

Preventing and Combating Domestic Violence in Armenia:

National and International Legal Framework

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ABSTRACT

Domestic violence is the most common form of violence against women occurring in all the corners of the globe. In recent decades the international human rights bodies have been very demanding in combating domestic violence setting standards of state obligations in prevention of violence, persecution of perpetrators and protection of victims. This thesis is an analysis of the developing international standards in comparison with Armenia's state practice of compliance with these standards. By focusing on the UN and the Council of Europe human rights system I claim that the Government of Armenia fails to comply with its obligations under international and regional human rights law. Based on comparative case analysis and examination of state policy this thesis concludes that the reason of incompliance is not only the lack of special national legislation and profound gender sensitive policies, but also the absence of genuine political will to combat domestic violence against women.

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Introduction

Violence against women is a pervasive human rights violation and one of the most outrageous manifestations of gender inequality. At the same time, it is one of the main obstacles towards achieving equality. Domestic violence occurs in every society and culture. Amnesty International¹ notes in its research on domestic violence that it is not a local phenomenon: “The figures may vary in different countries but the suffering and its causes are similar around the world.”² The fact that domestic violence is inherent in all societies legitimizes the claim that it no longer could be deemed as private issue and “beyond the scope of state responsibility.”³ Domestic violence affects everyone within the family irrespective of gender and age. Nevertheless, the vast majority of victims⁴ are women. Different forms of violence⁵ “affect(s) women from before birth to old age.”⁶ As a global average, at least one in three women is subjected to violence by her intimate partner.⁷

Combating gender based violence and particularly domestic violence has been one of the priorities for the international community and human rights advocates since the 1980s. The

¹ Amnesty International is a non-governmental human rights organization founded in 1961 in London. See more about Amnesty International at their official website <https://www.amnesty.org>.

² Amnesty International, “*Broken Bodies Shattered Minds: Torture and Ill-Treatment of Women*”, 6 March 2001, <https://www.amnesty.org/en/documents/act40/001/2001/ar/>.

³ Dorothy Q. Thomas and Michele Baesley, “*Domestic Violence as a Human Rights Issue*”, Human Rights Quarterly 15, no. 1, 1993, page 46.

⁴ Many authors refer to women affected by domestic violence as “survivors” explaining that the word “victim(s)” may indicate weakness of women and may be also referred to those who have been killed. In these thesis I use “victim(s)” for both women who have been killed and who have survived as all of them have been ultimately harmed.

⁵ See more on forms of violence in the 1st Chapter.

⁶ UN Secretary-General’s Campaign UNITE to End Violence against Women, Fact Sheet, *Violence against Women: The Situation*, DPI/2546A, November 2011, page 1.

⁷ UN Secretary-General’s Campaign UNITE to End Violence against women, Fact Sheet, DPI/2498, February 2008, <http://www.un.org/en/women/endviolence/pdf/VAW.pdf>.

United Nations (“the UN”) General Assembly and its certain human rights bodies⁸ adopted several resolutions and recommendations on violence against women highlighting the importance to adopt specific measures to combat domestic violence.

Although the United Nations Organization’s (“the UN”) Convention on Elimination of All Forms of Discrimination against Women (“the CEDAW”) does not contain any specific clause on domestic violence, however, the CEDAW Committee has adopted several general recommendations and individual decisions on violence against women in the private sphere.

At the regional level, the Council of Europe (“CoE”) has been raising its concern towards domestic violence since the late 1990s. In 2002, the Committee of Ministers reaffirmed that violence towards women is one of the main obstacles to the achievement of equality between women and men in its Recommendation to Member States on the protection of women against violence.⁹

In 2011, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (“the Istanbul Convention”) was opened for signature by State Parties. It entered into force on 1st August 2014 with the ratification of the 10th State Party.¹⁰

⁸ UN human rights system consists of Charter-based and Treaty-based bodies. Charter-based bodies are the Human Rights Council and its subsidiaries. Treaty-based bodies have been established by human rights conventions to monitor the implementation of the treaty provisions. The treaty bodies are composed of independent experts and meet to consider State parties' reports as well as individual complaints or communications. See more at <http://research.un.org/en/docs/humanrights/Introduction>.

⁹ Council of Europe Committee of Ministers, Recommendation Rec (2002)5, <https://wcd.coe.int/ViewDoc.jsp?id=280915>.

¹⁰ According to Article 75 (3) of the Istanbul Convention it shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 10 signatories have expressed their consent to be bound by the Convention.

Currently 39 States have signed and 22 of them ratified the Istanbul Convention.¹¹ Armenia has neither ratified nor signed it.

Irrespective of the Istanbul Convention, the European Court of Human Rights (“the ECtHR” or simply “the Court”) has developed case law in the domain of domestic violence which is binding for State Parties of the European Convention on Human Rights (“ECHR”) and therefore also for Armenia.

This thesis is an analysis of the developing international standards of protecting women against domestic violence compared with Armenia’s state practice of compliance with these standards. In fact, this country has recently received numerous recommendations on domestic violence both at the international and regional levels.

The resolutions, conventions and recommendations of the UN bodies and the CoE are my primary sources for international and regional frameworks together with cases of the Court and the Committee on the Elimination of Discrimination against Women (“the CEDAW Committee” or simply “the Committee”). At the national level, I examine the policy, legislation and case law on domestic violence of the Republic of Armenia. My secondary sources are scholarly sources and data on domestic violence.

¹¹ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Status as of 24/03/2016, <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>.

Chapter 1 - Domestic Violence: Forms of Violence, Causes and Impact

Introduction

Domestic violence has been perceived as a human rights issue in previous decades only. Its conception is on the one hand relatively new and on the other hand still evolving. In order to define domestic violence within the scope of this thesis I observe the definitional issues related to domestic violence sorting its forms and detecting its causes and impact.

1.1 What is domestic violence?

The term “domestic violence” is mainly used to describe a violence occurring within a family or within an intimate relationship. It may also occur between former spouses or partners. Although domestic violence may affect everyone within a family or a relationship, women are its main victims. As a global phenomenon, violence affects one in three women causing death and disability among women.¹² Worldwide surveys prove that the most common form of violence which women experience in their lifetime is the violence inflicted by an intimate partner.¹³

Women commonly are subjected to violence in their homes. As Edwards comments, “the safest place for men is the home, the home, by contrast, is the least safe place for women.”¹⁴ Domestic violence is a brutal manifestation of discrimination against women. “To some extent domestic

¹² Report of the UN Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, 1 September 2011, paragraph 8.

¹³ UN Secretary-General’s Campaign UNITE to End Violence against Women, Fact Sheet, *Violence against Women: The Situation*, DPI/2546A, November 2011, page 1.

¹⁴ Edwards, S.S.M., “Policing ‘Domestic’ Violence: Women, the Law and the State”, 1989 *London, Sage*, page 214

violence is not random, i.e., it is directed at women because they are women...,”¹⁵ therefore domestic violence is often described as gender based violence. It hinders women from exercising their fundamental human rights. Hence, in the scope of this thesis the term “domestic violence” is being used as violence towards women perpetrated by men within an intimate relationship.

1.2 Forms of domestic violence

Domestic violence takes different forms. The sole specialized convention on domestic violence, the so-called “Istanbul Convention”, defines domestic violence as “acts of physical, sexual, psychological or economic violence that occurs within the family or domestic unit or between former or current spouses or partners...”¹⁶ According to the UN In-depth Study on all Forms of Violence against Women, physical, sexual, psychological and economic abuses are interrelated.¹⁷ The study describes the forms of violence, more particularly, physical violence is characterized as the intentional use of physical force, strength or a weapon to harm or injure the woman.¹⁸ Sexual violence is described as abusive sexual contact which makes a woman engage in a sexual act without her consent.¹⁹ Psychological violence encompasses control, isolation, humiliation

¹⁵ Dorothy Q. Thomas and Michele Baesley, *"Domestic Violence as a Human Rights Issue"*, Human Rights Quarterly 15, no. 1 (1993), page 60.

¹⁶ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Article 3 (b).

¹⁷ The UN General Assembly, In-depth Study on All Forms of Violence against Women, 6 July 2006, paragraph 104 citing Watts, C. and Zimmerman, C., “Violence against women: global scope and magnitude”, Lancet, vol. 359 (April 2002), pp. 1232-1237.

¹⁸ The UN General Assembly, In-depth Study on All Forms of Violence against Women, 6 July 2006, paragraph 113, citing Saltzman, Fanslow, McMaon and Shelley, G.A. Intimate partner violence surveillance: Uniform definitions and recommended data elements, version 1.0, 2002 Atlanta.

¹⁹ Ibid.

and embarrassment of the woman.²⁰ Economic violence is described as denying a woman access to and control over basic resources.²¹

The same study suggests that forms of violence are relative to cultural, social, economic and political context.²² Manifestations of violence have an evolving nature therefore the study concludes that it is impossible to make an exhaustive list of forms of violence against women.²³

1.3 Causes and impact

Although domestic violence has deep roots in human history, it has been and still is highly underreported and underdocumented, therefore it is difficult to detect and examine it wholly.²⁴ For many years domestic violence has been viewed as natural phenomenon and has been explained as a consequence of biological differences between men and women.²⁵ Some scholars explain the occurrence of domestic violence as a manifestation of existing gender hierarchy - women subordination to men. Political and social structure created different perception about gender roles in a family and in a society at large attributing to men a power which, as Joanna Nilsson writes, “Resulting in women experiencing discrimination and subordination in society because they are women.”²⁶ Domestic violence may occur as a result of performing gender roles. Jeff Hearn explains that power relations have a significant role in men’s identity. “An important

²⁰ Ibid.

²¹ Ibid.

²² Ibid, paragraph 105.

²³ Ibid, paragraph 105.

²⁴ Laura L. O’Toole, Jessica R. Schiffman, Margie L. Kiter Edwards (editors), “Gender Violence: Interdisciplinary Perspectives”, 2007, page 3.

²⁵ Ibid.

²⁶ Joanna Nilsson “Mandatory Prosecution Policies in Cases of Domestic Violence – A State Obligation under International Human Rights Law?”, Lund University, 2012, page 12.

aspect of men's power and sense of power is the use, potential use or the threat of violence.”²⁷

Hearn continues explaining that women suffer the most from the manifestation of men's masculinity.²⁸ There are other explanations for causes of domestic violence, such as social problems, unemployment, alcohol or drug addiction or psychological problems of perpetrators. I agree with Joanna Nilsson that multiple factors may be involved in causing domestic violence. Neither of them however should be referred as a means to justify domestic violence.

Domestic violence affects not only women who are subjected to violence, but also their children, other members of the family, and society at large.²⁹ It causes serious health problems for women diminishing their ability to participate in public life.³⁰ Domestic violence includes direct and indirect costs. Direct costs are the services provided to support victims of domestic violence and procedures to bring perpetrators to justice. Indirect costs are human suffering and less economic productivity of women.³¹ Some authors assess the impact of domestic violence even higher. “The costs of violence against women, apart from the human costs, go beyond lowered economic production and reduced human capital formation but also include the costs associated with political and social instability through intergenerational transmission of violence...”³²

²⁷ Jeff Hearn, “The Violence of Men: How Men Talk About and How Agencies Respond to Men's Violence to Women”, SAGE Publications LTD, 1998, page 4.

²⁸ Ibid.

²⁹ The UN General Assembly, In-depth Study on All Forms of Violence against Women, 6 July 2006, paragraph 106.

³⁰ Ibid.

³¹ UN Secretary-General's Campaign UNITE to End Violence against Women, Fact Sheet, Violence against Women: The Situation, DPI/2546A, November 2011, page 2.

³² Ibid, paragraph 107.

Conclusion

Domestic violence has been proven to be a global phenomenon which deprives women from full enjoyment of their fundamental freedoms and basic human rights. Understanding of its causes is essential for setting standards of combating domestic violence at the national and international level. It is worth to repeat that none of the explanation of the causes of domestic violence should be recalled in order to victimize women and justify perpetrators. In order to provide effective protection to victims the impact of all forms of domestic violence separately or jointly taken should not be underestimated.

Chapter 2 - International Standards of Combating Domestic Violence

Introduction

This chapter observes international standards of State's positive obligation to combat domestic violence under the jurisdiction of the United Nations and the Council of Europe. I look at the development of the UN soft law on violence against women which demonstrates the historical background of the international community's efforts to combat domestic violence. The most expansive tools for protecting women against violence, the CEDAW and its Committee, are examined in separate subsections.

At the regional level, I analyze the jurisdiction of the Council of Europe which provides protection to victims of domestic violence both under the European Convention on Human Rights and the Istanbul Convention.

2.1 The United Nations Organization

Gender equality and women's rights have been one of the priorities for the UN since 1940s, whilst domestic violence would be considered as women's rights issue decades later. In 1946 the Economic and Social Council ("ECOSOC") established the Commission on the Status of

Women with the mandate to make recommendations for the ECOSOC on promoting women's rights.³³

Almost forty years later, in 1984 the ECOSOC decided to include the subject of domestic violence [family violence in the original text] in the agenda of the session of the Commission on the Status of Women stating that domestic violence is a common practice in various states.³⁴ This was the first time that the UN required its Member States to provide information on this subject and to formulate solutions at the national level.³⁵ In 1985, the General Assembly adopted a resolution on domestic violence inviting Member States to take urgent actions to prevent domestic violence.³⁶ The resolution also “invites Member States to adopt specific measures with a view to making the criminal and civil justice system more sensitive in its response to domestic violence.”³⁷ As Bonita Meyersfeld notes, the resolution lacked authority “using instead the language of invitation and suggestion”.³⁸ Nevertheless it fostered subsequent developments in the field. The later resolutions were more profound and particular emphasizing the importance of prevention of violence. In 1990, the General Assembly asked Member States to “develop and implement multidisciplinary policies, measures and strategies, within and outside of the criminal justice system, with respect to domestic violence in all its facets.”³⁹ In 1993, the UN General

³³ Council resolution 11(II) of 21 June 1946.

³⁴ http://www.un.org/womenwatch/daw/csw/pdf/CSW_founding_resolution_1946.pdf.

³⁵ UN, Economic and Social Council resolution 1984/14 of 24 May 1984 on violence in the family.

³⁶ Ibid, paragraph 2.

³⁷ UN, GA resolution 40/36 of 29 November 1985 on domestic violence, paragraph 2.

