Guide for CSOs
for
Ensuring Access to Justice for Women

WOMEN'S human rights training institute

BGRF bulgarian gender research foundation

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Ensuring Access to Justice for Women

Partnership for Good Governance

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This publication is the expression of joint efforts of the BGRF and the lawyers fellows of the WHRTI, as well as of current students of the Institute for ensuring access to justice and effective justice for women in Europe. It contains legal studies and articles which illustrate challenges women face in practice in the protection of their human rights.

The Guide is meant to establish a tradition of producing a series of such studies under the programme of the Women's Human Rights Training Institute.

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We dedicate the studies and articles in this publication to the full realization of the human rights of women in Europe and as a contribution to women's rights globally.

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Contents

„There are still many discriminatory laws and practices around the world and women face significant obstacles in accessing justice due to series of inequalities at the legal, institutional, structural, socio-economic and cultural levels. Securing access to justice to women is not only important for achieving equality of treatment before the law but for enabling them to enjoy their human rights. It is hence an important component of furthering gender equality.“

Dr. Ivana Radacic – member of the UN Working Group on the Issue of Discrimination against Women in Law and in Practice (Eastern European representative), fellow of the Women's Human Rights Training Institute

Access to justice for women victims of violence: Analysis and key tenets of international law and practice in the field

by Genoveva Tisheva

„Access to the courts, which is already not easy at national level, can be even more difficult at international level. … (A)*ccount is still not taken of the female perspective in human rights matters and such instruments are resources which women need to use to greater and better advantage*."
Françoise Tulkens, former Judge and Vice-President at the European Court of Human Rights

1. Introduction

Access to justice for women victims of gender-based violence is an inherent part of the broader issue of access to justice for women and of access to justice in general. Originally understood as ensuring the realization of fundamental human rights through courts and tribunals, the notion of access to justice evolved into a broader set of rights related to the concept of equal access to rights and to justice. Access to justice is crucial for ensuring non-discrimination of, and substantive equality for women. It is a central prerequisite for effectively protecting women from violence, preventing violence and for engaging state responsibility for eliminating gender-based violence. Limited access to justice for women in general, and more specifically, for women victims of violence, is due to a range of obstacles that women face prior to and when accessing courts, including gender stereotyping. The common denominator is that the limitations are pervasive and affect women exclusively.

The exercise by women of their rights related to access to justice before international courts and UN human rights treaty bodies in the last 10-15 years constitutes a positive trend. It led to substantial developments in the case law on violence against women of the European Court of Human Rights (ECtHR) and the UN Committee of the Elimination of Discrimination against Women (CEDAW Committee) under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP CEDAW). Increased awareness of international human rights bodies to access to justice and to barriers faced by women makes also a good momentum for reflection. Further progress may be expected thanks to additional guarantees ensuring women's access to justice that are enshrined in the Council of Europe Convention No. 210 on Preventing and Combating Violence Against Women and Domestic Violence, called „Istanbul Convention" (IC). The adoption by the CEDAW Committee of General Recommendation No. 33 on Women's Access to Justice in July 2015 will enhance the Committee's work to monitor the implementation of states' obligation to apply due diligence in the elimination of violence against women.

The present paper explores the concept of access to justice for women victims of violence, as well as barriers to such access, including gender stereotyping and additional vulnerabilities. It also addresses achievements in the access to justice before international human rights bodies. Further, the balance, instead of dichotomy, between ensuring the autonomy of women survivors of violence in initiating procedures for protection of their rights, on the one hand, and the obligation of the state to ensure public prosecution of aggressors in criminal law, on the other hand, will also be discussed.

The indispensable role of civil society organizations, in particular women's NGOs, in facilitating access to justice for women victims of violence will be one of the core arguments put forward in the present paper.

2. The concept of gender-based violence and violence against women in international human rights standards

Violence against women is one of the most severe forms of gender-based discrimination, degrading women and girls and impeding them in exercising their rights.

Previous research as well as international standards and national laws confirm that women and girls as well as men and boys may become victims of gender-based violence. However, it is widely recognized that in the majority of cases, gender-based violence is committed by men against women and girls. Therefore, the terms „gender-based violence" and „violence against women" are often interchangeably used. The present paper focuses on gender-based violence against women and girls, owing to the frequency, the specificities and the intensity of the violence against them. It also uses „gender-based violence" and „violence against women" interchangeably.

Gender-based violence is violence directed against a woman based on her gender. It represents a violation of her fundamental rights, like the right to life, freedom from torture and inhuman and degrading treatment, the right to security, the right to dignity, the right to privacy and family life, the right to equality between men and women, freedom from discrimination, and the right to physical and mental integrity. Gender-based violence reflects and reinforces the inequality between men and women.

In the Council of Europe system, violence against women is addressed as gender-based violence, which is defined as „*violence that is directed against a woman because she is a woman or that affects women disproportionately"* (Article 3, paragraph d, IC). Violence against women is understood as a „*violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life"* „(Article 3, paragraph (a) IC). The notion of „women" includes girls under the age of 18. (Article 3, paragraph (f) IC).

The preamble of the Istanbul Convention recognizes the structural nature of violence against women. Such violence is seen as a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against women by men and to the prevention of the full advancement of women.[1]

These characteristics of violence against expressed in the Istanbul Convention are inspired by principles affirmed in General Recommendation No. 19 on Violence against Women (1992) of the CEDAW Committee and in the Committee's coherent case law under the Optional Protocol to CEDAW.

Although it is difficult to separate the different types of such violence, since women and girls are often subjected to multiple forms of violence, gender-based violence includes, but is not limited to:

• domestic violence; sexual harassment, rape, sexual violence, stalking, sexual violence during conflict and harmful customary or traditional practices such as female genital mutilation, forced marriages and „honour crimes";

• trafficking of women, sexual and economic exploitation, forced prostitution and violations of human rights in armed conflicts (in particular murder, systematic rape, sexual slavery and forced pregnancy);

[1]This nature of violence against women has been affirmed by the Beijing Platform for Action from 1995, http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf

• forced sterilization, forced abortion, forced use of contraceptives, female infanticide during pregnancy, and prenatal gender selection.

During their entire life cycle women suffer from a combination of types of gender-based violence, from the prenatal period, through early childhood and childhood, as adolescent girls, in reproductive age, in post-reproductive age and as elderly women.

The concept of gender-based violence should be considered within the context of existing social structures, taking into account the historical roots of such violence and its connection with the positions and roles defined for women and men in society. These structures define norms and roles based on gender, thereby encouraging and justifying gender-based violence as a normal and socially accepted phenomenon. Indeed, the Istanbul Convention defines „gender" as the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men (Article 3 paragraph (c) IC).

These same social structures, norms and roles that are based on gender myths and stereotypes, often prevent women from accessing justice.

The barriers for women to fully realize their rights due to violence are stable and pervasive, as demonstrated by a large-scale survey published in 2014 by the European Union Agency for Fundamental Rights. Findings show that the gender-based violence is widespread in EU member states, where 33% of the women surveyed have experienced physical and/or sexual violence after the age of 15. 22% have experienced physical and/or sexual violence by their partner, and 5% of all women have been raped.[2] In some EU countries, prevalence rates are lower than average. For instance, in Bulgaria, 28% of women have experienced physical and/or sexual violence. Rather than pointing to lower rates in the prevalence of gender-based violence, lower figures may be explained by the fact that the women in this country still find it harder to talk about such violence and lack sufficient access to services throughout the country.

Women belonging to marginalized groups are at particular risk of violence. This includes for instance women from minorities, migrant women and refugee women, women in situations of armed conflict, women detained in institutions or women with disabilities. Often, these women, in particular

[2]European Union Agency for Fundamental Rights, Violence against women: an EU-wide Survey, 2014, http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf (accessed on 30 January 2015).

migrant and refugee women in Europe are at an increased risk of violence and multiple discrimination. Their access to justice and to state-provided services and support is often limited, especially when their status is undetermined or when they are undocumented.

The non-discrimination clause of the Istanbul Convention provides an important guarantee for protecting women belonging to marginalized groups from all forms of gender-based violence: „The implementation of the provisions of the Convention, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status. Special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination under the terms of this Convention." (Article 4, paragraphs 3 and 4 IC).

Given the complex nature of this phenomenon, it is of key importance for prevention of violence and protection of women victims to adopt and implement integrated policies, as required by the Istanbul Convention. This approach requires the inclusion of all relevant and interested actors, including active women's NGOs. It is of paramount importance to strike the right balance between prevention, protection and criminal prosecution, while putting the needs of victims at the centre. In existing good practice examples models of interagency cooperation and coordinated community responses to violence against women, the representatives of the judiciary are an integral part of the model.[3]

3. Access to justice and obstacles in accessing justice for women victims of violence

3. 1. The concept of access to justice and the responsibility of the state

Access to justice in international law and practice is understood as the ability of citizens to use the justice system and its institutions in order to obtain solutions for their justice problems. In order to have real access

[3]Training for Trainers Manual on Effective Multi-agency Co-operation for Preventing and Combating Domestic Violence - report by WAVE - author Rosa Logar, http://www.bvsde.paho.org/bvsacd/cd64/manual.pdf

to justice, these institutions including judicial bodies and special jurisdictions must function effectively in order to provide fair results of justice procedures. A reliable legal framework for protection of rights, complemented by an effective justice system, are key prerequisites for access to justice. Access to justice requires also knowledge and awareness of rights on the part of women, access to legal advice and representation, real access to the justice system, fair procedures and outcomes that are enforceable. In cases of ensuring access to justice for vulnerable groups, like women victims of violence, access to justice should be understood more broadly requiring the development of „*means of overcoming the obstacles faced by certain groups in making use of the processes established to provide redress where rights are considered not to have been respected*"[4] These means may include public funding for legal advice and representation, special procedures (such as class actions and public interest litigation), or simplified procedures, provided that there is informed consent of the interested individual.

When speaking about ensuring access to justice for women, especially for women victims of violence, it is central to remove the limitations and barriers hindering such access and closing the gap between the rights of women and their effective realization.

States are obliged to respect women's human rights related to access to justice, such as the right to equality before the law, the right to a fair trial, or the prohibition of discrimination (Article 5, paragraph 1 IC), and to ensure the practical realization of these rights., In addition, states are obliged to exercise due diligence to protect women from violence committed by non-state actors (Article 5, paragraph 2 IC):

„*1. Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation.*

2. Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors".

Ensuring women's access to justice is clearly linked with state obligations and the obligation to exercise due diligence to protect women from violence committed by non-state actors. The latter principle has

[4]Council of Europe, European Committee on Legal Co-operation, Access to Justice for Migrants and Asylum-seekers in Europe, author: Jeremy McBride, CDCJ (2009)

evolved in the case *Velasquez Rodriguez v. Honduras* (1988) before the Inter-American Court for Human Rights. Since then, the due diligence principle has been further developed by international human rights practice and jurisprudence in the context of violence against women, for instance in the CEDAW Committee's General Recommendation on Violence against Women (1992) or the case *Maria da Penha v. Brazil* (2001) before the Inter American Court for Human Rights. Further on, the principle has been applied by the ECtHR in important cases like *Bevacqua and S. v. Bulgaria (2008), M.C. v. Bulgaria (2003), Opuz v. Turkey (2009), A. v. Croatia 2010), Eremia and Others v. the Republic of Moldova (2013), Y. v. Slovenia (2015).* Examples of jurisprudence of CEDAW Committee referring to the state obligation to exercise due diligence in protecting women from gender-based violence include *Yildrim v. Austria (2007), Goekce v. Austria (2007), V.K. v. Bulgaria (2010), Jallow v. Bulgaria (2012), V.P.P. v. Bulgaria (2012), Vertido v. the Philippines (2010), and Gonzales Carreno v. Spain (2014).*[5]

3. 2. Obstacles to women's access to justice

Women's limited access to the legal and justice systems is due to gender inequalities found at different levels – the family, community and cultural level, the institutional or economic level. It is a continuation of inequality and discrimination of women in practice and in law. As participants in judicial proceedings, women in general, and women belonging to marginalized groups in particular experience a number of obstacles, as outlined in the following.

First, women's lack of equal access to socio-economic rights is transformed in economic barriers at the justice system level. Access to legal aid for advice and representation are often conditional upon a means test for eligibility, also for women victims of violence. This requirement deprives these women from legal advice and access to justice. The lack of specialized lawyers that are sensitive to the rights and needs of women victims of violence is another barrier.

Further, women victims are hindered from accessing justice due to feelings of shame, self-blame, fear from blame from others, often from their families and communities, and fear of further violence. Women victims often feel guilty because they used the system against the aggressor, who is in many cases the father of their children. Additional barriers exist for

[5]The years indicate the years of issuing the Views of the CEDAW Committee

women who have children, such as fear to put the children at risk, fear to lose their children, or fear to be blamed for being „*not good enough mothers*".

Other obstacles derive from the law itself, for example when laws for protection against domestic violence do not provide women with quick and direct access to justice, or when criminal law makes prosecution of domestic violence or rape cases dependent on women's initiative to bring the claim to the prosecutor. Furthermore, the majority of laws to protect women against violence in Europe are gender-neutral, and the institutions and mechanisms applying these laws lack gender sensitivity.

Stereotyping and non-responsiveness of the „justice chain" is another barrier that deserves special attention and led to the development of specialized studies in the last few years. A „*stereotype"* is a generalised view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, members of a particular social group.[6] Using gender stereotyping in the judicial system bears particular risks for women, as they may negatively affect the decisions and other outcome of the procedures, in violation of the principles of impartiality and integrity of the justice system. Stereotyping may cause judges to reach a view about cases based on preconceived beliefs. This may distort their perception of the facts, affect their vision of who is a „victim" and lead to the revictimization of complainants. It is also important to understand that the judicial system is a particularly sensitive area for gender stereotyping. This is because of the authority and legitimacy of the source, which may serve to justify stereotypes by awarding the „*stamp of approval of the state*" on prejudice and bias.[7] This is particularly true for final judgments that have repercussion in society. Such judgements have great potential to discourage women participants in proceedings from using further remedies, thereby impeding their access to justice at the national level. Gender-biased final judgements may also deter potential women applicants from entering the judicial system in the first place.

The described obstacles to women's access to justice, although not exhaustive, demonstrate the seriousness, scale and importance of the problem as a systemic issue, and its pervasiveness and impact on substantive equality. It becomes clear that women are revictimized in a vicious circle

[6]http://www.ohchr.org/EN/Issues/Women/WRGS/Pages

[7]S. Cusack, *Eliminating judicial stereotyping - Equal access to justice for women in gender-based violence cases*, 2014. www.opcedaw.wordpress.com.

of inequalities in practice and in the pursuit of justice. Facing such barriers, women seeking to pursue their right to protection from violence experience the well-known „glass ceiling" effect, hampering the real enforcement of their rights.

Stereotyping by the justice system may affect women in several ways. It may impact judges' understanding of the definition of domestic violence, and the context, pattern and severity of domestic violence suffered by women. Stereotypes may also adversely affect the judge's ability to understand power relations with respect to child custody in cases of domestic violence against women, when assessing relations with children and other family members, and the exercise of women's obligations as mothers. Stereotyping may occur in cases of rape and sexual assault, when police or judges blame women for the violence as a result of being potentially promiscuous, or fail to properly apply rules on the burden of proof in cases of discrimination.

Barriers and stereotypes are even stronger when it comes to violence against women from ethnic minorities, women with disabilities, against girls, women refugees and migrant women who have to overcome additional cultural, language or religious barriers.

Here are some examples of case law by international human rights bodies that identified the failure of states to remove barriers faced by women and to ensure their access to justice as a violation of women's human rights.

The CEDAW Committee in the *V.K. v. Bulgaria* case found that the denial of the court to issue a permanent order for protection of a woman victim of domestic violence was based on judicial stereotyping and constituted a violation of the CEDAW Convention. The Committee affirmed that *„… States Parties are accountable for judicial stereotyping that violates CEDAW...*(S)*tereotyping affects women's right to a fair trial and (…) the judiciary must be careful not to create inflexible standards based on preconceived notions of what constitutes domestic or gender-based violence'."* Similarly, in the case *Karen Vertido v. The Philippines* that involved gender stereotyping by the judiciary, in particular harmful myths about rape, the Committee stressed that*"… stereotyping affects women's right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general."* Furthermore in *R.P.B. v. The Philippines*, the

CEDAW Committee urged the state party *„ … to ensure that all criminal proceedings involving rape and other sexual offences are conducted in an impartial and fair manner and free from prejudices or stereotypical notions regarding the victim's gender, age and disability."*[8]

There is also important case law of the ECtHR addressing the failure of states to enable women victims of violence to access justice and to address stereotypical attitudes of the judiciary and other institutions. In the case of *Opuz v. Turkey,* the applicant and her mother had been assaulted and threatened over many years by the applicant's husband, at various points leaving both women with life-threatening injuries. The Court found the violence suffered by the two women was gender-based and in violation of Article 14 ECHR (prohibition of discrimination). It held that the alleged discrimination was not based on the legislation but rather resulted from the general attitude of the local authorities, including the way in which the women were treated at police stations when they reported the violence and from passivity of the judicial system. Excerpts from the judgment are indicative of the importance of the problem:

" *…. Bearing in mind its finding above that the general and discriminatory judicial passivity in Turkey, albeit unintentional, mainly affected women, the Court considers that the violence suffered by the applicant and her mother may be regarded as gender-based violence which is a form of discrimination against women. Despite the reforms carried out by the Government in recent years, the overall unresponsiveness of the judicial system and impunity enjoyed by the aggressors, as found in the instant case, indicated that there was insufficient commitment to take appropriate action to address domestic violence […]."*

The ECtHR used a similar approach in domestic violence cases against the Republic of Moldova (e.g. *Eremia v. Moldova)* in which the passive attitudes of domestic authorities, including the justice system, towards women victims amounted to condoning such violence and reflected a discriminatory attitude towards female victims. A very recent case before

[8]Examples of case law under CEDAW OP where the access to justice for women victims of violence also in the broader sense was involved are: *Isatou Jallow v. Bulgaria*, Communication No. 32/2012; *V.K. v. Bulgaria*, Communication No. 20/2008, UN Doc. CEDAW/C/49/D/20/2008 (2011) (CEDAW); *Karen Tayag Vertido v. The Philippines*, Communication No. 18/2008, UN Doc. CEDAW/C/46/D/18/2008 (2010) (CEDAW); *Fatma Yildirim v. Austria*, Communication No. 6/2005, UN Doc. CEDAW/C/39/D/6/2005 (2007) (CEDAW); *[a]ahide Goekce v. Austria*, Communication No. 5/2005, UN Doc. CEDAW/C/39/D/5/2005 (2007) (CEDAW).

the ECtHR (*Y. v. Slovenia)* adjudicated in 2015 deals with sexual violence against a girl who was assaulted at the age of 14 by an older man. The Court found a violation of Article 8 ECHR (right to respect for private and family life) due to the way in which the criminal proceedings against the applicant's aggressor were conducted. The Court found breaches of the girl's right to personal integrity during the criminal proceedings, because she was cross-examined by the defendant himself during two of the case hearings, which led to her being traumatized.

4. Access to justice for women victims of violence – international standards and case law

4.1 In the framework of the CEDAW Convention

Access to justice for women, including for women victims of violence, is enshrined as a human right in the CEDAW Convention, with corresponding state obligations. The core obligations of states under Article 2 CEDAW include: to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination. The crucial provision of Article 5(a) CEDAW defines the crosscutting obligation of states parties „to modify the social and cultural patterns of conduct of men and women" in an effort to eliminate practices that are „based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". Moreover, Article 15 of CEDAW embodies the principle of women's equality before the law and lists specific obligation to ensure women's equal access to courts and tribunals, as well as their equal protection by the law.

The CEDAW Committee in its practice has taken a principled positon and a comprehensive approach to the issue of access to justice for women, aiming at guaranteeing women a substantive right to access justice, rather than a merely formal right. This position is expressed in the Committee's Concluding Observations and General Recommendations to states parties, and in almost all individual communications dealing with obstacles to women's access to justice, which were declared admissible. Most recently, in July 2015, the Committee adopted General Recommendation No. 33

specifically dealing with women's access to justice. General Recommendation No. 33 elaborates states parties' obligations to overcome obstacles to women's access to justice, which include discriminatory provisions of substantive and procedural laws, lack of knowledge of their rights on behalf of women, poverty, isolation, gender stereotypes and bias against women in the justice system, as well as the existence of plural legal systems. The substantive approach which aims at de facto or substantive equality of women has implications on the availability and accessibility of courts, the quality and accountability of the justice system, capacity-building and education on human rights, and legal aid and representation in court by competent and dedicated advocates. GR 33 highlights state obligations to ensure the gender responsiveness of the justice system, to remove economic and linguistic barriers to justice, to establish one-stop centres, and to focus on the rights of illiterate, rural women, and women with disabilities, among others. States are also obliged to combat stereotypes and gender bias in the justice system and to extend capacity building to actors of the justice system who often interact with the justice system, such as health professionals and social workers.

