



**AMERICAN UNIVERSITY  
OF  
ARMENIA**

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**LL.M. Program**

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**TITLE**

**LEGAL PROTECTION AND SAFETY FOR DOMESTIC VIOLENCE  
VICTIMS**

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*The human being shall be the highest value in the Republic of Armenia.*  
**RA Constitution.<sup>1</sup>**

## INTRODUCTION

On January 1, 2018, the Law on Prevention of violence within the family, protection of victims of violence within the family and restoration of peace in the family came into force. (hereinafter Law). The main basis for the adoption was the fact that the Republic of Armenia (hereinafter Armenia) on January 18<sup>th</sup>, 2018, signed the Convention on preventing and combating violence against women and domestic violence (hereinafter Istanbul convention)<sup>2</sup>. Istanbul convention regulates and states policies with respect to the prevention of domestic violence and protection of victims of such acts.

The preamble of the law stipulates as follows.

“The Republic of Armenia National Assembly has adopted this law with a view to:

Provide special protection to the family as a natural and fundamental unit of society;

Set forth legal mechanisms to prevent violence within the family, ensure safety and protection of the victims of violence within the family, and guarantee their rights and legitimate interests;

Ensure safety of the family members and assist in restoring peace in the family;

Regulate activities of competent bodies in preventing violence within the family and protecting victims of violence within the family;

Stipulate legal grounds for operation of bodies responsible for provision of psychological, material and social assistance to the victims of violence within the family and their social rehabilitation.”<sup>3</sup>

Prevention, protection and revelation of domestic violence cases should be State’s priority. Domestic violence had and always has been an issue for every society that hasn’t yet been solved. There are several reasons that might have caused trouble to overcome this situation:

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<sup>1</sup> RA Constitution, <http://www.arlis.am/DocumentView.aspx?DocID=102510>

<sup>2</sup> Council of Europe treaty No. 210, Council of Europe Convention on preventing and combating violence against women and domestic violence

<sup>3</sup> Law on prevention of violence within family, protection of victims of violence within family and restoration of peace in the family, 2018

First of all, domestic violence cases have very high degree of latency – these types of crimes are considered to be hidden. Most of the victims never announce violent treatment towards them. Latency automatically makes it more up to date and necessary to deal with, at the same time complex for authorities to expose and interfere. Victims have doubts for authorities and are too afraid to try their chance of reporting, which gives perpetrators confidence and feeling of impunity.

Secondly, in many countries, including the Republic of Armenia, society is not ready to accept such concepts as interference of their private life even in domestic violence cases. Commonly, such offences are being justified with phrases such as: the victim deserved, the perpetrator was provoked by victim's behavior, it was a matter of honor for the perpetrator etc. This attitude and pressure end up in abusive acts not being reported as the victim feels shame and ends up with the feeling of guilt.

The law prescribes three methods of protection measures: warning, emergency interference order and protection order with the level of severity of the case. These measures are to be considered as administrative ones. If the perpetrator of violence doesn't agree with the emergency interference order and its limitations, he can appeal it to the administrative court within the specified time under the law. In addition, the protection order, which is the most severe type and has more restrictions toward the perpetrator can only be applied by the courts. More than that, it is important to mention that protection order can be applied only up to 6 months period and be extended two times, three months each.

Analyzing the law and protective measures, the procedures are not proportionate to the offence. That is to say, the violence, especially physical one, harms the victim not only physically but also psychologically. The rate of homicide is shocking, only this year (from January to April) four women were killed as a result of domestic abuse.<sup>4</sup> More than that, violence hurts not only the victim but also people who are under the victim's care. As it is further discussed, the methods taken by authorities are by far too gentle for such offence. Also, the number of cases concerning domestic violence has been increasing throughout years according to the statistics collected by law enforcement agencies and NGOs. Unfortunately, these numbers haven't decreased after the implementation of the law.

It is important to highlight the most recent case which happened in Gyumri city. This case once again outlines the urgency and actuality of the problem. A brief background of the

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<sup>4</sup> <https://medialab.am/50683/>

situation is as follows: on march 5<sup>th</sup> 2020, the police officers found 43 years old lady's dead body. She had been brutally beaten to death by her partner. In addition, her 13 years old child was also a victim.<sup>5</sup> She was also harshly beaten in a manner that caused grave damage to her health. Fortunately, after several days of being under proper medical care, she has survived. At this point, according to announcements published by investigative authorities, the perpetrator is accused of crimes prescribed under general provisions of Criminal Code of RA - article 112 (qualifying as intentional infliction of grievous bodily harm against two or more persons) and Article 14 (causing the victim's death by negligence)<sup>6</sup>. However, to prevent and combat domestic violence properly, punishments should be stricter than they are today. By stricter, it should be assumed, that the measurements of fight against these offences should be first of all assessed as crimes. Second of all, the authorities should classify it as e.g. battery within family, qualifying as domestic violence which at some point is aggravating.

Protection measures should be stipulated under Criminal law of RA. Many factors announce the immediate amendments to the laws. International standards and the Istanbul convention recommends to categorize domestic violence as criminal offence. These will decrease the number of cases happening every day by intensifying responsibility. The possible perpetrator will be psychologically suppressed: of being accused, arrested or detained for crime within a specified period which will not be less than a year and after all be considered as convicted that comes with all its consequences i.e. checking at the police office every month after getting free, forced rehabilitation, etc. This will affect the victims either: they might start to feel more protected under the law. According to surveys conducted with different organizations, many victims refrain from reporting offence because of several possible reasons related to 1) avoidance from public reproach, 2) consider it useless, 3) fear of perpetrator, 4) as well as for fear of interconnected by police.<sup>7</sup>

The Republic of Armenia by verifying the European convention on human rights has undertaken obligation, to ensure, inter alia, that no person should ever be tortured, degraded or ill-treated in any capacity. Protection from domestic violence falls under the scope of article 3 of the Conventions. Nevertheless, domestic violence, which includes ill treatment components of mentioned above, is not criminalized under the Criminal Code of RA.