³⁸ Ibid, paragraph 7.

³⁹ Bonita Meyersfeld, “Domestic Violence and International Law”, Hart Publishing, Oxford, 2010, page 19.

³⁹ UN GA resolution 45/114 of 14 December 1990 on domestic violence.

Assembly proclaimed a Declaration on the Elimination of Violence against Women (“the DEVAW”) affirming that violence against women is a human rights violation.⁴⁰

In 1994, the UN Commission on Human Rights⁴¹ discussed the subject of integrating women’s rights into the human rights mechanisms of the United Nations and the elimination of violence against women and decided to appoint a Special Rapporteur on violence against women, its causes and its consequences.⁴² The Special Rapporteur’s mandate was extended in 2003.⁴³

In 1995, the Fourth World Conference on Women adopted a Declaration⁴⁴ which, as Carin Benninger-Budel notes, shifted the focus of international community to “calling for state responsibility to prevent and address violence against women.”⁴⁵

The most important international achievement for women’s rights was the adoption of the Convention on Elimination of All Forms of Discrimination against Women (“the CEDAW”) which is often described as bill of rights for women. The CEDAW established new and profound tools for protecting women against violence which are examined in the following subsections.

⁴⁰ UN General Assembly Declaration on the Elimination of Violence against Women, A/RES/48/104, 20 December 1993, <http://www.un.org/documents/ga/res/48/a48r104.htm>.

⁴¹ UN Commission on Human Rights was established in 1946. In 2006 it was replaced by the Human Rights Council. See more at <http://www.ohchr.org/EN/HRBodies/CHR/Pages/CommissionOnHumanRights.aspx>.

⁴² UN Commission on Human Rights resolution [1994/45](#), paragraph 6.

⁴³ UN Commission on Human Rights resolution 2003/45. Paragraph 31.

⁴⁴ The Fourth World Conference on Women: Action for Equality, Development and Peace, September 1995 in Beijing, China, <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>.

⁴⁵ Berringer-Budel, Carin. “Due Diligence and Its Application to Protect Women from Violence”. Edited by Carin Berringer-Budel. Leiden: Martinus Nijhoff Publishers, 2008, page 8.

2.1.1 The CEDAW

In the 1970s, when the CEDAW was drafted, domestic violence did not receive the deserved significance. It was adopted in 1979 originally aiming to end discrimination against women without referring to the necessity to combat domestic violence. Only one of the 30 Articles of the CEDAW addresses the State's responsibility to protect women within the family stating that men and women have equal rights relating to marriage and family relations.⁴⁶ The CEDAW established⁴⁷ the CEDAW Committee ("the Committee") that would later require State Parties to take into consideration violence against women as a serious issue towards achieving gender equality. The Committee was established to monitor state compliance with the CEDAW requiring State Parties to submit periodic reports on the progress made in respect of implementation of the CEDAW at the national level.⁴⁸ The Committee was entitled to make suggestions and general recommendations based on the examination of state reports.⁴⁹

Since 2000, the CEDAW Committee's competences have been enlarged with the entry into force of the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women. By ratifying the Optional Protocol State Parties recognize the competence of the Committee to receive and consider complaints from individuals.⁵⁰ The CEDAW Committee has dealt with the issue of domestic violence both in its general recommendations and decisions on individual complaints which will be examined separately.

⁴⁶ The Convention on the Elimination of All Forms of Discrimination against Women, Article 16.

⁴⁷ Ibid, Article 17.

⁴⁸ Ibid, Article 18.

⁴⁹ Ibid.

⁵⁰ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Article 1.

2.1.1.1 General Recommendations

The first general recommendation to deal with the topic of domestic violence was General Recommendation no 12 in which the CEDAW Committee recommended to the States Parties to include in their periodic reports information about the legislation in force to protect women against the incidence of all kinds of violence including abuses in the family.⁵¹ This was still only a procedural recommendation. However, a few years later the Committee went much further in adding substance. In fact, in its General Recommendation no 19 the CEDAW Committee emphasizes that the CEDAW does not solely apply to gender based violence towards women by State actors. It also covers the violence towards women by any individual, organization or enterprises: "...States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."⁵²

General Recommendation no 19 broadened the definition of discrimination against women including violence against women. It also defines that gender based violence "includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty".⁵³ General Recommendation no 19 is considered to be a landmark document in combating domestic violence. As Bonita Meyersfeld writes, it "laid down a

⁵¹ The Committee on the Elimination of Discrimination against Women General Recommendation No. 12 eighth session, 1989.

⁵² The Committee on the Elimination of Discrimination against Women, eleventh session (1992) General Recommendation No. 19, paragraph 9.

⁵³ Ibid, paragraph 6.

framework, the value of which cannot be discounted.”⁵⁴ The novelty of the General Recommendation no 19 was that it addressed violence against women in the “private” sphere and required gender sensitive trainings for judicial and law enforcement bodies. The Committee recommended to State Parties to provide adequate protection to women enacting laws against “family violence and abuse, sexual assault and other gender-based violence.”⁵⁵ General Recommendation no 19 has been later recalled in all individual communications concerning domestic violence.

2.1.1.2 Individual communications where the Committee found violations

In recent years the CEDAW Committee has delivered its views on eight domestic violence cases. In 2005, it adopted its decision on the first individual communication related to domestic violence - *A.T. v Hungary*.⁵⁶ Ms A.T., the author of the communication, had been continuously subjected to domestic violence by her husband, L.F., father of her two children. He battered the author on several occasions.⁵⁷ There was a civil proceeding over the use of family’s residence jointly owned by the author and L.F. National courts authorized the abuser to use the apartment notwithstanding the allegation by A.T. regarding his violent behavior.⁵⁸ There were also criminal

⁵⁴ Meyersfeld, Bonita “*Domestic Violence and International Law*”, Hart Publishing, Oxford, 2010, page 19.

⁵⁵ The Committee on the Elimination of Discrimination against Women, eleventh session (1992) General Recommendation No. 19, paragraph 24 (b).

⁵⁶ CEDAW Committee, *A. T. v. Hungary*, Communication no. 2/2003, 26 January 2005.

⁵⁷ *Ibid*, paragraph 2.3.

⁵⁸ *Ibid*, paragraph 2.4.

procedures against L.F. during which he was not detained. Hungarian authorities took no action to protect the author from L.F.⁵⁹

The author claimed that the State had violated articles 2 (a), (b) and (e) 5 (a) and 16⁶⁰, of the CEDAW as it failed to provide effective protection to her. Hungary submitted to the Committee that they had recognized incompleteness of national legislation regarding domestic violence⁶¹ and admitted that the “institutional system in Hungary is not ready yet to ensure the internationally expected, coordinated, comprehensive and effective protection and support for the victims of domestic violence.”⁶² The Committee recalled its General Recommendation no. 19 stating that gender based violence is a manifestation of discrimination against women. It highlighted that “traditional attitudes by which women are regarded as subordinate to men contribute to violence against them”.⁶³ The Committee decided that the State Party had violated the rights of the author under article 2 (a), (b) and (e) and article 5 (a) in conjunction with article 16 of the CEDAW and made particular and general recommendations. Concerning to the author, it recommended “take immediate and effective measures to guarantee the physical and mental

⁵⁹ Ibid, paragraph 2.6.

⁶⁰ CEDAW Convention, *Article 2* - States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

Article 5 - States Parties shall take all appropriate measures: (a) To modify 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; *Article 16* - States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women.

⁶¹ CEDAW Committee, *A. T. v. Hungary*, Communication no. 2/2003, 26 January 2005, paragraph 5.7.

⁶² Ibid, 7.4.

⁶³ Ibid, paragraph 9.4.

integrity of A. T. and her family” and provide a safe home for them. In general the Committee delivered several recommendations such as to act with due diligence to protect women from domestic violence, investigate all allegations of domestic violence according to international standards, etc.⁶⁴

In 2007, the Committee delivered its views on two communications submitted by the relatives of the deceased women.⁶⁵ In *Goekce v. Austria*⁶⁶ the communication was submitted by The Vienna Intervention Centre against Domestic Violence and the Association for Women’s Access to Justice on behalf Şahide Goekce’s descendants. Mrs Goekce had been subjected to violence inflicted by her husband, Mustafa Goekce, on several occasions. She applied to the police, who issued an expulsion against the husband three times and a prohibition to return to Goekce’s apartment.⁶⁷ A district court too issued an interim injunction forbidding Mustafa Goekce to return to the family apartment, but he did not obey it.⁶⁸ The police was informed about it, but the only step they took was to check the apartment without finding him there.⁶⁹ Three weeks later, the public prosecutor decided that the evidence was insufficient to pursue a criminal prosecution against Mustafa Goekce for causing bodily harm and threatening his wife.⁷⁰ Two days after the decision the abuser shot Şahide Goekce with a gun in front of their daughters.⁷¹

The authors of the communication claimed that Austria had violated several articles of the CEDAW Convention because it had not taken all appropriate measures to protect Şahide

⁶⁴ Ibid, paragraph 9.6.

⁶⁵ Article 2 of the Optional Protocol allows to submit communication on behalf of individuals or groups, with their consent, unless it can be shown why that consent was not received.

⁶⁶ CEDAW Committee, *Goekce v. Austria*, Communication No. 5/2005, 6 August 2007.

⁶⁷ Ibid, paragraphs 2.2, 2.4 and 2.6.

⁶⁸ Ibid, paragraph 2.7.

⁶⁹ Ibid, paragraph 2.7.

⁷⁰ Ibid, paragraph 2.10.

⁷¹ Ibid, paragraph 2.11.

Goekce's right to personal security and life.⁷² While assessing the facts of the case the Committee recalled the General Recommendation no. 19 stating that "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."⁷³ The Committee noted that not only relevant institutions and legislation are needed to address domestic violence, but also political will demonstrated by State actors to adhere State's international obligations.⁷⁴ The Committee emphasized that while balancing between a perpetrator's right to be free from state interference and the State's obligation to protect women from violence, "the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity."⁷⁵ The second case submitted by the victim's descendants was also against Austria. In *Yildirim v. Austria*⁷⁶ Fatma Yildirim wanted to divorce her husband, Irfan Yildirim, but eventually was killed by him. Fatma had notified the police about death threats made by her husband.⁷⁷ The police issued an expulsion order against Irfan Yildirim⁷⁸ and later a district court issued an interim injunction⁷⁹, but both were insufficient to deter him from the further crime. He followed Fatma Yildirim and stabbed her near their apartment.⁸⁰

The Committee considered that Austria breached its due diligence obligation to protect Fatma Yildirim, because it had failed to detain Irfan Yildirim⁸¹, although state agencies were aware of his criminal behaviour. The Committee recommended Austria to act with due diligence "to

⁷² Ibid, paragraph 3.1.

⁷³ Ibid, paragraph 12.1.1.

⁷⁴ Ibid, paragraph 12.1.2

⁷⁵ Ibid, paragraph 12.1.5.

⁷⁶ CEDAW Committee, *Yildirim v. Austria*, Communication No. 6/2005, 1 October 2007.

⁷⁷ Ibid, paragraph 2.3.

⁷⁸ Ibid, paragraph 2.4.

⁷⁹ Ibid, paragraph 2.12.

⁸⁰ Ibid, paragraph 2.13.

⁸¹ Ibid, paragraph 12.1.5.

prevent and respond to such violence against women and adequately providing for sanctions for the failure to do so.”⁸²

The most recent domestic violence case on which the Committee has delivered its views is *X and Y v. Georgia*.⁸³ The authors of the communication, X and her daughter Y had been subjected to physical and sexual violence by X’s husband who is also Y’s father. X had been beaten by her husband for several years. She complained to the police about his violent behaviour towards her and her children.⁸⁴ The police repeatedly failed to intervene effectively sufficing merely requesting the husband to pledge in writing that he would refrain from violence in the future.⁸⁵ Y was also subjected to violence by her father. The mother reported to the District Prosecutor’s Office the sexual abuse of Y by her father. Prosecutor’s Office decided not to open a criminal case.⁸⁶

The authors complained that the State Party violated several articles of the Convention, because it had failed to comply with its duty “to enact criminal law provisions to effectively protect women and young girls from physical and sexual abuse within the family.”⁸⁷ The State Party claimed that its authorities had conducted investigations fulfilling all their positive obligations under the Convention.⁸⁸

While making considerations on the merits the Committee took note of the detailed information provided by the author about the violent behavior of her husband especially concerning the

⁸² Ibid, paragraph 12.3 (a).

⁸³ CEDAW Committee, *X and Y v. Georgia*, Communication No. 24/2009, 13 July 2015.

⁸⁴ Ibid, paragraph 2.3.

⁸⁵ Ibid, paragraph 2.6.

⁸⁶ Ibid, paragraph 2.8.

⁸⁷ Ibid, paragraph 3.1.

⁸⁸ Ibid, paragraph 7.2.

physical and sexual abuse of Y.⁸⁹ The Committee examined whether the State Party has adequately addressed the complaints of X and provided her and Y with effective legal protection. The Committee noted that written undertakings by the husband were insufficient to stop the violence and that authorities had failed to react adequately to protect X and her children.⁹⁰ The dismissal of X's complaints and denial to prosecute the abuser declaring allegations groundless, in the Committee's view, had created "extremely high requirements regarding the burden of proof in a domestic violence case."⁹¹ The Committee decided that the State Party had violated the authors' rights under articles 2 (b)-2 (f), in conjunction with articles 1 and 5 (a), of the Convention, as well as the Committee's general recommendation No. 19.⁹² In its recommendation to Georgia, the Committee emphasized the importance of awareness raising campaigns and demonstration of a zero-tolerance policy in respect of domestic violence.⁹³ It also recommended to provide prompt and adequate support to victims of domestic violence. This should include providing psychological support and shelter for victims and their children. Other recommendations of the Committee were to ratify the Istanbul Convention and to provide mandatory training the representatives of judicial and law enforcement systems.⁹⁴

There are three more domestic violence cases⁹⁵ where the Committee decided that State Parties had violated individuals' rights under the CEDAW. The examination of these cases demonstrates that the Committee strengthened the requirements prescribed by the CEDAW and General

⁸⁹ Ibid, paragraph 9.2.

⁹⁰ Ibid, paragraph 9.6.

⁹¹ Ibid, paragraph 9.6.

