established under the Istanbul

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<sup>345</sup> Indira Jaising, Asmita Basu, and Brojiti Dutta, *Domestic Violence Legislation and its Implementation- An Analysis for ASEAN Countries Based on International Standards and Good Practices*, (Report, Bangkok: UN Development Fund for Women (UNIFEM), 2009)

<sup>346</sup> The preamble contains reference to other important human rights instruments including the CEDAW Convention, but it also specifically refers to General Recommendation No. 19 to the CEDAW. Dubravka Šimonović, "Global and Regional Standards on Violence Against Women: The Evolution and Synergy of the CEDAW and Istanbul Conventions," (Human Rights Quarterly, Vol. 36, 2014):590-606, accessed October 16, 2015, DOI: 10.1353/hrq.2014.0040

<sup>347</sup> Ibid., p.604

<sup>348</sup> Ronagh J.A. McQuigg, "What Potential does the Council of Europe Convention on Violence against Women Hold as Regards Domestic Violence?" *The International Journal of Human Rights*. Vol. 16, No. 7, (2012): 956 accessed October 16, 2015 DOI: 10.1080/13642987.2011.63828

<sup>349</sup> Rory O'Connell, "Human Rights Law and Domestic Violence," RightsNI, (2011), access November 23, 2014, <http://rightsni.org/2011/09/human-rights-law-and-domestic-violence>

Convention does not require victims to bring their cases to court, which is important for addressing “unseen crimes” like domestic violence.<sup>350</sup>

### 2.3.1. Criminal Law Measures of Intervention

The criminalization of domestic violence is a primary measure, which “helps make the community more sensitive to the domestic violence.”<sup>351</sup> An important question that arises with respect to criminal law measures of domestic violence is the general role of the victim in the criminal proceedings.<sup>352</sup> Due to the particular nature of domestic violence, “without the cooperation of the victim in reporting crime, furnishing evidence, identifying the offender, and acting as a witness in court, most crimes would remain unknown and unpunished.”<sup>353</sup> Furthermore, women are in the best position to evaluate possible dangers that can occur from the side of the perpetrator upon the involvement of police.<sup>354</sup> Thereby, in the effective system, it is advisable to ensure victim participation in handling the cases of domestic violence.<sup>355</sup> However, in certain cases (e.g. when the victim is a child or an incapacitated person) international

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<sup>350</sup> Ronagh J.A. McQuigg, “What Potential does the Council of Europe Convention on Violence against Women Hold as Regards Domestic Violence?” *The International Journal of Human Rights*. Vol. 16, No. 7, (2012): 947 accessed October 16, 2015 DOI: 10.1080/13642987.2011.63828

<sup>351</sup> Katja Filipic, “Legal Responses to Domestic Violence: Promises and Limits” in Antić Gaber, Milica (ed.), *Violence in the EU Examined: Policies on Violence against Women, Children and Youth in 2004 EU Accession Countries*, (Ljubljana: University of Ljubljana, 2009):118

<sup>352</sup> Ronagh J.A. McQuigg, *International Human Rights Law and Domestic Violence: The Effectiveness of International Human Rights Law*, (London: Taylor & Francis, 2011):21

<sup>353</sup> Ibid.

<sup>354</sup> United Nations Office on Drugs and Crime United Nations Division for the Advancement of Women, Expert Group Meeting on Good Practices in Legislation on Violence Against Women, EGM/GPLVAW/2008/EP.01, (Austria: United Nations Office, 2008):8

<sup>355</sup> Laurie S Kohn, “The Justice System and Domestic Violence: Engaging the Case but Divorcing the Victim,” *N.Y.U. Review of Law and Social Change*, Vol. 32, (2008)244

standards welcome *ex officio* investigations against perpetrators in order to ensure a “zero tolerance” policy on domestic violence.<sup>356</sup>

The Istanbul Convention, *inter alia*, notes that investigation and prosecution of certain offences, including physical and sexual violence, should not be entirely dependent upon a victim’s complaint or the consequent withdrawals of the victim’s complaint.<sup>357</sup> Making a victim’s complaint or subsequent withdrawal a *sine qua non* of investigation/prosecution might result in additional pressure on the victim, transform the issue of domestic violence into the private sphere again and, most importantly, leave the perpetrator unpunished.<sup>358</sup> As the ECtHR noted in the case of *Opuz*, in more than ten Member States of the Council of Europe, it is required to continue a prosecution of the perpetrator of domestic violence irrespective of the victim’s withdrawal of a complaint.<sup>359</sup>

It is worth noting that in spite of increased criminalization of domestic violence, the attrition rate around the world remains high irrespective of the fact whether or not the country has mandatory prosecution.<sup>360</sup> The main shortcomings of the criminal law measures of domestic violence are to be found in the implementation, which can only be resolved if the states ensure systematic data collections on the reported, investigated, prosecuted and convicted domestic violence against women.<sup>361</sup>

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<sup>356</sup> OSCE/ODIHR, *Amendments to the Legal Framework on Preventing and Combating Domestic Violence in Georgia*, (Opinion on Draft Amendments, Warsaw: OSCE Office for Democratic Institutions and Human Rights, 2013) *para 110*

<sup>357</sup> The Istanbul Convention provides the possibility for the States party to the Convention to make a reservation in respect of minor offences of physical violence. See Article 55, Article 78 par 2 of the Istanbul Convention

<sup>358</sup> Andrea Coomber, Written Submission of Interights to the European Court of Human Rights on Application No. 33401/02 *Nahide Opuz v. Turkey*, (2007) *para 25*

<sup>359</sup> ECtHR, *Opuz v. Turkey*, Application no. 33401/02, 9 June 2009 *para. 87*

<sup>360</sup> Equality Division Directorate General of Human Rights Council of Europe. *Combating violence against Women: Stocktaking study on the measures and actions taken in Council of Europe member States*. Report, (Strasbourg: Council of Europe, 2006):21

<sup>361</sup> *Ibid.*, p. 39

### 2.3.2. Civil Law Measures of Intervention

Civil law can provide an important measure of protection for the victims of domestic violence, especially for those women who do not engage with the criminal law.<sup>362</sup> The CEDAW General Recommendation No 19 makes it clear that states should establish effective civil law protection for victims of domestic violence.<sup>363</sup> Civil law measures include civil protection orders, anti-discrimination laws, civil laws to sue perpetrators and State agents for compensation, and victim compensation funds that cover cases of violence against women.<sup>364</sup>

Protection orders, also known as restraining or removal orders, were first introduced in the United States in the middle of the 1970s and are currently considered to be among the most effective legal measures that provide victim with an immediate remedy.<sup>365</sup> These measures protect women from the immediate danger of violence by restraining the perpetrator from contacting the victim during a specified period or removing the perpetrator from the home.<sup>366</sup>

The Istanbul Convention also addresses civil law measures of intervention in detail. In particular, article 29 of the Convention stipulates that state parties are under an obligation to take all necessary measures to provide victims with adequate civil remedies against perpetrators as

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<sup>362</sup> Ronagh J.A. McQuigg, *International Human Rights Law and Domestic Violence: The Effectiveness of International Human Rights Law*, (London: Taylor & Francis, 2011):30

<sup>363</sup> Ibid., p. 82

<sup>364</sup> Women against Violence Europe, "What is Domestic Violence against Women," information brochure, accessed October 19, 2015 :[http://www.wave-network.org/sites/default/files/what\\_is\\_vaw.pdf](http://www.wave-network.org/sites/default/files/what_is_vaw.pdf)

<sup>365</sup> Model framework for legislation on violence against women United Nations, 2009p.45 also United Nations Office on Drugs and Crime United Nations Division for the Advancement of Women, Expert Group Meeting on good practices in legislation on violence against women United Nations Office at Vienna, Austria, EGM/GPLVAW/2008/EP.01, 12 May 2008 pp.1-2

