

IMPROVEMENT OF NATIONAL LEGAL NORMS AND MECHANISMS PREVENTING THE GENDER STEREOTYPES AND FAMILY VIOLENCE IN ACCORDANCE WITH INTERNATIONAL STANDARDS OF WOMEN'S RIGHTS

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In its General Recommendation No. 35 on gender-based violence against women adopted to update the General Recommendation No. 19, the UN Committee on the Elimination of Discrimination against Women (further - CEDAW) on July 26, 2017, has stated as follows¹:

"2. For over 25 years, the practice of States parties has endorsed the Committee's interpretation. The opinio juris and State practice suggest that the prohibition of gender-based violence against women has evolved into a principle of customary international law. General recommendation No. 19 has been a key catalyst for this process².

3. Acknowledging these developments, as well as the work of the UN Special Rapporteur on violence against women, its causes and consequences, and of human rights treaty bodies³ and special procedures⁴, the Committee has decided to mark the twenty-fifth anniversary of its adoption of general recommendation No. 19 by providing States parties with further guidance aimed at accelerating the elimination of gender-based violence against women.

Further, CEDAW continues:

"5. The Committee's concluding observations on periodic reports submitted by the States parties under the Convention⁵ and in the context of relevant follow-up procedures, general recommendations, statements, as

¹<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsldCrOIUtVLRFDjh6%2Fx1pWAeqJn4T68N1uqnZjLbtFuavNk4TIH7S3xdU4S7zlngqIbpD0ats8RlrdBnaBJI3TWoqC9ZC0U1GVw3B2Tc7W3b>

² The government practices in combating the gender-based violence against women are reflected in important political documents and regional treaties adopted as part of the multilateral forums, such as the Vienna Declaration and Programme of Action (1993); the Declaration on the Elimination of Violence against Women (1993); the Beijing Declaration and Platform for Action (1995) and five-year reviews of its implementation; and regional conventions and action plans such as the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (1994); Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003); and the Council of Europe Convention on preventing and combating violence against women and domestic violence (2011). Other similar international documents include the ASEAN Declaration on the Elimination of Violence against Women and Children; the Arab Strategy for Combating Violence against Women (2011-2030); and the Agreed conclusions of the 57th Session of the Commission on the Status of Women (2013) on elimination and prevention of all forms of violence against women and girls (E/2013/27, chapter I, section A). The Rome Statute of the International Criminal Court and the Security Council resolution 1325 (2000), and subsequent resolutions on women, peace and security, and many resolutions by the Human Rights Council, including resolution 32/19 dated July 1, 2016, containing specific provisions on combating gender-based violence against women. Judicial decisions by international courts, which are a subsidiary means for the determination of customary international law, also demonstrate such development of the concept of prohibition of the gender-based violence against women (see A/71/10, chapter V, section C, conclusion 13). The examples include the decision of the European Court of Human Rights in the case of *Opuz v. Turkey* (application No. 33401/02), dated June 9, 2009, when the Court was guided by considerations of what it is called "the evolution of norms and principles of international law" (paragraph 164) based on a number of international and comparable materials related to the violence against women; and the decision of the Inter-American Court of Human Rights in the *González case et al. ("Cotton Field") v. Mexico*, dated November 16, 2009. See *ibid*.

³ See, among others, General Comment No. 28 (2000) on the equality of rights between men and women by the Human Rights Committee; General Comment No. 2 (2008) by the Committee Against Torture; General comment No. 22 (2016) on the right to sexual and reproductive health, by the Committee on Economic, Social and Cultural Rights; and General Comment No. 3 (2016) on Women and girls with disabilities, by the Committee on the Rights of Persons with Disabilities. See *ibid*.

⁴ In particular, the Working Group on Discrimination against Women in Law and Practice and the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment. See *ibid*.

⁵ Almost six hundred Concluding Observations have been adopted by the Committee since the adoption of general recommendation No. 19: most refer explicitly to gender-based violence against women. See *ibid*.

well as opinions and recommendations in response to communications⁶ and inquiries⁷ received under the Optional Protocol to the Convention, the Committee consistently condemns gender-based violence against women in all its forms, wherever it occurs. By means of the given mechanisms, the Committee also clarifies the standards related for eliminating this violence and the obligations of States parties in this regard".

In this document, the CEDAW Committee clarifies the concept of "violence against women" and explains how negatively the gender stereotypes impact on the life of society:

9. The concept of "violence against women" in general recommendation No. 19 and other international instruments and documents has emphasised that this violence is gender-based. Accordingly, this recommendation uses the expression "gender-based violence against women", as a more precise term that makes explicit the gendered causes and impacts of the violence. This expression further strengthens the understanding of this violence as a social - rather than an individual-problem, requiring comprehensive responses, beyond specific events, individual perpetrators, and victims/survivors.