⁹² Ibid, paragraph 10.

⁹³ Ibid, paragraph 11 (b).

⁹⁴ Ibid, paragraph 11 (b).

⁹⁵ CEDAW Committee, *V.K. v. Bulgaria*, Communication No. 20/2008, 15 October 2008; *Jallow. v. Bulgaria*, Communication No. 32/2011, 23 July 2012; *Kell v. Canada*, Communication No. 19/2008, 28 February 2012.

Recommendation no. 19. State Parties of the CEDAW are obliged to act with due diligence and take appropriate measures to protect women against violence.

2.1.1.3 Inadmissible decisions

Being subjected to domestic violence and not receiving adequate protection from a State Party is not sufficient for successfully claiming a violation of rights prescribed by the CEDAW Convention. A communication firstly should pass the admissibility decision.⁹⁶ The case law of the Committee reveals that not all communications on domestic violence have been successful so far.

In *T.N. v Denmark*⁹⁷ the author, Mrs. T.N., claimed that she had been subjected to domestic violence by her husband and forced to move from Germany to Denmark with him. They had a dispute over their mutual children's custody and the author allegedly had been beaten on daily basis.⁹⁸ T.N. unsuccessfully endeavoured to obtain protection measures from Police and restraining order from a national court.⁹⁹ She complained that the State Party had failed to protect her and her children against domestic violence. But the Committee found that the author could not substantiate her claim, particularly, the documents submitted by her had been unstructured and without full translation from Danish. The Committee also noted that "many of the author's arguments were not presented in a comprehensive manner and that they lack consistency and are not supported by documentation".¹⁰⁰

⁹⁶ See Article 4 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

⁹⁷ CEDAW Committee, *T.N. v Denmark*, Communication No 37/2012, 3 November 2014.

⁹⁸ Ibid, paragraph 2.2.

⁹⁹ Ibid, paragraph 2.4.

¹⁰⁰ Ibid, paragraph 12.6.

The lack of documentation supporting the author's claim lead the Committee to conclude that T.N. had failed to substantiate her claim and it was declared inadmissible.¹⁰¹

In *S.O. v Canada*¹⁰² the author, a Mexican national, was an asylum seeker in Canada. She was awaiting deportation from Canada to Mexico where, as the author claimed, she would face domestic violence by her former partner who had allegedly subjected her to violence previously.¹⁰³ Although the Committee admitted that the author had been subjected to violence in the past, it declared the communication inadmissible on the same ground as in *T.N. v Denmark*: the author had failed to substantiate her claim. Particularly, she had not provided sufficient information "to demonstrate that she would face a real, personal and foreseeable risk of serious forms of gender-based violence if returned to Mexico".¹⁰⁴ The author could not provide sufficient evidence that after five years her former partner still would have the intention to subject her to violence.

Decisions on admissibility of communication prove that the requirement of sufficient substantiation has a significant importance for the Committee. The latter has demonstrated that it would apply stricter scrutiny while considering whether the claim manifestly ill-founded rather than considering the exhaustion of domestic remedies requirement. The most important requirement for victims of domestic violence would be to provide sufficient information and documents for substantiating their claims. If communications are not manifestly ill-founded the Committee, is inclined to adopt a gender sensitive approach, as decisions on merits prove.

¹⁰¹ Under Article 4 (2)(c) of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women the Committee shall declare a communication inadmissible where It is manifestly ill-founded or not sufficiently substantiated.

¹⁰² CEDAW Committee, *S.O. v Canada*, Communication No 49/2013, 27 October 2014.

¹⁰³ Ibid, paragraphs 2.1-2.3.

¹⁰⁴ Ibid, paragraph 9.6.

As discussed above, under the UN jurisdiction violence against women is considered to be a manifestation of gender discrimination which is prohibited by the CEDAW Convention. In the next subchapter I argue that the European Court of Human Rights is also inclined to recognize the failure of the State Parties to protect women from violence as a discrimination against women.

2.1.2 The Special Rapporteur on Violence against Women, Its Causes and Consequences

As it was mentioned above, the UN Special Rapporteur on violence against women, its causes and consequences (“the Special Rapporteur”) was appointed in 1994. Its mandate was extended by the Commission on Human Rights with the resolution 2003/45.¹⁰⁵ In the same resolution the Commission on Human Rights strongly condemns violence against women both perpetrated by State actors and third parties emphasizing Member States’ obligation to take appropriate and effective measures and exercise due diligence to prevent, investigate and punish violence against women.¹⁰⁶

The Special Rapporteur’s mandate was recently renewed for a period of three years by the Human Rights Council¹⁰⁷ with the resolution 32/19.¹⁰⁸ In this resolution the Human Rights Council emphasizes that domestic violence is “the most prevalent and least visible form of violence” against women and expresses concern that consequences of the violence are enduring and affect many areas of women’s lives.¹⁰⁹

¹⁰⁵ See footnote 43.

¹⁰⁶ Ibid, paragraph 5.

¹⁰⁷ See footnote 41.

¹⁰⁸ UN Commission on Human Rights resolution 32/19, paragraph 17.

¹⁰⁹ Ibid, paragraph 5.

By her mandate (so far all the special rapporteurs were women), the Special Rapporteur is authorized to seek and receive information on violence against women from all relevant actors and to respond to it, to make recommendations at the national, regional and international levels to combat violence against women and to remedy its consequences.¹¹⁰ The Special Rapporteur carries out country visits¹¹¹ and releases country reports making comprehensive recommendations on state policy and legal reforms. Since 1994, the Special Rapporteur has carried out more than 50 country visits.¹¹² She has not visited Armenia yet.

Based on received information the Special Rapporteur transmits urgent appeals and allegation letters to Governments. Such communications may concern a single case or general situation of violence against women in a given State. Urgent appeals usually concern cases when reliable information is received by the Special Rapporteur about an imminent and real threat to a woman's life or personal integrity. Actually none of the Special Rapporteurs have submitted urgent appeals so far. For cases which do not require a rapid response the Special Rapporteur sends allegation letters to Governments concerned requiring a clarification. The Special Rapporteur may be addressed by individuals and/or organizations.¹¹³

The Special Rapporteur also submits annual reports to the Human Rights Council providing an account of her activities. In her recent annual report, the Special Rapporteur Dr. Dubravka Šimonović states that “there is a general lack of a holistic, comprehensive approach to combating and preventing gender-based violence.”¹¹⁴ In the view of Dr. Dubravka Šimonović, the Special Rapporteur's key priorities are to contribute to the implementation of international and regional

¹¹⁰ UN Commission on Human Rights resolution [1994/45](#), paragraph 7.

¹¹¹ UN Commission on Human Rights resolution [1994/45](#), paragraph 10.

¹¹² See full list of country visits here <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/CountryVisits.aspx>.

¹¹³ See more at <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/Complaints.aspx>.

¹¹⁴ Human Rights Council Thirty-second session, Report of the Special Rapporteur on violence against women, its causes and consequences, 19 April 2016, paragraph 80.

instruments on violence against women, and to protect victims, support them and prosecute perpetrators.¹¹⁵

2.2 The Council of Europe

2.2.1 The European Convention on Human Rights

Although the European Convention on Human Rights (“the Convention”) does not contain any clauses on violence caused by another individual, the European Court of Human Rights has derived a positive obligation for the State Parties to protect individuals within its jurisdiction. These obligations are derived from Article 2, Article 3 and Article 8 of the Convention¹¹⁶ which prescribe negative obligations for State parties per se. They protect individuals from State interference (depriving one’s life arbitrarily, subjecting to ill-treatment, arbitrarily interfering personal life). But the Convention is a living instrument and the Court has developed positive obligations of the State Parties during the last decades. In a substantive number of domestic violence cases several State Parties are held responsible for noncompliance with their positive obligations under the Convention. Standards of States’ positive obligations are set in a several landmark judgments ruled by the Court.

Facts in these cases are more or less similar: the applicant is a woman who has systematically been subjected to physical and physiological violence by her (former) husband or a partner. She applies to state authorities alarming that her partner’s behaviour is dangerous for her and often for her children’s security. Sometimes, usually under the pressure and threats of the abuser, the victim withdraws her complaints. This enables State authorities not to initiate or pursue criminal

¹¹⁵ Ibid.

¹¹⁶ ECHR, Article 2 – Right to life; Article 3 – Prohibition of torture; Article 8 – Right to respect for private and family life.

proceedings against the aggressor as the individual complaint by the victim is a procedural requirement for such cases to proceed according to national legislation of several State Parties. As a rule, the circle of violence continues after the withdrawal of the complaint and a woman has to apply for protective measures to public authorities again.

Notwithstanding that in most of the cases authorities had not remained absolutely inactive, measures they have taken were ruled to be insufficient to provide effective protection to the victims of domestic violence. Here the Court sets the standards for combating domestic violence at the national level. These standards will be observed on a case by case basis in the following sub-sections.

2.2.2 Comparative case analysis

Since 2007, the Court has delivered various judgments on domestic violence cases finding violations of Articles 2, Article 3, Article 8 and Article 14¹¹⁷ of the Convention. The Court has found a violation of Article 2 in three cases¹¹⁸ where there was an actual victim of a murder. In ten cases¹¹⁹ where physical and psychological violence was so brutal that reached the “minimum

¹¹⁷ ECHR, Article 14 – Prohibition of discrimination.

¹¹⁸ ECtHR, *Kontrova v. Slovakia*, Appl. no. 7510/04, Judgment of 31 May 2007; *Branko Tomasic and Others v. Croatia*, Appl. no. 46598/06, Judgment of 15 January 2009; *Opuz v. Turkey*, Appl. no. 33401/02, Judgment of 9 June 2009.

¹¹⁹ ECtHR, *Opuz v. Turkey*, Appl. no. 33401/02, Judgment of 9 June 2009; *E.S. and Others v. Slovakia*, Appl. no. 8227/04, Judgment of 15 September 2009; *N. v. Sweden*, Appl. no. 23505/09, Judgment of 20 July 2010; *E.M. v. Romania*, Appl. no. 43994/05, Judgment of 30 October 2012; *Valiuliene v. Lithuania*, Appl. no. 33234/07, Judgment of 26 March 2013; *Eremia and Others v. Moldova*, Appl. no. 3564/11, Judgment of 28 May 2013; *B. v. Moldova*, Appl. no. 61382/09, Judgment of 16 July 2013; *Mudric v. Moldova*, Appl. no. 74839/10, Judgment of 16 July 2013; *N.A. v. Moldova*, Appl. no. 13424/06, Judgment of 24 September 2013; *T.M. and C.M. v. Moldova*, Appl. no. 26608/11, Judgment of 28 January 2014.

level of severity,”¹²⁰ a violation of Article 3 has been found. But this threshold is not an indispensable requirement for holding a State responsible in domestic violence cases. A violation of Article 8 may be found if it is impossible or problematic to prove that suffering of a victim has reached “the minimum level of severity”. The Court has found a violation of Article 8 in seven cases¹²¹ so far. It is worth noting that the Court has the authority to decide under which article to examine a given case following the principle that “the Court is master of the characterization to be given in law to the facts of the case.”¹²²

Last but not least, in four cases¹²³ the Court held that there had been a violation of Article 14. Prohibition of discrimination is not a free-standing Convention right¹²⁴ therefore Article 14 can only be invoked in conjunction with any of substantive articles of the Convention. In domestic violence cases it is pleaded in relation to Article 2, Article 3 or Article 8.

2.2.2.1 Violation of Article 2

The earliest ECtHR case on domestic violence is *Kontrova v. Slovakia* (2007). The facts of the case are following: the applicant, Mrs Kontrova, was assaulted and beaten by her husband. She

¹²⁰ In its landmark judgment of the case *Ireland v. the United Kingdom* (Appl. No. 5310/71, (ECtHR, 1978), paragraph 168) the Court has established a “minimum level of severity” as a threshold for the alleged ill-treatment in order to fall within the scope of Article 3.

¹²¹ ECtHR, *Bevacqua and S. v. Bulgaria*, Appl. no. 71127/01, Judgment of 12 June 2008; *E.S. and Others v. Slovakia*, Appl. no. 8227/04, Judgment of 15 September 2009; *A. v. Croatia*, Appl. no. 55164/08, Judgment of 14 October 2010; *Hajduova v. Slovakia*, Appl. no. 2660/03, Judgment of 30 November 2010; *Kalucza v. Hungary*, Appl. no. 57693/10, Judgment of 24 April 2012; *Eremia and Others v. Moldova*, Appl. no. 3564/11, Judgment of 28 May 2013; *B. v. Moldova*, Appl. no. 61382/09, Judgment of 16 July 2013.

¹²² *Guerra and Others v. Italy*, app. no. 116/1996/735/932 (ECHR 19 February 1998), paragraph 44.

¹²³ ECtHR, *Opuz v. Turkey*, Appl. no. 33401/02, Judgment of 9 June 2009; *Eremia and Others v. Moldova*, Appl. no. 3564/11, Judgment of 28 May 2013; *Mudric v. Moldova*, Appl. no. 74839/10, Judgment of 16 July 2013; *T.M. and C.M. v. Moldova*, Appl. no. 26608/11, Judgment of 28 January 2014.

¹²⁴ Although Protocol 12 to the European Convention on Human Rights removes this limitation on Article 14, only 19 State Parties have ratified it.

filed a criminal complaint against him providing a medical report of her injuries.¹²⁵ Mrs Kontrova stated that she had been often subjected to violence in the past too. But soon the applicant withdrew her complaint and following one of the police officer's advice she also submitted a medical report which proved that after the beating she had been able to return to her work in less than six days.¹²⁶ This report was necessary to avoid a criminal prosecution, as the police officer explained. The withdrawal of the complaint enabled the Police to take no action against applicant's husband. A month later the applicant and her relatives notified the Police that her husband was threatening to kill himself and their children.¹²⁷ Police did not take preventative measures and in a few days the applicant's husband actually materialized his threats.¹²⁸

The applicant alleged that the State actors had been well aware of the circumstances, but failed to take measures to protect her children's right to life (Article 2) and her right to private life (Article 8). As the ECtHR stated, positive obligation of the State under the Article 2 involves not only putting in place effective legislation, but also when necessary taking "preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual."¹²⁹ The Court, however, did not impose a burden on the State which would be impossible or disproportionate. Preventative measures should be taken in cases when authorities "know or ought to have known at the time of the existence of a real and immediate risk to life an identified individual from the criminal acts of a third party."¹³⁰ Preventative measures are crucial taking into account the repetitive nature of the domestic violence. In *Kontrova* case authorities' failure amounted to irreversible losses. The Court found a violation of

¹²⁵ ECtHR, *Kontrova v. Slovakia*, Appl. no. 7510/04, Judgment of 31 May 2007, paragraph 8.