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<sup>5</sup> <https://www.police.am/news/view/gyumricec060320.html>

<sup>6</sup> <http://investigative.am/news/view/anzgushutyamb-mah-gyumri.html>

<sup>7</sup> [http://socioscope.am/wp-content/uploads/2019/01/2017\\_Final-Report\\_on\\_violence.pdf](http://socioscope.am/wp-content/uploads/2019/01/2017_Final-Report_on_violence.pdf)

Nowadays lenient sanctions are not justifying themselves. The importance of this topic stems from several disturbing circumstances such as the presented shocking numbers of violence acts against subjects, lack of proficiency within responsible authorities, establishment of violence as a part of family life and culture that is supported within society and lack of prescription of proportionate punishments. The actual hazard that these offences represent in any democratic society violates fundamental human right, includes discrimination, gender-based crimes and builds feeling of impunity within society.

In the light of the aforementioned, it is extremely important to analyze legal and social implications where domestic violence is not crime and understand the risks it imposes.

## **CHAPTER 1: DOMESTIC LAW ON PREVENTION OF VIOLENCE WITHIN FAMILY, PROTECTION OF VICTIMS OF VIOLENCE WITHIN FAMILY AND RESTORATION OF PEACE IN THE FAMILY**

This chapter will present an overall view of the domestic law and regulations. It is important to understand the scope of subjects the law, Istanbul convention and related normative legal acts are referring to. Also, what protective methods RA offers to the victims. To make it clear, the law and the convention have several differences which are quite acceptable as conventions cover policies for all party states and most of the regulations are general. The signing countries should specify necessary rules suitable to their society and apply a few reservations to some articles if needed. Armenia has used its opportunity for the reservations from implementation of some articles, notably articles 30 p. 2, 55 p. 1 in respect to article 35, 58 in respect of article 37, 59 and 78.<sup>8</sup>

### ***Types of domestic violence***

According to article 3 of the law - “*violence within the family*” shall mean an act of physical, sexual, psychological or economic violence occurring between the family members as well as an act of negligence. Under article 4 - members of the family are: **1.** spouse (including the person in common marriage), former spouse, parent (including stepparent, adopting parent, foster parent), child (including adopted, stepchild or godchild), spouse of the

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<sup>8</sup> Reservations and Declarations for Treaty No.210 - Council of Europe Convention on preventing and combating violence against women and domestic violence, available at [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/declarations?p\\_auth=m5nbUKdG](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/declarations?p_auth=m5nbUKdG)

adopting parent, parents of the spouse, parents of the former spouse regardless of sharing the same residence, 2. grandmother, grandfather, sister and brother (including half-brother and half-sister), sister-in-law, brother-in-law, and son-in-law and daughter-in-law for the spouse's parents when sharing the same residence.

In contrast, according to Istanbul convention (article 3) "domestic violence" shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim. In the light of the convention we can see that it also protects partners from domestic violence. Term "Partner" has not been defined in the convention, however, interpreting it we can assume that it refers to people who are not and haven't been married, yet either live together or are engaged or are in a relationship regardless of sharing residence together. At this point this can be considered as a gap in our legislation. Though, main problem comes with the society and mentality. For this type of change the society must receive proper awareness and information of the importance of the issue, alter attitude and States should implement mechanisms to raise awareness of the public. According to the explanatory report of Istanbul convention, "domestic" term might narrow down the context of where the violence can occur, convention aims to protect victims before, during and after the relationship between perpetrator and the former without taking into account marital fact.<sup>9</sup> Thus, partners should also be considered possible victims and be protected under the law as the elements of actions, purposes and connections are related to the ones that are already regulated.

Furthermore, the definition of violence and its types are core to understand to be able to properly apply case by case. Specifically, under the law, *physical violence* includes those actions prescribed under Criminal Code of RA. Mainly, battery and other acts of violence, intentional infliction of health impairment, unlawful deprivation of liberty, intentional infliction of severe physical pain. In accordance with criminal law, actions like beating, an act against persons physical immunity, and is categorized as several strikes (three and more)<sup>10</sup> with an aim to harm the victim, with condition prescribed under Criminal Code. It also includes those actions such as different degree injuries to victim's health, murder etc.

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<sup>9</sup> Explanatory Report to the council of Europe convention on preventing and combating violence against women and domestic violence, Istanbul, 11.V.2011, p 8, <https://rm.coe.int/16800d383a>

<sup>10</sup> Criminal Law of the Republic of Armenia, textbook, special part, 2012, p 158

Out of all the mentioned only battery is prescribed as private charge case, generally without the victim's complain the police will not press any charges. Nonetheless, battery as a domestic violence offence, contains higher public hazard. There are aspects of battery that change from general case to domestic violence case. Regarding victims of domestic violence, the report rate is lower. The victim is not a stranger but rather a dependent person, connected to the perpetrator. Also, psychological pressure threshold is very high.

More specifically, oftentimes victims stay with their perpetrators out of several reasons that can include emotional connection, fear for child's safety, financial support and dependency. Additionally, for instance, battery that happens between people (strangers or people out of the subject scope of domestic violence) as a result of misunderstanding has episodic character. Moreover, at least one of the parties will be interested at pressing charges. Contrary to this, battery within family has a regular character. In other words, physical violence in this case is a process, almost never it ends up with one episode. Such process is highly latent, victims are more vulnerable thus scared to press any charges because these might end up with more severe consequences for them. Also, analyzing overall information, we might assume that some types of violence are usually in combination.

*Sexual violence* includes offences against sexual integrity and sexual freedom stipulated in the Criminal Code. Sexual violence includes rape, violence acts in sexual nature, immoral performances, engaging in sexual activity by force and sexual interaction/activity with person under 16. It is worth paying attention to the regulation stipulated under article 138. Analyzing, we can see that several conditions are necessary with the act to qualify it as rape. It should be against the victims will, with a usage of violence towards the latter or other person or with a threat of such and by means of women's helplessness. Several experts and organizations have raised issue regarding necessary conditions. CEDAW<sup>11</sup> states that "there should be no assumption in law or in practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence."<sup>12</sup> In other words, it is suggested for the States to refrain from applying those conditions and concentrate only to the fact of consent.