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

Uzbekistan, being as a party to the UN Convention on the Elimination of All Forms of Discrimination Against Women (further – the CEDAW Convention), has adopted two laws on September 2, 2019: the Law "On Guarantees of Equal Rights and Opportunities for Women and Men"⁸ and the Law "On the Protection of Women from Harassment and Violence" to fulfill its international obligations.⁹

The Law "On the Protection of Women from Harassment and Violence" defines the types of violence (psychological, physical, sexual, and economic), the concepts of "victim", "harassment" and "protective order".

The document specifies that if an international treaty of Uzbekistan establishes the rules other than those stipulated by the law of Uzbekistan on the protection of women from harassment and violence, the the rules of the international treaty shall apply¹⁰.

The main directions of government policy on protection of women from harassment and violence include, inter alia, as follows:

- development and implementation of gender policy, state programs and strategies for the protection of women from harassment and violence;
- creation of an environment intolerant towards harassment and violence against women in society;
- raising the legal awareness and legal culture in society, strengthening the rule of law;
- creation of effective organizational and legal mechanisms for prevention, identification, suppression of harassment and violence against women;
- taking the measures to eliminate the causes and circumstances contributing to harassment and violence against women;

⁶ Including the following communications: No. 2/2003, *A.T. v. Hungary*, Opinions adopted on January 26, 2005; No. 4/2004, *A.S. v. Hungary*, Opinions adopted on August 14, 2006; No. 6/2005, *Yildirim (deceived) v. Austria*, Opinions adopted on August 6, 2007; No. 5/2005, *Goekce (deceived) v. Austria*, Opinions adopted on August 6, 2007; No. 18/2008, *Vertido v. Philippines*, Opinions adopted on July 16, 2010; No. 20/2008, *V.K. v. Bulgaria*, Opinions adopted on July 25, 2011; No. 23/2009, *Abramova v. Belarus*, Opinions adopted on July 25, 2011; No. 19/2008, *Kell v. Canada*, Opinions adopted on February 28, 2012; No. 32/2011, *Jallow v. Bulgaria*, Opinions adopted on July 23, 2012; No. 31/2011, *S.V.P. v. Bulgaria*, Opinions adopted on October 12, 2012; No. 34/2011, *R.P.B. v. Philippines*, Opinions adopted on February 21, 2014; No. 47/2012, *González Carreño v. Spain*, opinions adopted on July 16, 2014. No. 24/2009, *X. and Y. v. Georgia*, Opinions adopted on July 13, 2015; No. 45/2012, *Belousova v. Kazakhstan*, Opinions adopted on July 13, 2015; No. 46/2012, *M.W. v. Denmark*, Opinions adopted on February 22, 2016; and No. 58/2013, *L.R. v. Republic of Moldova*, opinions adopted on February 28, 2017. See *ibid*.

⁷ See the report on Mexico prepared by the Committee under the Article 8 of the Optional Protocol to the Convention and the response of the Government of Mexico. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2f2005%2fOP.8%2fMEXICO&Lang=en; investigation report on Canada ([CEDAW/C/OP.8/CAN/1](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2f2005%2fOP.8%2fCAN%2f1)); and a summary report on results of the investigation of the Philippines ([CEDAW/C/OP.8/PHL/1](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2f2005%2fOP.8%2fPHL%2f1)).

⁸ The Law of the Republic of Uzbekistan, dated September 02, 2019, No. ZRU-562, <https://lex.uz/docs/4494873>

⁹ The Law of the Republic of Uzbekistan, dated September 02, 2019, No. ZRU-561, <https://lex.uz/docs/4494712>

¹⁰ Article 2 of the Law. Law on the Protection of Women from Harassment and Violence. See *ibid*.

securing cooperation between government authorities, public authorities, non-governmental and non-profit organizations, and other civil society institutions to prevent harassment and violence against women¹¹.

The victim of harassment and violence is provided with the protective order¹², and if necessary, she can be accommodated in a special center.¹³ The protective order can be sought by the legal representative or the wardship and guardianship authority on behalf of victims under the age of 18¹⁴.

The order is issued by the internal affairs authorities within 24 hours from establishment of the fact of harassment and violence or the threat of violence, for the period of up to 30 days and shall come into force from the moment of its registration. The validity period of the order can be extended for 30 days maximum¹⁵. With the systemic support to families and women, and upon the initiative of the President, the Decree of March 7, 2022 specified that the Ministry of Justice, the Prosecutor General's Office, the Supreme Court, the Ministry of Internal Affairs, the State Committee for Families and Women¹⁶ should submit to the Cabinet of Ministers by June 1, 2022 a draft law prescribing the procedure on issuing by court the protective order granting the State protection to a victim of harassment and violence, for a period of up to one year; increasing the responsibility for forcing a woman to perform an abortion; increasing the responsibility for intended bodily harm to a woman, which is a close relative; introducing the criminal liability for disclosing information about a person's intimate life that humiliates the honor and dignity of the individual; etc.