<sup>366</sup> The UN General Assembly, In-depth Study on All Forms of Violence against Women, (Report of the Secretary-General, A/61/122/Add.1, UN General Assembly, 2006):38, accessed March 24, 2015, <http://www.refworld.org/docid/484e58702.html>

well as against state authorities that have failed to take appropriate preventive or protective measures.<sup>367</sup> As regards to restraining or protective orders, article 53 notes that state parties must ensure appropriate restraining or protective orders for the victims.<sup>368</sup> Furthermore, article 31 emphasizes that while determining the custody and visitation rights of children, the state's shall ensure that the incidents of violence, including domestic violence are taken into account and that the exercise of these rights does not jeopardize the rights and safety of the victim or children.<sup>369</sup>

Despite the importance of the civil law measures of intervention to domestic violence, it is important to note that “the civil law is not a panacea for domestic violence.”<sup>370</sup> It is rather “a mechanism that victims can embrace to enable them to escape a situation which has become unbearable.”<sup>371</sup> Finally, although there is a significant distinction between civil and criminal measures, recent developments in a number of European countries establish the close link between these measures by criminalizing the non-compliance of civil measures.<sup>372</sup>

### 2.3.3. Social Support Measures for the Victims of Domestic Violence

There are a number of international documents that emphasize states' obligation to provide social support services for the victims of domestic violence. The CEDAW Committee in its General Recommendation No 19 has stressed the importance of appropriate victim support

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<sup>367</sup> The Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, (2011), Article 29 (1)(2)

<sup>368</sup> Ibid., Article 53

<sup>369</sup> Ibid., Article 31 (1)(2)

<sup>370</sup> Ronagh J.A. McQuigg, *International Human Rights Law and Domestic Violence: The Effectiveness of International Human Rights Law*, (London: Taylor & Francis, 2011):261

<sup>371</sup> Ibid.

<sup>372</sup> Equality Division Directorate General of Human Rights Council of Europe. *Combating violence against Women: Stocktaking study on the measures and actions taken in Council of Europe member States*. Report, (Strasbourg: Council of Europe, 2006):23 “For example, in the United Kingdom the Domestic Violence, Crime and Victims Act, 2004 makes the breach of a protection order a criminal offence and not the civil offence of “contempt of court.”

services.<sup>373</sup> The Istanbul Convention also noted that states should take all the necessary legislative and other measures in order to ensure immediate, short and long term support services for victims of domestic violence,<sup>374</sup> including “*legal and psychological counseling, financial assistance, housing, education, training and assistance in finding employment.*”<sup>375</sup>

The initial societal response to the issue of domestic violence was the establishment of shelters for the victims of domestic violence in order to provide, an immediate safe environment and to empower women to leave abusive relationships.<sup>376</sup> Providing shelter for the victims of domestic violence that meets quality standards<sup>377</sup> is commonly considered to be a good practice.<sup>378</sup> According to the recommendations of an expert group of the Council of Europe, one place in a women’s shelter should be provided per 7,500 inhabitants and the minimum standard should be one place per 10,000 inhabitants.<sup>379</sup> The Istanbul Convention pays particular attention to the need for shelters, in particular it stipulates that state parties shall take all the necessary measures to provide sufficient number of easily accessible shelters in order to ensure safe accommodation for and to reach out pro-actively to victims.<sup>380</sup> In the case of *A.T. v. Hungary*, the CEDAW Committee, *inter alia*, found the violation of the CEDAW Convention due to the

<sup>373</sup>The Committee on the Elimination of Discrimination against Women, The General Recommendation No 19, § 24(b))

<sup>374</sup>The Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, (2011), Articles, 20, 22

<sup>375</sup>Ibid., Article 20(1)

<sup>376</sup>Robert A. Geffner, Alan Rosenbaum, “Domestic Violence Offenders,” *Journal of Aggression, Maltreatment & Trauma*, 5:2, 1-9,(2001):3 accessed November 10, 2015 DOI: 10.1300/J146v05n02\_01

<sup>377</sup>The European network, Women Against Violence Europe, has developed quality standards for women’s shelters - *Women against Violence Europe, Away from Violence. European Guidelines for Setting up and Running a Women’s Refuge, Manual* (Vienna, Women against Violence Europe, 2004), available at: <http://www.wave-network.org/start.asp?b=6&sub=14>.

<sup>378</sup>The UN General Assembly, In-depth Study on All Forms of Violence against Women, (Report of the Secretary-General, A/61/122/Add.1, UN General Assembly, 2006):93

<sup>379</sup>Ibid., citing Council of Europe, Group of Specialists for Combating Violence against Women, (Final Report of Activities of the EG-S-VL, Strasbourg: Council of Europe, 1997)

<sup>380</sup>The Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, (2011), Article 23

absence of shelters for the victims of domestic violence.<sup>381</sup> Shelters should be available free of charge and be staffed by specially trained personnel.<sup>382</sup>

The existence of a sufficient number of shelters that meet international standards is considered to be one of the key indicators of a state's willingness to protect women against domestic violence on an immediate and practical level.<sup>383</sup> However, while shelters serve an essential part of the support service for the victims of domestic violence, they only address part of the problem.<sup>384</sup> Shelters should not be considered as adequate housing.<sup>385</sup> For the victims of domestic violence, finding a permanent home can be a decisive factor and "one of the most crucial struggles for freedom from violence."<sup>386</sup>

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in his 2006 report called on states to "ensure that women can access temporary, appropriate shelters and retain access to adequate housing on a longer-term basis so that they do not have to live in situations of violence in order to access adequate housing." In addition, he called on governments to "introduce anti-violence provisions in housing legislation and policies and ensure that domestic violence laws include provisions to protect women's right to adequate housing."<sup>387</sup> In various jurisdictions there is an emerging legislation

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<sup>381</sup> See section 1.6.2. of this chapter

<sup>382</sup> Andrea Coomber, Written Submission of Interights to the European Court of Human Rights on the Application No. 33401/02 Nahide Opuz v. Turkey, (2007):5

<sup>383</sup> Equality Division Directorate General of Human Rights Council of Europe, *Combating violence against Women: Stocktaking study on the measures and actions taken in Council of Europe member States*, (Report, Strasbourg: Council of Europe, 2006):31

<sup>384</sup> Robert Geffner and Alan Rosenbaum, "Domestic Violence Offenders," *Journal of Aggression, Maltreatment & Trauma*, (2001):3, accessed November 10, 2015, DOI: 10.1300/J146v05n02\_01.

<sup>385</sup> Ronagh J.A. McQuigg, *International Human Rights Law and Domestic Violence: The Effectiveness of International Human Rights Law*, (London: Taylor & Francis, 2011):32

<sup>386</sup> Ibid., p.17

<sup>387</sup> The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, Miloon Kothari, *Economic and Cultural Rights: Women and Adequate housing*, E/CN.4/2006/118, (Economic and Social Council: Commission on Human Rights, 2006), para 83 (d) and (e) accessed November 12, 2015, <http://www.refworld.org/pdfid/45377b080.pdf>

that acknowledges the nexus between domestic violence and women's right to adequate housing; good practice examples include the Domestic Violence Law in Mongolia, as well as the Spanish Law on Comprehensive Measures against Gender-based Violence.<sup>388</sup> In the absence of long term housing, domestic violence can significantly increase women's vulnerability to homelessness, especially when they are not protected by the domestic legal system.<sup>389</sup> One of the good practices in this respect is the Californian Civil Code, which prohibits landlords from evicting women because of domestic violence.<sup>390</sup>

Another important type of support measure and good practice is establishing domestic violence hotlines and help-lines to ensure women's access to information and support systems.<sup>391</sup> The Istanbul convention obliges state parties to establish telephone helplines that would provide advice on the issue related to violence against women.<sup>392</sup> Notably, these helplines should be available state-wide round-the-clock (24/7) free of charge.<sup>393</sup>

Availability of an adequate health-care system is also another important service for the victims of domestic violence under the Istanbul convention.<sup>394</sup> It is good practice for the health-care system to ensure a range of interventions for the support of victims. Examples of promising practice in this respect include training health-care professionals, integrating victim service

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<sup>388</sup> UN Office of the High Commissioner, *Women and the Rights to Adequate Housing*, (Report, Geneva, New York: United Nations, 2012), 75 accessed November 10, 2015, [http://www.ohchr.org/Documents/Publications/WomenHousing\\_HR.PUB.11.2.pdf](http://www.ohchr.org/Documents/Publications/WomenHousing_HR.PUB.11.2.pdf)

<sup>389</sup> Ibid., p.78

<sup>390</sup> California Civil Code, §1946.7, California Code of Civil Procedures §1161

<sup>391</sup> The UN General Assembly, In-depth Study on All Forms of Violence against Women, (Report of the Secretary-General, A/61/122/Add.1, UN General Assembly, 2006):92

<sup>392</sup> Council of Europe, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, (Istanbul, 2011), Article 24

<sup>393</sup> Ibid.