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<sup>11</sup> COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

<sup>12</sup> Sexual Violence Against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Laws and Practice by International Commission of Juris, 2015, p 7, available at <http://www.icj.org/wp-content/uploads/2015/04/Universal-GenderStereotypes-Publications-Thematic-report-2015-ENG.pdf>



*Psychological violence* represents intentional infliction of severe mental suffering, including a genuine threat of physical, sexual or economic violence, intentional and regular acts resulting in a justified fear in person for his/her or a family member's personal safety, regular violation of human dignity, extreme social isolation, forced abortion. In other words, psychological abuse means living in constant fear for life, health, subsistence etc. Oftentimes victims are blamed for not living their perpetrators although it might seem easy. There are many psychological reasons that make women stay with violent men, such as shame, fear and the social pressure not to declare the abuse. The reasons also include attachment to the abuser which have their origins in low self-esteem (both from the time of their childhood and from years of being abused in adulthood by that man) and include love.<sup>13</sup>

*Economic violence* includes actions of forcing a person into material dependence or controlling that person by depriving the latter of vital means of existence (food, clothing, housing, medicine), by unlawfully limiting the rights to possess, dispose or use property solely or jointly owned by the person, by restricting the rights of the person to education or free choice of employment. That is to say, the perpetrator controls victim's life by forcing dependency. In this case, the victim might be prevented to get a job. The contrary situation might as well occur: victim is forced to work though received wage be under control of abusers.

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

According to the explanatory report of the Convention<sup>14</sup>, ‘‘violence against women seriously violates and impairs or nullifies the enjoyment by women of their human rights, in particular their fundamental rights to life, security, freedom, dignity and physical and emotional integrity, and that it therefore cannot be ignored by governments. Moreover, they

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<sup>13</sup> Domestic violence and psychology by Paula Nicolson, 2019, p 4, available at <https://doi.org/10.4324/9781351202077>

<sup>14</sup> Report, *supra*, p 5

recognized that violence affects not only women adversely, but society as a whole and that urgent action is therefore required.

### *Protection measures*

There are three types of protection measures under the law. Least severe type is the warning. Warning order should be properly justified by the police officer. Such order is applied in cases when “violent act” doesn’t involve serious consequence and has been discovered for the first time. In case of recurrences within one year, police officer has right to make emergency intervention order regardless the fact that the second act, similarly, doesn’t include any elements of offence. The police officer sends a copy of the order to responsible support center nearby to prevent continuation. This regulation is quite welcoming as having well prepared support system, it might prevent further violence in case discovered soon.

Second is emergency intervention order. The convention leaves to the party states the period necessary for such order. Under domestic law, validity of emergency intervention order cannot exceed 20 days. There should be a reasonable certainty of imminent risk of repeated or continuing violence. Unlike warning order, emergency intervention order causes several limitations for the perpetrator. Particularly.

1) Immediately and forcibly remove the perpetrator of violence within the family from the residence of the victim of violence within the family and prohibit his return until the deadline established in the order, 2) If they live separately, prohibit the perpetrator of violence within the family to visit the workplace, school, leisure places or residence of the victim of violence within the family and, if necessary, persons under victim’s care as well as other venues attended by the latter, 3) Order the perpetrator of violence within the family to stay from the victim of violence within the family (and persons under the victim’ care, if necessary) at such a distance that will not raise in the latter a reasonable fear for personal safety. The order to apply this measure shall specify the distance, 4) Order the perpetrator of violence within the family to surrender all firearms under his possession until the expiry of the deadline specified in the order. If the perpetrator of violence within the family possesses firearms, he shall immediately surrender those firearms to the police officer issuing the order at the time when this restraining order is communicated to him, 5) Prohibit the perpetrator of violence within the family to communicate with or contact the victim of violence within the family (and persons under her care, if necessary) through phone, mail or other forms of communication. Under article 353.1 of criminal code failure to follow restraining orders

stipulated in sections 1-4 the perpetrator will be accused of criminal offence and the 5<sup>th</sup> section falls under article 206.16 of the law on Administrative offences.

Most severe type is protection order. These types of orders are subject to courts' decision due to the application by the victim, alleged victim or the support center with the latter's consent. The protection order is issued for a period of up to 6 months and can be extended by the court for up to 3 months twice on the basis of a well-grounded application justifying the need for such extension. In addition to above mentioned restrictions, protection order defines more limitations such as.

1) require the perpetrator of violence within the family to share with the victim of violence within the family the living expenses for their common minor children or adult children with disabilities and persons under their joint care by paying the amount of alimony specified in the Republic of Armenia Family Code. The court may require the perpetrator of violence within the family to cover other necessary expenses of the victim of violence within the family resulting from the violent act, 2) prohibit child visitations, if necessary, 3) require the perpetrator of violence within the family to attend a rehabilitation program. In this case the appeal is subject to first instance court's jurisdiction.

It is interesting to highlight that very often family members (perpetrator and victim) make their peace and if any charges have been pressed, the investigation is being stopped based on it. Nevertheless, the law prescribes possibility for alternative dispute resolution such as mediation regarding domestic violence cases, the Istanbul convention, more specifically article 48, prohibits mandatory alternative dispute resolution processes. Particularly, explanatory report opens up the main purpose of the drafters emphasizing that victims of such violence can never enter the alternative dispute resolution processes on a level equal to that of the perpetrator. It is in the nature of such offences that such victims are invariably left with a feeling of shame, helplessness and vulnerability, while the perpetrator exudes a sense of power and dominance.<sup>15</sup> In other words, the process of mediation might cause psychological harm to the victim once again, there is very little chance of success i.e. discontinuation of violent treatment and for the perpetrator this can be chance to obtain impunity.