It should be noted that the current edition of the Law "On the Protection of Women from Harassment and Violence" did not specify the norms on the role of the court in protecting women from harassment and violence, and its active participation would contribute to the effective prevention of domestic violence.

The system of protection of victims of violence can be improved based on the experience of several countries.

For example:

It would be expedient to stipulate in the Law "On the Protection of Women from Harassment and Violence" the mandatory issuance of a 24 hours warning that in case of a violence is reported, a person who committed violence can be expelled from a residential premises for the period of a protective order validity, regardless of the residential property ownership, to prevent further violent actions. During this period, it should be decided whether it is necessary to issue a protective order for up to 30 days, which can be a real measure to prevent the violence between the persons residing together in a marriage or without its registration, as well as between the persons related by kinship or property.

It is obvious that the deputies of the Parliament will prioritize the protection of property rights. However, the experience of other countries has proven that the aggressor shall not be just warned on domestic violence, but also evicted. And this measure is a real deterrent for further violent actions.

It is necessary to specify in the Law "On the Protection of Women from Harassment and Violence" that a person who has become a victim of domestic violence has the right to appeal to the court free of charge on violation of rights and for the use of civil remedies, that is, for issuance of restraining orders – an order prohibiting harassment, an order on the rules of residence, as provided for in the UK law, which is reviewed by the court within 48 hours and submitted for execution to the internal affairs bodies and public authorities at the place of victim of violence residence.

Seeing the USA experience, to supplement the rights of victims of violence in the Law "On the Protection of Women from Harassment and Violence" with provisions that they have the right for as follows:

- fair treatment and respect for honor and dignity, as well as privacy;
- be sufficiently protected from the accused person;
- be aware of the progress of the proceedings;
- attend and actively participate in the preliminary investigation and in court;
- for free legal support at the expense of the state;

¹¹ Article 5 of the Law. The main directions of state policy on protection of women from harassment and violence. See *ibid*.

¹² Article 23 of the Law. Issuance and extension of a protective order

¹³ Article 28 of the Law. Accommodation of victims of harassment and violence in special centers

¹⁴ Article 24 of the Law. A protective order for the victims of harassment and violence under the age of eighteen, or persons recognized by the court as incompetent

¹⁵ Article 23 of the Law. Issuance and extension of a protective order

¹⁶ It was established in pursuance of the Presidential Decree No. UP-81 dated March 1, 2022 "On measures for improvement of the system for dealing with families and women and supporting the mahalla and the senior generation", <https://lex.uz/uz/docs/5884176>

- for receipt of information about the sentence and the term of imprisonment;
- for monetary compensation at the expense of a special fund for relocation and change of residence, purchase of new housing, rent of housing or payment for existing housing.

Seeing the experience of France, it is possible to grant the right to organizations fighting violence and gender discrimination, including NGOs to represent the interests of victims of gender discrimination and sexual harassment, including victims of human trafficking during investigation and trial. Today, there is quite a large number of NGOs involved in protecting the rights of victims of violence, which have experienced lawyers. Their legal support is limited to legal advice. However, it is obvious that the victims of violence feel as the most vulnerable during the investigation and trial. Therefore, for provision the rights to access justice, which is guaranteed by international treaties of the Republic of Uzbekistan for victims of violence¹⁷, it is necessary to grant the right to access free legal support by a lawyer, which is provided at the expense of the state to the persons accused of committing crimes, but not to the victims of crimes, which in certain cases is gender-based discrimination: when the aggressor (most often it is a man) receives free support from a lawyer, while the victim (most often a woman) does not.

Following the experience of USA, the Law "On the Protection of Women from Harassment and Violence" can specify additional obligations of the the internal affairs bodies to create an attitude of law enforcement officers towards violence against women as one of the main priorities of their activities, with the purpose to eradicate such traditions that cultivate violence against women.

For this, the law shall specify that all of them must pass the special training. It cannot be allowed that a person who justifies the mistreatment, harassment, and violence against women, commits it at home and at work without understanding the hardships of a victim of violence and what treatment the victim needs, will be a person, at the same time, involved in protecting the rights of victims of violence and conducting an investigation.

For example, law of Slovenia, Canada, the Philippines contains the norms stipulating that employees of all institutions dealing with violence against women and children shall undergo training and development on the topics as follows: a) the nature and causes of violence against women and their children; b) the legal rights and remedies of victims and survivors of violence; c) services provided; d) the legal obligations of law enforcement officers in terms of arrest, protection and assistance; e) methods of disclosure and judicial review of cases of violence against women and their children.