¹²⁶ Ibid paragraph 9.

¹²⁷ Ibid, paragraph 11.

¹²⁸ Ibid paragraph 14.

¹²⁹ Ibid, paragraph 49.

¹³⁰ Ibid, paragraph 50.

Article 2 and Article 13 (right to an effective remedy), as authorities insufficient activity amounted the violation of right to life of the applicant's children and she did not have a possibility to obtain compensation for non-pecuniary damage.¹³¹

The standards of positive state obligations to protect individuals' right to life were strengthened in the landmark case of *Opuz v. Turkey* (2009).¹³² In this case, the Court dealt with systematic threats, offences and furious beatings inflicted by the applicant's husband. Mrs Opuz and her mother had been suffering from the periodic violent behaviour of H.O.¹³³ They had applied to the local Prosecutor's Office and courts several times alleging that H.O. threatened and offend them causing bodily injuries. H.O. even tried to kill them running his car into the applicant and her mother.¹³⁴ In several cases the prosecutions against H.O. were terminated as a result of withdrawal of the complaints by the applicant and her mother. But they had to go back to the Prosecutor's Office again and again as the violence towards them were getting more severe. In a certain phase H.O. succeeded to revive his family life with the applicant, but after a short period he stabbed his wife with the knife.¹³⁵ This incident was not followed by H.O.'s imprisonment. The domestic court found it sufficient to merely impose a fine on him.¹³⁶ H.O. continued making life threats to his mother-in-law. The later informed the Prosecutor's Office about the risk she was facing by H.O. who has wandering with a knife and a shotgun near her home.¹³⁷ The public prosecutor did not take measures to deter H.O. from his intention. As a result he materialized his threats killing the applicant's mother.¹³⁸ Subsequently he was sentenced to life imprisonment, but

¹³¹ Ibid, paragraph 55 and 66.

¹³² ECtHR, *Opuz v. Turkey*, Appl. no. 33401/02, Judgment of 9 June 2009.

¹³³ Ibid, paragraph 9.

¹³⁴ Ibid, paragraph 23.

¹³⁵ Ibid, paragraph 37.

¹³⁶ Ibid, paragraph 44.

¹³⁷ Ibid, paragraph 49.

¹³⁸ Ibid, paragraph 54.

his sentence was mitigated. In order not to exceed the pre-trial detention limit, H.O. was released with the regard that his judgment would be examined on appeal.¹³⁹ After his release the applicant again filed a petition asking authorities to protect her from her former¹⁴⁰ husband.¹⁴¹ The authorities reluctantly took some measures to protect the applicant.¹⁴²

In *Opuz v. Turkey* the Court recalled the international law on domestic violence and discrimination against women, particularly the UN Convention on Elimination all forms of Discrimination against Women and the general recommendations and individual cases of the CEDAW Committee. The Court also examined the practices of the Council of Europe and Inter-American system and the situation of women in Turkey in general. After the comparative law analysis the Court dealt with the facts of the case.

The applicant complained that state authorities failed to protect her mother's rights to life and her right not to be subjected to ill-treatment. The Government of Turkey argued that the applicant's and her mother's withdrawal of their complaints disabled the Prosecutor's Office to continue criminal proceedings against the applicant's ex-husband.

The Court looked at the practices of the Member States of the Council of Europe in order to decide whether the withdrawal of a complaint is a crucial for pursuing criminal proceedings against an individual. Comparison showed that in 11 States in cases of domestic violence authorities are required to proceed with criminal proceedings regardless of the victim's withdrawal of complaint.¹⁴³ In 27 Member States the authorities are entitled to decide whether the proceedings should be continued after the withdrawal of the complaint.¹⁴⁴ Almost none of the

¹³⁹ Ibid, paragraph 57.

¹⁴⁰ She obtained a divorce from H.O. after the murder of her mother.

¹⁴¹ Ibid, paragraph 59.

¹⁴² Ibid, paragraphs 60-69.

¹⁴³ Ibid, paragraph 87.

¹⁴⁴ Ibid, paragraph 89.

Member States (except Romania) prohibited its prosecution offices to pursue the criminal proceedings in the sake of public interest.

The Court noted that the State Parties have a positive obligation under Article 2 to secure the right to life of individuals within their jurisdictions. For ensuring this rights State parties are oblige to take preventative measures. These measures, as mentioned in *Kontrova* case, can be invoked when the authorities know or ought to have known about the existence of a real and immediate risk. Once public authorities are notified about the danger to the life and physical integrity of an individual from the acts of a third party they have to take measures which not necessarily should prevent the crime but “judged reasonably, might have been expected to avoid that risk.”¹⁴⁵

Government tries to argue that without personal complaint the interference in the applicant’s and her husband’s relationship will constitute a violation of Article 8. In this regard, the Court noted that the authorities should strike a balance between the right to respect for private life and right to life/not to be subjected to ill-treatment.¹⁴⁶ It is worth mentioning that the Court examined the instant case bearing in mind the seriousness of the problem of domestic violence not only in Turkey, but in all Member States noting that it often remains veiled because violence usually occurs within personal relationships.¹⁴⁷

The Court held that attributing domestic violence as a “private matter” could not justify authorities’ inactivity. Furthermore, the Court stated that in certain circumstances the authorities should interfere with the private life of individuals in order to fulfil their positive obligations – to protect rights of others.¹⁴⁸ The Court listed factors which authorities should take into account

¹⁴⁵ Ibid, paragraph 129.

¹⁴⁶ Ibid, paragraph 138.

¹⁴⁷ Ibid, paragraph 132.

¹⁴⁸ Ibid, paragraph 144.

while deciding whether to pursue criminal proceedings after the withdrawal of the complaint.

These factors are:

- “– the seriousness of the offence;
- whether the victim’s injuries are physical or psychological;
- if the defendant used a weapon;
- if the defendant has made any threats since the attack;
- if the defendant planned the attack;
- the effect (including psychological) on any children living in the household;
- the chances of the defendant offending again;
- the continuing threat to the health and safety of the victim or anyone else who was, or could become, involved;
- the current state of the victim’s relationship with the defendant and the effect on that relationship of continuing with the prosecution against the victim’s wishes;
- the history of the relationship, particularly if there had been any other violence in the past;
- the defendant’s criminal history, particularly any previous violence.”¹⁴⁹

In sum, the Court concluded that after the withdrawal of a complaint “the more serious the offence or the greater the risk of further offences, the more likely that the prosecution should continue in the public interest.”¹⁵⁰ Thereby the Court set standards for law enforcement agencies.

Although state authorities enjoy a certain level of discretion when it comes to criminal

¹⁴⁹ Ibid, paragraph 138.

¹⁵⁰ Ibid, paragraph 139.

procedures, nevertheless, in *Opuz v. Turkey* the Court indicated that the European supervision will be stricter regarding domestic violence. The Court found a violation of Article 2 as remaining passive national authorities did not display due diligence and failed to protect applicant's mother's right to life.

In the same year of *Opuz* judgment (2009), the Court found a violation of Article 2 also in *Branko Tomasic and Others v. Croatia*.¹⁵¹ In all above mentioned cases the ECtHR set the principles of protecting individuals against violence inflicted by a third party. The examination of these cases provides evidence to conclude that state responsibility may be invoked when authorities are aware of an immediate threat to individuals' life but fail to take appropriate preventative measures to protect them.

2.2.2.2 Violation of Article 3

In domestic violence cases the ECtHR has most of all found a violation of Article 3. In *Opuz v. Turkey* the Court not only established that the authorities had violated the applicant's mother's right to life, but also found a violation of the applicant's right to be free of ill-treatment. While examining alleged violation of Article 3 the Court took into account the vulnerability of the applicant personally and in the context of situation of women in Turkey.¹⁵² The Court accepted that authorities had not remained totally passive¹⁵³, but the taken measures were insufficient to protect the applicant from repetition of violence. The same argument of the Government that the applicant had withdrawn her complaints several times did not convince the Court. It noted that

¹⁵¹ ECtHR, *Branko Tomasic and Others v. Croatia*, Appl. no. 46598/06, Judgment of 15 January 2009.

¹⁵² ECtHR, *Opuz v. Turkey*, Appl. no. 33401/02, Judgment of 9 June 2009, paragraph 160.

¹⁵³ *Ibid*, paragraph 166.

the violent acts towards applicant were grave enough to pursue criminal proceedings against H.O. in a public interest.¹⁵⁴ Thus the Court held that there was a violation of Article 3.

A violation of Article 3 was also found in *Eremia v. of Moldova* (2013).¹⁵⁵ The facts of the case are the following: the applicants, Mrs Eremia (first applicant) and her two daughters, had been subjected to violence and abuse by A., the husband of the first applicant and father of her daughters. A., who is a police officer, had beaten and threatened his wife several times, sometimes at the present of their teenage daughters.¹⁵⁶ First applicant had reported the physical and mental abuses of her husband to police.¹⁵⁷ Mrs Eremia later applied to a local court for a protection order.¹⁵⁸ Notwithstanding that the protection order was granted, A. continued his violent behaviour towards his wife.¹⁵⁹ Measures taken by state authorities were not enough to deter the abuser from committing further violence. The first applicant alleged that the State did not comply with its positive obligation under Article 3 failing to protect her from domestic violence.¹⁶⁰

In its analysis the Court noted that prohibition of torture is not only a negative obligation of the State, but it also imposes positive obligation “to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment prohibited under Article 3, including where such treatment is administered by private individuals.”¹⁶¹ The ECtHR stated that according to the positive obligations derived from Article 3 State authorities should conduct an effective investigation. The Court characterized investigation as an “effective” if it is capable of “leading

¹⁵⁴ Ibid, paragraph 168.

¹⁵⁵ ECtHR, *Eremia and Others v. the Republic of Moldova*, Appl. no. 3564/11, Judgment of 28 May 2013.

¹⁵⁶ Ibid, paragraph 7.

¹⁵⁷ Ibid, paragraph 8.

¹⁵⁸ Ibid, paragraph 11.

¹⁵⁹ Ibid, paragraph 16.

¹⁶⁰ Ibid, paragraph 40.

¹⁶¹ Ibid, paragraph 49.

to the establishment of the facts of the case and to the identification and punishment of those responsible.”¹⁶² However, the Court emphasized, that effectiveness is an obligation of means and not of result.¹⁶³ In other words, the State obligation is not just the punishment of an alleged criminal, but rather the conduct of a prompt, throughout and independent investigation.

The Court also reiterated that in order to fall within the scope of Article 3, ill-treatment must attain the minimum level of severity.¹⁶⁴ Without examining the nature of the physical suffering of the first applicant the Court established that “the fear of further assaults was sufficiently serious to cause the first applicant to experience suffering and anxiety amounting to inhuman treatment within the meaning of Article 3 of the Convention.”¹⁶⁵ In regard to State actions the Court noted that although the State has a special legislation on domestic violence,¹⁶⁶ public authorities could not guarantee the protection of the victims of the violence because of the lack of effectiveness of the official investigation. It is obvious from the facts of the case that the public authorities were aware of that A.’s behavior implies serious danger for the applicants. Moreover, the Court considered that “the risk to the applicant’s physical and psychological well-being was imminent and serious enough as to require the authorities to act swiftly.”¹⁶⁷ Although the Court accepted that the authorities had not remained “totally passive,”¹⁶⁸ it nevertheless held that the measures were not effective and could not protect the first applicant from the recurrence of violence. The Court emphasized that A. was a police officer whose duty was the protection of the rights of others. However, he had been violating the rights and had remained unpunished, notwithstanding that the authorities had more opportunity to influence his conduct as he had been

¹⁶² Ibid, paragraph 51.

¹⁶³ Ibid, paragraph 51.

¹⁶⁴ Ibid, paragraph 48.

¹⁶⁵ Ibid, paragraph 54.

¹⁶⁶ Ibid, paragraph 57.

¹⁶⁷ Ibid, paragraph 61.

¹⁶⁸ Ibid, paragraph 62.

working for the State.¹⁶⁹ The most serious failure of the positive obligation of the State was the suspension of the investigation of A.'s case which gave a possibility to A. to remain completely unpunished. It was unclear for the Court how the prosecutor came to the conclusion that A. was "not a danger to society" taking into account that he breached the official protection order several times and repeatedly abused his wife.¹⁷⁰

Finally, the Court reached the conclusion that "the suspension of the criminal investigation against A. in such circumstances had "the effect of shielding him from criminal liability rather than deterring him from committing further violence against the first applicant, resulting in his virtual impunity."¹⁷¹ The Court found a violation of Article 3 as Mrs Eremia had suffered both physically and mentally and authorities manifestly failed to conduct an effective investigation. The ECtHR delivered another judgment against Moldova on a domestic violence case finding a violation of Article 3 in *B. v. Moldova* (2013) where the applicant faced inactivity of the State to protect her against the violence. She alleged that the authorities failed to comply with their positive obligations under Article 3 and 8 of the Convention. The applicant was systematically beaten by her husband whom she later divorced. After the divorce they continued to live in the same apartment and violence towards the applicant continued allegedly including a rape attempt.¹⁷² Although the domestic court adopted a protection order it did not order the applicant's former husband's eviction from the shared apartment.¹⁷³ Thus the protection order was meaningless as the abuser apparently was supposed not to get closer than 200 m from his ex-wife. Instead, he lived with her in the same apartment. The applicant unsuccessfully tried to evict him from the apartment. But the most striking in *B. v. Moldova* is the approach of the Supreme

¹⁶⁹ Ibid, paragraph 63.

¹⁷⁰ Ibid, paragraph 64.

¹⁷¹ Ibid, paragraph 65.

¹⁷² ECtHR, *B. v. Moldova*, Appl. no. 61382/09, Judgment of 16 October 2013, paragraph 9.

¹⁷³ Ibid, paragraph 18.