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<sup>15</sup> *Id*, p 42

## *Statistics*

According to the official data from the Police, regarding statistics of domestic violence cases from the adoption of the law (June 30, 2018) to March 30, 2020 numbers of reported cases are as follows:

In 2018 - 707 cases,

In 2019 - 485 cases,

In 2020 - 105 cases.

Overall, in most cases (843 out of 1297) the victims were women harassed by husband. Police also had announced that regarding 431 cases the police warranted a warning order, 131 – emergency interference order and overall 562 perpetrators had been registered.<sup>16</sup> More than that, according to data collected by a non-government organization from 2010 to 2015 30 women were killed by either their husbands or partners.<sup>17</sup>

Furthermore, bearing in mind current situation with COVID – 19, while most countries are in lockdown thus families spend their time together, domestic abuse have become more widespread. In Spain, the emergency numbers have drastically increased up to 18 percent after two weeks of the lockdown in contrast with only a month earlier.<sup>18</sup> Similarly, in France the rate increased about 30 percent.<sup>19</sup> The government of United Kingdom announced that ‘‘The household isolation instruction as a result of coronavirus does not apply if you need to leave your home to escape domestic abuse.’’<sup>20</sup> There has been at least 16 killings between 23 March and 12 April, including those of children.<sup>21</sup>

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<sup>16</sup> Minutes of the Family Violence Prevention Session, 2019 January 22, <http://www.mlsa.am/wp-content/uploads/2019/02/arcanagrutyun.pdf>

<sup>17</sup> Murder of women in Armenia, silent epidemic by coalition against violence towards women, 2016, p. 17 [https://coalitionagainstviolence.org/wp-content/uploads/2016/05/Femicide\\_Report\\_ARM.pdf](https://coalitionagainstviolence.org/wp-content/uploads/2016/05/Femicide_Report_ARM.pdf)

<sup>18</sup> A New Covid-19 Crisis: Domestic Abuse Rises Worldwide, <https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html>

<sup>19</sup> *Id*

<sup>20</sup> Coronavirus (COVID-19): support for victims of domestic abuse, 2020 April 14, <https://www.gov.uk/government/publications/coronavirus-covid-19-and-domestic-abuse/coronavirus-covid-19-support-for-victims-of-domestic-abuse>

<sup>21</sup> Domestic abuse killings 'more than double' amid Covid-19 lockdown, <https://www.theguardian.com/society/2020/apr/15/domestic-abuse-killings-more-than-double-amid-covid-19-lockdown>

## CHAPTER 2: STUDYING CASE LAW WITHIN THE FRAMEWORK OF DOMESTIC COURTS AND EUROPEAN COURT OF HUMAN RIGHTS

### *Public stereotypes*

Every society has its own unique stereotypes that have been shaped throughout years. Stereotype doesn't necessarily mean an unjustified rule but rather is a part of country's culture. Although, there are some "labels" that are enrooted in public's worldview, that need urgent change since it directly hurts others. According to a survey conducted within women and men from different locations in Armenia we can see those "labels" enrooted in people's mind. The aim of the survey was to understand the perceptions of definition and manifestation of domestic, n raised features of those unaccepted stereotypes.

According to some participants, domestic violence towards children is more latent than it is in case of women and has higher degree of hazard. Although, a group of men voiced their opinion regarding child violence claiming that " We are not Europe, we are a traditional society. How can beating a child for parental upbringing be considered violence now?"<sup>22</sup> A group of women said that lots of things depend on women, if she stops complaining, the battery will also stop. Also, many participants thought that they should tolerate no matter what with words "No, I think woman should tolerate. Where should she go leaving with children"<sup>23</sup>. In addition, the organizers were interested of the reasons why some stay or never report. Regarding that questions, both groups had similar answers, such as "It's a shame, whole village will find out, that's why everyone is silent", "Usually women don't have proper information were to apply for support", "Women are not reporting because the police always "covers up" all related cases"<sup>24</sup>.

This is a small part of the worrisome stereotypes that rule the society. State's should use their power to raise awareness, educate and break these unacceptable principals out of the culture.

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<sup>22</sup> Report on the current practice of multi-sectoral response to domestic violence in Armenia and increasing the effectiveness of initiatives, 2017, available at [https://www.un.am/up/library/Perceptions-attitudes-and-practices-regarding-domestic-violence-in-Armenia\\_Research\\_Arm.pdf](https://www.un.am/up/library/Perceptions-attitudes-and-practices-regarding-domestic-violence-in-Armenia_Research_Arm.pdf)

<sup>23</sup> *Id*

<sup>24</sup> *Id*

It is also interesting to note that while the draft of the law was presented to the public discussions, it received mass dissatisfaction from the public and not only,<sup>2526</sup>. Many professionals<sup>2728</sup> were acting against this law claiming that our domestic laws, such as criminal code, family code, civil code etc. fully cover all the material that was stipulated in the draft. Their main concerns and reasonings were that family is a private sector and issues connecting to families should also stay private, the law will authorize State authorities to interfere into public's life without any justified ground, take away their kids and ruin families. Unfortunately, as it can be seen from the statistics presented above, we see a wholly different situation. Domestic violence has become a part of everyday life for some families. To be more precise and practical, it is worthy to highlight several cases regarding domestic violence. These cases present various situations happening in Armenia and abroad, with similar or familiar components that are highly troublesome and are in need of attention.

#### *Case law analyzing: Domestic case law*

The first case I would like to discuss is Taguhi Mansuryan's case<sup>293031</sup>. There are three connected cases, with different charges. All three cases will be presented in a unified manner. These cases present a vivid example of domestic violence, which took place regularly, affecting not only the victim but also related people with horrifying ending.