<sup>394</sup> Ibid., Article 20(2)



centers in the health-care system; and establishing referral systems within relevant sectors.<sup>395</sup> The 2009 Amendments in the Domestic Violence Centre enshrined the notion of crisis centers, which provides rehabilitation, first and emergency medical aid and legal assistance for the victims of domestic violence.<sup>396</sup>

Leaving the abusive relationship can be particularly hard for women with limited or no financial guarantees and with no educational or vocational skills. Thereby, in order to acquire them with the necessary skill and help them regain their independence, it is of utmost importance to provide them with economic support.<sup>397</sup> In addition to empowering women, free legal aid is also considered to be promising practice, because the availability of such services can address a variety of issues with respect to housing or property settlements.<sup>398</sup> In some European countries under certain circumstances states have an obligation to provide resources for individuals in order to prevent violations of their rights.<sup>399</sup>

As Oloka-Onyango rightly notes

*Despite the statement in the Vienna Declaration of 1993 that proclaims all human rights as “universal, indivisible and interdependent and interrelated,” certain categories of rights within the international corpus are marginalized. Civil and political rights are considered to belong to a first category, or “generation” of rights, while economic, social, and cultural rights have been relegated to a lower less important sphere. The marginalization of the latter category can be discerned not only from the level of international attention paid to them, but also with respect to the approach of governments, judges, non-governmental actors, and even academics to the subject.*<sup>400</sup>

<sup>395</sup> The UN General Assembly, In-depth Study on All Forms of Violence against Women, (Report of the Secretary-General, A/61/122/Add.1, UN General Assembly, 2006):91-92

<sup>396</sup> Inga Beridze, *ოჯახში ძალადის სფეროში საქართველოში არსებული კანონმდებლობისა და სასამართლო პრაქტიკის ანალიზი*, (კვლევა, თბილისი: ქალთა საინფორმაციო ცენტრი, 2012):56

<sup>397</sup> Ronagh J.A. McQuigg, *International Human Rights Law and Domestic Violence: The Effectiveness of International Human Rights Law*, (London: Taylor & Francis, 2011):33

<sup>398</sup> The UN General Assembly, In-depth Study on All Forms of Violence against Women, (Report of the Secretary-General, A/61/122/Add.1, UN General Assembly, 2006):94

<sup>399</sup> Ronagh J.A. McQuigg, "What Potential does the Council of Europe Convention on Violence against Women Hold as Regards Domestic Violence?" *The International Journal of Human Rights*. Vol. 16, No. 7, (2012):957 accessed November 10, 2015, DOI: 10.1080/13642987.2011.638288

<sup>400</sup> Ronagh J.A. McQuigg, "How could human rights law be used by the courts to assist victims of domestic violence? A comparative study," *The International Journal of Human Rights Volume 14, Issue 3*, (2010):344, accessed November 10, 2015, DOI: 10.1080/13642980802535427

Other types of support measures include counseling services (professionals working with individual victims/survivors) and self-help groups (a group of victims providing support to each other). While respecting women's autonomy and decision-making abilities, such services provide an important support for the victims of domestic violence.<sup>401</sup> Women You Are Not Alone can be named as one of the good practice examples of a self-help groups on domestic violence located in Costa Rica.<sup>402</sup> Moreover, as studies reveal, an informal social support network such as family members, friends, acquaintances, and neighbors can be critical to a victim's sense of security and prevent further violence.<sup>403</sup> Similarly, women's groups/networks can play a crucial role in addressing the issue of domestic violence.<sup>404</sup>

Social support is often understood as one's ability to deal with stress and other difficulties.<sup>405</sup> The theory of "social support buffer hypothesis" suggests that the social support may reduce the effects of negative life events.<sup>406</sup> Studies showed that women who reported having social support were less likely to feel at risk than those who reported not having social support.<sup>407</sup>

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<sup>401</sup> The UN General Assembly, In-depth Study on All Forms of Violence against Women, (Report of the Secretary-General, A/61/122/Add.1, UN General Assembly, 2006):93

<sup>402</sup> Ibid.

<sup>403</sup> Melissa E. Dichter and Richard J. Gelles, "Women's Perceptions of Safety and Risk Following Police Intervention for Intimate Partner Violence," *Violence Against Women*, (2012):59, accessed October 29, 2015, DOI: 10.1177/1077801212437016 P.

<sup>404</sup> Thomas Hammarberg, *Conference on the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence*, (Speech, Madrid: Council of Europe Commissioner for Human Rights, 2006), accessed November 10, 2015 <https://wcd.coe.int/ViewDoc.jsp?id=1067767&Site=COE>

<sup>405</sup> Mary Ann Dutton, "Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome," *Hofstra Law Review*, Vol. 21 No4, (1993): 1238-91, accessed November 12, 2015, <http://scholarlycommons.law.hofstra.edu/hlr/vol21/iss4/2>

<sup>406</sup> Ibid.

<sup>407</sup> Melissa E. Dichter and Richard J. Gelles, "Women's Perceptions of Safety and Risk Following Police Intervention for Intimate Partner Violence," *Violence Against Women*, (2012):51, accessed October 29, 2015, DOI: 10.1177/1077801212437016 P

### 2.3.4. Raising Awareness on the Issue of Domestic Violence

CEDAW Convention acknowledges social and cultural norms as a source of violence against women and obliges states to take “all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”<sup>408</sup> Furthermore, it requires states to:

*[M]odify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.*<sup>409</sup>

Notably, in the case of, *Ms A.T. v. Hungary*, discussed in the previous section, the CEDAW Committee established a link between the unavailability of adequate shelters and civil protection orders with the Hungarian traditional attitudes that regarded women as subordinate.<sup>410</sup> Hence, the Committee clarified that in order to address violence against women, it is necessary to change certain cultural stereotypes, prejudices and women’s subordination.<sup>411</sup> Under General Recommendation No 19 to the CEDAW Convention, “[s]tates should introduce education and public information programmes to help eliminate prejudices that hinder women’s equality.”<sup>412</sup>

Studies have shown that women, who are aware of their human rights, are more likely to seek help against domestic violence than those that are not.<sup>413</sup> As Hester and Westmarland rightly note, publicity campaigns should use a wide range of media outlets in order to educate local

<sup>408</sup> The CEDAW, (1981) Article 2(f)

<sup>409</sup> Ibid., Article 5(a)

<sup>410</sup> CEDAW Committee, *Ms. A.T. v. Hungary*, Communication no. 2/2003, CEDAW/C/32/D/2/2003 (2005) para 9.4

<sup>411</sup> Christine Chinkin, Violence against women in Marsha A. Freeman, Christine Chinkin, Beate Rudole ed, *The UN Convention on the Elimination of all forms of Discrimination against women*, (New York, Oxford University press, 2012):471