States can be held accountable for violations of the rights enshrined in the CEDAW Convention, including access to justice, through two procedures under the Optional Protocol to CEDAW (OP CEDAW):[9] 1. a communications procedure allowing submitting communications by or on behalf of individuals or groups of individuals, in relation to claims of violations of rights protected under the Convention to the CEDAW Committee; and 2. an inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of women's rights.

Since the entry into force of the Optional Protocol in 2000, the communications procedure has been extensively used for the protection of women against violence. Interestingly, communications may also be submitted on behalf of individuals or groups of individuals, with their consent, unless the lack of consent can be justified. This clause gives broad access of women to justice at international level. Main conditions and requirements for the communications to be admissible include:[10]

- the state must be party to the Convention and the Protocol;
- the communication must be submitted in writing and may not be anonymous;.

[9] http://www.un.org/womenwatch/daw/cedaw/protocol

[10] Articles 3 and 4 OP CEDAW, Ibid

• domestic remedies must have been exhausted; this rule applies only to remedies that are available, not unduly prolonged and likely to bring effective relief; [11]

•the complaint is not being or has not been examined in its merit by the Committee, nor has it been or is it being examined under another procedure of international investigation or settlement;

• the complaint is compatible with the provisions of the Convention and is not an abuse of the right to submit a communication.

Meeting the admissibility criteria and further substantiation of the complaints are crucial in determining women's success in bringing a communication before the Committee. Therefore, despite the availability of a special model complaint form for the communications procedure[12], it is strongly advisable for women or groups of women who decide to use the procedure to seek the support of a specialized lawyer.

Once the communication submitted, the Committee will examine and consider all information provided in closed meetings. Presuming that the communication has been declared admissible and that violations of the Convention have been identified, the Committee will issue its findings and recommendations and forward them to the complainant and the state party concerned. The so-called „views" of the Committee contain specific recommendations related to the individual case, including recommendations for compensation or reparation commensurate to the violation of the rights and to harm suffered by the victim. In addition, recommendations of a more general nature may be issued in relation to the violations identified, in order to prevent similar violations in the future. The latter are specific and characteristic for the views issued by the CEDAW Committee and make a difference for women who use this mechanism. After issuing individual and general views, the CEDAW Committee has established a procedure to follow-up on the implementation of its views and both, individual and general recommendations. Thus, when using OP CEDAW, women victims of violence can rely on pressure from the UN body and have more guarantees for the payment of compensation/ reparation and for implementation of changes in legislation and policies related to the problems raised by the individual case.

Here are some examples of cases brought by women victims of violence under the Optional Protocol, in which the CEDAW Committee found violations of their rights under the Convention and issued views

[11] A general principle recognized also by the other human rights bodies.

[12] www.ohchr.org/en/hrbodies/cedaw/pages/cedaw

with recommendations to the states parties concerned. It is noteworthy that most cases were brought before the Committee with the support of human rights or women's rights NGOs.

a. Case of ***Goekce v. Austria*** – Communication No. 5/ 2005

The victim's husband, M.G., repeatedly assaulted the victim, S. G., including by choking and threatening to kill her. After moving to a neighbour for safety reasons, Ms S. G. reported the incident to the police who issued a temporary expulsion and order prohibiting her husband from returning to the apartment they shared. The police asked the Public Prosecutor to detain the husband, but the Prosecutor declined to do so. The prosecutor failed to charge M. G. with making a criminal dangerous threat because at that time, the Penal Code required that a threatened spouse had to give authorization to prosecute such a threat. S. G. however had not authorized the Austrian government to prosecute. M. G. was charged with the lesser offense of causing bodily harm, but was acquitted because S. G.'s injuries were deemed too minor.

On December 7, 2002, M. G. fatally shot S. G. in front of their children. S. G. had called the police on the emergency call line a few hours before she was killed, yet no patrol car was sent to the scene of the crime. M. G. was sentenced and sent to serve the sentence of life imprisonment in an institution for mentally disturbed offenders.

The Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice, as representatives of the descendants of the deceased victim, introduced a communication before the CEDAW Committee. They argued that the state party violated its obligations under Articles 1, 2, 3, and 5 because it had failed to actively take all appropriate measures to protect the victim's right to personal security and life, and to treat the perpetrator as an extremely violent and dangerous offender under criminal law.

The authors requested, among others, that the Committee recommend that the full criminal justice system routinely cooperate with organizations that work on behalf of women victims of gender-based violence and make training and education programs on domestic violence for criminal justice personnel compulsory.

After declaring the communication admissible, the Committee concluded that in light of the facts, **the police knew or should have known that the victim was in serious danger and** should have **treated her last call as an emergency. By not responding to the call immediately, the police failed to exercise due diligence to protect the victim.** Furthermore, the Public Prosecutor should have responded to the request by the police to detain M.G.

The recommendations to the government included: a) Strengthen implementation and monitoring of relevant legislation, by acting with due diligence to prevent and respond to such violence, apply sanctions for failure to do so; (b) Vigilantly and speedily prosecute perpetrators of domestic violence and use all criminal and civil remedies available to protect women from violence, emphasizing that perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity; (c) Ensure enhanced coordination within all levels of the criminal justice system and cooperation between the criminal justice system and non-governmental organizations that support women victims of gender-based violence; and (d) Strengthen training and education programmes on domestic violence for the criminal justice system, based on CEDAW, General Recommendation no. 19 and the Optional Protocol.

b. Case of ***V.P.P. v. Bulgaria –*** Communication No. 31/2011

The author, S.V.P, brought this case on behalf of her daughter, V.P.P. The author stated that V.P.P. at the age of 7 years was sexually assaulted by a man who lived in her neighbourhood. The indicted perpetrator admitted he was guilty for fornication and entered a plea bargain to receive a three-year suspended sentence under Article 55 of the Criminal Code. Even though a suspended sentence was not allowed for serious crimes, the court approved a suspended sentence in this case, because the crime was not considered a serious crime at the time it was committed.

On 13 June 2006, the court rejected the author's request to file a civil claim for moral damages under Article 84, paragraph 1 of the Criminal Procedure Code because of the plea bargain. As a result, the daughter received no effective compensation.

S.V.P. filed a separate civil lawsuit for compensation of her daughter's moral damages. The court issued a ruling recognizing the long-term effect of the sexual assault on the daughter, and sentenced the perpetrator to pay 15,000 euros for moral damages. Despite that the existing laws did not allow for the effective execution of the court judgement. Therefore no real compensation from the perpetrator or from the state could be sought. The law did not provide for the possibility to issue a restraining order for victims of sexual crimes after the end of the criminal proceedings.

S. V. P. submitted a communication under the OP CEDAW and claimed that Bulgaria had violated her daughter's rights under Article 1, Article 2, paragraphs (a), (b), (c), (e), and (g), in conjunction with Articles 3 and 5, Article 12 and Article 15 of the Convention.

With respect to V.P.P., the Committee recommended that the state provide reparation, including appropriate monetary compensation, commensurate with the gravity of the violations of her rights.

It also issued, among others, the following general recommendations:

1. That the state **ensure that all acts of violence against women and girls, especially rape, are defined, prosecuted, and punished in accordance with international standards.**

2. That the state amend legal aid legislation to provide aid for the execution of judgments awarding compensation to victims of sexual violence.

3. That the **state provide a mechanism for adequate compensation for moral damages to victims of gender-based violence**.

4. That the state amend criminal legislation to protect victims of sexual violence from re-victimization.

5. That the **state enact and apply health-care protocols and hospital procedures to address sexual violence against women and girls**.

c. Case of ***Isatou Jallow v. Bulgaria –*** Communication 32/2011

I.J. moved from Gambia to Bulgaria after her marriage with A.P., a Bulgarian national. Her husband became abusive toward her and subjected her to physical and psychological violence, including sexual abuse He attempted to force her to take part in pornographic films and pictures. He abused their daughter, M.A.P. as well. I.J. could not speak and write in Bulgarian.

Social workers who were made aware of the abuse called the police and advised Jallow to seek refuge without further guidance. Despite being called to the family home on numerous occasions and evident risks to Jallow and M.A.P, police only issued verbal warnings to A.P as an administrative measure under the Law of the Ministry of Interior. No further measures were taken by authorities.

A.P. filed an application with the Sofia Regional Court alleging that he was a victim of domestic violence and requesting an emergency protection order. After his second application for an order, based only on his declaration/ affidavit / as the Law on Protection from Domestic Violence allows/ he succeeded and was granted also temporary custody of M.A.P. Instead, the complaints of I.J from domestic violence were not taken into account. I.J. was deprived of her daughter and left without any information about her. In this situation I.J., in order to be awarded custody of her daughter, agreed to divorce A.P. by mutual agreement.

I.J. submitted a communication to the Committee on the Elimination of Discrimination against Women (CEDAW Committee) on behalf of

M.A.P. and herself in which she claimed violations by Bulgaria of Articles 1, 2, 3, 5 and 16(1)(c), 16(1)(d), 16(1)(f) and 16(1)(g) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The CEDAW Committee found violations of rights protected under the Convention, namely failure to investigate allegations of domestic violence, failure to take violence allegations into account when issuing an emergency protection order and awarding temporary custody of the child to the father, gender stereotyping and equal rights within marriage and family relations**.**

The Views of the Committee: The CEDAW Committee urged Bulgaria to compensate I. J. and M.A.P. for violating their rights under CEDAW. It also **recommended that the state party adopt measures to ensure that women victims/survivors of domestic violence, including migrant women, have effective access to justice and other services** (e.g., translation services). It also called on the state party to provide regular training on CEDAW and the Optional Protocol and **to adopt legislative and other measures to ensure that domestic violence is taken into account in the determination of custody and visitation rights of fathers.**

d. **Case of *Gonzales Carreno v. Spain – Communication* No. 47/ 2012**

G. C. was a victim of physical and psychological violence by her husband, F.R.C. She filed more than 30 complaints before the police and the courts and repeatedly sought protection orders to keep F.R.C. away from her and her daughter. She also sought a regime of monitored visits and payment of child support. F.R.C. did not comply with child support payments. G.C. initially gave up use of the marital residence, but circumstances changed and she applied for use of the family residence as part of the separation procedure.

The court issued protective orders, but only one included the daughter and it was limited to 2 months. F.R.C. violated other protective orders without legal consequences.

Despite numerous incidents of violence during the year and a half of supervised visits with his daughter, the court entered an order authorizing unsupervised visits, based on a report of social services that did not expressly recommend any changes in the visitation regime.

While on an unsupervised visit F.R.C. killed his daughter and himself. G. C. filed several claims for compensation before all possible instances due to negligence by the administration and judicial authorities but without success.

G. C. brought complaints before the CEDAW Committee and alleged violations of Articles 2(a – f), 5(a) and 16, separately and jointly with Articles 2 and 5.

The Committee found serious violations by focusing, among other, on the consideration **that the best interests of the child must be a central concern and must take into account the existence of domestic violence.** The Committee found that **the authorities applied stereotyped and discriminatory notions when deciding on unsupervised visits.**

The Committee found violations of Article 2(a), 2(b) and (c), (e), 2(f) and 5(a), and Article 16 (1)of CEDAW and recommended the government to provide the victim with appropriate reparations and compensation and to conduct an impartial investigation on failures on state structures. It issued the following general recommendations: take measures so prior acts of domestic violence will be considered when determining custody and visitation; strengthen the application of the legal framework so competent authorities can exercise due diligence, and provide mandatory training for judges and administrative personnel on the application of the legal framework to combat domestic violence. [13]

4.2. In the framework of the ECHR

The protection of women victims from gender-based violence and their access to justice at regional level in Europe is ensured through the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the European Court of Human Rights (ECtHR) in Strasbourg. As opposed to CEDAW, the ECHR is gender-neutral. Therefore, it does not address the violation of human rights of women and the obstacles to their access to justice as violations of specific women's rights, but as violations of several substantive articles of the ECHR and the positive obligations of the state under these provisions. The majority of cases on violence against women brought so far before the ECtHR are about violations of Article 2 (right to life), Article 3 (prohibition of torture), Article 4 (prohibition of slavery and forced labour) and Article 8 (right to respect of private and family life) of the Convention. Women applicants claim violation also of Article 13 of the Convention (effective remedy before a national authority). Another relevant provision is Article 6 (right to a fair

[13]For the summaries of case law in this section and in the section of case law of the ECtHR the summaries provided for the purpose of the Women's Human Rights Training Institute (WHRTI) were partly used.

trial in relation to any civil litigation or criminal charges, including the right to legal assistance). A very important provision in the context of gender-based violence is Article 14, which prohibits discrimination, including sex discrimination, in the enjoyment of the rights and freedoms set out in the Convention. In practice however, the Court has to date only in few cases found separate violations of Article 14 (e.g. in *Opuz v. Turkey* or *Eremia v. Moldova)*. In the majority of cases related violence against women, and especially in cases related to sexual violence against women, the Court does not explicitly recognize such violence as gender-based discrimination. According to a publication issued by the Court[14] this is because of the lack of ability to plead for discrimination based on sex, especially in the case of indirect discrimination, which has to be proven through relevant statistical and research data. At the same time, some scholars criticize this approach for being too strict, arguing that *„the rigid test followed by the Court in the course of examining a claim under Article 14 is not well suited for sex discrimination cases".*[15] It is a challenge for women and their advocates to pass this barrier and a double challenge in the case of sexual violence against women.

Article 35, paragraph 3 of the Convention. However, the application may be declared admissible if the State caused the continuous situation which began prior to ratification and persisted after that date.

In addition to these obstacles of substantive character, due to the fact that violence against women in most cases is not considered to be a form of discrimination, women victims of violence also face formal barriers in accessing justice within the framework of the ECHR. The number of cases before the ECtHR is still extremely high, which leads to delays in proceedings in many cases. Furthermore, over 90 % of all applications are rejected on the grounds of inadmissibility, because they do not fulfil the formal requirements for admissibility. This shows again that it is important for women to be supported by a specialized lawyer knowledgeable also about these procedural requirements.

In order for the application to be admissible, there is a need to provide all the information which is requested in the model application form.[16] In practice, the most important conditions for admissibility are that

[14]Council of Europe, Equal access to justice in the ECHR case- law on violence against women - Report of the Council of Europe, 2015. The report may be downloaded from: www.echr.coe.int (Case-law – Case-law analysis – Case-law research reports).

[15]Ibid.

[16]http://www.echr.coe.int/Pages/home.aspx?p=applicants/oI&c

- complaints to the ECtHR are brought within a period of six months from the date of the final domestic decision, and that domestic remedies have been exhausted.[17]

As far as the exhaustion of domestic remedies is concerned, the applicant has to use all remedies before competent civil, criminal or administrative courts. The ECtHR understands the requirement of exhaustion of domestic remedies in light of generally recognised rules of international law (as is the case for communications under the OP CEDAW). Thus, it is not necessary to use a particular national remedy, if this would be unreasonable in practice and would constitute a disproportionate obstacle to the effective exercise of the right to individual application.

Further requirements for the admissibility of the complaint are:

- The application does not constitute an abuse of the right of application.
- The same matter has not already been brought before the Court or another international body.
- The applicant has the status of a victim
- The state against which the application is directed is a party to the Convention (*ratione personae*).
- The facts have occurred within the territorial jurisdiction of the given State *ratione loci*).
- The acts or facts complained of have occurred after the date of entry into force of the Convention in the respondent state in question (*ratione temporis*)**.**[18]

Even if the application meets all the mentioned requirements, the ECtHR may declare it inadmissible if it assumes that the applicant has suffered no significant disadvantage.

Due to the complexity of the procedure, the Court published detailed instructions for applicants and their lawyers, as well as guides for the applications and on the admissibility criteria.[19]

Below are the summaries of several cases brought by women victims of sexual and domestic violence and the respective judgments of the ECtHR.

[17]Article 35, paragraph 1 ECHR

[18]Article 35, paragraph 3 of the Convention. However, the application may be declared admissible if the State caused the continuous situation which began prior to ratification and persisted after that date.

[19]http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf

Eremia v. R. of Moldova[20]

Facts

Mrs L.E. (applicant) and her two daughters, D. and M. E. had been victims of domestic violence by the husband of L.E. The applicant reported the assaults to the police. A protection order was issued in her favour but was never effectively enforced. The husband of L.E. violated the order on numerous occasions but despite the fact the prosecutor was made aware of this, there was no real reaction. L.E was even pressed by authorities to drop her criminal complaint. This pressure was reinforced by her husband who returned home, assaulted her and threatened to kill her. L.E. was invited to meet with social workers who advised her to reconcile with her husband since she was *„neither the first nor the last woman to be beaten by her husband"*.

The husband admitted he abused L.E. and the two daughters, concluded a plea bargain and asked to be conditionally released from criminal liability. The prosecutor decided that the offence was a *„less serious offence*", the husband had three minors to support, was respected in the community and did not represent a danger to society. Hence the prosecutor suspended the criminal proceedings.

Judgment

The Court found that the failure to effectively implement the existing legislation against domestic violence amounted to a breach of the state's obligations under the ECHR. Namely, the suspension of the criminal investigation in fact protected the aggressive husband from criminal responsibility.

The Court held that the applicant experienced suffering and anxiety amounting to inhuman treatment within the meaning of Article 3. The failure to take adequate measures to protect the daughters as witnesses of their father's assaults was a breach of the obligations regarding respect for private life under Article 8.

The failure of the judicial system and other government agencies to provide an adequate response to serious domestic violence amounted to gender discrimination under Article 14 in conjunction with Article 3. According to the court, the combination of factors, such as failure to investigate, make pressure for the complaint to be dropped, urging the applicant to reconcile and so on *„clearly demonstrates that the authorities' actions … amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the first applicant as a woman."*

[20] http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-119968

After the *Opuz* case, this decision also sets a higher threshold for what is considered adequate action against violence against women.

S.Z. v. Bulgaria[21]

Facts

On 19 September 1999 S.Z., a student aged 22, left Sofia for Blagoevgrad in a car with two young men, who told her that they intended to „sell" her as a prostitute. She was taken to a flat where she was repeatedly beaten and raped by several men for about 48 hours. She managed to escape but in the course of being interviewed by the police, S.Z. attempted to throw herself out of the window.

A criminal investigation was instituted. The applicant identified two of her assailants and also stated that the men were part of a criminal gang involved in human trafficking who wanted to force her into prostitution in Western Europe. Despite that the investigation was closed four times and the case was sent back for further investigation.

In 2007 seven defendants were committed for trial in the Blagoevgrad District Court on charges of false imprisonment, rape, incitement to prostitution or abduction for the purposes of coercing into prostitution. After 22 hearings, by a judgment of 27 March 2012 five of the accused were convicted and given prison sentences and fines but later the sentences were reduced.

The judgment

The Court examined the applicant's complaints solely under Article 3. The Court observed that the criminal proceedings had lasted for over 14 years all in all – an excessively long period, namely the Court found that the lack of diligence on behalf of the authorities had delayed the investigation phase. The Court was not satisfied that such a delay could be explained by the complexity of the case.

Despite the applicant's statements that her assailants were members of a network for trafficking in women for forced prostitution abroad, the authorities had not deemed it necessary to examine the possible involvement of an organised criminal network.

The Court decided that there had been a violation of Article 3 in relation to the re-victimisation of S.Z. due to the excessive length of the proceedings and the numerous court hearings and examinations by the Court.

[21] Application no. 29263/12, judgement from 3 March 2015.

In this case the Court noted that there are recurrent violations in Bulgaria hindering effective investigations and that it is a systemic problem. Namely, the Court observed that it had already, in over 45 judgments, found violations of the obligation to carry out an effective investigation in applications concerning Bulgaria, like delays in the investigation resulting in termination of the prosecution as time-barred.

B.S. v. Spain[22]

Facts

B. .S., a female sex worker of Nigerian origin legally resident in Spain was mistreated physically and verbally on the basis of her race, gender and profession. She claimed that, unlike other sex workers of European origin, she was subject to repeated police checks and fell victim to racist and sexist insults ("*black whore*").

The Judgment

The Court examined the case under the aspect of a breach of a procedural obligations under Article 3 of the Convention in relation to the effectiveness of the national authorities' investigations into the alleged ill-treatment of the applicant. An interesting aspect of *B.S.* is that two third-party interveners – The AIRE Centre and the European Social Research Unit of the University of Barcelona – asked the Court to recognize intersectional discrimination.

The Court found violations of Article 14 and Article 3 of the Convention. Although the Court's reasoning is short and does not use the term „intersectionality," it contains a clear intersectional approach. The Court says:

« *.a.la lumière des éléments de preuve fournis en l'espèce, la Cour estime que les décisions rendues en l'espèce par les juridictions internes n'ont pas pris en considération la vulnérabilité spécifique de la requérante, inhérente à sa qualité de femme africaine exerçant la prostitution* » [23]

[22]Application No. 47159/08, judgment from 24 July 2012

[23] "*in light of the elements of evidence provided in substance, the Court estimates that the decisions of the national jurisdictions did not take into consideration the specific vulnerability of the applicant , inherent to her status of African woman in prostitution*" - translation of the author

Y. v. Slovenia[24]

Facts

The applicant, Y, was born in Ukraine in 1987 and moved to Slovenia with her sister and mother in 2000. At the age of 14 she was repeatedly sexually assaulted by a family friend, X, who was 55 years old at the time. In July 2002, Y's mother filed a complaint with the police and in May 2005, the investigating judge issued a decision to open a criminal investigation concerning X.