- Taguhi Mansuryan and V. Martirosyan got married in 2014 and have a child. After approximately a year they got divorced. Confirmed case of violence happened in February 7<sup>th</sup>, 2015. Both parties had been accused of article 118 of Criminal Code, battery, as slight danger to one's health hadn't occurred. From mentioned day to April 20<sup>th</sup>, episodically, V. Martirosyan committed domestic violence towards his ex-wife. More specifically, these cases happened for five times in a row and two of them happened outside, near Taguhi's residence while she was returning home from her job. V. Martirosyan was additionally accused of article 119 (Causing severe physical pain or severe mental distress). While the case was in

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<sup>25</sup> <https://www.youtube.com/watch?v=6YOepvGImpo>

<sup>26</sup> Website for public discussions, Draft of the law on prevention of domestic violence and protection of victims and adjacent laws, available at <https://www.e-draft.am/projects/427/digest>

<sup>27</sup> Public discussion regarding the law on Prevention of Domestic, available at [https://www.youtube.com/watch?v=0ias\\_R41OvM](https://www.youtube.com/watch?v=0ias_R41OvM)

<sup>28</sup> <https://www.youtube.com/watch?v=MG9O7PjOUpw>

<sup>29</sup> Taguhi Mansuryan v Vladik Martirosyan  
[http://www.datalex.am/?app=AppCaseSearch&case\\_id=16044073672567806](http://www.datalex.am/?app=AppCaseSearch&case_id=16044073672567806)

<sup>30</sup> [http://www.datalex.am/?app=AppCaseSearch&case\\_id=16044073672566046](http://www.datalex.am/?app=AppCaseSearch&case_id=16044073672566046)

<sup>31</sup> [http://www.datalex.am/?app=AppCaseSearch&case\\_id=16044073672553469](http://www.datalex.am/?app=AppCaseSearch&case_id=16044073672553469)

court, parties announced about reconciliation and accusations towards Taguhi were extracted. For the perpetrator, the court decided to sentence him for 6 months imprisonment, applying conditional sentence, setting a probation period of 1 year.

Unfortunately, domestic violence acts, physical, psychological violence and stalking towards Mansuryan family didn't end with criminal charges. In July 8<sup>th</sup>, 2016 after having several misunderstandings with ex-wife and her parents, V. Martirosyan decided to take drastic steps. The perpetrator attacked Taguhi and Karine Mansuryans, firstly stabbed multiple axes in various parts of Taguhi Mansuryan's body, causing serious life-threatening damage, then, with the same ax, deliberately stabbed Karine Mansuryan numerous times, causing bodily injuries incompatible with her life which caused her death. Afterwards, with the sudden intention of illegally depriving Vachagan Mansuryan's life, attacked him causing serious harm to his life, however, independent of his will he could not complete it.

The case regarding the aforementioned actions is still pending. Pressed charges include articles 34, 104 (1), 137 (1).<sup>32</sup> Analyzing situations described in this case, we can conclude that things got wrong on the first place in 2015 when the court decided to apply conditional sentence for five episodes of domestic violence. It is in courts discretion to apply such type of sentence, not obligation<sup>33</sup>. In case of conditional non-application of the sentence, the court shall take into account the data characterizing the offender, the mitigating and aggravating circumstances of the offender.<sup>34</sup> In this case court took into account the fact that the perpetrator had several health issues and had never been convicted to imprisonment. Although, it didn't take into account the fact that having health problems didn't stop V Martirosyan of committing crime numerous times. Also, proper investigation and protection was not provided to neither of parties. This might be considered as a failure of authorities to provide protection, prevent future crimes and possibly this case might had ended years ago if at the first time the court acted less lenient.

- It is similarly worthy to discuss Diana Nahapetyan's case.<sup>35</sup> In my opinion, this case represents lack of objective assessments in the decision of the court and misinterpretation of

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<sup>32</sup> *Id*

<sup>33</sup> *Id*, article 70

<sup>34</sup> *Id*

<sup>35</sup> Diana Nahapetyan v Volodya Muradyan, U.Վ.Պ/0043/01/13,  
[http://www.datalex.am/?app=AppCaseSearch&case\\_id=27303072740950183](http://www.datalex.am/?app=AppCaseSearch&case_id=27303072740950183)

legal norm. Although the norm itself has many issues and the legislator also should be in charge to fix it.

In 2012, as a result of a dispute and battery, Volodya Muradyan has killed his wife Diana Nahapetyan. The homicide happened in front of Diana's two children. She was brutally killed being stabbed with two knives for 21 times. The main issue of the dispute had been Diana's behavior. With the words of Volodya, 'she was acting immorally and was cheating on him'. At first, Volodya was accused of murder, then of murder under aggravating circumstances (taking into account that her daughters were present and the graving manner of murder). However, after three years the decision regarding accusation was changed to 'murder under state of extreme mental anxiety'. The court has assessed that Volodya has been under extreme mental agitation because of his wife's immoral behavior thus was convicted for three years and six months imprisonment.

Revising the article which was the legal ground for such decision, we can conclude that it is indefinite. Overall interpretation and assessments of one's moral or immoral behavior is left on judge's discretion. This article can raise lots of issues, subjective interpretations and after all to an unjustified court decision. The court has power to measure victim's morality due his own subjective perceptions and values.

#### *ECtHR case law*

- Speaking of domestic violence cases, it is important to reflect famous Opuz v. Turkey ECtHR case.<sup>36</sup>

Facts of the case that were especially relevant for the court are as follows:

The case concerns the applicant's complaint, in particular, that the Turkish authorities failed to protect her and her mother from the violent and abusive behavior of H.O (hereinafter the perpetrator), who ultimately killed her mother.

According to the case, the perpetrator had committed numerous crimes towards her wife and her mother during several years. Those offences include, gross battery of wife and her mother, death threats, knife attack, with an aim to run down both of the victims by his car. These incidents happened for several years although the perpetrator never was detained, mostly fined or released. The applicant and her mother withdrew their complaints during each

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<sup>36</sup> Opuz v Turkey, No. 33401/02, 2009, [https://hudoc.echr.coe.int/eng#{"fulltext":\["opuz%20v%20turkey"\],"documentcollectionid2":\["GRANDCHAMBER"\],"chamber":\["CHAMBER"\],"itemid":\["001-92945"\]}](https://hudoc.echr.coe.int/eng#{)



of those proceedings, because of the fear for their lives, the domestic courts discontinued the cases. On 29 October 2001 the applicant was stabbed seven times and taken to hospital. The perpetrator was charged with knife assault and was fined.