<sup>412</sup> General Recommendation No 19 to the CEDAW Convention , Article 24 (b)

<sup>413</sup> Barbara Burton, Nata Duvvury, and Nisha Varia, *Activities, Justice, Change, and Human Rights: International Research and Responses to Domestic Violence*. Synthesis paper, Washington: International Center for Research on Women and The Centre for Development and Population Activities, (2000):23 accessed November 23, 2014, <http://www.icrw.org/sites/default/files/publications/Justice-Change-and-Human-Rights-International-Research-and-Responses-to-Domestic-Violence.pdf>

residents and staff across agencies about the seriousness of acts of domestic violence.<sup>414</sup> Furthermore, as Schneider notes educational programs on domestic violence must be carried out in places like schools, courts, welfare offices, and hospitals.<sup>415</sup>

## Conclusion

Both at the national and the international level, it is now commonly understood that domestic violence runs counter to the fundamental human rights, notably human dignity, equality and inalienable right to freedom from fear and freedom from want.<sup>416</sup> The jurisdiction of the ECtHR and the CEDAW Committee have profound effect in placing strong burden on states to protect women from domestic violence and in recognizing that domestic violence against women is a systematic problem reflecting a fundamental imbalance of power.<sup>417</sup> Furthermore, the Istanbul Convention is comprehensive and robust treaty that “can save lives in countries that ratify and implement it.”<sup>418</sup> In addition to these instruments, there are a number of international standards and good practices that can be used in addressing four main groups of state’s responses to domestic violence. Despite the available protection under the international realm, in order to address the issue of domestic violence effectively primary measures shall be implemented at the national level. Using Georgian as an example, the next chapter analyzes to what extent states complies with these international standards.

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<sup>414</sup> Ronagh J.A. McQuigg, *International Human Rights Law and Domestic Violence: The Effectiveness of International Human Rights Law*, (London: Taylor & Francis, 2011):36

<sup>415</sup> Ibid., p.37

<sup>416</sup> Dorothy Q. Thomas and Miche E. Baesley, "Domestic Violence as a Human Rights Issue," *Human Rights Quarterly* 15, no. 1 (1993): 37

<sup>417</sup> Ibid.

<sup>418</sup> Hillary Margolis, *How the EU Can Make ‘Women’s Day’ Meaningful*, (2015), accessed October 19, 2015, <https://www.hrw.org/news/2015/03/07/how-eu-can-make-womens-day-meaningful>

## **Chapter 3: Georgian Authorities' Response to Domestic Violence**

### **Introduction**

In light of the analysis in the second chapter, it is now possible to conclude that the states' failure to protect women from domestic violence can result in states' liability. Despite a number of international standards in this respect, continuing prevalence of the issue of domestic violence gives rise to the question of effectiveness as regards to their implementation at the national level. This chapter illustrates how international standards can be implemented at the national level, using Georgia as an example. It assesses the extent of Georgia's compliance to the main international standards discussed in the second chapter. As a starting point, the first section examines the comments of the CEDAW Committee with respect to domestic violence in Georgia. The next section analyzes the four main types of special measures of intervention against the issue of domestic violence taken by Georgian authorities. It examines the extent of Georgia's compliance with the available international standards, giving a particular emphasis on the standards established under the jurisdiction of the CEDAW Convention, the ECHR and the Istanbul Convention.

### ***3.1. Analysis of the of International and Regional Legal Obligations***

Georgia is party to the key international and regional human rights instruments that directly or indirectly address the issue of domestic violence, including the CEDAW Convention and the ECHR. In June 2014 Georgia also signed the Istanbul Convention and it is now in the process of

ratifying it.<sup>419</sup> All these instruments enjoy preeminence in the Georgian legal system in so far as they do not contradict the Constitution of Georgia.<sup>420</sup> The 1995 Constitution of Georgia, as a supreme law of the country, recognizes and protects universal human rights. In particular, it stipulates that “[w]hile exercising authority, the people and the state shall be bound by these rights and freedoms as directly acting law.”<sup>421</sup> It promotes equality and prohibits discrimination in accordance with the international standards.<sup>422</sup> It also emphasizes the promotion of the prosperity of the family and stipulates that “[m]arriage shall be based upon equality of rights and free will of spouses.”<sup>423</sup> The sub-section below analyzes the recommendations of the CEDAW Committee towards Georgia and provides the basis to the assessment of the state’s compliance with international standards.

### **3.1.1. The Comments of the CEDAW Committee on Domestic Violence in Georgia**

Georgia became a member of the CEDAW Convention in 1994, by which it undertook an obligation to regard domestic violence as a violation of human rights and to implement international standards into its domestic law.<sup>424</sup> Upon becoming a party to the CEDAW Convention, a state is obliged to submit an initial report to the CEDAW Committee and afterwards- every four years - present periodic reports. According to the General Recommendation No 19 to the CEDAW Convention, those reports must include information

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<sup>419</sup>The Public Defender of Georgia urges the Parliament of Georgia to commence this process as soon as possible. See. The Public Defender of Georgia, *Written submission to the 58th Session of the Committee on the Elimination of Discrimination Against*, (Report, Tbilisi: Public Defender of Georgia, 2015): 6

<sup>420</sup> The Constitution of Georgia, (1995), Article 6 (2)

<sup>421</sup> Ibid., Article 7

<sup>422</sup> Ibid., article 14

<sup>423</sup> Ibid., article 36

<sup>424</sup> United Nations, Convention on the Elimination of All Forms of Discrimination against Women Treaty Collections, accessed November 10, 2015, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en)

about the prevalence of violence against women and effectiveness of all the necessary measures that the state in question is taking to combat it.<sup>425</sup> In 1999, in addition to government reports, NGOs and national human rights bodies, such as Public Defender (Ombudsman) were also invited to submit their alternative reports to the CEDAW Convention, which usually espouses a more critical approach on the issue in question than government reports.<sup>426</sup> After the examination of all relevant reports, the CEDAW Committee issues specific recommendations through its Concluding Observations.<sup>427</sup> This sub-section analyzes all reports submitted to the CEDAW Committee by Georgian authorities and reports by the Public Defender of Georgia as well as concluding observations by the CEDAW Committee.

From 1998 up until today, Georgian Authorities submitted three state reports to the CEDAW Committee. Unfortunately, Georgia's first periodic report to the CEDAW Committee in 1999 largely neglected the issue of domestic violence in Georgia,<sup>428</sup> which the Committee noted with regret.<sup>429</sup> It also expressed its concerns about the persistence of a patriarchal culture<sup>430</sup> and prevalence of violence against women.<sup>431</sup> In its concluding observation, the CEDAW Committee recommended Georgia to adopt specific legislation on violence against women.<sup>432</sup>

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<sup>425</sup> General Recommendation No 19 to the CEDAW Convention , Article 2

<sup>426</sup> Ronagh McQuigg, "The Responses of States to the Comments of the CEDAW Committee on Domestic Violence," *The International Journal of Human Rights*, Vol. 11 (4), 2007: 462

<sup>427</sup> Ibid.

<sup>428</sup> The Committee was primarily informed about the establishment of hotline service and limited availability of shelters and services. Convention on the Elimination of All Forms of Discrimination against Women. *Initial report of Georgia* . CEDAW/C/SR.427, (New York: Committee on the Elimination of Discrimination, Twenty-first session, 1999), para 78

<sup>429</sup> Ibid.