For over 3 years, Y. was subjected to examinations and cross-examinations during court hearings. Namely, in September 2008, Y was personally cross-examined by her suspected offender, when she was asked more than a hundred questions, many having been humiliating and offensive. X. was acquitted and the appeals of Y. were rejected.

The decision

The Court found that the state violated Article 3 of the Convention with respect to the long periods of inactivity during the investigation and criminal proceedings. The Court noted that the government had not provided any justification for the delays. The Court found that the way the criminal proceedings concerning sexual abuse against Y were carried out constituted a violation of Article 8 because of the lack of adequate measures taken to protect the applicant's personal integrity. The Court discussed in detail the balance that must be struck between protecting the interests of the defence, particularly the right to call and cross-examine witnesses, while also protecting the rights of victims who are called upon to testify and act as witnesses.

It is important to note that this is the first time that the Court, in a case before it, referred to the Istanbul Convention. This instrument obliges state parties to take legislative and other measures towards the goal of protecting victims' rights and interests, for instance by taking action against intimidation and repeat victimization, enabling them to be heard, and allowing them to testify in the absence of the alleged perpetrator. Furthermore, in relation to the victim status, the Court also referred to the 2012/29/EU Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime. [25] The Directive urges that interviews with victims are to be conducted without undue delay and that

[24]Application No. 41107/10, judgment from 28 May 2015

[25]http://eur-lex.europa.eu/LexUriServ/

medical examinations are to be kept to a minimum. The influence of these new European standards indicates a new development of legal practice in the field of ending violence against women.

In conclusion, it is worth mentioning the role of human rights NGOs and of specialized lawyers cooperating with these organizations in providing support, legal counselling and representation to women victims of violence. This contribution plays an important role in the development of diverse, innovative solutions to individual cases and ever higher standards of protection established by the ECtHR.

5. The way forward towards effective access to justice for women- the benefits of the Istanbul Convention and the role of civil society organizations

The review of the barriers that prevent women from accessing justice at national level and of the opportunities for such access at international level show that these opportunities are conditioned by complex rules and procedures. It entails the need for removing the limitations at both levels. Women's needs and concerns have to be taken into account by the justice system in their countries, and access of women victims of violence to international redress mechanisms has to be alleviated and facilitated by all means.

The Council of Europe's Istanbul Convention and the support offered to women victims in the procedures at national and international level by non-governmental organizations are currently a resource to counterbalance these obstacles.

The Istanbul Convention is the first regional instrument with a specific focus on prevention and protection against violence against women and domestic violence. It represents an achievement also at the global level, as it provides a codification of core principles and good practices in the field of protection of women against violence as severe forms of discrimination. The Istanbul Convention also creates concrete obligations for states to ensure access to justice for women. In this regard, as well as in the other areas, the Convention frames the obligations of states as obligations to achieve the results required, without indicating the specific means to this end. It uses language such as „*… shall take all necessary legislative and other measures…*" or „*…shall ensure….*" which establish even stronger obligations of results upon state parties.

The principles codified and translated into state obligations include the principle of due diligence and of the obligation of the state to ensure and apply co-ordinated responses to VAW and integrated Policies. The effective implementation of these standards will also enhance women's access to justice. For instance, the Convention requires that a system of urgent protection measures is immediately made available to victims, that investigations and judicial proceedings in relation to all forms of violence are carried out without undue delay and that the rights of the victim are taken into consideration during all stages of the procedures. Investigation and prosecution of offences covered by the Convention shall not be fully dependent upon a report or complaint filed by a victim. Furthermore, states have to guarantee legal assistance to victims, including at the international level.

Unfortunately, the Istanbul Convention does not contain a direct mechanism to enable women to bring violations of the rights ensured to the ECtHR. An interesting example in this regard is the Inter-American Convention on Prevention, Punishment and Eradication of Violence against Women (Belem do Para Convention), which provides for direct access to the Inter-American Human Rights Court. Nevertheless, judgments of the ECtHR like in the case of *Y. v. Slovenia* give hope that the Court will be taking into account the Istanbul Convention when dealing with cases related to violence against women and girls. Furthermore, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), that is responsible for monitoring the implementation of state obligations under the Istanbul Convention, will also contribute in monitoring access to justice of women victims of violence.

The review of case law under the OP CEDAW and under the ECHR gives evidence of the fact that many women victims of violence succeeded in bringing their cases thanks to the support of human rights and women's rights NGOs. The latter are specialized in selecting and training committed, gender-sensitive lawyers. At the national level, women's NGOs that are trusted by women victims of violence are crucial for supporting women in accessing justice before domestic courts. In this regard, the Istanbul Convention creates an important obligation for states to guarantee that women victims receive support from NGO counsellors during investigations and judicial proceedings.

A good practice from Austria confirms the important role of NGOs. Amendments to the procedural law introduced the pioneering measure of a legally enshrined right to psychosocial and legal court assistance for all

victims of violent crimes. Its aim is to safeguard the rights of victims and to empower them during legal proceedings. The Austrian government assigned specialised victim support organisations with the implementation. Positive feedback and having increasing numbers of victims of gender-based violence and sexual abuse having recourse to this bear testimony to the success and importance of this legal provision. In 2014 this policy was awarded the Silver Award in the competition of the World Future Council for Policies of the Future in the field of ending violence against women and girls.[26]

The Women's Human Rights Training Institute (WHRTI) is an initiative which started over ten years ago. It was founded in 2004 as an initiative of three partners – the Network of East-West Women from Gdansk, Poland, the Bulgarian Gender Research Foundation (BGRF) and the Centre for Reproductive Rights from New York, USA, as the first-of-its-kind programme in Europe. The WHRTI is coordinated by BGRF and aims at building and developing the capacity of young lawyers from Europe for litigation on women's rights issues. The thematic focus is on three main topics (violence against women, sexual and reproductive health and rights, and employment discrimination), and their intersections and connections with other areas of gender equality and women's rights, as well as multiple discrimination of women. To date, WHRTI has trained over 100 lawyers from over 20 countries. WHRTI provides participants with advanced and in-depth knowledge on women's human rights protection in the three areas noted above. Participants improve their practical skills in writing and advocacy for development of strategic litigation in the region through the use of regional and universal human rights mechanisms. As a result of participating in the training, lawyers brought new litigation on women's rights and non-discrimination in their countries and at the international level, and influenced the case law of international courts and jurisdictions.

This article was a contribution of the author as Thematic paper for WAVE (Women against violence Europe)

[26]www.worldfuturecouncil.org

Highlights of the Obligations of the State and practice of the UN Treaty bodies in the field of Economic, Social and Cultural rights

by Ph.D Plamenka Markova

1. Obligations of States on economic, social and cultural rights

Economic Social and Cultural Rights (ESC) rights like other human rights contain dual freedoms: *freedom from the State* and *freedom through the State*. They have become increasingly well defined in national, regional and global legal systems, in laws and regulations, in national constitutions, and in international treaties. Accepting them as human rights creates legal obligations on States to ensure everyone in the country can enjoy these rights and to provide remedies if they are violated. The obligations of states in relation to economic, social and cultural rights are expressed differently from treaty to treaty. The International Covenant on Economic Social and Cultural Rights (ICESCR) requires States to „take steps" to the maximum of their available resources to achieve progressively the full realization of ESCRs, to guarantee the enjoyment of ESCR without discrimination and to ensure the equal right of men and women to the enjoyment of these rights. Other treaties or constitutions word obligations differently and even include specific actions that States must take such as the adoption of legislation or the promotion of these rights in public policies.

A „traditional" or „generational" approach to human rights protection renders a view where civil and political rights (CPRs) are disconnected from ESCRs the latter being non-justiciable[27]. Of the several arguments advanced in favour of the non-enforceability of ESCRs, the most frequent is an allusion to the text of Article 2 of the ICESCR where it has been argued that ICESCR in general is framed in means and ends and the provisions are expressed as State obligations and not individual rights. Article 2 of the ICESCR provides, „each State Party to the present Covenant undertakes to take steps…to the maximum of its available resources…to

[27]A Fair deal: Justiciability of ESC rights – Human Rights Features, 58th Session of the CHR, April 2002. Available online at: http://www.hrdc.net/sahrdc/hrfchr58/Issue3.htm#A%20fair%20deal

achieve progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

The Committee on ESCRs has repeatedly rejected the suggestion that Article 2 undermines enforceability. It has taken several important steps in insisting that a number of the rights are justiciable, despite the popular misconception that they are not and this is evidenced in various General Comments. General Comment 9 on the domestic applicability of the norms is of particular significance in that it is perhaps the strongest statement from any UN body about the need for states to transform their international obligations into effective remedies.

The ICCPR affirms the „right to life",[28] which has conventionally been interpreted to mean that no person shall be deprived of his or her life in a civil and political sense. According to the Human Rights Committee (HRC) in adopting a General Comment on this issue, this should now be interpreted expansively to include measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics. „[HRC] has noted that the right to life has been too often narrowly interpreted. The expression 'inherent right to life' cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures[29]."

General Comment No. 3 (1990) notably states that „among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system be considered justiciable[30]." Other measures, which may also be considered „appropriate" for the purposes of article 2(1) include, but are not limited to, administrative, financial, educational and social measures.

The Committee further states in Para 4(General Comment 3) that, „while each State party must decide for itself which means are the most appropriate under the circumstances with respect to each of the rights, the „appropriateness" of the means chosen will not always be self-evident. It is therefore desirable that State parties' reports should indicate not only the

[28]ICCPR Article 6(1): "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".

[29]Human Rights Committee, General Comment No 6 adopted at the Sixteenth Session (1982) on Article 6 of the ICCPR.

[30]The nature of State parties Obligations (Article 2, paragraph 1), CESCR General Comment 3.

measures that have been taken but also the basis on which they are considered to be most „appropriate" under the circumstances".

In its General Comment 3, Para 10 the ESCR Committee states that „…a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant. By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2(1) obligates each State party to take necessary steps „to the maximum of its available resources". In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.

On the question of justiciability, General Comment No. 9 also notes that in relation to CPRs, it is „generally taken for granted that judicial remedies are essential… Regrettably the contrary assumption is too often made in relation to economic, social and cultural rights." The Committee concludes „this discrepancy is not warranted either by the nature of the rights or by the relevant Covenant provisions" (paragraph 10).

In interpreting Article 2, the Limburg Principles[31] of the Implementation of Economic, Social and Cultural Rights note that „although the full realisation of the rights recognised in the Covenant is to be attached progressively; the application of some rights can be made justiciable immediately, while other rights can become justiciable over time" i.e. progressive realisation of rights (General Comment 3). The requirement of „progressive realisation" reflects the fact that full realisation of all ESC rights will generally not be able to be achieved in a short period of time.

It is important to note that the „progressive obligation" component of the Covenant does not mean that only once a state reaches a certain level of economic development must the rights established under the Covenant be

[31] The Limburg Principles have largely been accepted by human rights scholars. They have been issued as an official UN Document and have found a mention in several UN Resolutions.

realised. The duty in question obliges all State parties, notwithstanding their level of national wealth, to move towards the realisation of ESC rights. Of these, two are of particular importance: the „undertaking to guarantee" that relevant rights „will be exercised without discrimination" and the undertaking in Article 2(1) „to take steps". The progressive realisation concept thus imposes an obligation to move as expeditiously and effectively as possible towards that goal.

As the Committee points out, numerous provision of the ICESCR are capable of „immediate implementation". These include: articles 3 (equal rights of men and women), 7(a) (i) (fair wages and equal wages for men and women), 8 (right to form trade unions), 10 (3) (special measures for children), 13 (2) (a) (free and compulsory primary education), 13 (4) (freedom to establish educational institutions) and 15 (3) (respect for scientific freedom).

Any suggestion that the provisions indicated are inherently non self-executing i.e. capable of being applied by courts without further elaboration, would seem to be difficult to sustain. The Committee has noted that while the general approach of each legal system needs to be taken into account, there is no Covenant right which could not, in the great majority of systems, be considered to possess at least some significant judiciable dimension[32].

One of the concerns in the realisation of ESCRs is the extent to which the judiciary can discharge its constitutional mandate without unduly interfering with the functions of the other branches of the government. It is often argued that adjudicating economic, social and cultural rights is not an appropriate or legitimate role for courts since it involves making policy decisions that are properly the function of the other branches of the government. This argument fails to acknowledge that courts routinely adjudicate on matters of public policy anyway. This is no way implies that courts will or should take over policy making from governments. Rather, in adjudicating ESCRs just as CPRs, courts can influence or shape policy formulated by the executive branch of the government and impact on the realisation of economic and social rights.

As held by the South African Constitutional Court in the TAC case, the primary duty of courts is to the Constitution and the law, „which they must apply impartially and without fear, favour or prejudice." The Constitution requires the State „to respect, protect, promote, and fulfil the

[32]The Domestic Application of the Covenant (paragraph 10), CESCR General Comment 9, December 1998

rights in the Bill of Rights". Where the State policy is challenged as inconsistent with the Constitution, courts have to consider whether in formulating and implementing such policy the State has given effect to its constitutional obligations. If it should hold in any given case that the State has failed to do so, it is obliged by the Constitution itself. In so far as that constitutes an intrusion into the domain of the executive that is an intrusion mandated by the Constitution itself[33].

The Committee on Economic, Social and Cultural Rights has dealt with this objection in its General Comment No. 9, paragraph 10, in which it stated, „it is sometimes suggested that matters involving the allocation of resources should be left to the political authorities rather than the courts. While the respective competences of the various branches of government must be respected, it is appropriate to acknowledge that courts are generally already involved in a considerable range of matters, which have important resource implications. The adoption of a rigid classification of ESCRs, which puts them, by definition, beyond the reach of courts, would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.

As emphasised by the Vienna Declaration and Program of Action- adopted by the Vienna World Conference on Human Rights in 1993- and elaborated upon by the South African Constitutional Court, „CPRs and ESCRs are interdependent, indivisible and interrelated. The indivisibility of CPRs and ESCRs is quite simply a matter of common sense; human dignity, freedom and equality" are denied to those who have no food, clothing or shelter".

This indivisibility is further exemplified by the Human Rights Committee in its various General Comments where it has rejected any suggestion of a sharp divide between CPRs and ESCRs. In paragraph 5 of General Comment 6 the Human Rights Committee states[34] : „. . . the Committee has noted that the right to life has been too often narrowly interpreted. The expression 'inherent right to life' cannot properly be understood in a restrictive manner, and the protection of this right requires

[33]2002 (10) BCLR 1033 (CC) at para 99

[34]Right to life, CESCR General Comment 6, 1982. Available at : http://www.unhchr.ch/tbs/doc.nsf/(Symbol)84ab9690ccd81fc7c12563ed0046fae3?Opendocument

that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics."

The role and responsibility of the State has also been elaborated upon by the Maastricht Guidelines, several of which deal with remedies and other responses to violations ESCRs. The Maastricht Guidelines emphasise that the overall responsibility for human rights violations rests upon the State and the State accordingly is obliged to provide effective and necessary remedies.

The Guidelines also draw attention to the fact that economic, social and cultural rights are justiciable, and that victims should be able to seek and have remedies at the municipal, regional and international levels (Guideline 22). Consequently all victims of violations are entitled to restitution, compensation, rehabilitation and satisfaction or guarantees of non-repetition (Guideline 23). Furthermore, national judicial and other organs should ensure that any pronouncements they make do not result in the official sanctioning of a violation of an international obligation and National Human Rights Institutions should be aware that economic, social and cultural rights are not inferior to civil and political rights (Guideline 25)[35].

It is still too early to assess whether the Maastricht Guidelines will receive similar support and acceptance as the Limburg Principles. Although the principle of indivisibility has been repeatedly invoked, the reality is that ESC rights have yet to be recognised as legal rights at the same level as CPRs.

It is an urgent necessity to consider how the provisions of economic, social and cultural rights can be translated into concrete action at the national level. The question to be addressed is therefore whether the concept of good governance can function as a supporting mechanism in efforts to increase legal protection of individuals ESCRs.

2. CEDAW in the framework of international treaties dealing with ESCRs

The CEDAW Convention was forged through formal legal processes. It is clearly a constricted instrument. CEDAW adopts a minimalist liberal agenda, focussing, its name suggests, primarily on the equality of men and women.

[35]See also CESCR General Comment No. 10 on the Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights, UN Doc. E/C.12/1998/25

CEDAW also encapsulates counter-hegemonic values that potentially present a challenge to the standard human rights framework:

-it acknowledges diversity (for example, in its reference to rural women);- It locates human rights and discrimination within a cultural context; adopts an expansive approach to rights that recognizes the equal importance of ESC rights and development rights; recognizes that the empowerment of women necessitates structural reform.

CEDAW is the first and the only human rights treaty that obliges the States Parties to modify and abolish social attitudes and cultural patterns and practices which are based on the idea of the inferiority or the superiority of either sex or on stereotyped roles for men and women. This norm entails an obligation to combat gender-based stereotypes in social and cultural life and to eliminate them in law and public policies, both of which State Parties should fulfil loyally, with due diligence, in good faith and without delay.It further obliges States Parties to redress instances of both, direct and indirect discrimination against women; to recognize, prohibit and eliminate intersecting forms of discrimination and redress their compounded negative impact on women concerned, improve the position of women and achieve de facto/substantive gender equality by all appropriate measures and without delay, including through compensating for past discrimination and different treatment of women concerned her sex or on stereotyped roles for men and women.The obligation to 'pursue by all appropriate means', gives a State Party certain extent of discretion in devising a policy that will be appropriate for its particular national framework and that can respond to the particular obstacles and resistance to equality of women and men. States are obliged to achieve certain results by whatever means are determined states to be appropriate-the principle of equality of women and men in all domains covered by CEDAW must be realized in practice; to pursue an appropriate policy without delay makes it clear that their obligation is of an immediate character.

Prior to the introduction of the Optional Protocol there was no mechanism through which individuals could complain to the Committee about the violation of their rights under CEDAW, leading Theodor Meron to describe it as a second-class instrument.[36] It seems that during the drafting of CEDAW there was simply little thought given to the matter of establishing

[36]Meron, 'Enhancing the Effectiveness of the Prohibition of Discrimination Against Women', 84 *AJIL* (1990) 213. See also Connors, 'Optional Protocol', in M. Freeman, C. Chinkin, and B. Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (2012), at 607, 609.

an individual complaints mechanism, a standard feature of most human rights treaties.[37] Instead, a reporting procedure and an inter-state complaints mechanism were relied upon to secure states' compliance with their treaty obligations. The flaws and weaknesses of such enforcement systems are now well known.[38] In common with other UN human rights treaties, CEDAW's inter-state complaints mechanism has never been used. As for the reporting procedure, this is generally accepted as a means of reviewing national implementation rather than an enforcement mechanism. Poor compliance by states with reporting obligations is notorious under all international human rights treaties, and CEDAW has been no exception. Furthermore, CEDAW is encumbered with the honour of being the most heavily reserved international human rights treaty,[39] indicating weak adherence to its normative principles. The Optional Protocol that entered into force on 22 December 2000 „is the result of delicate negotiation". Parties agree to recognize the competence of the Committee to consider complaints alleging violations of the Convention's rights. Article 2 of the Optional Protocol allows Communications to be „submitted on behalf of individuals or groups of individuals, with their consent, unless it can be shown why that consent was not received". This proved to be one of the most controversial provisions during the drafting process. While NGOs called (unsuccessfully) for standing in their own right, states were anxious about any expanded role for NGOs. Divisions over this issue almost derailed the drafting process; while relatively relaxed rules of standing were ultimately included, Article 2 has attracted a number of interpretive statements.

The inclusion of an inquiry procedure – a relative innovation modelled on Article 20 of the Convention against Torture – was a further subject of controversy. The Committee is empowered to inquire into and report on „reliable information indicating grave or systematic violations by a State Party" of the Convention. While states may opt out of this obligation, only four have done so. Compromises reached during the drafting process also

[37]Byrnes and Connor, 'Enforcing the Human Rights of Women: A Complaints Procedure for the Women's Convention?', 21 *Brooklyn J Int'l L* (1996) 679, at 684.

[38] For a first-hand account of the difficulties faced by the Women's Committee in enforcing the Convention in its early years see Evatt, 'Finding a Voice for Women's Rights: The Early Days of CEDAW', 34 *George Washington Int'l L Rev* (2002) 515.

[39]Cook, 'Reservations to the Convention on the Elimination of all Forms of Discrimination against Women', 30 *Virginia J Int'l L* (1990) 643, at 643.

resulted in states not being bound to remedy violations, but rather to give „due consideration" to the Committee's views and recommendations. However, this was ameliorated somewhat by Article 7(5), which authorizes CEDAW to adopt follow-up procedures in respect of communications. Further, Article 5 empowers the Committee to adopt interim measures to prevent „irreparable damage" to a victim.

The Optional Protocol, therefore, was a compromised but nonetheless welcome development, providing an enhanced opportunity for the Women's Committee to discover its voice. Reilly argues that human rights 'must be understood as continually contested and (re)constituted through concrete, bottom-up struggles in local-global nexuses where the universal and the particular meet'.[40] CEDAW's individual complaints procedure locates it ideally in a space that vacillates between the particular and the universal, the global and the local, the periphery and the centre. This, I suggest, opens up a potentially exciting and creative space for the re-imagining of women's rights.