Afterwards, the day victims decided to move out, the perpetrator forced the van to pull over, opened the passenger door and shot the mother. The applicant's mother died instantly. Final judgment, announced on 26 March 2008, convicted the perpetrator of murder and illegal possession of a firearm. The court sentenced him to life imprisonment. However, took into account the fact that the accused had committed the offence as a result of provocation by the deceased and his good conduct during the trial, the court mitigated the original sentence, changing it to fifteen years and ten months' imprisonment and a fine. In view of the time spent by the convict in pre-trial detention and the fact that the judgment would be examined on appeal, the court ordered release.

ECHR assessing above discussed case facts, actions of both parties came to conclusion that it does not appear that the local authorities sufficiently considered the important factors when repeatedly deciding to discontinue the criminal proceedings against the perpetrator. Instead, they seem to have given exclusive weight to the need to refrain from interfering with what they perceived to be a "family matter" (paragraph 123 of the case). Moreover, there is no indication that the authorities considered the motives behind the withdrawal of the complaints. Though the applicant's mother has announced that she and her daughter had withdrawn their complaints because of the death threats issued and pressure. The Court thus considers that the prosecuting authorities should have been able to pursue the proceedings as a matter of public interest, regardless of the victims' withdrawal of complaints. In addition, the Court hold that it is not in fact apparent that the authorities assessed the threat posed and concluded that his detention was a disproportionate step in the circumstances; rather the authorities failed to address the issues at all. In any event, the Court would underline that in domestic violence cases perpetrators' rights cannot supersede victims' human rights to life and to physical and mental integrity (see the *Fatma Yıldırım v. Austria* and *A.T. v. Hungary* decisions of the CEDAW Committee, both cited above, §§ 12.1.5 and 9.3 respectively). Thus, court came into conclusion that there has been violation of article 2 in respect of the death of the applicant's mother and article 3 in respect of the authorities' failure to protect the applicant against domestic violence perpetrated by her former husband.

In the light of this case, we can conclude that states have positive obligation to protect alleged victims of domestic violence. Domestic violence has private nature, neither of the parties mostly want to announce about it, even victims because of merits of current society, out of shame and out of psychological violence. Violent actions such as battery being a private prosecution case, should not create impression of impunity thus authorities and states should either amend their laws concerning such violent offences and make it public or train authorized authorities in a manner that they will be ready to assess situations precise.

- In addition, there is a case in ECHR against Armenia (Tovmasyan v Armenia). The applicants complain refers to article 2, especially that the authorities failed to conduct their obligations efficiently regarding his daughter's death. Although this is a communicated case.

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The relevant facts submitted by the applicant are as follows. in 2012 his 21 years old daughter – Maro Guloyan had committed suicide while being pregnant with her second child. She hung herself from a bathrobe belt in the house where she used to live. The applicant strongly believes that during the investigation authorities have left many gaps thus qualified it as suicide. The applicant claims that her daughter either could have been killed or there has been an incitement of suicide as a result of domestic violence. More notably, the alleged victim and her husband were having lots of arguments since getting married and wanted a divorce.

According to the facts, a photojournalist working for a well-known investigative journalism website was invited to Maro Guloyan's funeral. Pictures had shown that there had been various injuries on the body although the investigators either hadn't noticed or hadn't properly reported. The investigator had ordered a forensic medical examination of the body and relevant other procedures. The report had no photographs of the body attached and according to it Maro Guloyan died of suffocation, most probably with the belt attached and there were no other injuries in her body found. There has been another forensic examination that in contrast to above mentioned one, came into conclusion that there have been injuries inflicted while alive prior to death by sharp object. She was described as a cheerful person who loved life and her child. More than that, during investigative processes the bathrobe and

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<sup>37</sup> Tovmasyan v Armenia, 5442/15, 2015, [https://hudoc.echr.coe.int/eng#{"fulltext":\["TOVMASYAN%20v.%20ARMENIA"\],"documentcollectionid2":\["COMMUNICATEDCASES"\],"itemid":\["001-194354"\]}](https://hudoc.echr.coe.int/eng#{)

the belt had disappeared. It is also worth mentioning that one of the witnesses who allegedly found the body had contradicted herself, regarding statements about the time and conditions she found Maro Guloyan's dead body.

The applicant has submitted motions against investigator's decision about the termination of criminal proceedings for absence of elements of criminal offence. Nevertheless, domestic courts didn't change much in the investigator's decision after all so the applicant submitted it to ECHR for Maro Guloyan's right to life in the light of state's obligation to discover her case according to the law.

Although there are still no statements from the Government of RA announced or any legal assessments of the court, within the scope of the information available, we can assume that the authorities might have failed their obligations to properly and objectively investigate this case. The fact that experts who conducted forensic analyzes hadn't taken any pictures of the body and hadn't immediately noticed injuries on the body is dangerous. Especially in cases of suicide and domestic violence the investigator builds up the case on such basis. The fact that experts failed to conduct their obligations properly, might mean that there can be lots of cases undiscovered. More than that, this indirectly lays burden of prove on relatives of the victim to bear actions described in this case (inviting photojournalist to take pictures of dead body covered in bruises and injuries). Also, the investigator lacked proficiency to examine such case as there have been lots of breaches. Nonetheless, no respective measure was taken to prevent or fix it. State authorities should train their specialist to be able to conduct their responsibilities in high quality so that main features of the case will be discovered. At this point there is no evidence that the investigator took necessary measures to find out who harmed Maro Guloyan, where the bruises came from, whether there has been domestic violence towards her and whether her suicide was incitement.