<sup>430</sup> Ibid., para 99

<sup>431</sup> Ibid., para 101

<sup>432</sup> Ibid., para 102

In 2006 the CEDAW Committee considered Georgia's combined the second and the third periodic reports.<sup>433</sup> It welcomed newly adopted legislative measures, in particular the adoption of the Law on Domestic Violence in 2006.<sup>434</sup> However, it remained concerned about the persistence of patriarchal attitudes and the lack of information on domestic violence and urged Georgia to carry out research on prevalence and persistence of domestic violence.<sup>435</sup> The Committee also urged Georgia to give high priority to the implementation of newly-adopted domestic violence legislation, emphasis was made on the norms related to shelters and rehabilitation centers for victims of domestic violence.<sup>436</sup>

In 2014 the CEDAW Committee considered the fourth and so far the last periodic report of Georgia.<sup>437</sup> The Committee welcomed certain positive aspects, in particular 2012 amendments to the criminal code, which introduced the definition of the scope and categories of domestic violence in the code.<sup>438</sup> It also welcomed the Action Plan for Combating Domestic Violence and Implementing Measures for the Protection of Victims of Domestic Violence for 2013-2015,<sup>439</sup> as well as the establishment of the Permanent Inter-Agency Coordination Council for the Prevention of Domestic Violence in 2008.<sup>440</sup> However, the CEDAW committee remained concerned about patriarchal and stereotypical attitudes regarding gender roles and responsibilities in Georgia.<sup>441</sup> The Committee also expressed its concern about the low reporting

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<sup>433</sup>The Committee on the Elimination of Discrimination against Women, *Concluding comments: Georgia*, CEDAW/C/GEO/CO/3, (United Nations, Thirty-sixth session, 2006)

<sup>434</sup> Ibid., para 6

<sup>435</sup> Ibid., para 17-20

<sup>436</sup> Ibid., para 19-20

<sup>437</sup> The CEDAW Committee, "Concluding observations on the combined fourth and fifth periodic reports of Georgia," CEDAW/C/GEO/CO/4-5( United Nations, fifty-eighth session, 2014)

<sup>438</sup> Ibid., para 4 (b)

<sup>439</sup> Ibid., para 5 (e)

<sup>440</sup> Ibid., para 5 (h)

<sup>441</sup> Ibid., para 18-19



rate of domestic violence owing to factors like stigma, fear of retaliation, and lack of trust towards law enforcement agencies.<sup>442</sup>

Similar to previous concluding observations, the CEDAW Committee remained concerned about the lack of inadequate protection measures for the victims of domestic violence, including insufficient enforcement of restrictive and protective orders and lack of state-funded shelters and support services, particularly in rural areas.<sup>443</sup> In his written submission to the CEDAW Committee the Public Defender of Georgia noted that legislative process is undermined by the government's failure to ensure prompt and efficient protection measures, and effectively address existing barriers that deter the victims of domestic violence from reporting the abuse, but instead leading "to nothing but secondary traumatization."<sup>444</sup> Furthermore, the CEDAW Committee emphasizes the lack of a due diligence standard from the side of law enforcement officers in investigating domestic violence cases.<sup>445</sup> In this respect, the Public Defender of Georgia also pointed out remaining gaps and ineffective implementation of the law, which ultimately led to the ineffective protection of the victims of domestic violence.<sup>446</sup>

Recalling its general recommendation No 19, the CEDAW Committee urged Georgia to address all the above-mentioned issues by, *inter alia*, providing awareness raising complaints, ensuring effective prosecution and punishment of perpetrators as well as providing adequate compensation and protection and support for all female victims of domestic violence.<sup>447</sup> Finally,

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<sup>442</sup> Ibid., para 20 (ab)

<sup>443</sup> Ibid., para 20 (c)

<sup>444</sup> The Public Defender of Georgia, *Written submission to the 58th Session of the Committee on the Elimination of Discrimination Against*, (Report, Tbilisi: Public Defender of Georgia, 2015):4

<sup>445</sup> UN Human Rights Committee, *Concluding observations on the fourth periodic report of Georgia*, (CCPR/C/GEO/4), International Covenant on Civil and Political Rights, (3074th and 3075th meetings, 2014)para 9

<sup>446</sup> The Public Defender of Georgia, *Written submission to the 58th Session of the Committee on the Elimination of Discrimination Against*, (Report, Tbilisi: Public Defender of Georgia, 2015):4

<sup>447</sup> The CEDAW Committee, "Concluding observations on the combined fourth and fifth periodic reports of Georgia," CEDAW/C/GEO/CO/4-5( United Nations, fifty-eighth session, 2014)para 21 b, c, 33

the Committee recommended enhancing cooperation with relevant NGOs with respect to domestic violence.<sup>448</sup>

Although CEDAW is often referred to as the “law without sanctions,” it has the potential to play a significant role in policy work that can lead to political and legal reforms,<sup>449</sup> however, the question again is the extent of the state’s compliance with those recommendations. In the context of Georgia, the issue of domestic violence has been an increased concern for the CEDAW committee. In this respect Georgia has adopted a number of positive approaches; however, significant gaps remain in legislation, while the implementation of existing legislation also lags behind.

### **3.2.      *The Specific Measures of Implementation Taken by Georgia***

The symbol of Georgia’s commitment to combat domestic violence is the 2006 Law of Georgia, on Elimination of Domestic Violence, Protection of and Support to Its Victims (hereinafter “Domestic Violence Law”) amended in 2009 and 2014.<sup>450</sup> This law along with a number of other legislative acts constitutes the legal basis for combating domestic violence in Georgia. Although the adoption of the domestic violence legislation was a significant step ahead of Georgian authorities, it may not be sufficient to successfully overcome the issue.<sup>451</sup> The subsections below analyzes extent of Georgia’s compliance with the four main groups of states’ responses to domestic violence discussed in the second chapter. These measures include criminal

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<sup>448</sup> Ibid., para 21 c

<sup>449</sup> Bonita Meyersfield, *Domestic Violence and International Law*, (United Kingdom: Hart Publishing Ltd, 2012):30

<sup>450</sup> Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims, accessed November 10, 2015, <https://matsne.gov.ge/en/document/view/26422>

<sup>451</sup> Natia Ubilava, Nana Chabukiani, Gvantsa Jibladze, *The Anti-Domestic Violence Policy Analysis in Georgia*, (Research, Tbilisi: Women’s Fund in Georgia, 2014)6

law measures of intervention, civil law measures of intervention, social support services for the victims of domestic violence and awareness raising on the issue of domestic violence.

### **3.2.1. Criminal Law Measures of Intervention**

As analyzes in the second chapter, a number of international standards require the state to combat domestic violence, all of which also apply to Georgia as a party to these instruments.<sup>452</sup> Prior to discussing specific criminal law measures of intervention taken by Georgia, it is important to also analyze the scope of the concept of domestic violence under the Georgian law. Under the Domestic Violence Law of Georgia the definition of domestic violence is considered to be quite broad.<sup>453</sup> Namely, it includes physical violence (battery, torture, and restriction of liberty), psychological violence (blackmail and degrading treatment) sexual violence and economic violence.<sup>454</sup> Such broad definition of domestic violence is seen to be in line with the international standards and practice.<sup>455</sup> Furthermore, for the meaning of domestic violence a family member is also defined in a broad manner.<sup>456</sup> Namely, it includes relatives by blood, marriage or adoption, however, the definition of family member excludes relationships in which persons do not or did not live together.<sup>457</sup> Such exclusion can be seen as contrary to a number of international standards, including the Istanbul Convention.<sup>458</sup>

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<sup>452</sup> See., The UN Declaration on the Elimination of Violence against Women, G.A. res. 48/104, (1993), Article 4 (d)

<sup>453</sup> Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims, Article 3

<sup>454</sup> Ibid., Article 3

<sup>455</sup> Department of Economic and Social Affairs Division for Advancement of Women, Handbook for Legislation on Violence against Women, Handbook, (New York, 2009):3.4.2.2

<sup>456</sup> Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims, Article 4(g)

<sup>457</sup> Ibid., Article 4 (g)

<sup>458</sup> See., Explanatory Report to the Istanbul Convention, par 42, which stipulates that joint residence of the victim and the perpetrator is not required for the meaning of “domestic violence.”