The Case Law of the Women's Committee on ESCRs

If the Women's Committee has blazed a trail in communications alleging gender-based violence and interferences with women's physical autonomy, it has been far less sure-footed in other areas of discrimination. The first communication the Committee delivered views on was B.J. v. Germany,[41] in which the author complained of gender-based discrimination under the statutory regulations governing the legal consequences of divorce and in the reallocation of pension entitlements and maintenance payments. Having tried unsuccessfully to resolve her complaints over a number of years before domestic courts, she further argued that the 'risks and stresses' of divorce proceedings are unilaterally carried by women. While the communication was held by the majority to be inadmissible for failure to demonstrate exhaustion of domestic remedies, two dissenting members considered that judicial proceedings had been unreasonably prolonged, recognizing that the author continued to live 'without a regular, reliable income, even five years after the divorce that took place against her will'.[42] Certainly some commentators have

[40]N. Reilly, *Women's Human Rights: Seeking Gender Justice in a Globalizing Age* (2009), at 37–38

[41]Communication No. 1/2003, UN Doc. CEDAW/C/36/D/1/2003 (14 July 2004).

[42]Dissenting opinion by Krisztina Morvai and Meriem Belmihoub-Zerdani.

expressed disappointment in the majority's failure to adopt a more gendered approach to admissibility.[43]

The author in *Nguyen v. The Netherlands*[44] complained under Article 11(2)(b) that the level of maternity leave payment awarded to women who are both self-employed and also in part-time salaried employment was discriminatory. In determining that there was no violation of the Convention (the only admissible case in which it has so far done so), the Committee resorted to a tool forged by other human rights tribunals to minimize states parties' obligations: 'the Convention leaves to States parties a certain margin of discretion to devise a system of maternity leave benefits to fulfil Convention requirements'.[45] Three dissenting members argued that the complaint potentially revealed a form of indirect discrimination; but in the absence of data demonstrating that women are more likely than men to have a mixed income base, the Committee felt helpless to act.

In *Kayhan v. Turkey*,[46] the author was dismissed from her teaching position because she wore a headscarf. It would have been fascinating to hear the Committee's views on the merits of this communication, given the approach taken by the European Court of Human Rights in its *Leyla Sahin v. Turkey*[47] judgment addressing similar facts. However, in perhaps what is one of the Committee's most disappointing decisions to date, it declared the communication inadmissible because the author had not raised the issue of sex discrimination in relation to her dismissal before national courts. Facio has argued that it was 'quite disconcerting' for the Committee to base its admissibility decision on an argument not even raised by the state party.[48]

While the above cases add little, if anything, to our understanding of the economic rights of women, a more recent decision indicates that the Committee may be gaining greater confidence in this area. *In T.P.F v. Turkey*,[49]

[43]Connors, *supra* note 4, at 639. See also A. Facio, *The Optional Protocol as a Mechanism for Implementing Women's Human Rights: An Analysis of the First Five Cases Under the Communications Procedure of OP-CEDAW*, IWRAW Asia Pacific Occasional Papers Series No. 12 (2008).

[44]Communication No. 3/2004, UN Doc. CEDAW/C/36/D/3/2004 (29 Aug. 2006).

[45]*Ibid.,* at para. 10.2.

[46]Communication No. 8/2005, UN Doc. CEDAW/C/34/D/8/2005 (2006).

[47]App. No. 44774/98, *Leyla Sahin v. Turkey*, Judgment of 10 Nov. 2005 (2007) 44 EHRR 5 (Grand Chamber).

[48]See A. Facio, *The Optional Protocol as a Mechanism for Implementing Women's Human ights: An Analysis of the First Five Cases Under the Communications Procedure of OP-CEDAW*, IWRAW Asia Pacific Occasional Papers Series No. 12 (2008).p.40

[49]Communication No. 28/2010, UN Doc. CEDAW/C/51/D/28/2010 (13 Apr. 2012

the author claimed that she was dismissed from her job on spurious grounds, ostensibly for 'inappropriate conduct'. While her legal claim before domestic tribunals was largely successful, it had not been found that she was the subject of sexual discrimination in spite of the explicit gender dimension to her claim. In finding that Turkey had violated a number of Articles of the Convention and in calling upon it to improve implementation of its labour laws, the Committee reminded states parties of their obligation to 'modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and consequence of discrimination against women'.[50]

Medvedeva v. Russia[51]. Medvedeva, graduated as a navigation officer, was selected by a private company to work at the helm of a boat. She was subsequently rejected with the explanation that hiring her would contradict Article 253 of the Labour Code and Government Regulation no.162 which details the occupations women are not permitted to do or are restricted in doing. She brought her case to CEDAW, arguing that her rights had been violated under the Convention.

In its findings, the Committee said that the blanket prohibition, which applies to all women regardless of their age, marital status, ability or desire to have children, constituted a violation of Ms. Medvedeva's rights to have the same employment opportunities as men and to freely choose her profession and employment.CEDAW, which has repeatedly criticised countries that have lists of occupations prohibited to women, called on Russia to:

- Review and amend Article 253 of the Labour Code;
- Periodically revise, amend and reduce the list of restricted or prohibited occupations and sectors established by Regulation No. 162 to ensure they apply strictly to protecting maternity and to providing special conditions for pregnant women and breastfeeding mothers;
- Promote and facilitate the entry of women into these jobs by improving working conditions and adopting temporary special measures to encourage women's recruitment in these sectors.

Elisabeth de Blok et al. v. The Netherlands[52].The Committee on the Elimination of Discrimination against Women found in its views that the

[50]*Ibid.,* at para. 8.8.

[51]Communication No. 60/2013 UN Doc. CEDAW/C/63/D/60/2013

[52]Communication No. 36/2012 UN Document CEDAW/C/57/D/36/2012

State party had violated their rights under article 11(2)(b) of the Convention on the Elimination of All forms of Discrimination Against Women by removing the existing maternity leave scheme applicable to self-employed women up to 2004. The Committee concluded that the State has put into effect direct sex and gender-based discrimination against women. The Committee recommended that the State party provide reparation, including monetary compensation, for the loss of maternity benefits. The Committee noted that the State Party amended its legislation in June 2008 to ensure that a maternity leave scheme is available also to self-employed women. However, the Committee invited the State party to address and redress the situation of women, who are self-employed and gave birth between 1 August 2004 and 4 June 2008, when no compensation scheme for self-employed women was in place.

The CEDAW Convention has the potential to assert itself as a major voice contributing to the re-shaping of women's rights. At present, the particular contribution that CEDAW is likely to make appears to be in the following areas: non-state actors' participation in norm creation; articulating states' positive obligations under human rights treaties; addressing systemic violations of women's rights; addressing intersectional discrimination; condemning gender stereotypes. To these areas the Committee could have much to add in the coming years.

Improving the Access to Justice for Women – Victims of Sexual Violence

by *Natasha Dobreva - lawyer*

Obstacles to access to justice for women.

Access to justice starts with access to a lawyer, therefore, the lesser obstacles women have in finding a lawyer, the lesser obstacles they have in accessing justice in general. Lawyers, however, are either expensive or unexperienced. The States guarantee free legal aid to vulnerable groups of society, but they do not guarantee high quality of the legal aid. Although specialization can be acquired either during the university education or via post-university trainings, in Bulgaria neither of these opportunities is abailable. The law faculties in the country do not offer „Human Rights Law" or „Women's Rights Law" as a compulsory subject in the agenda. Furthermore, the Bar Associations do not offer specialized training on women's rights for attorneys. As a result, the state funded legal aid in Bulgaria can by no means provide a specialized legal aid to victims of human rights violations. Non-governmental organizations, through their legal defense programs, are the only actor in the country which can guarantee both free and qualified legal aid.

Access to justice also strongly depends on access to a sensitive prosecutor. Traditionally, prosecutors in Bulgaria do not recognize domestic violence as a serious endangering act, but as a private matter. Also, prosecutors would not open criminal proceedings upon a complaint submitted by a sex worker, just the contrary, chances are high to prosecute the sex worker her/himself for „immoral activity". The sole fact that sex work is not regulated in Bulgaria automatically cuts sex workers' access to justice, due to the reasonable fear from self-incrimination. In 2017, for the first time in Bulgaria the competition for the job of prosecutor included questions from the field of Human Rights Law.[53]

Finally, access to justice, understood as a well-substantiated judgment with relevant and sufficient reasons addressing the alleged violations,

[53] http://legalworld.bg/61515.821-kandidati-za-mladshi-prokurori-otgovariaha-na-vyprosi-po-pravoto-na-es.html

implies trained judges. Again, non-governmental organizations are the only actor in the country which provides training of judges on women's rights.

Ensuring access to justice for women – **the role of international litigation**, with focus on litigation before the ECtHR. **Compilation of summaries of relevant case law of the ECtHR**.Analysis and comparison of the effectiveness.

Violence against women falls under the scope of Articles 3, 4 and 8 of the European Convention on Human Rights and includes issues such as sexual assault, human trafficking, beating, forced examination, secondary victimization etc. Below are examples of the States' negative and positive obligations under these articles in the context of violence against women.

Obligation to refrain from acts of torture (negative obligations of police officers)

Y.F. v. Turkey (application no. 24209/94)

In October 1993 the applicant and his wife were taken into police custody on suspicion of aiding and abetting the PKK (Workers' Party of Kurdistan), an illegal organisation. The applicant's wife was held in police custody for four days. She alleged that she had been kept blindfolded and that police officers had hit her with truncheons, verbally insulted her and threatened to rape her. She was examined by a doctor and taken to a gynaecologist for a further examination. The police officers remained on the premises while she was examined behind a curtain. In March 1994 the applicant and his wife were acquitted. In 19 December 1995 three police officers were charged with violating the applicant's wife's private life by forcing her to undergo a gynaecological examination. They were acquitted in May 1996. The applicant alleged that the forced gynaecological examination of his wife had breached Article 8 (right to respect for private life) of the Convention.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It considered that, given her vulnerability in the hands of the authorities who had exercised full control over her during her detention, the applicant's wife could not be expected

to have put up resistance to the gynaecological examination. There had accordingly been an interference with her right to respect for her private life. The Turkish Government had failed to demonstrate the existence of a medical necessity or other circumstances defined by law. While the Court accepted their argument that the medical examination of detainees by a forensic medical doctor could be an important safeguard against false accusations of sexual harassment or ill-treatment, it considered that any interference with a person's physical integrity had to be prescribed by law and required that person's consent. As this had not been the case here, the interference had not been in accordance with the law.

Ýzci v. Turkey (judgment of 23 July 2013)

This case concerned a Turkish woman who complained in particular that she had been attacked by the police following her participation in a peaceful demonstration to celebrate Women's Day in Istanbul and that such police brutality in Turkey was tolerated and often went unpunished.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention both in its substantive and procedural aspect, and a **violation of Article 11** (freedom of assembly) of the Convention. It considered in particular that, as in many previous cases against Turkey, the police officers had failed to show a certain degree of tolerance and restraint before attempting to disperse a crowd which had neither been violent nor presented a danger to public order, and that the use of disproportionate force against the demonstrators had resulted in the injuring of the applicant. Moreover, the failure of the Turkish authorities to find and punish the police officers responsible raised serious doubts as to the State's compliance with its obligation under the Convention to carry out effective investigations into allegations of ill-treatment. Finally, the use of excessive violence by the police officers had had a dissuasive effect on people's willingness to demonstrate.

In this case the Court reiterated that a great number of applications against Turkey concerning the right to freedom of assembly and/or excessive use of force by law enforcement officials during demonstrations were pending. Considering the systemic aspect of the problem, it therefore requested the Turkish authorities to **adopt general measures**, **in accordance with** their **obligations under Article 46** (binding force and execution of judgments) of the Convention, in order to prevent further similar violations in the future.

Obligation to avoid secondary victimization (negative obligations of judges)

W. v. Slovenia (no. 24125/06)

This case concerned criminal proceedings against a group of men who had raped the applicant in April 1990, when she was 18 years old. The applicant complained in particular that the long delays in the criminal proceedings had been in breach of the State's obligation to effectively prosecute the criminal offences committed against her. While she was awarded compensation at national level for the distress she suffered as a result of the lengthy proceedings, she considered that the amount of 5,000 euros paid to her could not be regarded as sufficient redress.

The Court held that there had been a procedural **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention, finding that the criminal proceedings regarding the applicant's rape did not comply with the procedural requirements imposed by Article 3.

Y. v. Slovenia (no. 41107/10)

This case concerned a young woman's complaint about the criminal proceedings brought against a family friend, whom she accused of repeatedly sexually assaulting her while she was a minor, alleging that the proceedings were traumatic for her. The applicant complained of breaches of her personal integrity during the criminal proceedings and in particular that she had been traumatised by having been cross-examined by the defendant himself during two of the hearings in her case.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the Slovene authorities had failed to protect the applicant's personal integrity during the criminal investigation and trial. In particular, they should have prevented the alleged assailant from using offensive and humiliating remarks while cross-examining her during the trial. The authorities had admittedly taken a number of measures to prevent the applicant from being traumatised further. However, given the sensitivity of the matter and her young age at the time when the alleged sexual assaults had taken place, a particularly sensitive approach would have been required. As regards in particular the nature of the cross-examination by the defendant himself, the Court noted that, while the defence had to be allowed a certain leeway to challenge the applicant's credibility, cross-examination should not be used as a means of intimidating or humiliating witnesses.

Obligation to provide an effective legal framework

In **M.C. v. Bulgaria (no. 39272/98)**the applicant, a 14 year-old girl, claimed that she had been raped by two men. An investigation had been conducted by the police but the prosecutor had ultimately discontinued the proceedings on the ground that there was insufficient evidence of rape, and in particular of coercion. In its judgment, the Court identified certain shortcomings in the investigation but also considered that undue emphasis had been given to the lack of direct evidence of the use of violence. In that respect the approach of the State essentially amounted to a finding that the definition of the offence in domestic law required proof of physical resistance on the part of the victim. The Court felt that this was not broad enough to provide sufficient protection against other sexual acts of a non-consensual nature. Referring to comparative studies which showed a trend towards defining rape more widely than in the past, the Court expressed the view that the State's positive obligations „must be seen as requiring the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim". In other words, in the context of the State's positive obligations to adopt „measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves," it may not be enough for the State to establish that a criminal offence is recognised and effectively prosecuted. The Court may also examine whether the content of the law and the elements of the offence are in conformity with the wider requirements of the Convention.

Rantsev v. Cyprus and Russia (no. 25965/04)

The applicant was the father of a young woman who died in Cyprus where she had gone to work in March 2001. He complained that the Cypriot police had not done everything possible to protect his daughter from trafficking while she had been alive and to punish those responsible for her death.

The Court noted that, like slavery, trafficking in human beings, by its very nature and aim of exploitation, was based on the exercise of powers attaching to the right of ownership; it treated human beings as commodities to be bought and sold and put to forced labour; it implied close surveillance of the activities of victims, whose movements were often circumscribed; and it involved the use of violence and threats against victims. Accordingly the Court held that trafficking itself was prohibited by Article 4 (prohibition of slavery and forced labour) of the Convention. It concluded that there

had been a **violation** by Cyprus **of** its **positive obligations arising under Article 4** of the Convention on two counts: first, its failure to put in place an appropriate legal and administrative framework to combat trafficking as a result of the existing regime of artiste visas, and, second, the failure of the police to take operational measures to protect the applicant's daughter from trafficking, despite circumstances which had given rise to a credible suspicion that she might have been a victim of trafficking.

Obligation to conduct an effective official investigation

S.Z. v. Bulgaria (no. 29263/12)

The applicant complained of the ineffectiveness of the criminal proceedings for the false imprisonment, assault, rape and trafficking in human beings perpetrated against her. She complained in particular of the lack of an investigation into the possible involvement of two police officers and the failure to prosecute two of her assailants, and of the excessive length of time taken to investigate and try the case. She also submitted that the excessive length of the criminal proceedings, in as far as they concerned her claim for damages, had infringed the requirements the right to a fair hearing within a reasonable time. She submitted, lastly, that her case was illustrative of a certain number of recurring problems regarding the ineffectiveness of criminal proceedings in Bulgaria.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the shortcomings in the investigation carried out into the illegal confinement and rape of the applicant, having regard in particular to the excessive delays in the criminal proceedings and the lack of investigation into certain aspects of the offences. The Court found it to be a cause of particular concern that the authorities had not deemed it necessary to examine the applicant's allegations of the possible involvement in this case of an organised criminal network of trafficking in women.

The Court also observed in this case that it had already, in over 45 judgments against Bulgaria, found that the authorities had failed to comply with their obligation to carry out an effective investigation. Finding that these recurrent shortcomings disclosed the existence of a systemic problem, it considered, under **Article 46** (binding force and execution of judgments) of the Convention, that it was incumbent on Bulgaria, in cooperation with

the Committee of Ministers of the Council of Europe, to decide which general measures were required in practical terms to prevent other similar violations of the Convention in the future.

L.E. v. Greece (no. 71545/12)

This case concerned a complaint by a Nigerian national who was forced into prostitution in Greece. Officially recognised as a victim of human trafficking for the purpose of sexual exploitation, the applicant had nonetheless been required to wait more than nine months after informing the authorities of her situation before the justice system granted her that status. She submitted in particular that the Greek State's failings to comply with its positive obligations under Article 4 (prohibition of slavery and forced labour) of the Convention had entailed a violation of this provision.

The Court held that there had been a **violation of Article 4** (prohibition of slavery and forced labour) of the Convention. It found in particular that the effectiveness of the preliminary inquiry and subsequent investigation of the case had been compromised by a number of shortcomings. With regard to the administrative and judicial proceedings, the Court also noted multiple delays and failings with regard to the Greek State's procedural obligations.

Irina Smirnova v. Ukraine (no. 1870/05)

This case concerned the systematic abuse carried out against the applicant by a criminal group and the alleged failure of the Ukrainian authorities to prevent it.

The Court held that there had been a **violation of Articles 3** (prohibition of inhuman or degrading treatment) of the Convention. It noted in particular that the repeated and premeditated nature of the verbal attacks to which the applicant was subjected coupled with the incidents of physical violence by a group of men against a single senior woman reached the threshold of severity required to come within the ambit of Article 3 and engaged the State's positive duty to set in motion the protective legislative and administrative framework. Although the principal offenders were prosecuted and sentenced to significant prison terms, it nonetheless took the Russian authorities over twelve years to resolve the matter. In view of the extreme delays in instituting and conducting the criminal proceedings, the Court found that Russia had failed to discharge its positive obligation under Article 3 of the Convention.

Relationship between Article 3 procedural obligations and Article 13 (right to an effective remedy)

In respect of Article 3 claims, where an individual has an arguable claim that he has been tortured or subjected to serious ill-treatment by the State, the notion of „effective remedy" under Article 13 entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigation procedure. There is clearly then a degree of overlap with so-called 'procedural' obligations of the State under Article 3 itself, which also require there to be, among other things, an effective investigation of complaints of ill-treatment. Given that the procedural requirements under both Articles 3 and 13 are broadly the same, it might be advisable to plead both Articles 3 and 13 whenever a 'procedural' issue arises. The following cases are examples of the operation of Article 13 in Article 3 cases:

◊ In **Aydin v. Turkey (1997),** the Court noted that applicant was entirely reliant on the public prosecutor and the police acting on his instructions to assemble the evidence necessary for corroborating her complaint. The public prosecutor had the legal powers to interview members of the security forces at Derik gendarmerie headquarters, summon witnesses, visit the scene of the incident, collect forensic evidence and take all other crucial steps for establishing the truth of her account. His role was critical not only to the pursuit of criminal proceedings against the perpetrators of the offences but also to the pursuit by the applicant of other remedies to redress the harm she suffered. The Court noted that the ultimate effectiveness of those remedies depended on the proper discharge by the public prosecutor of his functions. The Court noted that the public prosecutor who was responsible for the investigation failed to ascertain who might have witnessed the victim's arrest. He took no meaningful steps to ascertain whether the Aydýn family were held at the police station as alleged. No police officers were questioned at critical stages of the investigation. The prosecutor readily accepted the police denial that the Aydýn family had been detained, and was prepared to accept at face value the reliability of the entries in the custody register. Had he been more diligent, he would have been led to explore further the reasons for the low level of entries for the year 1993 given the security situation in the region. The prosecutor's deferential attitude towards the police was a particularly serious shortcoming in the investigation. The medical investigations centred on whether the victim had lost her virginity when it should have focussed on whether she had been raped. These factors, together with others, led the Court to conclude that the investigation had not been effective.

◊ **O'Keeffe v. Ireland,** judgment of 28 January 2014 (Grand Chamber) This case concerned the question of the responsibility of the State for the sexual abuse of a schoolgirl, aged nine, by a lay teacher in an Irish National School in 1973. The applicant complained in particular that the Irish State had failed both to structure the primary education system so as to protect her from abuse as well as to investigate or provide an appropriate judicial response to her ill-treatment. She also claimed that she had not been able to obtain recognition of, and compensation for, the State's failure to protect her. The Court held that there had been a **violation of Article 3** (prohibition of inhuman and degrading treatment) and of **Article 13** (right to an effective remedy) of the Convention concerning the Irish State's failure to protect the applicant from sexual abuse and her inability to obtain recognition at national level of that failure.