All of above-mentioned cases have several and similar messages to the society and more importantly to the State authorities. Responsible bodies lack proficiency to conduct an efficient investigation. These elements are present not only in Armenia but are common in many member states throughout the world. We can see that courts assess cases by assessing the victims, their behavior hence giving them mild punishments. More than that, authorities are "afraid" to intervene into family life or might as well don't take domestic violence as serious crime. We should try to take various actions regarding this situation. The adoption of the law was the first step and it indeed was a huge one taking into account the pressure from

the society and somewhat regulation institute. Discussed cases outline the necessity of additional changes that will raise responsibility for domestic violence.

### **CHAPTER 3: ANALYZING REGULATIONS REGARDING DOMESTIC VIOLENCE: SUGGESTED RECOMMENDATION**

With the implementation of domestic violence law in Armenia the necessity for coordinated actions become more actual and vital. As mentioned, and discussed above, the law provides several mechanisms to protect the victims of domestic violence. Also, the law has policies in regard to the protection conducted by support centers and shelters. The signing of Istanbul convention especially with such pressure from society towards the State can be considered as a first and crucial step. At this point the State authorities should start to proceed to more specific measures and afford better protection. Warning order, emergency interference and protection order might work out in cases where domestic violence hasn't yet happened or has happened in a slight manner where actions taken does not include any severe type of violence toward anyone in the family. Nevertheless, the numbers are still increasing which is worrying. This might mean that the law is not working or that it is actually working. In other words, as there had not been a specific law related to domestic violence, and such cases would just fall under criminal offences if there has been serious crime or the police would not take any actions to prevent or interfere anyhow, we do not have proper statistic to measure and compare those numbers with current ones. And again, the number is still too high after the adoption of the law no matter what the picture was before it. The society still has doubts that authorities cannot help them. Thus, we need to adopt new policies and rules regarding lenient punishments prescribed under the law. Committee against torture, while observing Armenian legislation, published an opinion according to which the State party should strengthen its efforts to prevent and combat domestic violence, including by adopting without undue delay a law criminalizing domestic violence and ensuring its effective implementation<sup>38</sup> with additional conditions that are urgent to solve.

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<sup>38</sup> Committee against torture, Concluding observations on the fourth periodic report of Armenia, (CAT/C/ARM/4), 2017

Criminal code doesn't have any specific mentioning about brutal treatment towards women or any separate provision regarding domestic violence. It has several articles that cover violence offences in general. Events that can be part of domestic violence. This regulation might seem, and many experts of the field has announced, that we do not need to specify any other additional rules concerning specifically to cases that happen within the family. That each time Criminal Code can be implemented. Nonetheless, domestic violence has its unique form of expression and elements that are only particular for this type of crimes while investigating and qualifying. For a long period of time, violence within family was considered to be private and subject to be considered only within family i.e. that is unacceptable to come between matters risen in the family. As most of the times victims never showed up in the police stations and announced about brutal treatment towards them, society used to classify it as a crime of less public hazard. Although, this attitude is far from the reality, taking into account several facts. As mentioned before, one of the main characteristics of domestic violence is latency. Even the available statistics are still only the visible part of the "iceberg". Because of the pressure from society many victims are ashamed to announce. The victim is being ill-treated by a person from whom he or she has economic, social, psychological dependence, and in an environment that has to be most secure for him or her. In addition, domestic violence is not usually an event but a process. In other words, it is almost never limited to a single act; the victim lives in a chain of violence, suffering continuous physical and mental suffering.<sup>39</sup> Most of the times the victims are either women or children of the family as these two members are more vulnerable and have less ability to protect themselves. Additionally, it is equally important to educate society and change the mentality concerning domestic abuse. Victims should always be aware of their rights, of the necessary actions to be taken in case of victimization, as much as potential perpetrators – of the legal consequences of their actions.

It is important to highlight that Istanbul Convention obliges states to criminalize domestic violence. More specifically article 46 of the convention stipulates that offences that already exists in relevant laws, in our case Criminal Code, be considered as aggravating circumstances in the determination of the sentence in relation to the offense established in accordance with the convention. That is to say, Armenia should not only criminalize domestic

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<sup>39</sup> Symposium materials by professors of YSU faculty of law, 2019, p. 370, [http://www.y-su.am/files/27Gohar\\_Hakobyan.pdf](http://www.y-su.am/files/27Gohar_Hakobyan.pdf)

violence but also stipulate it as aggravating circumstance. In contrast, there is no rule in domestic laws that consider such acts as crime in regard with violence within family.

### *Criminalization*

Referring to the types of violence again in the light of possible criminalization of physical, sexual and psychological violence in the scope of domestic violence.

According to article 33 of the convention, parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats is criminalized. Though the convention does not specify the definition of serious impairing, the explanatory report opens up the possible purpose of the article. The provision refers to a course of conduct rather than a single event. Psychological violence often precedes or accompanies physical and sexual violence in intimate relationships (domestic violence). In addition, the convention does not oblige states to criminalize psychological violence rather gives chance to reserve from that obligation. Taking into account above mentioned, such acts against family members, in condition that it is only psychological pressure, can be covered with relevant - article 119 of Criminal code. Article 119 holds liability for causing severe physical pain or severe mental distress. In case the subject of such actions is a minor or a person who is dependent from the perpetrator, is aggravating circumstance. The sanctions are respectively – not more than 3 years or from 3 to 7 years of imprisonment. At this point the section is quite proportionate for this type of violence, however it might cause some difficulties to properly implement mental distress alone as a violence because it can be hard to prove. For this reason, the article needs some amendment. More specifically, the legislator should properly define the scope of mental distress. In addition, domestic violence should have a separate point in the scope of aggravating circumstances that has happened for more than once. This will help the investigators, prosecutors and courts to precisely qualify cases under this article especially outlining that this type of violence had happened within family.