An utmost important step towards combating domestic violence is simply criminalizing it.<sup>459</sup> In 2012 domestic violence was determined as a criminal offence under the Criminal Code of Georgia.<sup>460</sup> Criminalization of domestic violence, *inter alia*, addressed one of the main concerns expressed towards the Georgian authorities by the UN Committee on Economic, Social and Cultural Rights in 2003.<sup>461</sup> It was widely welcomed by various human rights bodies, including the Public Defender of Georgia.<sup>462</sup> However, certain problematic areas remained. In particular, contrary to the international standards criminalization of domestic violence was not accompanied with the aggravated penalties.<sup>463</sup> In fact, the Criminal Code disregarded a number of aggravating circumstances, e.g. when the victim is under fourteen years old, is a pregnant woman or a dependent person. Hence, the criminalization of domestic violence in Georgia can be seen as failing to spread a clear message about the seriousness of the issue.<sup>464</sup> Hence, in this respect Georgia fails to meet the requirements under the Istanbul Convention.<sup>465</sup>

Another important area where Georgian criminal law measures fail to comply with the international standards relates to the general role of the victim in the criminal proceedings. In

<sup>459</sup> United Nations Office on Drugs and Crime United Nations Division for the Advancement of Women, Expert Group Meeting on Good Practices in Legislation on Violence Against Women, EGM/GPLVAW/2008/EP.01, (Austria: United Nations Office, 2008):.9

<sup>460</sup> Criminal Code of Georgia, Article 111 and 1261

<sup>461</sup> See The UN Committee on Economic, Social and Cultural Rights, the Concluding observations on the 2nd periodic report submitted by Georgia (2003), par 18 accessed November 10, 2015 [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1%2fAdd.83&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1%2fAdd.83&Lang=en)

<sup>462</sup> Public Defender of Georgia, *Written submission to the 58th Session of the Committee on the Elimination of Discrimination Against*, (Report, Tbilisi: Public Defender of Georgia, 2015):5

<sup>463</sup> See the UN Women Virtual Knowledge Centre to End Violence against Women and Girls, accessed November 1, 2015, <http://www.endvawnow.org/en/articles/445-criminal-sanctions-and-sentencing-provisions-.html> The sources notes that “[I]n legislation should specify that penalties for crimes involving domestic violence should be more severe than similar non-domestic violence-related crimes. This sends the important message that the state will treat a domestic violence crime as seriously, if not more seriously, than a crime against a stranger”.

<sup>464</sup> OSCE/ODIHR, *Amendments to the Legal Framework on Preventing and Combating Domestic Violence in Georgia*, (Opinion on Draft Amendments, Warsaw: OSCE Office for Democratic Institutions and Human Rights, 2013) para 61-4

<sup>465</sup> The Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, (2011), Article 46

particular, contrary to the international good practice, Georgian legislation contains no possibility or obligation of law enforcement bodies to continue a prosecution of the perpetrator of domestic violence irrespective of the victim's withdrawal of a complaint.<sup>466</sup> Such approach runs contrary to the Istanbul Convention, which requires that investigation and prosecution of certain offences, including physical and sexual violence shall not be entirely dependent upon a victim complaint or the consequent withdrawals of victim complaint.<sup>467</sup> It can also be seen as contrary to the ECtHR case law.<sup>468</sup>

As for the statistics of the implementation of criminal law measures of domestic violence, according to the information of the Chief Prosecutor's Office of Georgia (CPO) during December-October 2014, 495 victims of domestic violence have been registered.<sup>469</sup> However, it is widely consider that the actual cases of domestic violence are higher than reported.<sup>470</sup> As studies suggest, one of the reasons why the victims of domestic violence do not report the crime is because women victims do not want to have their intimate partners imprisoned.<sup>471</sup> To address this issue one of the most important state's response can to raise awareness on violence against women among women and girls as well as various other stakeholders. Georgian authorities' response with respect to the awareness raising campaigns on domestic violence is analyzed in the last sub-section of this chapter.

<sup>466</sup> OSCE/ODIHR, *Amendments to the Legal Framework on Preventing and Combating Domestic Violence in Georgia*, (Opinion on Draft Amendments, Warsaw: OSCE Office for Democratic Institutions and Human Rights, 2013) *para 110*

<sup>467</sup> The Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, (2011), Article 55, Article 78 (2). Notably, the Convention provides the possibility for the States party to the Convention to make a reservation in respect of minor offences of physical violence.

<sup>468</sup> See ECtHR, *Opuz v. Turkey*, Application no. 33401/02, 9 June 2009. The ECtHR stated in the case of *Opuz* that in more than 10 Member States of the Council of Europe, it is required to continue a prosecution of the perpetrator of domestic violence irrespective of the victim's withdrawal of a complaint.

<sup>469</sup> The Public Defender of Georgia, *Violence against Women and Domestic Violence in Georgia*, (Special Report, Tbilisi: Public Defender of Georgia, 2015)4

<sup>470</sup> For further information with respect to the prevalence of domestic violence in Georgia see the first chapter

<sup>471</sup> Estonian Institute for Open Society, Anti -Violence Network of Georgia, *Interviews with Georgian Police Personnel on Domestic Abuse and Violence against Women*, (Report, Tbilisi, 2008):10

### 3.2.2. Civil Law Measures of Intervention

The Georgian Law on Domestic Violence authorizes protective and restraining orders as temporary measures to protect victim of domestic violence.<sup>472</sup> A protective order should be issued by the judge of the first instance, while a restraining order is issued by an authorized police officer.<sup>473</sup> The restraining order must be approved by a court within 24 hours.<sup>474</sup>

In compliance with international good practice, Georgian legislation makes a distinction between civil and criminal measures, but at the same time similar to the developments in number of European countries<sup>475</sup> establishes close link between these two measures by criminalizing the non-compliance of civil measures.<sup>476</sup> According to the Georgian legislation, non-compliance with the requirements of restraining or protective orders by the perpetrator shall result into legal liability (fine or socially useful labor for up to 180-240 hours or deprivation of liberty for a term up to one year).<sup>477</sup> Criminalizing the non-compliance of restraining or protective orders is very important for the effective implementation of the legislation.<sup>478</sup>

The analysis of Public Defender's Special Report on Violence against Women and Domestic Violence highlights that protective and restraining orders are usually issued in cases of

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<sup>472</sup> Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims, Article 10,(1)

<sup>473</sup> Ibid., Article 10(2, 3)

<sup>474</sup> Ibid.

<sup>475</sup> Equality Division Directorate General of Human Rights Council of Europe. *Combating violence against Women: Stocktaking study on the measures and actions taken in Council of Europe member States*. Report, (Strasbourg: Council of Europe, 2006)23 For example, in the United Kingdom the Domestic Violence, Crime and Victims Act, 2004 makes the breach of a protection order a criminal offence and not the civil offence of "contempt of court" (enacted 31 March 2005).

<sup>476</sup> Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims, Article 10; Criminal Code of Georgia, Article 3811

<sup>477</sup> Ibid.

<sup>478</sup> OSCE/ODIHR, *Amendments to the Legal Framework on Preventing and Combating Domestic Violence in Georgia*, (Opinion on Draft Amendments, Warsaw: OSCE Office for Democratic Institutions and Human Rights, 2013)97

psychological and physical abuse, while they are least issued in the cases of sexual abuse.<sup>479</sup> In particular, the number of issued restraining orders in cases of domestic violence is 91% more than the number of protective measures.<sup>480</sup> Such disparity is explained with, *inter alia*, the lack of information about the procedures required with respect to protective order.<sup>481</sup> The Public Defender's report reveals the cases of domestic violence where protective/restrictive orders are issued most frequently concern a violence that is perpetrated by a current male partner or former male partner.<sup>482</sup> As for the general statistics of the implementation of protective and restrictive measures, in 2014 totally 87 - protective and 902 - restrictive orders were issued.<sup>483</sup>

Overall, Georgian civil law measures of intervention can be seen in line with the international standards and good practice.<sup>484</sup> However, as with criminal law measures, the effectiveness of the civil law measures highly depend on an understanding of the nature of domestic violence as well as diligent monitoring of the implementation of the law.<sup>485</sup> To this end, it is important to highlight the need of enhancing monitoring system of the implementation of Restrictive and Protective Orders.<sup>486</sup>

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<sup>479</sup> Public Defender of Georgia, *Violence against Women and Domestic Violence in Georgia*, (Special Report, Tbilisi: Public Defender of Georgia, 2015):38

<sup>480</sup> Ibid.