Court of Justice. It accepted that in one of the incidents the applicant herself had “provoked” the violence towards her.¹⁷⁴ The result of such victimization was that the Supreme Court of Justice denied the existence of the systematic abuse.

The ECtHR found that although the legislative framework in the Republic of Moldova was sufficient to protect individuals from violence inflicted by other individuals,¹⁷⁵ however the authorities had failed to take appropriate measures to provide an effective protection for the applicant. The applicant’s former husband was only fined and these fines did not have a deterrent effect.¹⁷⁶ The authorities did not analyse the important circumstances of the case such as the seriousness of the attacks and the probability of the further abuse.¹⁷⁷ There was no effective investigation and the Court found the administrative proceedings to be insufficient for fulfilling the positive obligation of the State under Article 3.

The Court gave the most expansive interpretation of Article 3 in *Valiulienė v. Lithuania* (2013).¹⁷⁸ The applicant, Mrs Valiulienė, was beaten by her partner on five occasions. She was “strangled, pulled by the hair, hit in the face and kicked in the back and in other parts of her body.”¹⁷⁹ Her bodily injuries were examined and documented by experts who concluded that they were “minor and had not caused any short-term health problems.”¹⁸⁰ The applicant applied to a national court, but both public and private prosecutions did not lead to prompt and thorough investigation of the case and as a result the perpetrator remained unpunished. While assessing the facts of the case, the Court recalled international practice of combating domestic violence and data on violence against women in Lithuania, according to which 42 percent of women are

¹⁷⁴ Ibid, paragraph 14.

¹⁷⁵ Ibid, paragraph 50.

¹⁷⁶ Ibid, paragraph 53.

¹⁷⁷ Ibid, paragraph 54.

¹⁷⁸ ECtHR, *Valiulienė v. Lithuania*, Appl. no. 33234/07, Judgment of 26 March 2013.

¹⁷⁹ Ibid, paragraph 7.

¹⁸⁰ Ibid, paragraph 8.

physically assaulted or threatened with physical assault by their current partners during their lifetime.¹⁸¹

The Lithuanian Government argued that the applicant's complaint should be examined under Article 8 maintaining that the treatment to which the applicant had been subjected had not attained the minimum level of severity to fall within the scope of Article 3.¹⁸² Moreover, the Government assessed the applicant's injuries as "merely trivial nature."¹⁸³ The Court did not share the Government's view. It decided to examine acts of violence towards the applicant "as a continuing situation, which it finds to be an aggravating circumstance."¹⁸⁴ The Court also acknowledged the psychological suffering of the applicant as an important aspect of ill-treatment emphasizing that it is a form of domestic violence.¹⁸⁵ Therefore, the Court considered that physical violence on five occasions against the applicant "combined with her feelings of fear and helplessness, was sufficiently serious to reach the level of severity under of Article 3 of the Convention."¹⁸⁶

In his concurring opinion Judge Pinto de Albuquerque noted that the ECHR should be interpreted in a gender-sensitive manner taking into account "the factual inequalities between women and men and the way they impact on women's lives."¹⁸⁷ The Judge emphasized the humiliating character of domestic violence for the victims which are mainly women.

"Physical pain is but one of the intended effects. A kick, a slap or a spit is also aimed at belittling the dignity of the partner, conveying a message of humiliation and degradation. It is precisely this intrinsic

¹⁸¹ Ibid, paragraph 40.

¹⁸² Ibid, paragraph 54.

¹⁸³ Ibid, paragraph 55.

¹⁸⁴ Ibid, paragraph 68.

¹⁸⁵ Ibid, paragraph 69.

¹⁸⁶ Ibid, paragraph 70.

¹⁸⁷ Ibid, Concurring Opinion of Judge Pinto de Albuquerque.

element of humiliation that attracts the applicability of Article 3 of the Convention.”¹⁸⁸

It is worth noting that in *Eremia v. Moldova* the daughters of Mrs Eremia claimed that the verbal abuses of A. and being witnesses of their mother’s assault amounted to a violation of their rights under Article 3,¹⁸⁹ but the Court decided to examine the daughters’ complaint under Article 8 of the Convention. Thus, it avoided to answer whether verbal assaults and being witnesses of a physical violence amounts to ill-treatment. Periodic verbal abuses, however, could amount to degrading treatment. In *Ireland v. the United Kingdom* the Court stated that the treatment is degrading if in the victims arises the “feeling of fear, anguish and inferiority capable of humiliating and debasing them.”¹⁹⁰ In the case of *Eremia v. Moldova* the assessment of the alleged violation under Article 3 in regard to Mrs Eremia’s daughters could create a precedent of considering verbal abuse as ill-treatment. Nevertheless, the Court found a violation in regard to verbal abuses examining the complaint under Article 8.

2.2.2.3 Violation of Article 8

Notwithstanding Judge Pinto de Albuquerque’s opinion that examining domestic violence cases under Article 8 “would fail to qualify as a gendered understanding of violence,”¹⁹¹ the Court has characterized domestic violence as a violation of right to private life in seven cases.

In *Bevacqua and S. v. Bulgaria* (2008) the applicant, Mrs Bevacqua had a dispute with her former husband over their mutual child custody. She was subjected to physical and physiological

¹⁸⁸ Ibid.

¹⁸⁹ ECtHR, *Eremia and Others v. Moldova*, Appl. no. 3564/11, Judgment of 28 May 2013, paragraph 60.

¹⁹⁰ ECtHR, *Ireland v. The United Kingdom*, Appl no. 5310/71, Judgment of 18 January 1978, paragraph 167.

¹⁹¹ ECtHR, *Valiuliene v. Lithuania*, Appl. no. 33234/07, Judgment of 26 March 2013, Concurring Opinion of Judge Pinto de Albuquerque.

violence by her former husband receiving several threats. The applicant unsuccessfully initiated several civil and criminal proceedings to protect herself and her son from violence. The police qualified the issue as a “private dispute” and did not interfere.¹⁹² Mrs Bevacqua complained that authorities failed to take measures to protect her and her son’s rights. The applicant asserted that the legislation in force was incompatible with the positive obligation of the State and was discriminatory. In its assessment the Court recalled international law indicating that positive obligation of a State to protect women against violence had become a common practice not only among the Member States of the CoE, but also beyond its borders. While ruling on the merits of the case the Court stated that although the essential object of Article 8 is the protection of individuals against arbitrary state interference, nevertheless the effective “respect” for private and family life may oblige Contracting States to adopt measures in the sphere of individual relations.¹⁹³ The Court confirmed the vulnerability of the victims of domestic violence and held that the Government’s position towards domestic violence as a “private matter” was incompatible with their positive obligations under Article 8.¹⁹⁴

In some of the cases the Court found a violation of both Article 3 and Article 8. In *B. v. Moldova* the Court held that domestic court’s refusal to evict the applicant’s former husband from the apartment amounted to a violation of the applicant’s right to respect for private life. The applicant and her children had to flee the apartment on several occasions because of the violent behaviour of her former husband.¹⁹⁵ Although the authorities were aware of such behaviour, nevertheless, the domestic court preferred to protect the abuser’s right to use the apartment. The Court held that “they failed to balance the rights involved and effectively forced the first

¹⁹² ECtHR, *Bevacqua and S. v. Bulgaria*, Appl. no. 71127/01, Judgment of 12 September 2008), paragraph 57.

¹⁹³ *Ibid*, paragraph 64.

¹⁹⁴ *Ibid*, paragraph 84.

¹⁹⁵ ECtHR, *B. v. Moldova*, App. no. 61382/09, Judgment of 16 October 2013, paragraph 67.

applicant to continue risking being subjected to violence or to leave home.”¹⁹⁶ The Court also emphasized the vulnerability of victims of domestic violence which the State had not taken into account.

In Ronagh J.A. McQuigg’s opinion, it is unlikely to matter for applicants whether the Court finds a violation of Article 8 or Article 3.¹⁹⁷ But as Dinah Shelton observes the seriousness of the violation matters for the Court for awarding damages.¹⁹⁸ Applications against Slovakia prove that there may be a difference in compensation for non-pecuniary damage related to whether the Court finds a violation of Article 3 or Article 8. In *E.S. and Others v. Slovakia*¹⁹⁹ where a violation of Article 3 and 8 was held the Court awarded 8000 Euros, twice more than in *Hajduova v. Slovakia*²⁰⁰ where the Court found only a violation of Article 8. The standard of living in the country is also taken into account by the Court while deciding the amount of the award.²⁰¹ Therefore, a violation of a particular Article in various cases against one State Party may result in the same amount of award but may differ from the award in a similar case against another State Party. For example, the Court awarded the same amount for non-pecuniary damage (15000 Euros) in four cases on domestic violence against Moldova²⁰² as a violation of Article 3 was found in all of them.

In Judge Jociene’s opinion, in some specific circumstances Article 3 may be applicable in domestic violence cases, but in other cases “the Court could rely on Article 8 taken alone or in

¹⁹⁶ Ibid, paragraph 75.

¹⁹⁷ Ronagh J.A. McQuigg, “*Domestic Violence as a Human Rights Issue: Rumor v. Italy*”. The European Journal of International Law Vol. 26 no. 4, 2016, page 1015.

¹⁹⁸ Shelton, Dinah, “Remedies in International Human Rights Law” (Third edition), Oxford University Press, 2015, page 322.

¹⁹⁹ ECtHR, *E.S. and Others v. Slovakia*, Appl. no. 8227/04, Judgment of 15 September 2009.

²⁰⁰ ECtHR, *Hajduova v. Slovakia*, Appl. no. 2660/03, Judgment of 30 November 2010.

²⁰¹ Ibid.

²⁰² ECtHR, *Eremia and Others v. Moldova*, Appl. no. 3564/11, Judgment of 28 May 2013; *B. v. Moldova*, Appl. no. 61382/09, Judgment of 16 July 2013; *Mudric v. Moldova*, Appl. no. 74839/10, Judgment of 16 July 2013; *T.M. and C.M. v. Moldova*, Appl. no. 26608/11, Judgment of 28 January 2014.

combination with Article 3”²⁰³. On the contrary, Judge Pinto de Albuquerque urges for more expansive use of Article 3 in domestic violence cases instead of Article 8 taking into account that it may lead to higher compensation for non-pecuniary damage.

Nevertheless, there is a lack of consistency in the case law of the Court regarding compensations for non-pecuniary damage. Harris, O’Boyle and Warbrick note that compensation for loss of life or torture might be in some cases lower than awards for loss of liberty or freedom of expression.²⁰⁴ In order to achieve greater consistency the Court relies on internal tables and documents for calculating non-pecuniary damage. These documents are not available for the public yet.²⁰⁵

2.2.2.4 Violation of Article 14

Opuz v. Turkey was the first domestic violence case there the applicant claimed that State’s inactivity constitutes a discriminatory treatment towards women. Mrs Opuz alleged that she and her mother had been discriminated against by state authorities on the basis of their gender and complained under Article 14 of the Convention, read in conjunction with Articles 2 and 3.²⁰⁶ The Court examined the complaint in the light of women’s situation and international efforts to eliminate violence towards women. It cited the third-party intervener Interights’²⁰⁷ submission on discrimination against women. According to this submission the violence against women was

²⁰³ ECtHR, *Valiulienė v. Lithuania*, Appl. no. 33234/07, Judgment of 26 March 2013, Dissenting Opinion of Judge Jociene.

²⁰⁴ Harris, O’Boyle, and Warbrick *Law of the European Convention on Human Rights* (Third Edition), Oxford University Press, 2014, page 156.

²⁰⁵ Ibid.

²⁰⁶ ECtHR, *Opuz v. Turkey*, Appl. no. 33401/02, Judgment of 9 June 2009, paragraph 177.

²⁰⁷ INTERIGHTS was an international legal human rights NGO based in London. In 2014 it closed down. See more at <http://www.interights.org>.

internationally recognized as form of sex discrimination.²⁰⁸ The CEDAW Committee and the United Nations Commission on

Human Rights were also cited to proclaim that domestic violence is a form of discrimination against women.²⁰⁹ The Court also recalled regional human rights treaties to state that authorities' failure to protect women against violence inflicted by a third party might constitute a violation of the right to equal protection.²¹⁰ Regarding Turkey the Court noted that its legislation provides special protection from domestic violence, but implementation of the law is rather poor to ensure an effective protection.²¹¹ The Court concluded that despite of legislative reforms, the judicial system did not take appropriate measures to combat domestic violence.²¹² As a result, women are continuously subjected to gender based violence which is a form of discrimination. In the given case the Court held that the authorities' inactivity constituted a violation of Article 14 read in conjunction with Article 2 and Article 3 of the Convention.²¹³

In *Eremia v. Moldova* the applicant also made an argument based on Article 14 in conjunction with Articles 3 and 8. Mrs Eremia complained that the authorities' "preconceived ideas concerning the role of women in the family" caused the failure to apply the domestic legislation for protecting women from domestic violence.²¹⁴ Like in *Opuz*, the Court recalled the situation of women in the State and Moldovan authorities' response to it to substantiate its conclusion that authorities' failure to protect Mrs Eremia from domestic violence reflected a discriminatory

²⁰⁸ ECtHR, *Opuz v. Turkey*, Appl. no. 33401/02, Judgment of 9 June 2009, paragraph 182.

²⁰⁹ Ibid, paragraphs 187 and 188.

²¹⁰ Ibid, paragraph 191.

²¹¹ Ibid, paragraph 193.

²¹² Ibid, paragraph 200.

²¹³ Ibid, paragraph 202.

²¹⁴ ECtHR, *Eremia and Others v. Moldova*, Appl. no. 3564/11, Judgment of 28 May 2013, paragraph 80.

attitude towards her as a woman.²¹⁵ With the same argument the Court found a violation of Article 14 also in two other cases against Moldova.²¹⁶

McQuigg welcomes finding a violation of Article 14 in the above cases as this manifest the Court's recognition of the structural inequalities within society which are one of the principal causes of domestic violence.²¹⁷ McQuigg foresees a more expansive use of Article 14 in domestic violence cases in the near future.²¹⁸

2.2.2.5 Cases with no violation of the Convention

So far the Court has found no violation of any rights guaranteed by the Convention in only two domestic violence cases. In *Irene Wilson v. the United Kingdom*²¹⁹ the Court held that the complaint was manifestly ill-founded and declared it inadmissible. In *Rumor v. Italy*²²⁰ the application was declared admissible, but the Court found no violation.