Role of international litigation

Litigation before the ECtHR is significant for its strong implementation mechanism. In accordance with Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Committee of Ministers supervises the execution of judgments of the European Court of Human Rights. This work is carried out mainly at four regular meetings (DH meetings) every year. The Committee of Ministers' essential function is to ensure that member states comply with the judgments and certain decisions of the European Court of Human Rights. The Committee completes each case by adopting a final resolution. In some cases, interim resolutions may prove appropriate. Both kinds of Resolutions are public. Applicants can access the Resolutions adopted concerning their case here: http://hudoc.exec.coe.int.

In 2015, the Committee of Ministers started supervision over a landmark judgment regarding violence against women – **S.Z. v. Bulgaria**

(no. 29263/12). S.Z. v. Bulgaria is a leading case in a group of cases classified for their indicator of a structural problem in the country. The cases in this group concern ineffective investigations of murder, bodily harm, rape, unlawful confinement and incitement to prostitution (**procedural violations of Articles 2 and 3**). The European Court found a „systemic problem" of ineffectiveness of criminal investigations in Bulgaria with regard to shortcomings which affect investigations regardless of the identity of the alleged author of the facts and which are revealed by a large number of repetitive cases concerning members of law enforcement agencies or private individuals. The Court urged the authorities to identify, in co-operation with the Committee of Ministers, the different causes of these shortcomings and the general measures capable of preventing similar violations.

Following the S.Z. judgment, the Bulgarian authorities adopted and elaborated certain reforms and are currently carrying out activities to enhance their analysis of the causes of the systemic problem identified by the Court. On 20 October 2016 the Bulgarian Government submitted revised action plan in the S.Z. group of cases. It proposed the following general measures to ensure the effectiveness of investigations:

- ensuring timely and effective criminal investigations: Since 2006, the domestic law has contained time-limits within which the investigation must be completed and a reform in 2016 laid down a deadline for completing the preliminary inquiry (the stage preceding the investigation). In addition, a Bill of 2016 provided for the introduction of an acceleratory remedy applicable at all stages of criminal proceedings and also available to victims of a criminal offence. Finally, the authorities foresee examining the advisability of introducing judicial review of the refusal by a prosecutor to open an investigation and to analyse the practice in the area of judicial review of decisions by the prosecution service to terminate an investigation.

✓ eliminating certain procedural obstacles to the effectiveness of investigations: A 2016 Bill seeks to abolish the obligation for courts automatically to terminate criminal proceedings if, one or two years (depending on the seriousness of the charge) have elapsed after a person has been charged with an offence without any valid committal to trial. The authorities foresee also analysing the application of a rule whereby once one or two years (depending on the seriousness of the charge) have elapsed, criminal proceedings terminated by the prosecution service may not be re-opened except „in exceptional circumstances" and further to a decision by the Chief Prosecutor.

✓ ensuring the effectiveness of judicial examination of criminal cases: The possibility of modifying the charges before a court of first instance was extended in 2010 and a 2016 Bill provides for the holding of a preliminary hearing to avoid cases being referred back to a prosecutor at the trial stage.

In addition to the measures above, the authorities are currently carrying out an in-depth analysis of the causes of the ineffectiveness of investigations. In particular, the Supreme Prosecution Office is currently analysing the relevant judgments of the European Court and a mission of prosecutors from European Union countries is currently under way to analyse the functioning of the Bulgarian prosecution service and make recommendations.

The Committee of Ministers considered this action plan on its 1273rd meeting (06-08 December 2016) and the supervision is still pending.

National **examples of improved access to justice for women** in the countries from the region.

Litigation before the ECtHR is clearly improving access to justice for women in Bulgaria. On one hand, the successful cases before the ECtHR entail legislative reforms, which increase gradually the scope of the rights of victims of violence. For example, in August 2017 the Bulgarian Government adopted amendments in the Criminal Procedure Code, introducing the right of victims to accelerate the development of the proceedings.[54] This legislative reform is a direct consequence of the Court's judgment in S.Z. v. Bulgaria. On the other hand, the case law of the ECtHR provides practicing lawyers with necessary argumentation before the national courts. Below are several examples of recent good practices in Bulgaria.

Gender-sensitive interrogation of adult victim

In Bulgaria the number of blue rooms is increasing, but this year for the first time the authorities decided to use such premise for the interrogation of full age person. More specifically, in February 2017, in criminal case 195/17, the Blagoevgrad District Court considered a request by an adult woman, participating in the criminal proceedings in the capacity of victim of human trafficking. She requested the court to allow her to avoid eye-to-eye contact with the defendant, by giving statements in a blue room. The victim argued: „In my capacity of victim of gender-based violence and violence in a close relationship the court is obliged to protect me from

[54] CPC, Sections 368 and 368a.

secondary victimization." She relied on Article 19 of 2012/29/EU Directive establishing minimum standards on the rights, support and protection of victims of crime. The victim also relied on the ECtHR's judgment in S.Z. v. Bulgaria, § 52, where the Court found problematic the secondary victimization of the applicant on behalf of the investigation authorities and the court. The victim indicated the judge where to find official translation of the judgment in Bulgarian language. Also, the victim's lawyer cooperated closely with the victim's therapist, who issued a psychiatric report for the purposes of the trial. The Blagoevgrad District Court found the request well-founded. Legal aid for the victim was provided pro bono by specialized law firm. The victim was referred to this law firm by non-governmental organization providing her psychological support.

Award for moral damages suffered from sexual exploitation

In Bulgaria, few victims of sexual exploitation sue their traffickers for monetary compensation. In January 2017, in criminal case 20274/14, the Sofia District Court awarded the sum BGN 8,000 in compensation for moral damages, suffered by a victim of human trafficking. The victim, a young, unemployed woman from a small Bulgarian village, claimed compensation in the amount of BGN 8,000 for 9 months work in prostitution. She claimed, more specifically: „The moral damages that I suffered consist in that I feared how I was going to escape the situation of prostitution and if I was going to be punished somehow by the defendant for my escape; in that I was ashamed and I feared that the defendant would tell in my village what I was working and I still fear this; in the feeling of helplessness to overcome his influence and pressure and, most of all, in that I feared strongly for my safety, when I was planning to leave prostitution for good and when I did it actually and reported to the police. Since then, I live in constant stress that something bad might happen to me and that the defendant will revenge. As a result of the crime, I had to live in shelters, but not at home." The Sofia District Court considered the claim well-founded and awarded the compensation in full. Legal aid for the victim was provided pro bono by specialized law firm. The victim was referred to this law firm by non-governmental organization providing her psychological support.

Severe sentence for attack over elderly woman

In March 2016 the Vidin Regional Prosecution Office completed investigation of an aggravated robbery. The case concerned breaking

into the house of a single woman, age 94, by a person who beat her, hit her in the face and tried to strangle her in an attempt to extract information where she kept her money. The burglar left the crime scene steeling several items and the woman died from her injuries three weeks later. The Vidin Regional Prosecution Office brought the case to court, raising the most severe charges – robbery involving death, a crime under Section 199 of the CPC punishable with up to life imprisonment. On 12 May 2017 the Vidin Regional Court sentenced the defendant to 20 years imprisonment and awarded the heirs BGN 25,000 in compensation for moral damages. Legal aid for the victim was provided by two lawyers. Written observations and written communication with the Vidin prosecution office and the Vidin court were provided by a specialized law firm based in Sofia. The victim was referred to this law firm by a non-governmental organization. In addition, legal representation in court hearings was provided by a local lawyer, member of the National Legal Aid Bureau, trained by the same non-governmental organization and chosen specifically by the heirs. The Vidin court not only appointed the heirs *ex-officio* lawyer, paid by the state budget, but also respected their choice of concrete *ex-officio* lawyer.

Annotated prosecution decree on the rights of victims of human trafficking

In November 2016 the Oryahovo District Prosecution Office proposed improved version of the prosecutorial decree, used by the officials to inform victims of crimes about their rights. According to Section 75 of the CPC, the prosecution authorities have a statutory obligation, once they open criminal proceedings, to identify the victim of the crime and to inform her/him about her/his rights in the ensuing criminal proceedings. In implementation of this duty, the prosecution offices in the country dispose of a blank form containing excerpts from the CPC, citing the most important procedural rights of the victims. The Oryahovo District Prosecution Office drafted a special form of this document for the purposes of human trafficking cases and supplemented the general form with a number of special rights of the victims of human trafficking, dispersed in other pieces of legislation, other than the CPC. For example, right to accommodation in shelter, if they cooperate with the authorities; right to protection of witnesses in danger; right to state-funded monetary compensation for damages.

The Legal Aid Act highlights victims of violence

On 19 March 2013 the Bulgarian Parliament adopted important amendments to the Legal Aid Act. According to the amendments, the following vulnerable groups are explicitly listed as beneficiaries of state-funded legal aid: „victims of domestic or sexual violence or of human trafficking, who do not have assets and wish to use legal aid".[55] Until then and since the adoption of the act in 2005, victims of violence were not recognized by the law as persons who should automatically enjoy a right to free legal aid.

The Crimonal Procedure Code prevents secondary victimization

On 4 August 2017 the Bulgarian Crimonal Procedure Code introduced for the first time the notion of a witness with „special need of protection". According to the newest amendments, „special need of protection" is at stake „when it is necessary to apply additional means for protection against secondary victimization, intimidation and revenge, emotional or psychological suffering, including for protection of the dignity of the victims during interrogation".[56]

Recommendations and strategies for improving access to justice for women and girls.

Training of law enforcement officials

- Prosecutors and judges need an intersectional preparation, including in psychology, for work with women victims of violence. There must be a specialization of the professionals working with such cases, for instance, years ago special prosecutors and investigation officers were appointed to work only on cases involving minors.
- In accordance with the emotional and psychological condition of the victim, the authorities should consider interrogating her in a „blue room", even if she is full age.
- The judges should consider any life threats on behalf of the defendant towards the victim on account of her cooperation for the investigation of the crime as an aggravating circumstance.

Training of attorneys

[55] Legal Aid Act, State Gazette No. 28/19.03.2013, Section 22, paragraph 2, point 7.
[56] Criminal Proceedings Code, State Gazette No. 63/04.08.2017, Additional provision, § 1 (4).

- Women victims of violence need preliminary information and basic legal preparation about the trial, its purpose, their role in it, the function of the prosecutor etc. The attorneys bear a primary responsibility to inform their clients about the proceedings.
- The lawyers (and the social workers where possible) who form part of NGOs' staff should be trained to provide legal consultations and legal representation to victims of violence;
- The National Legal Aid Bureau should introduce a separate specialization for representation of victims of crimes. At present, the National Legal Aid Bureau in Bulgaria keeps a register of attorneys specializing Criminal Law, without differentiating between rights of the defendant and rights of the victims;
- Regular participation in trainings should be mandatory for attorneys registered in the National Legal Aid Bureau;
- The lawyers should be trained to keep secret the address of the victim for safety reasons; the lawyers should indicate the address of their practice for communication with the authorities.

The Istanbul Convention – Advanced Contemporary Approach to the Access to Justice for Women – Victims of Violence

by Albena Koycheva – lawyer

> *„It's the first international treaty to specifically tackle violence and abuse against women and girls. It sets legally binding standards for addressing all forms of violence against women – physical, sexual, emotional or financial – as well as stalking, forced marriage and female genital mutilation. It recognises violence against women comes in different forms and manifestations, and requires a comprehensive and integrated response."*
>
> *Emma Watson*[57]

The prevalence of violence against women and domestic violence that predominantly affects women and their children has been confirmed in many researches and data collected in the recent years trougout Europe. The FRA survey[58] from March 2014 is the first of its kind on violence against women across the 28 Member States of the European Union (EU). It is based on interviews with 42,000 women across the EU, who had been asked about their experiences of physical, sexual and psychological violence, including incidents of intimate partner violence ('domestic violence'). This report came in response to the necessecity of comprehensive and comparable data on violence against women that can serve to inforn policy and decision making bodies to take action to prevent and protect women against violence. It is also a clear evidence that the formally existing legal frameworks, standards and their implementation, despite of their continuous improvement in many countries, continue to be insufficient and/or ineffective to guarantee a life free from violence for a great number of women in all countries in Europe.

[57] Extract from a letter of the UN campaigner and actress Emma Watson from February 2017 to the UK Parliament, the whole text of this letter available at: http://www.harpersbazaar.com/uk/culture/culture-news/news/a40030/emma-watson-istanbul-convention-letter/

[58] http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report

The gender based violence continues to be seriously underreported and the main reasons for this lay in the various obstacles for many women to access justice in such cases.

The large majority of incidents and crimes of violence against women remain hidden and never come to the attention of the police, court or other state authorities because women victims are not aware of their rights and/or because they cannot rely on the necessary specialized support, including legal advice and legal aid, and the resources to exercise and protect their rights. Only around 30% of victims of violence report the most serious incidents they have experienced. One in four women who do not report sexual violence to the police chooses not to do so because of shame; one in five does not want anyone to know, one in ten believes the police could or would not do anything. Of those who do report to the police, only about half are satisfied with the assistance received. Tolerance and acceptance of gender-based violence persist, deeply rooted in the stereotypical attitudes and approaches, and often victims face indifference, negligence and disdain, or are even blamed when they suffer violence and thus are re-victimized instead of supported and protected.

Violence against women as a concept in human rights law has developed since the 1990s. Sex discrimination has been prohibited on a broad basis in many international human rights instruments like the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Roghts (ICCPR), etc. and in many regional legal documents without the issue of gender based violence being addressed separately. Gender-based violence became a focus of international attention in the recent decades and significant progress has been achieved in the legal theory, concepts, standards, and case law.

In 1992 the UN CEDAW Committee issued its General Reccommendation No. 19 where gender based violence is defined as a major human rights violation that affects the whole range of human rights of the victims; a form of discrimination against women based on sex and gender; a violation that requires the due diligence principle to be applied and state posivite obligations to prevent, protect and punish.

In 2010 the CEDAW Committee in its General Reccomendation No. 28 explains in more details the obligations of the governments under article 2 of the CEDAW Convention on the core obligations of the States Parties under this article 2 of the Convention are to respect, protect and fulfil women's rights to non-discrimination and the enjoyment of de jure and de facto equality.

All the Council of Europe Member States are also States parties to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The CEDAW Convention and the Istanbul Convention are two very advanced, comprehensive and fully compatible, overlapping and complementary instruments. The Istanbul Convention came into existence in response to the need of introducing legally binding instruments for the identification, recognition, definition and criminalization of numerous wide spread gender-based offences, and to introduce the respective legal definitions, the principles of their investigation and punishment together with the guarantees for the support for the victims and ensuring standards for compensations. The Istanbul Convention is based on the victim centered approach and is aimed at addressing the victim's needs as a main priority.

The Istanbul Convention is preceeded by extensive development of the legal approaches at regional level on the issues of violence against women and domestic violence. The European Human Rights Court (ECtHR) has since held in its case law, which is binding on the States Parties, that gender-based violence is to be considered as covered by the prohibition against torture and inhuman or degrading treatment under Article 3 of the European Convention on Human Rights Convention (ECHR), and as a violation of the respect for private and family life under Article 8 of the ECHR. In some cases the ECtHR found that gender based violence amounted to a violation of the right to life as protected by article 2 of the ECHR and also to discrimination based on sex and gender, which is prohibited by article 14 of ECHR.

The Inter-American Belém do Para Convention, concluded in 1994, may be considered a forerunner to the European Istanbul Convention as a binding international treaty for eradicating violence against women.

What is gender based violence?

Gender-based violence is legally defined as a brutal form of discrimination based on sex and gender and a violation of the victim's fundamental rights. It is both a cause and a consequence of inequalities between women and men.

Gender-based violence is a pattern of behavior or a single act that happens everywhere, in every society and EU country, regardless of social background, whether at home, at work, at school, in the street or online. Not only does it affect women's health and well-being, but it can hamper women's access to employment and the entire range of their human rights, thereby negatively affecting their financial, social and personal

independence and the economy in general. The phenomenon and its extremely high costs affect in practice every member and every part of the society, and therefore the efforts to combat and abolish gender-based violence need the involvement of the whole society. For this reasons article 27 of the Istanbul Convention encourages the reporting of the offences covered by the Convention by any person who withesses of has reasonable grounds to suspect that such an act may be committed where the term 'readsonable grounds' refers to an honest belief reported in good faith.

With regard to exercicing parental rights and visitation cintacts article 31 of the Istambul Convention introduces the ctiteria of consideration of the history of violence in the family, prioritizes the right to safety and the best interest of the children and defines the obligations of the dicision making authorities to guarantee the safety and the personal rights of the victims and their children witnesses of violence for the future based on risk-assessment and safety planning.

The theme is relatively new to EU law. Gender-based violence extends the scope of nondiscrimination beyond what is traditionally understood as EU sex equality and non-discrimination law, i.e. the *acquis* on discrimination on the basis of sex and policies aiming at promoting gender equality in working life, access to goods and services, and related areas of life. National legislation in the 28 EU Member States offers unequal protection of women against all forms of violence, whilst the measures adopted at EU level present considerable lacunae. Therefore, the EU accession to the Istanbul Convention is crucial for the advancement of women's rights throughout the EU[59].

Binding EU law started to pay attention to the specific requirements needed for combating gender-based violence in the 2010s, with Directive 2011/99/EU on the European protection order and Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography setting minimum requirements on Member State legislation. The Victims' Directive 2012/29/EU sets minimum requirements for the Member States regarding issues that are highly relevant to the Istanbul Convention, Regulation No. 606/2013 on mutual recognition of protection measures in civil matters pays attention to gendered violence.

The elaboration of the Istanbul Convention

The text of the Istanbul Convention was drafted by a group of experts – CAHAVIO – representatives of all the 47 member states of the Council of Europe, and also the EU, Canada, USA, Mexico, Japan and the Holy See.

[59]On June 13th, 2017 the EU signed the Istanbul Convention.

The Council of Europe Convention No, 210 on Prevention and Combating violence against Women and Domestic Violence was opened for signatures on May 11th, 2011 in Istanbul and entered into force on August 1st, 2014. As of November 10th. 2017 it has 44 signatures, 26 ratifications, 16 reservations, 4 declarations, 5 objections. While the adoption of the Istanbul Convention is a very positive and needed development in the efforts to combat gender-based violence the big number of reservations is indicative of the serious challenges and obstacles this new instrument faces in the implementation at national level in quite a lot of countries in Europe and reveals that the process of adoption is different for the different countries.

Purposes of the Istanbul Convention

The Isanbul Convention is based on the understanding that certain type of violence is a manifestation of the historically unequal power relations between men and women. It aims at combating gender-based violence as one of the main means to promote and achieve substantative gender equality by four major strands of state obligations, also known as the four „P" – Prevention, Protection, Punishment and Policies. There four main purposes may be successfully achieved if only implemented together, in parallel, because the Convention is a system of binding legal regulations that are defined to be implemented as necessary components of a new and higher standard of living in safety and promotion of the whole complexity of human rights – for the moment and for the future.

The Istanbul Convention is the most comprehensive legal instrument on gender-based violence which sets a detailed legal framework of standards and corresponding state obligations for the prevention of gender based violence, protection of victims and their children, prosecution and punishment of perpetrators, and compensation for the victims of this type of violence. It encompasses all the universal and regional legal standards in this area providing also mechanisms for their de facto implementation.

For these purposes the Istanbul Convention requires the States Parties to take substantive legal measures in the areas of criminal, procedural and to some extent even civil law and to ensure their effective implementation.

The Istanbul Convention covers practically all forms of violence against women and applies in times of peace and in situations of military conflict and requires their active rile not only in the development of local, regional and national policies but also in their effective implementation.

State obligations and Due diligence

In the area of prevention the Istanbul Convention requires from the States Parties to undertake the necessary measures that would result in changes in the social and cultural patterns of behavior; eradicating prejudices, customs, traditions and all other practices based on the idea of inferiority of women or stereotyped roles, underlining that such measures should be specific and flexible, and obliges the State Parties to …ensure that culture, custom, religion, tradition or so-called „honour" shall not be considered as justification for any acts of violence.

These standards are to be included in the educational programmes and trainings of professionals on a regular basis thus providing for the filling for the huge gap in the sphere of education of the professionals, including legal education.

Preventive intervention and treatment programmes

These programmes and measures as defined in article 16 of the Convention, are aimed at adopting the best practices and research information about the work with perpetrators to help them change their attitudes and behavior, understand the nature of what they have caused, take the responsibility for their offencive acts and develop safe models of behavior in order to refrain from any acts of domestic or sexual violence in the future.

The sunstantative law part of the Istanbul Cinvention (Chapter V – articles 29 – 58)

The Istanbul Convention requires immediate state response to incidents of gender based violence and implementation of *preventive, protective and compensatory measures for the victim*s, including gender sensitive measures with a special focus on the rights of the victim like risk assessment and risk management, emergency barring orders, restraining or protection orders, facilitated access to justice, including free legal aid, etc. These should be implemented with due diligence and together with the *punitative measures for the perpetrators* of those forms of violence that require a criminal law response.