<sup>481</sup> Ibid., p.39 In order to get protective order a victim personally (or through the other person) shall apply to the court.

<sup>482</sup> Ibid., p. 36

<sup>483</sup> Ibid., p. 36

<sup>484</sup> OSCE/ODIHR, *Amendments to the Legal Framework on Preventing and Combating Domestic Violence in Georgia*, (Opinion on Draft Amendments, Warsaw: OSCE Office for Democratic Institutions and Human Rights, 2013) *para 94* See also The Special Rapporteur on Violence against Women, its Causes and Consequences, Radhika Coomaraswamy, A Framework for Model Legislation on Domestic Violence, E/CN.4/1996/53, (5 February, 1996), *para 29 (4)*

<sup>485</sup> United Nations Office on Drugs and Crime United Nations Division for the Advancement of Women, Expert Group Meeting on Good Practices in Legislation on Violence Against Women, EGM/GPLVAW/2008/EP.01, (Austria: United Nations Office, 2008)2

<sup>486</sup> Public Defender of Georgia, *Written submission to the 58th Session of the Committee on the Elimination of Discrimination Against*, (Report, Tbilisi: Public Defender of Georgia, 2015): 5

### 3.2.3. Social Support Services for the Victims of Domestic Violence

While the criminal law measures along with the protective/restraining measures have a significant direct impact on perpetrators of domestic violence and in this regard empower victims,<sup>487</sup> as illustrated in the second chapter, a number of other support services are needed in order to fully overcome the issue of domestic violence. Studies suggest that victims of domestic violence as well as the law-enforcements institutions and other stakeholders in Georgia emphasize the importance of social support services.<sup>488</sup> It is important to note that the Istanbul Convention specifically requires that support services be base on a gendered understanding of domestic violence.<sup>489</sup>

Under the Georgian legislation any victim of domestic violence, whose status has been deterred as such and is in need of refuge may be provided with shelter for the duration of three months, which could be than prolonged for the next three months.<sup>490</sup> Although shelters should not be looked upon as a permanent residence, the Public Defender of Georgia suggests that initial 3 month term of stay in the shelter is rather insufficient and problematic for the following two main reasons.<sup>491</sup> Firstly, most victims, who have suffered severe forms of domestic violence,

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<sup>487</sup> Katja Filipic, “Legal Responses to Domestic Violence: Promises and Limits” in Antić Gaber, Milica (ed.), *Violence in the EU Examined: Policies on Violence against Women, Children and Youth in 2004 EU Accession Countries*, (Ljubljana: University of Ljubljana, 2009):119

<sup>488</sup> Public Defender of Georgia, *Violence against Women and Domestic Violence in Georgia*, (Special Report, Tbilisi: Public Defender of Georgia, 2015):46

<sup>489</sup> The Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, (2011), Article 18 (3)

<sup>490</sup> As provided by the 2006 Law on Domestic Violence, the State Fund for Protection and Assistance of Victims of Human Trafficking runs 2 shelters for victims of domestic violence (Tbilisi and Gori) and 2 shelters for victims of human trafficking (Tbilisi and Batumi), which also serves victims of domestic violence. In addition, NGOs are running 2 shelters for victims of domestic violence (2 in Tbilisi and 2 in Akhaltsikh). Public Defender of Georgia, *Written submission to the 58th Session of the Committee on the Elimination of Discrimination Against*, (Report, Tbilisi: Public Defender of Georgia, 2015): 5

<sup>491</sup> Public Defender of Georgia, *Violence against Women and Domestic Violence in Georgia*, (Special Report, Tbilisi: Public Defender of Georgia, 2015):11



require significant time to overcome trauma and heal.<sup>492</sup> Secondly, shelter services become very important in cases when children of the victims of domestic violence wait for the court decision on their support by the father and meanwhile remain fully dependent on their mothers.<sup>493</sup>

As a positive development, it is noteworthy that in 2014 as compared to 2013 the percentages of shelter beneficiaries that are brought to the shelter on the basis of a restrictive order have increased 175%.<sup>494</sup> It should be noted that although shelters ensure primary care and safety, problems remain with respect to psycho-social rehabilitation, long-term housing and safety.<sup>495</sup> Consequently, most women are unable to leave the violent relationship due to the absence of alternative long-term housing.<sup>496</sup> In Georgia significant number of women experience economic hardship and those who leave abusive relationship often have to rely on the support of their friends or family.<sup>497</sup> Amnesty International among others argues that the state should help victims of domestic violence to gain their economic independence through providing vocational training and assisting them to find jobs.<sup>498</sup> Unfortunately, Georgia lacks proper state's response in this respect.

Another positive development, Georgia has recently established free hotline,<sup>499</sup> which provides consultations on the issue of domestic violence.<sup>500</sup> The hotline operators are trained

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<sup>492</sup> Ibid., p. 10-11

<sup>493</sup> Ibid., p. 11

<sup>494</sup> Ibid., report p. 9

<sup>495</sup> Ibid., p.24, Also see. Amnesty International, *Georgia: Thousands Suffering in Silence: Violence against Women in the Family*, (report, London : Amnesty International, 2006)20

<sup>496</sup> Amnesty International, *Georgia: Thousands Suffering in Silence: Violence against Women in the Family*, (report, London : Amnesty International, 2006)19

<sup>497</sup> Ibid.

<sup>498</sup> Ibid., p.20

<sup>499</sup> "Notable that up until now, hotline service is free for Silknet3 subscribers. The process of providing free hotline service is in progress and it is important to resolve the issue as soon as possible" Public Defender of Georgia, *Written submission to the 58th Session of the Committee on the Elimination of Discrimination Against*, (Report, Tbilisi: Public Defender of Georgia, 2015): 5

<sup>500</sup> Public Defender of Georgia, *Violence against Women and Domestic Violence in Georgia*, (Special Report, Tbilisi: Public Defender of Georgia, 2015):25

lawyers.<sup>501</sup> While the received calls are recorded in a special journal for the purposes of statistic data, no referrals are made due to the principle of confidentiality.<sup>502</sup> According to the available statistics, majority of calls during 2013-2014 concerned physical violence reported most by women followed.<sup>503</sup> All in all 776 persons used the hotline.<sup>504</sup>

In conclusion, although social support services for the victims of domestic violence in Georgia have improved over time, a number of problematic areas remain. It's important to note that currently the absolute majority of the organizations supporting women victims/survivors of domestic violence are run by the non-governmental organizations.<sup>505</sup> However, under the international standards it is primarily the state's obligation to provide victims of domestic violence with all necessary protection. Social support measures discussed above are considered to be one of the most pressing necessities for victims of domestic violence in Georgia.<sup>506</sup> Thereby, the enforcement of socio-economic rights (such as such as the right to education, housing, and health) are particularly important.<sup>507</sup>

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<sup>501</sup> Ibid., 26

<sup>502</sup> The Law of Georgia on the Elimination of Domestic Violence, Protection and Assistance to the Victims/Survivors of Domestic Violence, Article 21. 11

<sup>503</sup> Public Defender of Georgia, *Violence against Women and Domestic Violence in Georgia*, (Special Report, Tbilisi: Public Defender of Georgia, 2015):26

<sup>504</sup> Public Defender of Georgia, *Written submission to the 58th Session of the Committee on the Elimination of Discrimination Against*, (Report, Tbilisi: Public Defender of Georgia, 2015): 5

<sup>505</sup> Nino Javahishvili, *National Report, Georgian Component of the Multi-country Study on Support Services for Women and Girls Subjected to Gender-based Violence*, (UN women, 2014)

<sup>506</sup> Ronagh J.A. McQuigga, "How could human rights law be used by the courts to assist victims of domestic violence? A comparative study," *The International Journal of Human Rights Volume 14, Issue 3*, (2010):344

<sup>507</sup> Ibid.