In *Irene Wilson v. the United Kingdom* the applicant, a victim of domestic violence, complained that her rights as a victim of violence were not sufficiently regarded during the criminal proceedings and that the suspended sentence given to her husband was unduly lenient.

In its assessment the Court cited previous judgments on domestic violence noting that in contrast to them the violence was not continuing in the *Irene Wilson v. the United Kingdom*. Although the applicant stated that she had been continually subjected to violence by her husband, she had

²¹⁵ Ibid, 89.

²¹⁶ ECtHR, *Mudric v. Moldova*, Appl. no. 74839/10, Judgment of 16 July 2013 and *T.M. and C.M. v. Moldova*, Appl. no. 26608/11, Judgment of 28 January 2014.

²¹⁷ Ronagh J.A. McQuigg, "Domestic Violence as a Human Rights Issue: Rumor v. Italy". The European Journal of International Law Vol. 26 no. 4, Oxford University Press, 2016, page 1021.

²¹⁸ Ibid.

²¹⁹ ECtHR, *Irene Wilson v. the United Kingdom*, Appl. 10601/09, Decision of 23 of October 2012.

²²⁰ ECtHR, *Rumor v. Italy*, Appl. no. 72964/10, Judgment of 27 of May 2014.

notified the authorities only on one occasion.²²¹ The authorities' response was prompt, the investigation was conducted with due expedition, the perpetrator was arrested and charged.²²² The Court noted that authorities "did everything in their power to keep the applicant informed of the progress of the case and to explain their actions to her".²²³ The national judge had carefully considered all the facts and circumstances of the case before making decision on the sentence.²²⁴ Furthermore, domestic authorities continued investigation and prosecution after the withdrawal of the complaint by the applicant. "This is of some importance, particularly when the Court has criticised provisions of domestic law which prevent prosecutors from proceeding with cases when the applicant/victim withdraws her complaint".²²⁵ Therefore, the Court found that the complaint was manifestly ill-founded and rejected it.

In *Rumor v. Italy* the applicant complained that the authorities had not taken sufficient measures to protect her from her former partner.²²⁶ Particularly, she alleged that she had been feeling anguish and fear because of her former partner's proximity to her home while he was under house arrest.²²⁷ In its assessment the Court noted that authorities did not remain passive, the perpetrator was detained immediately after the violence occurred, the investigation was conducted with due expedition and he was sentenced to three years and four months detention.²²⁸ Regarding the location of house arrest, the Court admitted that the domestic court "carefully assessed the suitability of the facility chosen".²²⁹ The Court concluded that the national legislation allowed authorities to take measures against persons accused of domestic violence

²²¹ ECtHR, *Irene Wilson v. the United Kingdom*, Appl. 10601/09, Decision of 23 of October 2012, paragraph 48.

²²² Ibid.

²²³ Ibid, paragraph 49.

²²⁴ Ibid, paragraph 50.

²²⁵ Ibid, 49.

²²⁶ Ibid, paragraph 39.

²²⁷ Ibid, paragraph 44.

²²⁸ Ibid, paragraph 64.

²²⁹ Ibid, paragraph 67.

and that legislative framework “was effective in punishing the perpetrator of the crime of which the applicant was victim and preventing the recurrence of violent attacks against her physical integrity.”²³⁰ Therefore, no violation of Articles 3 and 14 have been found as the applicant claimed. McQuigg argues that in *Rumor v. Italy* the State had not really fulfilled its positive obligation to protect individuals from violence and that “the Court itself failed to adopt a sufficiently gender sensitive interpretation and application of the Convention in this case”.²³¹ Nevertheless, the case law of the ECtHR on violence against women could be a guideline for State Parties for redressing violence against women inflicted by third parties. State Parties may avoid liability in cases when State actors’ response is prompt and the investigation is conducted with due expedition. However, merely enacting appropriate legislation is not sufficient it should be implemented in a way to provide effective measures for condemning acts of violence and protecting victims from repetition of violence. The case law of the ECtHR was also referred to in the preamble of a special convention on domestic violence which will be observed in the following subsection.

2.3 Convention on Preventing and Combating Violence against Women and Domestic Violence

The Council of Europe currently develops its mechanisms for a better protection of women’s rights. Issues connected to violence against women and particularly domestic violence are addressed in the Convention on Preventing and Combating Violence against Women and Domestic Violence (“Istanbul Convention”) which entered into force only in 2014. Although the

²³⁰ Ibid, paragraph 76.

²³¹ Ronagh J.A. McQuigg, “Domestic Violence as a Human Rights Issue: *Rumor v. Italy*”. *The European Journal of International Law* Vol. 26 no. 4, Oxford University Press, 2016, page 1024.

majority of the CoE Member States have not yet ratified the Istanbul Convention (only 22 ratifications up to now, the most recent ratification was in 14 March 2016 by Belgium) it has a huge potential to become the most profound tool for protecting women against domestic violence.

The purposes of the Istanbul Convention are to “protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence.”²³²

Assistance to victims of domestic violence is also one of the main purposes of the Istanbul Convention. It admits that women are affected by domestic violence disproportionately²³³ and obliges the Parties of the Istanbul Convention (“Parties”) to pay particular attention to women while implementing the provisions of this Convention.²³⁴ Besides defining the forms of domestic violence²³⁵ the Istanbul Convention explicitly obliges Parties to protect women “in both the public and the private sphere.”²³⁶ Article 5 (2) plainly prescribes state responsibility for the actions perpetrated by non-State actors obliging “to take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence...” Parties shall design and implement gender sensitive policies²³⁷ including establishment of an official coordinating body²³⁸ and allocation of financial resources.²³⁹ Besides obliging to provide training for relevant state actors,²⁴⁰ to include gender related topics in formal education²⁴¹ and to conduct awareness-raising campaigns,²⁴² the Istanbul Convention set

²³² Convention on Preventing and Combating Violence against Women and Domestic Violence, Article 1.

²³³ Ibid, Article 2 (1).

²³⁴ Ibid, Article 2 (2).

²³⁵ Ibid, Article 3 (b).

²³⁶ Ibid, Article 4 (1).

²³⁷ Ibid, Article 6.

²³⁸ Ibid, Article 10.

²³⁹ Ibid, Article 8.

²⁴⁰ Ibid, Article 15.

²⁴¹ Ibid, Article 14.

standards of legislative protection of women from domestic violence. Particularly, Parties shall take the necessary legislative measures providing appropriate mechanisms for effective co-operation between all relevant state agencies “in protecting and supporting victims and witnesses of all forms of violence.”²⁴³ The Istanbul Convention envisages a provision of adequate civil remedies not only against the perpetrator²⁴⁴, but also “against State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers.”²⁴⁵ Parties are also obliged to ensure victims’ right to claim compensation from perpetrators²⁴⁶ and if damage is not covered by a perpetrator, Parties shall award adequate State compensation.²⁴⁷

A Group of experts on action against violence against women and domestic violence (“GREVIO”) has been established to monitor the implementation of the Istanbul Convention by the Parties. GREVIO recently adopted a questionnaire based on which Parties shall submit their periodic reports on legislative and other measures giving effect to the provisions of the Istanbul Convention.²⁴⁸ GREVIO may also receive information from non-State agencies.²⁴⁹ After considering information submitted by different stakeholders GREVIO shall adopt its report and conclusion concerning the implementation of the Istanbul Convention by a particular Party²⁵⁰

²⁴² Ibid, Article 13.

²⁴³ Ibid, Article 18.

²⁴⁴ Ibid, Article 29 (1).

²⁴⁵ Ibid, Article 29 (2).

²⁴⁶ Ibid, Article 30 (1).

²⁴⁷ Ibid, Article 30 (2).

²⁴⁸ Ibid, Article **68** (1).

²⁴⁹ Ibid, Article **68** (5).

²⁵⁰ Ibid, Article **68** (11).

and make recommendations.²⁵¹ GREVIO is also entitled to adopt general recommendations on the implementation of the Istanbul Convention.²⁵²

Unlike the CEDAW Committee, GREVIO lacks the authority to receive complaints by individuals. This gap may be fulfilled in the future when the Istanbul Convention receives more ratification and gain more reputation among the Member States of the Council of Europe.

Conclusion

International human rights law has developed sufficient mechanisms for protecting women from domestic violence. Treaties, case law and soft law of the UN and the CoE jurisdiction have set standards according to which States are obliged to exercise due diligence to prevent the continuing perpetration of domestic violence and to protect the victims who are mainly women. The CEDAW Committee recommendations, the ECtHR case law and the Istanbul Convention leave no room for state agencies to assess domestic violence as a private matter and remain inactive. Moreover, in the case of state authorities' failure to protect individuals from domestic violence the Istanbul Convention demands to provide adequate remedies to victims for holding them responsible.

Although the Court delivered its first judgment on domestic violence case as early as nine years ago, the analysis of the ECtHR's jurisprudence demonstrates that a growing body of case law also provides remedy to victims for challenging States' failure to protect and support them. The evolving interpretation of Article 3 and expansive use of Article 14 provide evidence to conclude that the Court tends to make a more gender sensitive assessment of the situation with regard to

²⁵¹ Ibid, Article **68 (12)**.

²⁵² Ibid, Article **69**.

domestic violence. As judge Pinto de Albuquerque has concluded, “domestic violence has emerged as an autonomous human rights violation”.²⁵³ The above mentioned elements demonstrate that the State’s positive obligation to protect women from domestic violence has become a part of customary international law and is binding for each country which is a part of the international community.

²⁵³ ECtHR, *Valiuliene v. Lithuania*, Appl. no. 33234/07, Judgment of 26 March 2013, Concurring Opinion of Judge Pinto de Albuquerque.

Chapter 3 Armenia: Compliance with International Obligations

3.1 The third Republic of Armenia. International human rights treaties

The Republic of Armenia is a former Soviet Union country in the South Caucasus region. The third Republic was established in 1991 when the country gained its independence from the Soviet Union after about 70 years of association.²⁵⁴ Armenia is a member of the United Nations Organization and the Council of Europe. It has signed and ratified numerous of the UN and the CoE conventions including the most important in the field of human rights. In 1993, Armenia ratified the CEDAW Convention.

However, discussions on gender equality and women's rights emerged in Armenia as late as the beginning of the 21st century. International and local human rights organizations' efforts of raising awareness on gender equality issues in the general population may be deemed more successful than making pressure on authorities for reforms.

3.1.1 Women's rights movement

Women's rights campaign in Armenia was mostly accompanied with the highlighted emphasizes on combating gender based violence. The phrase "domestic violence" has been circulated in the press and public at large only in the late 2000s. Since then Armenian civil society has been very vocal in the issue of combating domestic and gender based violence.

²⁵⁴ The first Republic was established in 1918 and survived only 2 years. In 1920 the second, Armenian Soviet Socialist Republic was established within the Soviet Union.

Armenian non-governmental organizations have declared October 1 as “National Day to Combat Domestic Violence” (non-official) since 2010. That day Zaruhi Petrosyan, a 20-year-old Armenian woman was beaten to death by her husband. Petrosyan’s case was the first to get immense attention of media and public at large. This case was also crucial for several local NGOs promoting gender equality. In 2010, finally seven NGOs²⁵⁵ established the Coalition to Stop Violence against Women (“the Coalition”).

3.2 Data on domestic violence in Armenia

3.2.1 Nationwide surveys

The first nationwide survey on domestic violence in Armenia was conducted in 2007 commissioned by local non-governmental organization - Women’s Rights Center. Face-to-face interviews were conducted with 1006 women from all regions of Armenia in order to uncover the prevalence of gender-based violence within families. According to study, about 66% of Armenian women experienced psychological abuse, 27% experienced moderate physical abuse and 12% experienced severe physical abuse.²⁵⁶ Vast majority of respondents indicated that abusers were either their husbands or mothers-in-law.²⁵⁷

Numerical data of another and yet the most recent nationwide survey on domestic violence significantly differs from the results of the first study. “Nationwide Survey on Domestic

²⁵⁵ These NGOs are “Pink Armenia”, “Real World, Real People”, “Sexual Assault Crisis Center”, “Society without Violence”, “Women’s Resource Center”, “Women’s Rights Center”, “Women’s Support Center”. See more about the Coalition on the official website - <http://coalitionagainstviolence.org/en>.

²⁵⁶ “Domestic Violence and Abuse of Women in Armenia”, Women’s Rights Center, Yerevan 2007, page 29.

²⁵⁷ Ibid, page 22.

Violence against Women in Armenia” was conducted by National Statistical Service of the Republic of Armenia and United Nations Population Fund (UNFPA) during 2008-2010.

The importance of this survey is its scale and scope that is unprecedented. From urban and rural areas 4,720 households were selected for the survey sample. It revealed various forms of violence towards women. According to survey, 61% of women were exposed to controlling behaviour, 25% of women were subjected to psychological violence/abuse, 8.9% of women were subjected to physical violence, 3.3% of women were subjected to sexual violence.²⁵⁸ In fact, 47.9% of the respondents could not indicate any particular reason why their intimate partner abused them physically.²⁵⁹

The authors of the survey admit that the above mentioned numbers do not depict the real image as the methodology of the survey (face-to-face interview with women) might result in considerable underreporting. “It is this underreporting that helps explain striking differences between our survey data for Armenia and data for Europe. Otherwise, a conclusion would have to be drawn that the percentage of women subjected to physical violence is at least twice and to sexual violence almost three times lower in this country than in Europe”.²⁶⁰

Irrespective of significant underreporting the survey data clearly indicates the adverse impact of violence on women’s and their children’s health.²⁶¹ Although the findings of two nationwide surveys do not match both indicate that domestic violence is a pressing issue for Armenian society.

Among numerous recommendations to the Government are legislative amendments, awareness-raising campaigns and the establishment of a system of prevention of all forms of gender-based

²⁵⁸ Nationwide Survey on Domestic Violence against Women in Armenia”, National Statistical Service of the Republic of Armenia and UNFPA, Yerevan 2011, page 127.

²⁵⁹ Ibid, 128.

²⁶⁰ Ibid, page 135.