In requiring specific action regarding specific and particularly defined crimes of gender-based violence the Istanbul Convention substantially differs from all preceding human rights instruments, which traditionally use more open-ended language concerning the responsibilities of the States Parties. The approach of the Istanbul Convention is to combat violence against women

consistently and comprehensively by a number of actors, based on the coordination and cooperation of the stakeholders and also on international cooperation when necessary. The provisions of the Convention rely not only on government action, but also on the media and civil society actors.

The Convention lists a number of acts that States Parties are to criminalise, and requires that the States ensure jurisdiction over these crimes and provide for their effective investigation and prosecution. It is a criminal law treaty that addresses in its substantative law provisions all the sites at which violence against women may occur – the family, the community, the stateq and the whole range of possible perpetrators of those acts –state authorities, officials and non-state actors. It also lists and defines the forms violence against wimen that can take place to identify specific criminal offences, which include: Psychological violence – coercion and stalking, all forms of physical violence; sexual violence, including rape; forced marriage; female genital mutilation; forced abortion and forced sterilization; and sexual harassment.

With a view to guarantee the protection of victims in court proceedings and that they are not forced to reconcile with the perpetrators the Istanbul Convention in its article 48 prohibits the mandatory alternative dispute resolution methods and procedures, including mediation in cases of violence covered by this Convention. While admitting the advantages of these alternative methods and procedures for resolving disputes the drafters of the Convention have considered the possible negative effects as the victims of such violent acts can never enter such procedures on a level equal to that tf the perpetrator.

Who will make sure that state parties are living up to their obligations?

The Istanbul Convention provides for a monitoring mechanism that is a two-pillar system and consists of an independent expert body, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), which is initially composed of 10 members and will subsequently be enlarged to 15 members following the 25th ratification, which has been already reached, and a political body, the Committee of the Parties, which is composed of representatives of all the Parties to the Istanbul Convention.

GREVIO adopts its own Rules of Procedure and has competences for the monitoring the implementation of the Convention and may adopt Recommendations on the themes and concepts of the Convention.

The Committee of Parties follows up on GREVIO reports and conclusions and is the body that adopts recommendations to the Parties concerned.

Ensuring Access to Justice for Women in Georgia

by Tamar Dekanosidze
Georgian Young Lawyers' Association

A. Brief assessment of the general background on violence against women in Georgia

1. Prevalence and attitudes

Violence against women and domestic violence is a serious concern in Georgia. Even though the Government has taken a number of important steps to prevent and respond to violence, the legislation, policy and practice yet need to take transformative approaches to tackle the problem, and ensure substantive equality.

A national research conducted in 2009, commissioned by UNFPA, shows that, among the women interviewed, one woman in 11 had experienced physical or sexual abuse, either perpetrated by her husband or intimate-partner and 34.7% have been injured as a result of physical or sexual violence.[1]

According to the 2009 National Research, insults (14.3%), belittling/ humiliations (5.3%) intimidation (5.1%) and threats (3.8%) were the most common components of psychological abuse reported by the women interviewed 35.9% of women reported their exposure to acts intended to control their behaviour, with a higher prevalence among the women with incomplete secondary education (60% of them) than those having completed their secondary, technical or higher education (35% of them) and among women who do not earn money (76.6%).[2]

According to the 2010 reproductive health survey, verbal and/or physical abuse in marriage was, in general, greater among women with less formal education and lowest socioeconomic status, as well as among Azeri women or from other ethnic backgrounds.[3] Domestic violence is

[1] National Research on Domestic Violence against Women in Georgia, 2010,pp.33 and 44., available at: http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/GeorgiaAnnexX.pdf
[2] National Research on Domestic Violence against Women in Georgia, 2010, Pp. 33-37, available at: http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/GeorgiaAnnexX.pdf
[3] Reproductive Health Survey Georgia, final report, National Center for Disease Control and Public Health, Ministry of Labor, Health, and Social Affairs, National Statistics Office of Georgia,2010,p.312.

considered as more prevalent in minority groups, including Azeri and Armenians, in particular in rural areas.[4]

Application of the protection mechanisms against domestic violence has significantly increased since 2014, when the alarming number of killings of women was recorded.[5] However, The Special Rapporteur regrets that the estimation of cases of domestic violence is based on the number of restraining orders issued, leaving invisible an undefined number of cases, not reflecting the real amplitude of this scourge. She is concerned that some cases are registered by the police under 'family conflict', which also may leave cases of domestic violence invisible.[6]

The Special Rapporteur notes that among the factors that most likely increase the risk of intimate-partner violence in Georgia are discriminatory gender stereotypes and patriarchal attitudes, women's low awareness of their rights, the occurrence of child and forced marriages and the lack of economic independence, among others. In addition, the consumption of alcohol, economic problems and unemployment are factors that contribute to reinforce the occurrence of domestic violence.[7]

2. Current state of legislation of Georgia on violence against women:

Georgia is the party to all major international and regional human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities and the European Convention on Human Rights and Fundamental Freedoms. In May 2017 Georgia ratified the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence (Istanbul Convention), leading to significant changes in domestic laws to comply with the Convention requirements (amendments enacted on 1 June 2017).

[4] Ethnic Minority Women in Georgia–Facing a Double Burden?, ECMI-European Centre for Minority Issues,2014

[5] Special Report of the Public Defender of Georgia, 2016, the Situation of Women's Rights and Gender Equaltiy, p. 29, http://www.ombudsman.ge/uploads/other/4/4451.pdf

[6] Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia, 9 June 2016, A/HRC/32/42/Add.3, para. 12.

[7] Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia, 9 June 2016, A/HRC/32/42/Add.3, Para. 14.

The Law on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence (currently the Law on Elimination of Violence against Women and/or Domestic Violence, Protection and Support of Victims) was adopted in 2006, outlining measures to detect and respond to domestic violence and to provide assistance to the victims.[8] Domestic violence became a distinct crime in the Criminal Code of Georgia since 2012, defining the scope and categories of the crime.[9] The Law on Gender Equality came into force in 2010, outlining equal rights and freedoms for men and women.[10] The Law on the Elimination of All Forms of Discrimination was enacted in 2014, prohibiting discrimination on any grounds, including sex, and providing redress mechanisms.[11] In 2017 the substantive equality provision was adopted by the Parliament to be included in the Constitution (yet to be enacted).

Under the amendments based on the Istanbul Convention, prevention and protection mechanisms against violence (restraining and protection orders), as well as shelters and medical, legal and psychological services, are provided to both victims of domestic violence and women victims of gender-based violence occurring outside the family.[12] Stalking,[13] Female Genital Mutilation,[14] Forced Marriage,[15] and Sterilization without Consent[16] are criminalized. Commission of a crime against a family member and committing a crime with discriminatory motive (including based on sex) are aggravating circumstances.[17]

The article on committing a crime with discriminatory motive was introduced in the Criminal Code on 27 March 2012. Article 53.3[1] of the

[8] Law on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, 25/05/2006, available at:https://matsne.gov.ge/ka/document/view/26422 Accessed 28.07.2017

[9] Article 126[1] (Domestic Violence) of the Criminal Code of Georgia, available at: https://matsne.gov.ge/ka/document/view/16426 Accessed 28.07.2017

[10] Law on Gender Equality, 26/03/2010, available at: https://matsne.gov.ge/ka/document/view/91624 Accessed: 28.07.2017

[11] Law on Elimination of All Forms of Discrimination, 02/05/2014, available at: https://matsne.gov.ge/ka/document/view/2339687 English version of the Law available at: https://matsne.gov.ge/en/document/view/2339687 Accessed: 28.07.2017

[12] Law on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, Chapter 3 and 6.

[13] Criminal Code of Georgia, Article 151[1]

[14] Criminal Code of Georgia, Article 133[2]

[15] Criminal Code of Georgia, Article 150[1]

[16] Criminal Code of Georgia, Article 133[1]

[17] Criminal Code of Georgia, Article 53[1].1 and 53[1].2.

Code stated as follows: „Commission of a crime on the grounds of race, colour, language, sex, sexual orientation, gender identity, age, religion, political or other beliefs, disability, citizenship, national, ethnic or social origin, material status or rank, place of residence or other discriminatory grounds shall constitute an aggravating circumstance for all the relevant crimes provided for by this Code."

By the amendments of 4 May 2017, the above article was removed from the Code and Article 53[1] was added. The article states: 1.Commission of a crime on the grounds of race, colour, language, sex, sexual orientation, gender, gender identity, age, religion, political or other beliefs, disability, citizenship, national, ethnic or social origin, material status or rank, place of residence or other discriminatory grounds shall constitute an aggravating circumstance forall the relevant crimes provided for by this Code.

2. Commission of a crime by a family member against another family member, against a person in vulnerable position, against a minor or in the presence of a minor, by extreme cruelty, by using weapons or threat of using weapons, by abuse of official power, is an aggravating circumstance for all the relevant crimes provided for by this Code.

As to the standard on establishing the above discriminatory motive – the Chief Prosecutor's Office has internal guidelines for it, which are not public.Psychological violence outside family is not separately criminalized - the article in force on violence does not cover psychological violence.[18] None of the laws recognizes violence against women as a form of discrimination against women.

B. National examples of improved access to justice and remaining challenges

1. Improving access to justice since 2014

Since 2014, there have been improvements in access to justice for women survivors of gender-based and domestic violence, documented by GYLA's litigation and trial monitoring practice, due to the Government's policy of increasing regarding domestic violence as a matter of public interest and not a matter of private concern.

[18]Criminal Code of Georgia, Article 126.

The above is demonstrated in the significant increase of applying legal mechanisms of prevention and protection by survivors of violence since 2014, illustrated in the figures below[19]:

Protection orders: 2014 – 87 orders; 2015 – 173 orders; 2016 – 179 orders;

Restraining orders: 2014 – 902 orders; 2015 – 2726 orders; 2016 – 2877 orders;

Prosecutions under Ar. 11[1] (domestic crimes) and 126[1] (domestic violence) of the Criminal Code:

2014 – 350 prosecutions;
2015 – 728 prosecutions;
2016 – 1356 prosecutions.

Statistics of family conflicts:

2014 – 1371 conflicts;
2015 – 936 conflicts;
2016 – 584 conflicts.

Reports made through police hotline „112" on domestic violence/ domestic conflicts:

2014 – 9260 reports
2015 – 15910 reports
2016 – 18163 reports.

2. Remaining challenges in court practice, hindering access to justice

GYLA's criminal trial monitoring in the periods between February-July 2016 and August 2016 – January 2017 has indicated some recent improvements in the approaches of courts in certain areas of domestic violence proceedings, however, systemic and individual gaps in responding to violence against women still remain.

In cases of domestic violence and domestic crimes, the courts still fail to assess threats and risks posed to victims and do not apply adequate or any preventive measures:

◊ between February – July 2016, the imposition of bail in 2 (20%) out of 10 cases of domestic violence and domestic crimes monitored

[19] Special Report of the Public Defender of Georgia, 2016, the Situation of Women's Rights and Gender Equaltiy, p. 29, http://www.ombudsman.ge/uploads/other/4/4451.pdf

was unjustifiably lenient considering the gravity and continuity of the violence in question;[20]

- ◊ between August 2016 – January 2017, the number of inadequate preventive measures increased – in 8 out of 17 cases (47%) the applied preventive measures were insufficient to ensure the prevention of continued violence and the protection of victim.
- ◊ the proportionality of sentencing remains problematic:

- between February – July 2016 custodial sentences were imposed in only 6 (27%) out of 22 cases;[21]
- between August 2016 – January 2017, the Kutaisi City Court did not impose a custodial sentence in any of the 14 domestic crime cases monitored;[22]
  - ◊ between February 2016 and January 2017, only one case was classified as committed from a discriminatory motive;
  - ◊ furthermore, the downgrading of the classification of these offences is also an issue.[23]

GYLA's monitoring report of the August 2016 – January 2017 concludes that in practice courts still view domestic violence as a private matter between the abuser and the victim, which deserves less punishment than crimes committed outside the family.[24]

[20] Georgian Young Lawyers' Association, Monitoring Criminal Trials in Tbilisi and Kutaisi City and Appellate Court, Author: Goga Khatiashvili, Monitoring report N9, February-July 2016. pp. 15-19, (attached Annex 1) and available at: https://gyla.ge/files/news/%E1%83%9C%E1%83%98%E1%83%A3%E1%83%A1%E1%83%9A%E1%83%94%E1%83%97%E1%83%94%E1%83%A0%E1%83%98/Courts%20Monitoring%209.pdf

[21] Georgian Young Lawyers' Association, Monitoring Criminal Trials in Tbilisi and Kutaisi City and Appellate Court, Author: Goga Khatiashvili, pp. 19-20

[22] See above

[23] See above, pp. 23-28, Georgian Young Lawyers' Association, Monitoring Criminal Trials of Violence against Women and Domestic Violence in Tbilisi, Kutaisi, Batumi, Gori and Telavi courts; Author: Goga Khatiashvili. Monitoring report N10, period: August 2016 – January 2017.

[24] Georgian Young Lawyers' Association, Monitoring Criminal Trials of Violence against Women and Domestic Violence in Tbilisi, Kutaisi, Batumi, Gori and Telavi courts; Author: Goga Khatiashvili. Monitoring report N10, period: August 2016 – January 2017.

C. Gender stereotyping in criminal proceedings, as the barrier of access to justice

1. Justice for femicides - gender-related killings of women

The study of the Georgian Young Lawyers' Association of the court judgments on femicides committed in 2014 and prosecuted mostly in 2015 (12 judgments), which I conducted, found as follows:[25]

There are deficiencies in the response of both the judiciary and the prosecution in identifying the crimes as femicide, establishing the motive and classifying the crime, defining mitigating and aggravating circumstances and imposing sanctions to perpetrators. In none of the cases of femicide the gender-related motive was identified. The killings of women are either considered to be related to regular motives or the judgments do not contain any information on the motive in contrary to the procedural legislation. In some of the cases, femicide is classified as a lighter crime, while the circumstances of the case provide the need for other classification. Sanctions imposed to perpetrators are sometimes unreasonably lenient.

In none of the femicide cases have the courts or the prosecution applied the gender perspective. Justice is administered relying on the general methods of adjudicating crimes against human beings, towards which the prosecution and the judiciary reveal incomprehensive and sometimes a loyal approach. Femicides are treated as isolated cases of violence against women and they are not analysed through the general context of gender-based violence and discrimination against women.

Except for one judgment, the courts have not examined violence suffered by the victim before the killing in order to give the adequate evaluation to such violence while determining sanctions. In none of the cases had these facts any impact on identifying the motive and classifying

[25] Judgments of 2014 Femicide Cases in Georgia, Georgian Young Lawyers' Association, Author: T. Dekanosidze, 2016, available at: https://www.gyla.ge/files/news/2016%20%E1%83%AC%E1%83%9A%E1%83%98%E1%83%A1%20%E1%83%92%E1%83%90%E1%83%9B%E1%83%9D%E1%83%AA%E1%83%94%E1%83%9B%E1%83%90JUDGMENTS%20OF%202014%20FEMICIDE%20CASES%20IN%20GEORGIA.pdf
https://gyla.ge/files/news/2016%20%E1%83%AC%E1%83%9A%E1%83%98%E1%83%A1%20%E1%83%92%E1%83%90%E1%83%9B%E1%83%9D%E1%83%AA%E1%83%94%E1%83%9B%E1%83%90/femicidi_ge.pdf

the crime. Sanctions imposed for femicide through procedural bargaining mostly fall short to reflecting the gravity of the crime, the victims' families' expectation for sanctions and the goals of justice for crimes committed against women. Taking into account the gravity and seriousness of crimes against women committed by law-enforcement officers, there is a need to give a special evaluation to these acts in every case.

Investigation, prosecution and punishment of femicide shall have the transformative potential – alongside the purpose of prevention of crimes and the punishment of perpetrators, the judgments of the courts shall aim for the recognition of suffering of women victims of violence, and for transforming structural inequality, discrimination, subordination and gender hierarchies, which are the root causes of violence against women and femicide. In each case, victims'/their families' views and expectations shall be given maximum consideration for the restoration of justice.

2. Lack of investigation of discrimination as the barrier to access justice in femicides and other forms of gender-based violence

Lack of investing sex-based discriminatory motive and using it as an aggravating circumstance by the courts is the main obstacle in accessing justice for gender-related killings.

Specific case examples include:

◊ According to the **judgment of the Tbilisi City Court dated 23 January 2015**,[26] the victim and the perpetrator divorced as the husband was „rude, jealous and they often had disputes over regular issues". The offender categorically demanded to reconcile and once tried to drown his wife in the Tbilisi Sea and threatened to kill her with his firearm. In this case, the court established that the offender was a violent husband, however the Court concluded that the motive of the crime was jealousy and did not in addition discuss the motive of discrimination, while looking over the existing evidence.[27]

[26] The Tbilisi City Court, Case N1/4942-14, 23 January 2015.

[27] As mentioned by the mother of the victim in the documentary"2014" by Lia Jakeli, the husband prohibited his ex-wife to dance and sing that clearly indicated existence of discriminatory motive.

◊ According to the **judgment of the Rustavi City Court dated 7 May 2014,** the spouses divorced as the husband suspected that the wife led „unhealthy style of life" (the judgement does not clarify what „unhealthy style of life" means). The perpetrator who felt offended by the behaviour of his ex-wife decided to revenge.[28] The court stated that the motive of the crime was revenge for „unhealthy style of life"; however, the court does not discuss the specific indications of a gender-related motive and does not analyse discriminatory prejudice.

◊ **The judgement of the Kutaisi City Court dated 7 April 2015** also describes the control of the ex-wife, discriminatory prejudices and ownership assumptions of the perpetrator. The domestic conflicts were caused by jealousy of the offender, his desire to control the woman's behaviour, the woman's relations with other people (including after divorce), problems related to seeing the child, payment of alimony, and „lies and improper life-style" of the ex-wife. During the court proceedings discrimination based on sex was revealed in identifying certain facts, namely, the offender warned his ex-wife that „she would not be pardoned" if „she behaved badly" (according to the circumstances of the case, „bad behaviour" meant any relations with another man). Despite this, the court did not examine the existence of the motive of discrimination, as well as any other possible motivation.[29]

◊ **The judgement of the Telavi District Court dated 25 June 2015** describes misogynist (hatred or intolerance towards women) femicide committed in the name of honour; according to the testimonies of witnesses, the offender tried to find moral justification for the crime and he was ready to carry responsibility for his behaviour. The perpetrator stated that the crime was incited by „wife's behaviour" as she informed him „I prefer my child to you".[30] The circumstances of the case indicate the existence of possible misogynist motive towards the victim as manifested in the behaviour of the offender after committing the crime – in front of the village shop he was

[28] The Rustavi City Court, Case N1-252-14, 7 May 2014.

[29] The Kutaisi City Court, 17 April, 2016,case N1/797-2014.

[30] The Telavi District Court, 25 June 2015, case N1/305-14.

saying „I have cut the throat of my wife, come and see it"[31] and requested the neighbours to call the police. There was no trace of blood on the offender's clothes; as he explained he had changed his clothes to be ready for going to the police. Despite the perceptions of the offender towards the victim, the court did not examine the motive of the crime.

◊ According to the **judgment of the Kutaisi District Court dated June 9 2015**, the offender suspected that his wife was leading so called improper lifestyle and had a lover – „I tried everything to ensure that you live properly but you have a lover", „I killed her because she was cheating". As witnesses stated, the victim had a love affair with another man and „everybody knew about it". The court stated that the husband killed his wife due to jealousy. The Court does not discuss whether jealousy was connected to discrimination based on sex.[32] In the same lines, the Tbilisi City Court in its judgement dated April 7 2015 only focused on the motive of jealousy in killing of an intimate partner by a man.[33]

◊ **The judgement of the Tbilisi City Court dated 22 May 2015** does not identify the motive of the crime, whereas the victim and the offender had a dispute „because of somebody"[34] (the judgement does not describe the facts in details) before the murder. Likewise, the Tbilisi City Court does not consider the motive of the crime in its judgment dated 8 August 2015; in this case, on the crime scene, the offender informed the police that he witnessed how his wife was cheating on him with the landlord, he beat her and decided to kill her.[35]

◊ **The Ozurgeti District Court, in its judgment dated 26 February 2015,** established that the only motive of the murder of the wife was a revenge: „hereby the court stresses the motive of the crime and identifies that the tool and means of the crime,

[31] According to the judgment, the offender said to neighbours: "I've cut throat of my wife like a pig"; "I've cut the throat of my wife, come and see it; the head and body are lying separately".
[32] The Telavi District Court, 9 June 2015, case N1/59-15.
[33] The Tbilisi City Court, 7 April 2015.
[34] The Tbilisi City Court, 22 May 2015, case N1/6524-14.
[35] The Tbilisi City Court, 18 August 2015

the seriousness of the wound and the defendant's behaviour after the crime reveal that the dominant motive of the defendant - that is the moving force of the defendant's behaviour - was revenge, which, in this specific case was caused by the conflict between the spouses".[36]

3. Analysis of the deficiencies in the above cases and measures taken by GYLA to address them

Deficiencies:

The above femicide cases reveal that the prosecution and/or judicial bodies abstain from or fail to investigate or give adequate evaluation to possible motives related to discrimination during investigation and judicial proceedings. This is reflected in the relevant judicial decisions, which do not contain considerations on a possible gender-related motive. In cases of femicide, the courts mainly refer to common motives (jealousy, revenge) that do not/should not exclude the possibility of the existence of other motives. In most of the judgments, the motive of the crime is not identified at all. However, in many cases, the motive could rather easily be identified based on the case materials and the facts presented in the judgment.