The definition of physical violence has already been discussed above under domestic law. Chapter 16 covers up all the articles related to actions against one's life from murder to battery. As we could understand from the material discussed aforesaid and the related case law material, domestic violence includes offences relevantly covered up in Criminal Code (articles mentioned above). Although, taking into consideration that domestic violence happens very often, consists of regular actions and has very high public hazard, there is not

detached as a separate misconduct. Most of the time perpetrators use this gap against their victims and underline that fact in a manner that the law will not help victims. This causes feeling of impunity towards the perpetrators. It is important to follow the regulations under the Istanbul convention and international standards that oblige states to criminalize domestic violence separately and by implementing precise aggravating points for domestic violence. This might raise higher awareness within society to start understand the seriousness of the issue, break rooted stereotypes and somehow passively attack the possible perpetrators. Murder as a result of domestic violence should not be qualified as a general murder that could happen between strangers. Murder within family where victims are more vulnerable, are dependent and scared for their or their relative's life constantly contains and necessitates stricter measures.

Sexual violence contains any act described under criminal code. The conventions put the light on the fact of the presence or absence of consent from the victim. Chapter 18 of the code regulates all the matters concerning acts against one's sexual integrity and immunity. There are some conditions that at least one should be present to qualify an act as rape (138) or violent acts of sexual nature (139) – absence of consent, physical violence or such threat or the helplessness of a victim. Most of the articles (138, 139, 142) include aggravation circumstance when the violence is conducted by parent and the victim is under 18. Rape and actions that are of sexual nature is very hard to prove if there has not been a concert actions and the conditions above are not present. For the condition part, we must admit that they are too broad, hard to interpret thus complex to implement practically. It will be even complex to prove such events that happen within family. For years people didn't even accept the fact that there can rape between married people. However, the picture is not that clear as very often physical violence grows into other forms of violence, more often to sexual. With the aggravating circumstances mentioned above, that might cover cases towards children in the family, there must also be addition concerning domestic violence. In case of actions of sexual nature happened within family (the elements of domestic violence) without one party's prior consent it should be considered aggravating circumstance without need of any other condition.

To sum up the discussed material, it is significant for Armenia to criminalize domestic violence, more importantly psychological, physical and sexual types of violence. There is no legal ground to justify the non-compliance to the Istanbul Convention. The victims should be

protected by all means, the State should enact effective preventive and remedial mechanisms and declare domestic abuse as crime.

## CONCLUSION

Domestic violence has been treated too gently in our society for a long period of time. After the adoption of the law, victims of violence found hope for their fundamental rights to be legally protected. Unfortunately, as the statistics show after more than one year of enacting the law, numbers are still high and there are still murders in the grounds of domestic ill-treatment. This might have several reasons as discussed following that for now the responsible authorities are not ready to accept the rules of this law and are not prepared. Under the law there must be training for police to discover such cases immediately and act precisely as any err can be followed by brutal death of the victim. The mentality of public should be changed, actions should be taken so that public will come to a conclusion that domestic violence is unacceptable. More importantly, victims should feel protected under the law. In case of a domestic abuse, we should remember that generally and indirectly more people are suffering. Physical violence towards mother will definitely harm the child psychologically. The punishments at this point are not proportionate to the crime and are mild. We need to amend our laws to comply with current necessities of the issue, launch better versions of protection measures. This can be done by firstly criminalizing domestic violence as a crime, and add several points in relevant articles of criminal code. More than that, the offence which happened within family and contains criminal elements be qualified as aggravating circumstance. Victims of such crimes usually are the vulnerable parties of the family, not able to protect themselves. The fact that mainly it happens on regular basis thus including several crimes, legislators must reconsider the dispositions and sanctions. More than that, this is what international practice and Istanbul Convention stipulate and were legal ground for the adoption of the law.

The adoption of such amendments might take some time for the State, because from the beginning the idea of such law and policies earned huge disgrace from the public, however as the police states, victims started to trust authorities. The number of reports has increased drastically and at least State has exact statistics. Improvements will only be in interest of



victims and the State. The more practical policies the less crimes against women, children and families overall.

## **BIBLIOGRAPHY**

### *Legal documents*

1. Constitution of the Republic of Armenia,
2. Criminal Code of the Republic of Armenia,
3. Criminal Procedure Code of the Republic of Armenia,
4. Law on prevention of violence within family, protection of victims of violence within family and restoration of peace in the family, 2018,
5. Code of Administrative Offenses of the Republic of Armenia,
6. Council of Europe treaty No. 210, Council of Europe Convention on preventing and combating violence against women and domestic violence,
7. European Convention on Human rights

### *Website sources*

1. Criminal Law, textbook, special part
2. Murder of women in Armenia, silent epidemic by coalition against violence towards women, 2016, p. 17
3. Minutes of the Family Violence Prevention Session, 2019 January 22
4. Symposium materials by professors of YSU faculty of law, 2019,
5. Sexual Violence Against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Laws and Practice by International commission Of Jurists,
6. Domestic Violence: Reasons Why Battered Victims Stay with the Batterers,
7. Analysis of the RA criminal legislation in terms of the criteria set by the Council of Europe Convention on the Prevention and Combating of Violence against Women and Domestic Violence, by Javier Truchero, 2017

8. Explanatory Report to the council of Europe convention on preventing and combating violence against women and domestic violence, Istanbul, 11.V.2011,
9. Domestic violence and psychology by Paula Nicolson, 2019,
10. A New Covid-19 Crisis: Domestic Abuse Rises Worldwide,
11. Coronavirus (COVID-19): support for victims of domestic abuse, 2020 April 14,
12. Domestic abuse killings 'more than double' amid Covid-19 lockdown,
13. Report on the current practice of multi-sectoral response to domestic violence in Armenia and increasing the effectiveness of initiatives, 2017,
14. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, observation on the fourth periodic report of Armenia by Committee against torture, 2017.

### *Cases*

1. Taguhi Mansuryan v Vladik Martirosyan, ԵՇԴ/0125/01/15,
2. Taguhi Mansuryan v Vladik Martirosyan, ԵՇԴ/0192/01/16,
3. Taguhi Mansuryan v Vladik Martirosyan, ԵՇԴ/0015/01/17,
4. Diana Nahapetyan v Volodya Muradyan, ԱՎԴ/0043/01/13,
5. Tovmasyan v Armenia, 5442/15, 2015
6. Opuz v Turkey, No. 33401/02, 2009.