²⁶¹ Ibid, page 130.

violence.²⁶² Particularly, the “Nationwide Survey on Domestic Violence against Women in Armenia” survey recommends adopt such more comprehensive and encompassing law which would be “in line with the underlying philosophy of the Convention on Preventing and Combating Violence against Women and Domestic Violence”.²⁶³

3.2.2 Report of the Commissioner for Human Rights on Armenia

Following his visit to Armenia in 2014 the Commissioner for Human Rights of the Council of Europe Nils Muiznieks released a report summarizing the results of the visit and making a number of recommendations to the Government of Armenia. Almost a half of the report (80 out of 172-points) of the Commissioner is devoted to gender equality and women’s rights with the special focus on domestic violence.

The Commissioner notes that the seriousness and prevalence of domestic violence is not sufficiently acknowledged by all stakeholders, it is still considered as a private issue.²⁶⁴ The report highlights the legislative gap in Armenia, particularly, that the criminal legislation does not address a specific offence of domestic violence, its prevention, prosecution issue and protection of victims.²⁶⁵ “Despite numerous calls by national and international actors for Armenia to adopt a separate law on domestic violence, the Armenian Government returned the draft law for further revision and consultation in 2013”.²⁶⁶

²⁶² Ibid, page 136.

²⁶³ Ibid, page 137.

²⁶⁴ Report by Nils Muiznieks Commissioner for Human Rights of the Council of Europe following his visit to Armenia from 5 to 9 October 2014, Strasbourg, 10 March 2015, paragraph 124.

²⁶⁵ Ibid, paragraph 138.

²⁶⁶ Ibid, paragraph 140.

The Commissioner postulates that domestic violence cases are neither adequately addressed by the police nor by courts which in his opinion “contributes to the low level of reporting by women for whom it is already very difficult to complain due to societal and family pressure”.²⁶⁷

The report contains numerous recommendations to the Government of Armenia such as to collect detailed data on domestic violence, raise public awareness, enhance their efforts in the area of prevention, duly investigate and prosecute acts of violence against women, adopt a special law on domestic violence, sign and ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.²⁶⁸ There are also more specific recommendations, for example, to amend legislation “so that law enforcement bodies can investigate and prosecute a case irrespectively of whether a complaint has been lodged by the victim, or if the latter withdraws the complaint”.²⁶⁹

Highlighting the important role of NGOs in providing shelters to victims of domestic violence, the Commissioner, nevertheless, emphasizes that it is the state’s responsibility and urges the Armenian authorities to provide support to shelters.²⁷⁰

3.2.3 Universal Periodic Review 2015

3.2.3.1 National Report

In its national report submitted for the 21st Session of the Universal Periodic Review (UPR)²⁷¹ the Government of the Republic of Armenia presented the development that followed its first

²⁶⁷ Ibid, paragraph 144.

²⁶⁸ Ibid, paragraphs 148-153.

²⁶⁹ Ibid, paragraph 154.

²⁷⁰ Ibid.

²⁷¹ The Universal Periodic Review (UPR) is an element of the UN Human Rights Council. It provides the opportunity to review human rights records of all 193 UN Member States. The UPR is a State-driven process, during

review in 2010. As regards gender equality policy the State referred to the Gender Policy Strategic Program for 2011-2015, the Gender Policy Action Plan for 2011 and the Gender Policy Concept Paper adopted by the Government that “play a significant role in ensuring the implementation of the gender equality policy”.²⁷²

As a progress in combating domestic violence the Government mentioned the Interagency Commission on Combating Gender Violence set up by the Decision of the Prime Minister of the Republic of Armenia, “The National Program Against Gender-based Violence” and “The Strategic Program Against Gender Violence 2011-2015” that “defines the core directions of the state policy for reduction of gender violence”.²⁷³

According to the National report, annual programs for the gender policy include measures to prevent gender violence, protect victims of violence and prosecute perpetrators of gender violence.²⁷⁴ Furthermore, the Government introduced the draft of the law "On social assistance" as a legislative reform to tackle gender-based violence as victims of domestic violence were included in the list of “persons in a difficult life situation” which will give an opportunity of providing assistance to them.²⁷⁵ But according to the information provided by the Human Rights Defender of Armenia, the law "On social assistance" is not a comprehensive legislation to combat domestic violence that is widespread in Armenia.²⁷⁶

the Sessions State present their national reports and receive numerous recommendations from other States. See more about UPR at the official website <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>.

²⁷² UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review, 21st Session, National Report submitted in accordance with paragraph 5 of the annex to Human Rights Resolution 16/21, Armenia, 19-30 January, 2015, page 5, paragraph 31.

²⁷³ Ibid, page 6, paragraph 33.

²⁷⁴ Ibid, page 6, paragraph 34.

²⁷⁵ Ibid, page 6, paragraph 35.

²⁷⁶ UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review, 21st Session, Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, 7 November 2014, page 2, paragraph 6.

In recent years the Government of Armenia indeed has accepted a few strategic documents on domestic violence which were welcomed by many stakeholders. The National Action Plan to Combat Domestic Violence (“Action Plan”) was accepted in 2011 to set directions and strategy of the State policy for combating and preventing gender-based violence.²⁷⁷ The Action Plan introduces obstacles that hinder State efforts to combat gender-based violence. Those are underestimation of the impact of gender-based violence, lack of public awareness, inadequate legal system, prevention mechanisms, absence of rehabilitation programs for victims and perpetrators.²⁷⁸

The Action Plan envisages rather ambitious goals setting three main directions – prevention, protection and prosecution.²⁷⁹ It aims to implement international obligations of Armenia in order to reduce gender-based violence, reform legislation, improve support and services provided to victims, conduct awareness raising campaigns, transform stereotypes and create the environment of zero tolerance of violence, include the topic of gender-based violence into professional development courses, building capacity of professional staff of the bodies and institutions that deal with prevention of gender-based violence and service provision, enhance efficiency of prosecution of perpetrators and provide rehabilitation service for them.²⁸⁰ And the 2011-2015 Strategic Action Plan to Combat Gender-based Violence outlines expected outcomes of the goals of the National Action Plan to Combat Domestic Violence.²⁸¹

All these documents seemed to indicate Armenia’s will to combat domestic violence, but the results are not measurable. The Government itself accepts that it is impossible to evaluate the

²⁷⁷ Annex 1 to the Protocol Decision no 23, of the Government of the Republic of Armenia made at its 17 June 2011 session, National Action Plan to Combat Domestic Violence, page 1, paragraph 1.

²⁷⁸ Ibid, page 7, paragraph 20.

²⁷⁹ Ibid, page 8, paragraph 22.

²⁸⁰ Ibid, page 8, paragraph 22 and 23.

²⁸¹ Annex 2 to the Protocol Decision no 23, of the Government of the Republic of Armenia made at its 17 June 2011 session, 2011-2015 Strategic Action Plan to Combat Gender-based Violence.

state's actions as there has not been any nationwide survey on domestic violence since the Action Plan launched.²⁸² Furthermore, recently the Control Chamber of the Republic of Armenia discovered abuses in the implementation of the grant program called “Improving the quality of service rendered to women became victims of domestic violence in Armenia” conducted by the “National Institute of Labor and Social Studies” during 2012-2013.²⁸³ According to the annual report of the Control Chamber, the Ministry of Labor and Social Affairs of the Republic of Armenia has submitted official letter to the Control Chamber with the explanation concerning wasted resources and repayable funds.²⁸⁴ There is no further information in the report about the exact sum of repayable funds and other measures taken against the abusers.

Interestingly, the Government of Armenia in its recent report to CEDAW Committee represents this program as an effort in improving domestic violence's victims' situation in the country.²⁸⁵

3.2.3.2 Recommendations for Armenia

During the 21st Session (22 January 2015) of the Universal Periodic Review (UPR) Armenia received 189 recommendations from UN Member States. Almost 1/4, namely 42 out of 189 were concerning women's rights, gender equality and violence against women. There were several specific recommendations regarding legislation and other means of combating domestic violence. For instance, Turkey recommended to strengthen legislation on domestic violence by

²⁸² What prevents the implementation of National Action Plan to Combat Gender Based Violence in Armenia?, , “Woman and Society”, 09 December 2014, <http://womennet.am/en/azgayin-cragir/>.

²⁸³ Annual Report of the Control Chamber of the Republic of Armenia 2015, pages 5-6.

²⁸⁴ Ibid.

²⁸⁵ Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention, Fifth and sixth periodic reports of States parties due in 2013, Armenia, 28 April 2015, paragraph 51.

adopting a national law on the subject and by ratifying the Istanbul Convention.²⁸⁶ “Implement comprehensive legislation to effectively combat the widespread cases of violence against women and offer further protection to victims of domestic violence” was recommended by Sierra Leone.²⁸⁷ The United Kingdom gave more specific recommendations, namely to adopt a law qualifying domestic violence as a criminal and civil offense setting up a specialized referral system for victims of domestic violence.²⁸⁸ Germany’s recommendation was to create public institutions for providing assistance and protection to victims.²⁸⁹ Protection and prevention mechanisms were highlighted also by Spain and the Czech Republic²⁹⁰. Australia went further by recommending the provision of gender sensitive training for security and law enforcement agencies.²⁹¹

The Government of Armenia has accepted all recommendations concerning domestic violence and women’s rights²⁹², but hardly implemented any of them so far. In particular, a specific law on domestic violence has not been adopted yet and no shelter for victims is either run or supported by the Government.

²⁸⁶ UN General Assembly, Human Rights Council, Report on the Working Group of the Universal Periodic Review: Armenia, 13 April 2015, page 15, paragraph 120.24.

²⁸⁷ Ibid, page 20, paragraph 120.102.

²⁸⁸ Ibid, page 20, paragraph 120.105.

²⁸⁹ Ibid, page 20, paragraph 120.109.

²⁹⁰ Ibid, page 20, paragraph 120.108 and page 21, paragraph 120.113.

²⁹¹ Ibid, page 21, paragraph 120.115.

²⁹² 2RP: Responses to Recommendations & Voluntary Pledges, Armenia’s responses to recommendations (as of 24.08.2015), http://www.upr-info.org/sites/default/files/document/armenia/session_21_-_january_2015/recommendations_and_pledges_armenia_2015.pdf.

3.3 Legislation: Bill on Prevention and Combating domestic violence

The Coalition to Stop Violence against (“the Coalition”) Women has been advocating for adoption of legislation on domestic violence. Nevertheless, the bill of law is stuck between the National Assembly and the Government of Republic of Armenia. Representatives of civil society together with the Ministry of Justice have amended the draft several times, but the Government refused to send the draft to Parliament in 2013.

The Coalition has sent the amended version of the bill to the Government and National Assembly in November 2014. Since then, a few MPs held meetings with representatives of civil society discussing the draft. Although members of the ruling party agreed to cooperate in the final phase of the amendment of the draft, nothing has been done in this direction. The Coalition still demands to adopt the legislation, because they are certain that it will enhance the effectiveness of actions towards preventing and combating domestic violence in Armenia.

Armenia has neither ratified nor signed the Istanbul Convention. The absence of an internal law might be one of the reasons for Armenia to refrain from signing and ratifying the Istanbul Convention as it obliges its parties “to take necessary legislative and other measures,”²⁹³ i.e. to adopt legislation on domestic or gender based violence.

Recently the European Union has offered Armenia human rights budget support for 2017 with the condition to adopt a law on domestic violence in 2016.²⁹⁴ This became a significant incentive

²⁹³ *Council of Europe Treaty Series - No. 210, Council of Europe Convention on preventing and combating violence against women and domestic violence*, Istanbul, 11.V.2011, <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>.

²⁹⁴ The Delegation of the European Union to Armenia, Newsletter, 21 October 2016, <http://eunewsletter.am/law-on-gender-based-violence-cso-government-discussions/>.

for the Government to launch discussions on the draft titled “Bill on Prevention and Combating Domestic Violence”. The Ministry of Justice is currently consulting with the Coalition to finalize the draft.

Irrespective of the adoption of a national law, Armenia as a State Party of the CEDAW and the ECHR has to comply with international standards of combating domestic violence. The Republic of Armenia has ratified the European Convention on Human Rights and has recognized the compulsory jurisdiction of the Court. Although there is no ECtHR judgment on a domestic violence case against Armenia, there are considerable number of cases in which this institution sets the standards of preventing and combating domestic violence. Domestic courts should consider these standards while delivering decisions of domestic violence cases. These cases and established standards have already been discussed above.

Armenia also has ratified the Optional Protocol to CEDAW recognizing the competence of the Committee to consider complaints by individuals. Again no case has reached from Armenia to CEDAW Committee on domestic violence, but the Committee has delivered its views on few cases that were discussed above.

3.4 Support of victims of domestic violence

The draft of the “Bill on Prevention and Combating Domestic Violence” envisages the establishment of shelters and crisis centers for the victims of domestic violence. There is yet no public shelter for women who have been subjected to violence. Victims of domestic violence

mainly get support from NGOs.²⁹⁵ Currently three local NGOs provide shelters for women and their children with limited resources. The number of their beneficiaries is not publicized, but obviously it is insufficient to cover all affected persons.

Women's rights advocates insist that shelters should receive financial support from the State. Once law is adopted the State will be obliged to establish shelters and maintain their operation. This is one of the main reasons (though not always precisely expressed) of refusal of the Armenian Government to adopt special legislation. But the EU human rights budget support may temporarily solve the financial issue.

3.5 Comparative case analysis

National courts recently delivered several judgments on domestic violence cases. Four such cases are discussed in this subchapter. Diana Nahapetyan's case is one of them.²⁹⁶ According to the case, Diana's partner, Volodya Muradyan had some doubts on infidelity. They argued on this issue and Volodya battered Diana with hands and a glass vase. After severe beating Volodya took Diana to the kitchen by pulling her hair and stabbed her many times killing his de facto wife in front of her infant daughters.

At the pre-trial stage, Volodya Muradyan was accused of "Murder"²⁹⁷ which is punished with imprisonment for 6 to 12 years. During the trial the prosecutor changed the accusation twice, first to "Murder with particular cruelty"²⁹⁸ which is punished with 8-15 years of imprisonment or

²⁹⁵ These NGOs are "Women's Rights Center", "Women's Support Center" and "Lighthouse" Armenia.

²⁹⁶ Ararat and Vayots Dzor Districts Court of First Instance, case ԱՎԴ/0043/01/13, 24 December 2015.

²⁹⁷ Criminal Code of the Republic of Armenia, Chapter 16, Article 104-1.