During the investigation and judicial proceedings on the killings of women, due examination and evaluation of the motive of the crime shall be conducted, taking into account gender perspective and issues related to gender. To identify the motive of discrimination, it is necessary to analyse the offender's attitude towards the victim and the criminal act itself during the investigation and judicial proceedings. There is a need for thoroughly investigating whether the possible discriminatory or sexist attitude, sense of ownership or gender stereotyping towards the victim had a role in provoking the crime. In this respect, the existence of more than one motive (gender-related crime accompanied by the motive of jealousy) should not be excluded; if there is more than one motive, all motives should be evaluated separately.

GYLA's work to address the above deficiencies:

In criminal cases of violence against women, GYLA gets involved in the proceedings as the representative of the victim. GYLA submits applications to the prosecution, requesting to take the following steps:

[36] The Ozurgeti District Court, 26 February 2015, case N050100114679410.

- ◊ Classify the crime based on its gravity;
- ◊ Investigate gender-based discriminatory motive in the crime and submit the evidence at the court, so that the court is able to aggravate the sentence;
- ◊ Investigate incidents of domestic violence, which led to the escalation of the crime;
- ◊ Interrogate possible witnesses;
- ◊ Take gender-approach in investigation taking into account general background of violence against women;
- ◊ Classify violence against women as a form of discrimination;
- ◊ Investigate intersectional and multiple discrimination;
- ◊ Apply protection measures for victims.

4. A positive example from court practice for bringing justice for Femicide:

Judgment of the Tbilisi city Court, 23 January 2015, case N1/4942-14.

The judgment of Tbilisi City Court dated 23 January 2015 creates a positive precedent on the examination of domestic violence preceding the crime of femicide[37]. The court stressed that the offender - the chief inspector of the Special Detachment of the Investigation of the Ministry of Finance of Georgia – was a violent and jealous husband. The Court describes the instances when the offender threatened to kill the victim with a gun and tried to convince her (his ex-wife) to reconcile with him with an attempt to drowning and threats. The defendant could demonstrate violence using his service gun, which he was carrying all the time. The family of the victim was aware of the defendant's violent actions, however hesitated to inform his office.

The Court also considered that committing of a crime against a family member (article 11^1 of CCG) should be used as an aggravating circumstance while imposing the sanction. Thus, this case was the only one out of the femicide cases committed in 2014 and discussed in this study, in which the court considered that a crime committed against a family member was an aggravating circumstance, as required by the Istanbul Convention (however, the judgment does not refer to the Convention itself). Despite this, even in this case the court did not take into account the domestic violence history as an aggravating circumstance and based on this history the Court did not

[37] The Tbilisi city Court, 23 January 2015, case N1/4942-14.

establish that the perpetrator could have acted with discriminatory motive, among other possible motives. Yet the court established that the murder was committed on the basis of revenge after dispute.

D. Used strategies and tools for access to justice in the specific case/ cases, including using international law and practice.

Strategies used to hold the State accountable for a Femicide case (the case that I litigated as a lawyer at GYLA together with my colleague Mikheil Jakhua) and outcomes are as follows:

1. Brief description of the facts of the case:

S,J, 19, was killed in the park in Zestaphoni, Georgia on June 25, 2014 by her ex-husband, the police officer. S.J. is among 25 women murdered by their partners or ex-partners in 2014. S.J. had a child, 3 years old.

S.J.'s and S.S.'s relationship started with violence. In 2011 S.J., 17 years old, was kidnapped by S.S. under threat of a firearm. Zestaphoni police did not assist her parents in finding the daughter and she became S.S.'s wife. In the course of their marriage, as well as after divorce, S.S. inflicted systematic physical and psychological violence and threatened her with a gun. Alimony and jealousy was the reason of their conflicts. On July 25, 2014 S.S. killed S.J. in the park of Aghmashenebeli street, in Zestaphoni. He is charged with premediated murder (Article 108 of the Criminal Code).

Prior to the fatal incident, S.J. had applied to Zestaphoni police, prosecutor's office and the General Inspection of the Ministry of Interior and demanded protection from the abuser. Nevertheless, no legislative measures were carried out for termination of her ex-husband. The response of the Police and the Prosecutor's Office to S.S.'s allegations were discriminatory based on sex - the police fell short to assess the seriousness of the reported violence, did not record facts of violence in the protocol and failed to carry out further legally required measures for its prevention. Moreover, the police responded with gender-related humiliating comments on S.J.'s statements. The police officers were mainly S.S.'s co-workers and the police collusion aggravated the facts of the case. Prosecution, in violation of legislative requirements, failed to launch the investigation on the facts of intimidation and violence and did not recognize domestic

violence as an adequately serious matter for the launch of the criminal persecution. Further, General Inspection of the Ministry of Interior, obliged to protect public from violence and unlawfulness, appeared completely ineffective in stopping the abuser and even colluded with him, leading to the murder of S.J..

2. Court proceedings and outcome:

GYLA filed the administrative claim for moral damages on behalf of the mother of the victim on 22.01.2015. The respondents were the Ministry of Interior and the Chief Prosecutor's Office. The applicant claimed moral damages for the discriminatory failure of the Ministry of Interior (including the General Inspection of the Ministry) and the Chief Prosecutor's Office to protect S.J.'s life from domestic murder. On 24.07.2015 the Tbilisi City Court granted a part of the claim – awarded 20,000 GEL for moral damages as opposed to 120,000 GEL claimed by the applicant. The Court established that the respondents had not adequately fulfilled their obligations under the law and they did not carry out appropriate measures to prevent the crime, to eradicate discrimination against S.J. and to protect her right to life. However, the Court did not state that the inaction of authorities to prevent domestic violence constituted discrimination. The Court only noted that the authorities failed to protect S.J. from sex-based discrimination committed by S.S.

Both of the respondents appealed the decision denying any kind of responsibility. The Ministry of Interior stated it was clear that the police officers had not violated any of their professional duties, either willingly or negligently, they acted in full compliance with the law and that the decision of the Tbilisi City Court was groundless.

Similarly, the Chief Prosecutor's Office stated that they acted in compliance with the law and that it is not understandable what kind of measures they had to take. The Prosecutor's Office submitted that there was no causal link between the alleged act and the damage and that the denial to start the investigation did not violate the law, considering that there were no signs of crime. It was also submitted that they had an appropriate response to the fact of discrimination.

On 11 January 2017, the Tbilisi Court of Appeals upheld the decision of the first instance court on damages resulting from the inaction of the authorities. However, the Court weakened the reasoning of the Tbilisi City Court in a sense that it did not provide any mention of discrimination (committed by S.S. as noted by the first instance court) whatsoever, only focusing on the failures to protect S.J. life and physical integrity and to reduce the threats caused by S.S.

Both of the respondents appealed the decision at the Supreme Court of Georgia on 23.03.2017. The Ministry of Interior and the Chief Prosecutor's Office reiterated their position expressed in their appeals of the first instance court decision, denying any kind of failures or violations committed by the police/prosecution and underlining the decision of the Court of Appeals was groundless. They stated that they had fulfilled their duties adequately and had undertaken all the legally required measures. Therefore, they found no basis for granting the compensation for moral damages.

The Supreme Court did not admit the claim and stated that the decisions of the lower courts were in compliance with the law and that Art. 3 and 8 of the ECHR were violated in relation to the applicant's daughter.

3. Importance of the case

The case demonstrates the first precedent in Georgia, when the State was held accountable for not preventing and adequately responding to domestic violence, which led to the murder. The court established that the authorities had not taken the measures they were required under the law and which had the potential to alleviate the risk posed by the abuser.

4. Measures that failed

In contrast to the above, there have been measures taken by GYLA, which did not lead to any positive outcome.

These measures were as follows:

1. <u>Responsibility of prosecutors</u>

- **Action**: GYLA applied to the Chief Prosecutor's Office asking to open an investigation in the conduct of the prosecutors, who were responsible for investigating S.J.'s allegations of domestic violence (including to investigate discriminatory motive). **Outcome**: Investigation was never opened.
- **Action**: GYLA applied to the General Inspection of the Chief Prosecutor's Office asking to start disciplinary proceedings against the prosecutors, who were responsible for investigating S.J.'s allegations of domestic violence. **Outcome**: No proceedings were opened.

2. <u>Responsibility of police officers</u>

♦ **Action**: GYLA applied to the Chief Prosecutor's Office asking to investigate the conduct of the police officers, who failed to protect S.J. (including the request to investigate a discriminatory motive of the police officers). **Outcome**: The prosecutor's Office confirmed the start of the investigation on criminal negligence with all possible motives (without specifying discrimination). The investigation is on-going and no charges were brought against the police officers, and the applicants were not informed of any meaningful or other steps taken. The law does not require the Chief Prosecutor's Office to respond.

3. <u>Responsibility of the employees of the General Inspection of the Ministry of Interior</u>

♦ **Action**: GYLA applied to the Chief Prosecutor's Office requesting to open the investigation in the acts of the employees of the General Inspection of the Ministry of Interior, who failed to inspect S.S.'s conduct based on S.J.'s reports. **Outcome**: No investigation opened.

4. <u>Responsibility of the prosecutor of S.S., who failed to identify the gender-based discriminatory motive in the murder of S.J.</u>

♦ **Action**: GYLA applied to the General Inspection of the Chief Prosecutor's Office requesting to discipline the prosecutor of S.S. for his failure to investigate the discriminatory motive in the murder of S.J..**Outcome**: No measures taken.

5. The way forward to seek justice at the European Court:

I am currently litigating the case at the European Court of Human Rights as a lawyer at GYLA, in cooperation with EHRAC (submitted in September 2016). The applicant argues that Art. 2, 3 and 14 of the Convention were violated for the discriminatory failure of the State to prevent and adequately investigate S.J.'s murder and to protect her from ill treatment. The application is pending. <u>This is the first case on Femicide submitted to the European Court against Georgia. In case of winning, this will also be the first case on violence against women.</u>

Despite the victory in the administrative case, there have been several shortcomings, which, under GYLA and EHRAC's view, still make a case at the European Court:

♦ As of August 2017, no charges (criminal or disciplinary) are brought against any of the law enforcement officials (police officers, prosecutors, employees of the General Inspection) responsible to protect S.J., or against the prosecutor responsible for the comprehensive investigation of Femicide committed against S.J..

♦ The moral damages decision of the national courts is not final and is under appeal. Even if the decision was final, it would not solely serve as sufficient remedy and redress for the violation of Article 2, 3 and 14 of the Convention.

♦ The applicants underline that the national courts failed to establish that the authorities' failure to protect S.J. from domestic violence constituted discrimination. Neither the Tbilisi City Court, nor the Tbilisi Court of Appeal made any finding of discriminatory behaviour on the part of the police officers/prosecutors/employees of General Inspection of the Ministry of interior. Moreover, there was no accountability for the failure to investigate discriminatory motive in the murder of S.J., which downgraded the crime committed.

♦ This was a high profile case that received considerable media attention, of which the authorities must have been aware. Despite this, they have not investigated or acknowledged their liability before the domestic courts or any other forum. They have been rejecting the courts' findings throughout the proceedings and are still appealing the decision, alleging that the finding that the police/prosecution did not adequately fulfil their obligations towards S.J. is baseless.

6. Seeking justice at CEDAW

For the similar case of Femicide as above, I (as a lawyer at GYLA) have submitted the application at the CEDAW (communication submitted in September 2017). This is the first Femicide case submitted to CEDAW concerning Georgia.

This case the inaction of the State to prevent femicide (gender-related killing of a woman) and the inadequate investigation of the crime that constitutes a systemic problem of discrimination against women in Georgia.

B. DZ. entered into an unregistered marriage with O.SH. in 2004 and lived in Rustavi City, Georgia. As O.SH. on a regular basis assaulted the spouse physically and psychologically, B.DZ. moved out with her children to live separately in September 2013. O.SH continued physical and

psychological violence over his spouse, which resulted in the murder of B.DZ on March 6, 2014.

Prior to the death, B.DZ. had referred to the police four times (the last reference was recorded 4 days before the murder) and asked for the protection from the abuser. In spite of this, the police and the Prosecutor's Office did not take any measures envisaged in the law to protect the life of B.DZ. O.SH was convicted of a premeditated murder (Article 108 of the CCG) and sentenced to a minimum sentence stipulated in the above Article (7 years and 6 months of imprisonment).

GYLA asserts at the CEDAW that the State has committed discrimination against B.DZ., as it: a) failed to protect B.DZ's life; b) failed to protect B. DZ against inhumane treatment; c) failed to investigate the murder of B.DZ as a gender crime; d) failed to eradicate deeply entrenched gender stereotypes and subordination, which played the major role in the murder of B.DZ. The application is pending.

In this case, criminal and administrative proceedings are similar to the case of S.J. (see above) therefore, they will not be outlined here.

E. Analysis of the role of NGOs supporting the victim

1. General approach of GYLA to provide support to victims

To provide support for victims of domestic and gender-based violence, holistic intervention is needed and services shall also be provided (psychological, medical, shelters) outside the legal support. This is particularly relevant for women from marginalized communities, who are at risk of different forms of oppression and criminalization.

To combat violence against women, GYLA goes beyond providing legal aid, as applying legal mechanisms only cannot offer long-term solutions for victims. Therefore, outside legal aid, GYLA cooperates with service-provider organizations for women to access psychological aid and shelters; takes measures for their socio-economic empowerment; raises awareness on legal mechanisms and promotes effective referral and management mechanisms. In particular:

- **GYLA provides legal aid** in the entire territory of Georgia, with its main office in Tbilisi and 8 regional offices. The legal aid is provided to victims through hot-line consultations and in-person consultations; drafting applications to request protection measures and other legal documents; legal representation of victims at the stage of criminal investigation; representation at courts/public institutions in civil and administrative cases. While providing legal aid, GYLA has regular communication and collaboration with other professionals (social workers, medical professionals) to implement the principles of the model of „one-stop shops" (the unified coordination database for instant exchange of information). Legal aid will be provided in 9 locations: Tbilisi and 8 regional centres, where GYLA has office representations.
- **GYLA conducts studies and advocates for improved policies on violence against women and domestic violence** and provides recommendations to fill out the gaps.
- **When needed, GYLA ensures the placement of victims in one of the following facilities operated by partner NGOs:** Shelter, Crisis Centre and Rehabilitation Centre, depending on the specific needs of the victim. In those centres, victims will benefit from the relevant psycho-social rehabilitation and urgent medical relief, including gynaecological services.
- **GYLA refers victims to partner organizations for psychological services**. This involves Individual consultations; Group therapy and Training in social skills and self-help groups.
- **Urgent medical services are provided by partner organizations, in case of need**.
- **To empower women,** through partner organizations GYLA provides skills' training and mentorship to acquire skills, necessary for employment or starting business and mediate on their behalf to find them employment opportunities.

While the above steps could provide effective solutions for many women, they do not always work with marginalized groups, for whom different strategies and approaches are needed to meet their needs.

2. Analysis of GYLA's work to help marginalized women break the cycle of violence – sex workers and women who use drugs

Marginalized women, including sex workers and women who use drugs, experience some of the most insidious forms of violence and lack access to justice. Sex workers and women who use drugs are particularly vulnerable to physical, psychological, sexual and economic violence

because of intersecting forms of discrimination. Their sex, structural problems associated with punitive drug policy/administrative penalties for sex work and social stigma related to their lifestyle make them particularly vulnerable. There is no reliable data on the actual scale of violence experienced by these groups of women.

Lack of access to justice for sex workers and women who use drugs is rooted in the belief that these women deviate from traditional and socially acceptable gender roles. Therefore, they are subjected to severe judgment and double standards as compared to men. Women who use drugs and sex workers face double stigma, as they do not fulfill the socially determined and gender-related „morality" requirements. As a result, violence against marginalized women is considered acceptable and oftentimes justified as compared to monolithic groups of women. Stigma and discrimination instigates violence, which, coupled with repressive state response, make these women particularly vulnerable to various forms of abuse.

For many years GYLA has had difficulty in engaging with sex workers and women who use drugs and providing them legal aid to increase their access to justice. Only in 2015 GYLA starting cooperating with the community organizations and service providers to women of these groups. As a result of such cooperation, it has become possible to take steps for the legal empowerment of marginalized women.

Starting from January 2015 GYLA, has been seeking to address barriers of access to justice for marginalized women through setting precedents of seeking remedies for gender-based violence and to contribute to wider legal practice and policy changes for increasing access to justice for criminalized women.

The specific action GYLA takes for the above purpose are: increasing awareness about using legal remedies in cases of GBV against criminalized women; increasing skills of free-legal aid lawyers and sensitivity of media on issues facing criminalized women; conducting litigation relying on the abuses documented in the pilot project against sex workers and women who use drugs to set useful precedents of redress for violations; engage with Committee on the Elimination of Discrimination against Women, examine the government's compliance with the recommendations of human rights bodies on violence against criminalized women; drafting a report with recommendations, on abuses against sex workers and women who use drugs relying on the findings of the pilot project and organizing the round table discussion with stakeholders.

F. Recommendations to NGOs and practicing lawyers to improve their intervention in violence against women cases

1. Identifying cases to litigate and supporting the victim:

Other than widely disseminating the information about providing legal aid, cases might be identified through field visits. Referrals can also be made by organizations, which provide services to different groups and do not assist with legal matters. Field visits are particularly important to reach out to the closed communities, who do not have many opportunities to apply for legal aid themselves. To reach out to certain communities (such as ethnic and religious minorities, marginalized women such as sex workers and drug users), cooperating with community organizations, or an individual from the communities, might be of help. In many cases, this kind of cooperation can be the only way to identify and litigate cases, as well as to establish trust with the applicants.

Once the applicant is identified, offer her services outside the legal support. This might require referral to service provider organizations, who offer medical and psychological services and shelters. Establish contacts with the organizations, who work on economic empowerment of the victims, to provide long-term and sustainable solutions.

2. Specific tips for lawyers in the process of litigating violence against women cases:

a) Criminal cases – prosecutions of violence against women:

In the criminal cases of violence against women, get involved in the proceedings as the representative of the victim and submit the applications to the prosecution, requesting to take the following steps:

- ◊ Classify the crime based on its gravity, as in many cases crimes against women tend to be downgraded;
- ◊ Investigate gender-based discriminatory motive in the crime and submit the evidence at the court, so that the court is able to aggravate the sentence;
- ◊ Investigate incidents of domestic violence, which led to the escalation of the crime;
- ◊ Interrogate possible witnesses;
- ◊ Request grant the victim status, which will enable you (as the lawyer of the victim) to review the case materials.

- ◊ Take gender-approach in investigation taking into account general background of violence against women;
- ◊ Classify violence against women as a form of discrimination;
- ◊ Investigate intersectional and multiple discrimination;
- ◊ Apply protection measures for victims.

b) Applying protection measures against violence (administrative cases):

- ◊ If definition of violence is limited to physical, psychological and sexual violence, and other forms of violence (such as stalking and sexual harassment), try to argue the remaining forms of violence in the framework of the acts envisaged in the law. E.g. some elements of stalking could qualify as psychological violence. This way, protection order might be issued by the court despite the fact that stalking is not envisaged in the law.
- ◊ Present the information of systematic nature of violence, even when the acts happened so long ago that they cannot be supported by evidence. This might still influence the court to provide maximum available protection under the law (e.g. issue the protection order for the maximum available term).

c) Holding the State accountable for inadequate response to violence against women:

- ◊ If the victim of violence applied to the police/prosecution, who inadequately responded to the report, file the application at the Court in an administrative case.
- ◊ Request that the Court establish the facts of the inaction of the authorities, which led to damages and ask for compensation;
- ◊ Argue that that inaction of the authorities to the applications of the victim constituted discrimination based on sex;
- ◊ Argue both: that the state failed to protect the victim from discrimination (committed by the abuser) and that the state bodies committed discrimination while inadequately responding to the incident.
- ◊ If violence entailed criminal prosecution, file a claim against the prosecutor's office, if the discriminatory motive of the perpetrator was not investigated.