### 3.2.4. Raising Awareness on the Issue of Domestic Violence

Domestic violence advocates rightly argue that in order to overcome the issue of domestic violence, it is necessary to raise public awareness on this issue.<sup>508</sup> As the first chapter illustrated, a part of Georgian society still considers domestic violence as a less-serious crime or in certain circumstance even justify it.<sup>509</sup> Due to the lack of awareness on women's rights, the victims of domestic violence often have to face criticism from public, family or friends if they try to protect themselves from domestic violence.<sup>510</sup> As the Public Defender of Georgia rightly notes, to some extent society is conscious of the issue of domestic violence; however, they refrain from reporting the case to the law-enforcement institutions and instead leave the victim in the hand of a perpetrator.<sup>511</sup> Such public perception could be one of the reasons why the victims of domestic violence in Georgian only report the violence as a last resort.<sup>512</sup> In addition to low awareness on the issue of domestic violence among general population, studies reveal a number of cases when the representatives of law-enforcement institutions contrary to the international standards fail to distinguish “family conflict” from “domestic violence.”<sup>513</sup>

Although in recent years Georgia has made significant legislative steps towards addressing domestic violence, the main feature of all norms on domestic violence is that they are formulated in a gender neutral manner.<sup>514</sup> In particular, domestic violence is viewed as a violation of

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<sup>508</sup> Ronagh J.A. McQuigg, *International Human Rights Law and Domestic Violence: The Effectiveness of International Human Rights Law*, (London: Taylor & Francis, 2011)36

<sup>509</sup> Footnote from the first chapter

<sup>510</sup> Public Defender of Georgia, *Violence against Women and Domestic Violence in Georgia*, (Special Report, Tbilisi: Public Defender of Georgia, 2015): 48

<sup>511</sup> *Ibid.*, p.34

<sup>512</sup> *Ibid.*, 44

<sup>513</sup> *Ibid.*, 40-1

<sup>514</sup> Indira Jaising, Asmita Basu, and Brotiti Dutta, *Domestic Violence Legislation and its Implementation- An Analysis for ASEAN Countries Based on International Standards and Good Practices*, (Report, Bangkok: UN Development Fund for Women (UNIFEM), 2009) para 14

individual rights, rather than as an expression of gender inequality.<sup>515</sup> This runs counter to the Istanbul Convention<sup>516</sup> as well as to the recommendations of the UN Framework for Model Legislation on Domestic Violence, which stipulates that domestic violence should be recognized as a gender-based violence “directed against women, occurring within the family and within interpersonal relationships”.<sup>517</sup> De-gendered approach of Georgian legislator can be seen as an indicator of the fact that often while implementing international standards gender –sensitivity is more or less lost depending of the specific context of the country.<sup>518</sup>

The UN Universal Periodic Review of 2010 on Georgia emphasized the Georgian government provides insufficient resources and lacks willingness to overcome the gender enquality which is a cause and the consequence of the issue of domestic violence:

Despite certain positive changes on the path towards building a democratic state in the recent years, adequate attention is not paid to women’s rights and gender equality issues on a policy-making level. Insufficient resources provided by the government [...] and the lack of the political will, especially in the executive branch of the government, to tackle inequality problems, leads to ineffective protection of women’s rights and slow progress towards enhanced gender equality.<sup>519</sup>

Although non-governmental organizations play significant role in raising public awareness through informational campaigns and trainings, their resources are limited and often unstable in so far as their activities highly depend on donor assistance.<sup>520</sup> Government agencies on the other

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<sup>515</sup> Natia Ubilava, Nana Chabukiani, and Gvantsa Jibladze, *The Anti-Domestic Violence Policy Analysis in Georgia*, (Research, Tbilisi: Women’s Fund in Georgia, 2014):19

<sup>516</sup> The Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, (2011), Article 6

<sup>517</sup> Indira Jaising, Asmita Basu, and Brotiti Dutta, *Domestic Violence Legislation and its Implementation- An Analysis for ASEAN Countries Based on International Standards and Good Practices*, (Report, Bangkok: UN Development Fund for Women (UNIFEM), 2009) para 34

<sup>518</sup> Natia Ubilava, Nana Chabukiani, and Gvantsa Jibladze, *The Anti-Domestic Violence Policy Analysis in Georgia*, (Research, Tbilisi: Women’s Fund in Georgia, 2014):19

<sup>519</sup> Universal Periodic Review, *Georgian National report, A/HRC/WG.6/10/GEO/1*, (Geneva: Human Rights Council, 2010):3

<sup>520</sup> Nino Javakhishvili, Lia Tsuladze, "Implementing Domestic Violence Policy in Georgia: Impediments and their Causes," (6th ECPR General Conference, Iceland: University of Iceland, 2011)25

hand often have insufficient understanding of the important role of local NGOs and lack cooperates with them.<sup>521</sup>

## **Conclusion**

The chapter revealed a number of deficiencies in terms of legislation as well as implementation in the Georgian authorities' response to domestic violence. Some problems are deeply entrenched in traditions, which require time to overcome; however, most other problems are cause due to the state's lack of compliance. One of the main problematic areas remains government's failure to ensure prompt and efficient protection measures for the victims of domestic violence. There are, however, a number of positive developments including establishment of free hotlines for the victims of domestic violence. Hence, despite existing shortcomings recent positive developments can be seen as a positive trend in the growing attention to the issue of domestic violence.

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<sup>521</sup> Ibid.

## Conclusion

This thesis demonstrated that domestic violence caused by gender inequality remains one of the most pervasive human rights violations globally, and more specifically in Georgia. It is a complex phenomenon, which continues to have devastating consequences for a significant number of women, children, families and communities. Over the past two decades, there has been major progress in establishing international standards on domestic violence. The relevant standards on domestic violence can be found within numerous human rights treaties, both general and specific to women's rights. Hence, it is now commonly understood that domestic violence is a violation of human rights, and represents an act of discrimination against women. Despite states' international obligations to protect and prevent women from domestic violence, the case study on Georgia revealed a number of deficiencies at the national level.

In 2014, the Georgian government took a number of significant steps that may have a positive effect on the issue of domestic violence. Namely, it is commendable that the Georgian government signed the Istanbul Convention and is currently in the process of harmonizing Georgian domestic violence legislation with respect to the convention. However, a number of problematic areas remain with respect to the legislation, as well as the implementation of the existing norms. In particular, contrary to international standards, criminal law measures disregard certain aggravating circumstances and contain no state obligation to continue the prosecution of the perpetrator of domestic violence irrespective of the victims' withdrawal of a complaint. While civil law measures can be seen as being in compliance with international standards, their practical implementation lags behind as

highlighted by the Public Defender of Georgia. In Georgia, where a significant number of women experience economic hardship, lack of social support services for the victims of domestic violence remain as one of the main impediments in overcoming the issue of domestic violence. Last, but not least, victims of domestic violence in Georgia face an addition burden from society that often tolerates or even justifies men's violence over women.

Resolving the issue of domestic violence against women requires a systematic and holistic approach. In the case of Georgia, in order to overcome the issue of domestic violence it is important to enhance social support services, and to raise public awareness on the issue of violence against women. Given that Georgia's compliance with international standards on domestic violence is a matter of limited scholarly research, the main findings of this thesis can be used as a point for future academic engagements in this field.

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