²⁹⁸ Ibid, Article 104-5.

for life, then to “Murder in the state of strong temporary insanity” (fit of insanity)²⁹⁹ which is punished with imprisonment for the term of up to 4 years. The prosecutor based himself on the testimony of the perpetrator who claimed that he was in a state of insanity because of the events that preceded the incident.³⁰⁰ Volodya Muradyan asserted that Diana Nahapetyan had been betraying him with another man whom they had met that day and the latter approved that he had been in a relationship with Diana. Volodya later testified that Diana offended him with the word “cow”, then demanded him to call his mother and ask for money threatening him to throw out of the home “like a dog” if he didn’t do as she said.³⁰¹ Volodya confessed that he started to beat Diana and after her elder daughter intervened he left the bedroom and went to the kitchen. After that, as Volodya claims, Diana hit him with the bottle and tried to stab him with the kitchen knife. Then, as a self-defense he snatched the knife and stabbed Diana many times.³⁰² Diana’s daughters gave opposite versions, but the Ararat and Vayots Dzor Districts Court of First Instance (“the court”) found the perpetrator’s words more credible and decided to believe the perpetrator’s version of the facts, eventually sentencing Volodya Muradyan to imprisonment for the term of 3.5 years, i.e. the most lenient punishment.

Diana Nahapetyan’s case is an example of double discrimination. The court in its decision “accused” Diana Nahapetyan of “immoral behavior” considering her relations with other men as a proven fact and accepted that her behavior could provoke strong insanity in her husband. This enabled the perpetrator to escape a more severe punishment for the murder.³⁰³

²⁹⁹ Ibid, Article 105-1.

³⁰⁰ Ararat and Vayots Dzor Districts Court of First Instance, case ԱՎԴ/0043/01/13, 24 December 2015, The Content of the Judicial Act.

³⁰¹ Ibid, the testimony of Volodya Muradyan.

³⁰² Ibid.

³⁰³ Ibid, The verdict.

The perpetrator escaped severe punishment in Hasmik Khachatryan's case too. This is one of the most publicized domestic violence cases in Armenian media. Almost 9 years Hasmik had been subjected to domestic violence by her husband. One day she escaped from her home and asked shelter at a Women's Support Center NGO. Only after that she dared to apply to the police. According to the case³⁰⁴, Hasmik's husband Sargis Hakobyan had severely beaten Hasmik quite often. In Hasmik's words, he was battering her to death.³⁰⁵ Once Sargis burnt Hasmik's skin with his cigarette.³⁰⁶ At the pretrial stage Sargis Hakobyan was accused for "Torture that committed in relation to a person dependent financially or otherwise on the perpetrator" which is punished with imprisonment for the term of 3 to 7 years.³⁰⁷ But the General Jurisdiction Court of First Instance of Gegharkunik Marz ("the court") found that Hasmik Khachatryan was not dependent on her husband as they had not been living together for the previous two years and Sargis was not supporting her financially.³⁰⁸ Therefore, the court changed the accusation to "Torture" which is punished with imprisonment for the term up to 3 years.³⁰⁹ As a result, the perpetrator who had been previously convicted was sentenced to imprisonment for the term of 1.5 years. Sargis Hakobyan was not jailed, he was granted amnesty that had been announced for the 20th anniversary of independence of the Republic of Armenia. The court also rejected Hasmik Khachatryan's claim of financial compensation finding that 300000 Armenian drams (less than 600 EURO) were sufficient that the perpetrator paid to the victim during the trial³¹⁰. Hasmik

³⁰⁴ General Jurisdiction Court of First Instance of Gegharkunik Marz, case ՊՂ/0036/01/13, 24 August 2015.

³⁰⁵ Ibid, the content of the Judicial Act.

³⁰⁶ Ibid.

³⁰⁷ Criminal Code of the Republic of Armenia, Chapter 16, Article 119, part 2/3.

³⁰⁸ General Jurisdiction Court of First Instance of Gegharkunik Marz, case ՊՂ/0036/01/13, 24 August 2015, the Content of the Judicial Act.

³⁰⁹ Criminal Code of the Republic of Armenia, Chapter 16, Article 119, part 1.

³¹⁰ The verdict of the General Jurisdiction Court of First Instance of Gegharkunik Marz, case ՊՂ/0036/01/13, 24 August 2015.

Khachatryan demanded 4000000 AMD (more than 7500 EURO). Khachatryan's efforts to appeal the first instance court's decision were in vain.

Narine Zohrabyan's case³¹¹ proved that the punishment for wife battering could be even more lenient. In November 2015 Narine was battered by her husband Vardan Jamalyan. Vardan was drunk that night and beat up Narine first with the plastic bottle than with hands and feet.³¹² The investigation concluded that bodily injury did not cause short-term health disorder and the act classified as merely "Battery" which is punished with a fine in the amount of up to 100.000 AMD, or correctional labor for up to 1 year, or with arrest for the term of up to 2 months.³¹³

The perpetrator declared that he repented and asked for an accelerated procedure which was accepted by the Ararat and Vayots Dzor Districts Court of First Instance ("the court") as a mitigating circumstance.³¹⁴ Another mitigating circumstance was the fact that the accused cares for four infants.³¹⁵ According to Article 57, part 2 of the Criminal Code of the Republic of Armenia, persons caring for children under 8 years of age, are not put under arrest. Therefore, the court decided to oblige Vardan Jamalyan to pay a fine of 50000 Armenian drams (less than 100 Euros), half of the maximum penalty prescribed by law.

It is worth mentioning that the court ignored as an aggravating circumstance the fact that the victim was subjected to violence by the perpetrator again after the criminal case had been launched with regards to domestic violence. In December 2015, Vardan Jamalyan hit his wife, but the investigator made a decision not to prosecute him for the second incident.³¹⁶

³¹¹ Ararat and Vayots Dzor Districts Court of First Instance, Case ԱՎԴ 2/0002/01/16.

³¹² Ibid, The Content of the Judicial Act.

³¹³ Criminal Code of the Republic of Armenia, Chapter 16, Article 118.

³¹⁴ Ibid.

³¹⁵ Ibid.

³¹⁶ Ibid.

The most recent incident is the Heghine Dabuzyan's case³¹⁷ which was still under appeal at the time this thesis was completed. The Court of First Instance of Malatia-Sebastia Community of Yerevan (the court) sentenced Dabuzyan's husband to imprisonment for the term of 11,5 years.³¹⁸ Artak Arakelyan murdered his wife by cutting her throat then stabbing her 30 times with the hunting knife.³¹⁹ Artak and Heghine were engaged in a trade, they were exporting clothes from Turkey. The perpetrator explained that the reason of murder was his wife's infidelity with their Turkish partner.³²⁰ The court found that the husband's suspicions about infidelity were unfounded. Artak Arakelyan was accused for "Murder"³²¹ and "Illegal procurement, transportation or carrying of weapons"³²² which are punished relatively with imprisonment for 6 to 12 years and imprisonment for the term of up to 2 years. Artak Arakelyan has appealed the judgment asking for lenient punishment. The representative of the victim has done the same but asked for a heavier punishment claiming that it was a murder with particular cruelty which is punished with 8-15 years of imprisonment or for life.³²³

Heghine Dabuzyan's case description (as well as other case descriptions) does not provide any information about the pretrial stage, but witnesses' testimonies prove that Heghine Dabuzyan had applied to the police asking for protection from her husband who had been threatening and beating her during their joint life and after it.³²⁴ The inactivity of the Police was not discussed during the trial, but the fact that the perpetrator has not been arrested before and no criminal

³¹⁷ Court of First Instance of Malatia-Sebastia Community of Yerevan, Case ԵՄԴ/0001/01/16, 29 September 2016.

³¹⁸ The Verdict of the Court of First Instance of Malatia-Sebastia Community of Yerevan, Case ԵՄԴ/0001/01/16, 29 September 2016.

³¹⁹ Court of First Instance of Malatia-Sebastia Community of Yerevan, Case ԵՄԴ/0001/01/16, 29 September 2016.

³²⁰ Ibid, the Content of the Judicial Act.

³²¹ The Criminal Code of the Republic of Armenia, Chapter 16, Article 104, part 1.

³²² Ibid, Chapter 23, Article 235, part 4.

³²³ Ibid, Chapter 16, Article 104, part 2-5.

³²⁴ Ibid.

proceedings had been launched against him, indicates the failure of authorities to take appropriate measures to prevent the crime and protect the victim.

Conclusion

The Republic of Armenia still has a long way to go to comply with its international obligations in protecting women against violence. The absence of analysis of outcomes of National Action Plan and Strategic Action Plan to Combat Gender-based Violence signals the lack of importance given to this field. Although there is some positive move towards adopting a special legislation, law enforcement bodies continue to contribute to the impunity of perpetrators of violence against women.

The above mentioned cases indicate that domestic violence has not been taken seriously by the judiciary of Armenia so far. Criminal proceedings are often focused on finding victim's fault in the occurred incident and justifying violence against women.

Case descriptions do not provide detailed information about pre-trial stages. Therefore it is difficult to analyse whether the Police and other state institutions exercised due diligence to protect victims and to prosecute perpetrators effectively. Police's inactivity is visible only in Haghine Dabuzyan's case. Witnesses' testimonies indicate that authorities have not taken appropriate measures to protect the victim from future violence which led to irreparable consequences. In Narine Zohrabyan's case the prosecutor made a decision not to prosecute the perpetrator for the repeated violence as the husband beat her wife only once, whilst the ECHR

Judge Pinto de Albuquerque finds that even a slap may attract the applicability of Article 3 of the European Convention on Human Rights.³²⁵

Courts' approach to violence against women cases is not gender sensitive. For example, in Hasmik Khachatryan's case the General Jurisdiction Court of First Instance of Gegharkunik Marz did not take into account the vulnerability of women in Armenia (especially in rural areas) while making the decision whether Hasmik was dependent on her husband or not.

Furthermore, personal morals and values of judges, persecutors and police officers often play a role. Thus, male perpetrator's testimony is often being considered more credible than female victim's testimony. As the CEDAW Committee notes in *Vertido v. Philippines*, male's credibility is supported by gender stereotypes³²⁶ And the European Court of Human Rights observes in *Opuz v. Turkey* that women's subordination to men is not based on legislation but in institutions attitude towards women.³²⁷

In Armenia also gender stereotypes affect decision making, as a result almost all perpetrators were sentenced to extremely lenient punishments. Women's rights advocates are alarmed that such impunity may incite even more violence against women.

³²⁵ See footnote 188.

³²⁶ CEDAW Committee, *Vertido v. Philippines*, Communication No. 18/2008, 22 September 2010, paragraph 8.6.

³²⁷ ECtHR, *Opuz v. Turkey*, Appl. no. 33401/02, Judgment of 9 June 2009, paragraph 192.

Conclusions and recommendations

Domestic violence as a form of discrimination against women is one of the most concerning human rights issues globally. Irrespective of its causes domestic violence is one of the major obstacles to protect women's rights and achieve gender equality. Based on developed international human rights law, domestic violence by no means could be deemed as a private issue anymore. All forms of domestic violence should be condemned and perpetrators should be persecuted. State actors are obliged to take appropriate measures to prevent the violence, protect victims and persecute perpetrators. State's positive obligation to protect women from domestic violence is a part of the customary international law providing several mechanisms for victims of domestic violence to hold State actors responsible for the failure to protect their rights.

After gaining independence from the Soviet Union the Republic of Armenia has voluntarily signed and ratified several significant human rights conventions which oblige the State to treat individuals under its jurisdiction according to international standards. Although the documents submitted to international human rights bodies indicate the readiness of the Government of the Republic of Armenia to comply with its international obligations, the current situation proves that not that much progress has been registered concerning domestic violence so far. Moreover, the lack of governmental support to victims of domestic violence, the lenient sentences of perpetrators, the zero gender sensitivity of representatives of law enforcement bodies and judicial system, the incomplete and defective implementation of programs and projects aiming to improve conditions of victims reveal that Armenia is quite far from total compliance with international standards of combating domestic violence. State policy to combat domestic violence and amend the legislation should be based not on a budget support from foreign donors,

but on the perception of the problem, its prevalence and consequences and on the strong political will to eliminate all forms of violence against women.

The following recommendations could be useful for the Government of the Republic of Armenia, as well as for the other stakeholders.

Recommendations to the Government:

- To demonstrate a genuine political will to protect women from domestic violence.
- To conduct a nationwide comprehensive survey on domestic violence revealing its prevalence, causes and consequences in Armenia.
- To engage and consult with the representatives of local women's rights organizations in drafting the 2016-2020 Strategic Action Plan to Combat Gender-based Violence.
- To supervise vigilantly the implementation of State policies, projects and programs on domestic violence, women's rights and gender equality.
- To adopt an effective and practical bill on domestic violence in line with Istanbul Convention.
- To engage and consult with the representatives of local women's rights organizations in all stages of the drafting the bill.
- To provide special obligatory trainings on gender sensitivity for the representatives of law enforcement bodies and judicial system.
- To exercise due diligence and investigate cases objectively and comprehensively bringing the perpetrators to responsibility and sentencing them to more severe punishments (on a case by case basis).

- To support victims of domestic violence by allocating funds for the establishment of shelters and help centers in the regions and in the capital.
- To organize nationwide awareness raising campaigns on breaking gender-based stereotypes and combating domestic violence.
- To sign and ratify the Istanbul Convention.
- To invite the Special Rapporteur on violence against women, its causes and consequences to visit Armenia.
- To translate and disseminate international case law and soft law on domestic violence.
- To implement without an undue delay all recommendations concerning domestic violence and women's rights at the national, regional and international level.

Recommendations to the representatives of civil society organizations, human rights activists, researchers, journalists and other stakeholders:

- To cooperate with State actors in drafting and implementation of the legislation and policy on domestic violence.
- To refer to State's positive obligation to protect women from domestic violence more frequently.
- To refer to international human rights treaties, case law and soft law on domestic violence more frequently while advocating for women's rights.
- To lobby for a country visit by the Special Rapporteur.
- To monitor the implementation of State policies, projects and programs on domestic violence, women's rights and gender equality.

- To follow up the implementation of recommendations received at the national, regional and international level.
- To monitor cases on domestic violence at pre-trial stages and in courts.
- To encourage victims of domestic violence or their relatives/representatives to apply to international and regional bodies to hold the State responsible for domestic violence against women.

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