Improving Access to Justice for Women in Moldova

by Veronica Vition

I. The background of domestic violence and violence against women in Republic of Moldova

1.1. Patriarchal stereotypes

Domestic and sexual violence are widespread and systematic problems in Moldova. Some estimates suggest that 63.4 percent of women and girls aged 15 or older had experienced at least one form of physical, psychological, or sexual violence over their lifetime, with the prevalence of violence in rural areas being higher (about 69 percent).[60] However, few victims actually report such violence.[61] A recent survey revealed that physical violence exists in almost 50 percent of the families of surveyed men.[62] This survey found that such violence is associated with negative perceptions and gender stereotypes, as well as persisting gender inequalities in families and in the Moldovan society: 27.7 percent of men and 17.5 percent of women think that a woman should tolerate violence in order to preserve her family, and 41.1 percent of men believe that there are moments when a woman should be beaten.[63] In terms of sexual violence, statistics indicate that one in five men have had sex with a female without her consent, while almost one in four men have had sex with a female unable to give consent under the influence of alcohol.[64]Additionally, 18 percent of men surveyed admitted they used force to have a sex with a current partner, while 14 percent of men used force to have sex with a former partner.[65]

1.2. Legal framework – current state of legislation on domestic violence and violence against women. Statistical data.

Domestic and sexual violence are human rights violations that breach woman's rights to freedom from discrimination, including in terms of equal

[60]National Bureau of Statistics, UNDP, UN Women and UNFPA, *Violence against Women in the Family in the Republic of Moldova* (2011).
[61] Ibid, showing that of the 40 percent of women who had experienced physical violence, only 9 percent had reported it.
[62] Women's Law Center, Perceptions Survey "Men and Gender Equality in Moldova" (2015).
[63] Ibid.
[64] Ibid, ¶ 96.
[65] Ibid.

protection before the law, equality before the courts, and recognition as a person before the law.Moreover, it concerns the prohibition of ill-treatment, and, depending on the intensity of force and violence used, it occasionally violates the right to life. Failures to ensure that criminal and civil laws adequately protect women and consistently hold abusers accountable, that state agents – such as police and prosecutors – implementing the laws that protect victims of domestic violence, act with due diligence to prevent, investigate and punish violations of women's rights, constitute breaches of the procedural limbs and the duty to combat impunity for ill-treatment, violations of the right to life (as commented).The international human rights framework, including the European Convention on Human Rights and Fundamental Freedoms, as implemented by the European Court of Human Rights, has specifiedthat authorities' positive obligations in some instances under Article 8 – right to respect to private and family life) taken alone or in conjunction with Article 3 of the Convention – include, in certain circumstances, a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (see also, *Osman v. the United Kingdom*, judgment of 28 October 1998, Reports 1998 VIII, §§ 128-130, and *M.C. v. Bulgaria*, no. 39272/98, ECHR 2003 XII). The Court notes in this respect that the particular vulnerability of the victims of domestic violence and the need for active State involvement in their protection has been emphasized in a number of international instruments.[66]

As a result, the international standards, including the European Convention on Human Rights and Fundamental Freedoms and the case law of the Strasbourg Court, including its landmark judgment in the case *Opuz v. Turkey*, spell out the obligation to establish and apply effectively a system by which all forms of domestic violence could be punished and sufficient safeguards for the victims be provided.

It is to be noted that, in addition, the international legal framework, including the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence requires the Contracting Parties to take the necessary legislative and other measures to protect the rights and interests of victims in the course of relevant procedures. Such

[66]Bevacqua and S. v. Bulgaria, 71127/01 | Judgment (Merits and Just Satisfaction) | Court (Fifth Section) | 12/06/2008, para. 65.

measures involve, inter alia, protection from intimidation and repeated victimization, enabling victims to be heard and to have their views, needs and concerns presented and duly considered, and enabling them, if permitted by applicable domestic law, to testify in the absence of the alleged perpetrator. In addition, the EU Directive establishing minimum standards on the rights, support and protection of victims of crime provides, inter alia, that interviews with victims are to be conducted without unjustified delay and that medical examinations are to be kept to a minimum.

The Moldovan legal framework on preventing and combating domestic violence is predominantly based on the special Law on Preventing and Combating Domestic violence (hereinafter – Law No. 45) that has been adopted in 2008. It is followed byseveral bylaws / internal regulations, including specific Instructions of the Ministry of Internal Affairs, Ministry of Health and Ministry of Social Protection. They have been supplemented by recommendations adopted in order to specify and explain the actions of the bodies and authorities responsible for the implementation of Law no. 45, appropriate provisions of the Criminal, Civil Procedural and Criminal Procedural Codes.

However, the legislation had retained certain gaps. As a result, it could not properly address the issue of protection of victims of domestic violence and ensure effective responses to domestic violence and did not meet the international standards in this area. It did not fully ensure victims' protection and needs in situations of immediate danger, because the court-ordered protection of victims was often delayed or refused by courts.The subjects of domestic violence were limited by their marital status and the measures referred only to husbands. Victims' access to justice was limited due to the obligation to justify their necessity of obtaining a protection order, and due to the lack of state guaranteed legal aid and high financial resources for engaging a lawyer and submitting files to court[67]. The protection orders were not adequately enforced, partly because of the lack of proportional sanctions for relevant infringements, partly because the supervision of their implementation was in the competence of bailiffs, who were not sufficiently operative and efficient in these cases. The victims, who suffered serious injuries or

[67]Report on Costing Domestic Violence and Violence Against Women in Moldova, pag.11 http://cdf.md/rom/resources/raportul-de-estimare-a-costurilor-violentei-in-familie-si-a-violentei-impotriva-fe

psychological or other health damages, caused by physical injuries and psychological consequences of violence had no enforceable right to compensation due to the inadequate facilities, support, including legal aid, resultant in constraints in terms of access to court and lack of consistent court practice.

On 28 of July 2016, the Parliament of the Republic of Moldova approved the amendments to the Law No. 45 and 10 other laws and codes. They comprised of advanced provisions referring to: violence in family, mental violence, victim and aggressor/perpetrator, extension of the definition of aggressor. They included new norms concerning: crisis/critical situation, emergency restraining order, violence against women, gender-based violence against women. The amendments also provided for a new administrative offence „stalking". The new protection measures for victims refer to: emergency protection orders (restraining orders) that allow police officers to isolate the aggressor immediately from the family/home for up to 10 days, an easier procedure for obtaining a protection order based only on the statement of victim, and more protection measures that can be envisaged by an order. The issuing of restraining orders is based on risk assessment survey conducted by the police on the ground.

The law has increased the criminal sanctions for domestic violence and established criminal sanctions for infringements of protection orders, as well as administrative ones for infringements of restraining orders and the responsibility of police to ensure the execution of the restraining and protection orders.

Victims have been provided with additional support like the right to free legal assistance guaranteed by the state, exemption from court fees, right to get immediate and confidential aid in medical institutions, and the right to claim for compensation for moral and financial damages from the state. The procedure of obtaining protection orders was regulated more clearly. It has been specified how protection measures are solicited. The legal framework now provides for certain exceptions with regard to individual subjects, and the possibility of involvement, at the victim's request, of professionals, if the victim is unable to apply for protection on her own.

Is this Law No, 45 (and the procedure for its implementation) a civil law or a criminal law and does this affect the access to free legal aid – for example, dependent on the procedural rules and/or the procedural principles and the capacity of the victims and perpetrators in the proceedings?

At the same time, the amendments have extended competencies of probation bodies as to provision of assistance and counseling to perpetrators in order to prevent recurrence of domestic violence.

The responsibilities of authorities have been also extended by the obligation to inform properly the victim of her rights, to prioritize and allocate financial resources at the local level for developing and maintaining the support services for victims and establish centers for perpetrators, to uniform the statistical data and ensure its collection, to publish annual reports on domestic violence, allocate financial resources for preventive measures, and to ensure the functioning of the national hot-line for 24-hour assistance.

The number of victims who are accessing NGO-s – service providers in cases of domestic violence area is still high. In 2016, the National Hot Line of the International Centre „La Strada"[68] has registered 12 835 phone calls concerning domestic violence and 5560 women have been counseled. Almost 500 women with children were placed in the shelters[69].

Official statistics of the Ministry of Internal Affairs from 2016 pointed out that the number of cases of domestic violence continues to increase: to 10459 compared to 9203 in 2015 and 7338 in 2014. However, the number of cases investigated as criminal offences decreased in 2016 to 1679 compared to 1914 in 2015 and 2270 in 2014. The number of protection orders was on the rise in 2016 reaching 916 compared to 828 in 2015. The provision regarding restraining order came into force on 17 March 2017 and during this period, until October 2017, police issued almost 1000 restraining orders[70].

These developments were prompted by the civil society efforts to advocate for the alignment of the national legal framework with the provisions of the European Convention on Preventing and Combating Violence against Women and Domestic Violence, the UN CEDAW Committee Recommendations for Moldova and the Recommendations for Moldova following the UPR, as well as the European Convention on Human Rights and Fundamental Freedoms and the relevant case law of the Court in Strasbourg, and represented the first significant step taken by authorities to ratify the Convention which was signed on February 17, 2017.

The practice reveals that besides the police, including local/community officers, the municipal (local/communal) authorities are the ones that are

[68] http://lastrada.md/rom/violenta-in-familie

[69] Internal statistics of the National Coalition Life without Violence.

[70] http://politia.md/sites/default/files/ni_vf_web.pdf

best placed for preventing domestic violence and timely triggering the protecting framework and procedures.

It is to be noted in this regard, that the new provisions providing the victims of domestic violence with the right to claim damages directly from the state have not gained their full steam in practice due to insufficient cases initiated in this regard.

The following recommendations remain topical:

- ✓ To adopt the National Strategy and Action Plan on preventing and combating domestic violence for 2017-2022 and to ensure the financing of its implementation;
- ✓ To ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (signed in February 2017);
- ✓ To ensure more consistent implementation in practice of the relevant legal framework, including in terms using of protecting measures of victims of domestic violence in the course of procedures;
- ✓ To implement specific duties of the local/communal authorities (bodies) with regard to identification, prevention of domestic violence and triggering protective framework and procedures, as well as take care of their capacity building in this regard;
- ✓ To intensify strategic litigation activities with regard to the right to claim damages directly from the state and take care of NGOs capacity building in this regard.

II. Access to justice of women, victims of domestic violence.Shortcomings and obstacles to access to justice for women.

Access to justice is a basic principle of the rule of law. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable. The Declaration of the High-level Meeting on the Rule of Law[71] emphasizes the right of equal access to justice for all, including members of vulnerable groups, and reaffirmed the commitment of Member States to taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for

[71]https://www.un.org/ruleoflaw/files/A-RES-67-1.pdf [para. 14 and 15].

all.Access to justice can be construed as the ability of people, including people from disadvantaged groups, to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards[72]. It means ensuring access to fair, affordable, accountable and effective remedies in terms of contact with, entry to and use of the legal system. The requirement of equality, including gender equality, is at the centre of the scope, the exercise and the fulfillment of the right to justice. Thus, the right of access to justice for women is essential to the realization of all the rights protected under the UN Convention on the Elimination of All Forms of Discrimination against Women.

The most important standards identified by the CEDAW Committee General Recommendation No. 33 (2015) on women's access to justice are: 1) access to free legal aid for women by ensuring that eligibility criteria for legal aid is formulated on the basis of gender considerations so as to take into account the diverse realities of women's lives; 2) addressing the power dynamics between women and men in alternative dispute resolution processes to ensure that women are respected and their voices and concerns are heard; 3) ensuring the possibility of legal standing for NGOs to bring proceedings before the courts; 4) raising awareness among law enforcement officials on gender equality and eliminating gender-based stereotypes; 5) allocating resources and giving powers to equality bodies which could monitor and secure equal access of women to justice; 6) taking special measures at the legal or practical level in order to address the needs of vulnerable women and enhance their access to justice.

The centrality of the availability of free legal aid for ensuring the right to fair trial and protection of other rights has been maintained by the European Court of Human Rights since its early judgment in *Airey v. Ireland*.[73]

When talking about access to justice for women, we need to consider not only the national framework, but also, cultural, social, legal and procedural national factors such: as the availability and quality of legal aid, persistence of gender stereotypes in the society in general and particularly among the professionals of the justice sector, the functionality, effectiveness and transparency of the justice system and quality of the justice administration, the public confidence in the justice sector, low legal culture of society and especially among women, the lack of the knowledge about official procedures and available assistance, lack of the legal awareness

[72]Doina Ioana Strãisteanu, Barriers, remedies and good practices for women's access to justice in five Eastern Partnership countries: Republic of Moldova, available at: https://rm.coe.int/16806b0f41

[73]Application N 6289/73 | Judgment (Merits) | Court (Chamber) | 09/10/1979.

campaigns, the activism and strengthening of the civil society organizations[74], and the high cost of legal assistance.

2.2. The system of legal aid for victims of domestic violence. The availability, cost and quality

✓ *State guaranteed legal aid*

The Moldovan Constitution is the supreme law, which guarantees equality of citizens, before the law and public authorities, no matter what are their race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin (Article 16) and the right to an effective remedy from the competent court for violation of her/his rights (Article 20). Additionally, Article 26 guarantees the right to defense, to respond independently by appropriate legitimate means to an infringement of his/her rights and free-doms and the right to be assisted by a lawyer, either chosen or appointed ex officio throughout the trial.

The Code of Civil Procedure and the Code of Criminal Procedure provide for the right to be assisted in civil and criminal cases by a lawyer, who can be chosen by the parties or appointed by the coordinator of the territorial office of the National Legal Aid Council. The legal assistance can be provided in any court, at any stage of the trial.The Law on the guaranteed legal aid provides the types, conditions, and the procedure to obtain such legal aid guaranteed by the State: primary legal aid and qualified legal aid. Before the legislative changes, introduced by the Law No. 196 adopted on 28 July 2016, the Law on the Guaranteed Legal Aid was providing an exhaustive list of beneficiaries of qualified legal aid. The persons who were not included in the list had to prove the lack of financial resources so, providing qualified legal aid was conditioned by the income of the person. The paradox was that the abusers could benefit of qualified legal aid under the general conditions. Also, the procedure of proving lack of financial resources was bureaucratic and unclear. In these conditions, the burden of proof lied on the victims of domestic violence. The Law No. 196 (Article 7) introduced the provision, according to which children victims of crimes and victims of domestic violence benefit of guaranteed free legal aid[75], without imposing any conditions in line with international standards[76].

[74] https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice

[75] http://lex.justice.md/index.php?action=view&view=doc&id=325350

[76] 12 UN Women, Handbook for Legislation on Violence against Women (2010), Section 3.9.3.http://www.un.org/womenwatch/daw/vaw/handbook Handbook%20for%20legislation%20on%20violence%20against%2 women.pdf,

The system of legal aid is formed form attorneys (advocates) and paralegals. There are 5 territorial offices of National Legal Aid Council in 5 cities, approximately 500 lawyers, but only 10 % of them are working in the South of the country. It is indicative that there is the lowest rate of domestic violence complaints, requests for the protection orders and files to courts and victims are more willing to hire private attorneys in this region.

In 2016, 49743 persons benefited from the qualified guaranteed legal assistance (2842 children and 6845women) and 9335 persons benefited from primary legal aid. There is no desegregated data regarding the number of domestic violence cases where such legal aid has been granted. 491 lawyers were assigned to provide qualified legal aid, including layers specialized in child-related cases, assistance for asylum seekers, refugees, humanitarian beneficiaries, stateless persons, people with mental disabilities, victims of crime. Primary legal aid was offered by 42 paralegals, 13 law students, and 16 public lawyers.[77]

The interviewed specialists mention that the most common legal needs of women are: obtaining protection orders, divorce, establishing child custody, child maintenance, sharing/dividing of the common property, legal procedural representation before prosecution bodies and courts. The most often requested legal services concernlegal aid in issuing protection orders, divorce and establishing the child custody. In terms of primary legal assistance it is information on the legal system of the Republic of Moldova, rights and obligations of the victims, measures against aggressors and duties of the authorities, exercising the rights, advising on legal issues, assistance in drafting legal documents. All interviewed women emphasized that the support of paralegals was crucial to them in terms of understanding their rights, submitting files to courts and representing themselves in courts[78]. Moreover, paralegals working in the communities have themselves very often identified victims of domestic violence and provided information about rights, placements, etc.

The professionals from guaranteed legal aid need specialized trainings targeted in domestic violence issues, in particularly after the legal changes have been introduced.The last activity report of the National Legal Aid Council, which mentions that paralegals have been trained, dates from 2013. Since then, they did not take part in any training on domestic violence, comparatively with prosecutors, judges and police.

[77]http://www.cnajgs.md/uploads/asset/file/ro/1111 Raportul_de_activitate_al_CNAJGS_2016.pdf

[78] http://lastrada.md/files/resources/3/ Practicile_existente_privind_accesul_la_justi__ie_pentru_VF.pdf

One of the most important findings in terms of maintaining access to justice is that, although the costs of hiring private lawyers by individuals are 33.7 times higher than those, who provide free guaranteed legal aid, victims prefer to hire private lawyers. This highlights the lack of information about the guaranteed free legal aid, as well as the questionable quality of the state services currently provided. These expenses represent a huge financial burden on the victims in caseswhen they refer to institutions to seek justice. A survey conducted by the National Bureau of Statistics certified that from the total number of women victims, only 2.8% asked for legal assistance, only 22.1% were satisfied by the services offered, 41.4% were not satisfied, and 36.5% did not know how to answer this question. To hire a lawyer, in an average case of domestic violence, the victim should pay a sum of up to 12 times higher than the average monthly income.

✓ *Lawyers from the public institutions and NGOs, service providers for victims of domestic violence*

There is a lack of lawyers in the regions, especially in public institutions, service providers for victims of domestic violence (maternal centers). The majority of them do not have incorporated lawyers and just few hire part-time lawyers. Since they do not have attorneys, they usually refer such cases to other NGOs through the internal referral system. The NGOs have at least one lawyer and occasionally hire other attorneys when needed[79]. A study has shown that only 25 % of victims, who get in contact with NGO-s and public institutions, obtainjust some basic information about their rights, when informed by the police.At the same time, the Law No. 45 establishes that „responsible authorities have to react promptly to any request and to inform victims about their rights, about bodies and institutions tasked with the prevention and combating of domestic violence, about the types of services and organizations that may be addressed for help; about assistance available to the victims; about where and how can they lodge a complaint; about the procedure to be followed after lodging the complaint and about their role in such proceedings; how protection can be obtained; to what extent and in what conditions can counseling or legal assistance be accessed.[80]. Almost all victims noticed that mayors, social assistants and police either do not provide this information in full, even though they knew about their situation, or they provide in such way that they cannot understand.

[79] Internal data of National Coalition "Life without violence"
[80] http://lex.justice.md/md/327246/

The guaranteed legal aid and the legal aid provided to victims by NGO-s is free of charge and confidential (amendment introduced by the Law No. 196 from 28 July 2016). According to the report „Costing of domestic violence in Republic of Moldova"[81] the total cost for the justice sector is 14990 thousand MDL/. Almost 80 % are spent for the judiciary-related segment and just 18 % are spent on police.

There are also expenses related to justice sector costs which could be an impediment for access to justice. After the reform for the optimization of the judicial map in Republic of Moldova, the number of courts are reducing from 44 to 15 courts in the country that will make it more difficult for victims to travel to the courts, especially in the absence of financial resources. Also, the majority of victims cannot afford to cover travel costs to make theirreport and obtain a certificate of forensic expertize. Usually, these costs are covered by NGOs if victims are assisted by them, or by the police.

Additionally, the activity of public lawyers and paralegals, in particular their role related to assistance in domestic violence is not enough known and popularized. Taking into consideration that the role of the professionals of legal guaranteed aid is crucial in ensuring the access to justice for women – victims of domestic violence at the initial stage, these gaps should be addressed accordingly. The statistical data could be better disaggregated as well, in order to reveal and make it possible to analyze when the number of victims of domestic violence is increasing, which is the group with the most frequently needed assistance, what are the numbers of civil and criminal cases, relationship between the victim and the perpetrator, etc.

Thus, in terms of ensuring an appropriate access to justice by the victims of domestic violence and women in general, it would be necessary:

✓ To ensure awareness raising of the potential victims of domestic violence and related abuses (vulnerable groups of population) regarding the availability of free legal aid and ready availability of free legal aid over all territory of the country, in particular it South.

✓ To take further actions with regard to capacity building of free legal aid lawyers and paralegals in addressing domestic violence and related abuses and enhance their performance in this regard.

✓ To rationalize and streamline costs of preventing and combating domestic violence, including judicial and related ones, including in view of the optimization of the court map and ensure that they are covered/ alleviated (where appropriate) by the state.

[81] http://cdf.md/rom/resources/rapoarte/raportul-de-estimare-a-costurilor-violentei-in-familie-si-a-violentei-impotriva-fe

DOCUMENTS, MATERIALS AND REFERENCES TO USEFUL READINGS

Adequacy of the international legal framework on violence against women – *by Dubravka Simonovic – UN Special Rapporteur on Violence against Women, its causes and consenquencesm* available here http://ap.ohchr.org/documents/dpage_e.aspx?si=A/72/134

The Story Behind General Recommendation 33 – available at: https://rm.coe.int/1680631f5a

Committee on the Elimination of Discrimination against Women

UN CEDAW Committee General recommendation on women's access to justice, availavle at:http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf

Access to Justice for Women – approaches throughout the world:

Access to Justice for Women – India's response to sexual violencein conflict and social upheaval - https://www.law.berkeley.edu/wp-content/uploads/2015/04/AccesstoJustice.pdf

The Istanbul Convention

Links to documents and materials:

Report – Legal Implications of EU Accession to the Istanbul Convention http://ec.europa.eu/justice/gender-equality/files/your_rights/istanbul_convention_report_final.pdf

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