Following the experience of USA, the Law "On the Protection of Women from Harassment and Violence" can supplement with official duties of labor authorities for bearing obligations on prohibition of discrimination against victims of violence by the employer, regardless of the form of ownership of the company, institution, organization, when the victim needs vacation to improve health, to ensure the safety and well-being of the employee or her child.

The Law "On the Protection of Women from Harassment and Violence" can supplement the official duties of the local government authorities to include an obligation to conduct the training programs and preventive measures, train local specialists and provide technical and financial support for implementation of programs intended to help to victims of domestic violence.

Seeing of the experience of Poland and Slovenia, to introduce the obligation for the health authorities, preschool, and educational institutions to inform law enforcement agencies or the prosecutor's office immediately about suspected violence against women and children.

Following the experience of Canada to introduce the concept of courts for correction of persons accused in crimes related to violence, with participation in the correctional program of: a judge, a prosecutor, a lawyer who have received special training; representatives of the service for protection of persons suffered from domestic violence; representatives of the department for prevention of cases of family violence; representatives of the family and children service; representatives of the probation service; psychologists; representatives of internal affairs bodies; social workers.

¹⁷Article 2 of the UN Convention on the Elimination of All Forms of Discrimination Against Women

In Lithuania, domestic violence was categorized as private-public charge up until recently. After the ECHR resolution on *Valiuliene v. Lithuania* (No. 33234/07, March 26, 2013) the Criminal Code and the Criminal Procedure Code of Lithuania were amended to compliance with the Law against Domestic Violence adopted in 2011. The amendments were related to introduction of rules on mandatory triggering a preliminary investigation in all cases where signs of domestic violence were identified, even in the absence of a complaint from the victims or an application from their representative¹⁸.

The transfer of domestic violence from the category of private and private-public prosecution to the category of public prosecution in criminal law is an effective measure of legal protection for victims. Although criminal sanctions alone cannot change the complicated set of behavioral patterns that constitute domestic violence¹⁹, criminal prosecution has an evident deterrent effect in terms of the growth of recidivism and use of violence in the future.

Being a measure of protection, criminalization, firstly, guarantees that the State will have to investigate the crimes committed within the family, but not blame the victims for the violence occurred. Secondly, criminalization facilitates to streamline the course of the investigation, since victims of domestic violence are often unable to collect the body of evidence for the crime under investigation. Thirdly, the victims will no longer be able to drop the charges and withdraw the complaint if they are pressurized and intimidated by the relatives or other persons during the investigation. If the victims are the ones who are responsible for deciding on filing a complaint and further proceeding the criminal prosecution (as, for example, in private and private-public prosecution), the pressure and danger from the aggressor will just continue, but, quite the opposite, may increase, since the victims are "accused" that they the ones who "started everything," and "guilty themselves." This practice demonstrates how crucial it is that courts, being a judicial body, to be active in preventing violence against women.

The legal practice of the European Court of Human Rights and the UN Committee on the Elimination of Discrimination Against Women, as well as the analysis conducted by the Special Rapporteur on violence against women, highlighted some gaps common to the States in terms of application of protective injunctions. Identification of those gaps will facilitate in development of the best practices for implementation of mechanisms of protective injunctions:

- mechanisms for issuing the protective injunctions (warnings, restraining orders, protective orders) should enable their immediate issuance — in emergency cases and in the absence of the offender (ex parte);
- authorities, especially law enforcement agencies, shall inform the victims of domestic violence about their right to apply for a protective injunction;
- compliance with protective orders should be effectively ensured, and offenders shall be administratively liable for violation of restraining orders, and criminally liable for violation of the provisions of the protective order;
- protective injunctions should focus on safety provisions and protection of victims, rather than the treatment of offenders;
- the period of the protective injunctions should be sufficient, and they should contain clear wordings and enforceable instructions that ensure maximum safety;
- the bodies of the justice system should coordinate their actions and exchange information on the issued protective injunctions (coordination between criminal courts and family courts, as well as between courts and internal affairs bodies is especially important).

With this, the norms of the CEDAW Convention, the compliance with which is monitored by CEDAW, as well as advanced foreign experience based on international human rights standards, affecting the changes in national law and practice of its application. These norms are used to establish a social environment intolerant

¹⁸ Council of Europe Commissioner for Human Rights, Report Following Visit to Lithuania from 5 to 9 December 2016. 19 April 2017. P. 4-5 // <https://rm.coe.int/168070a746>.

¹⁹ Ruth Lewis, Russell P. Dobash, Rebecca Emerson Dobash and Kate Cavanagh. Protection, Prevention, Rehabilitation or Justice? Women's Use of the Law to Challenge Domestic Violence. *International Review of Victimology* 2000 7: 179. 181.

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towards gender-based violence, impact positively and efficiently on protection of the rights of victims of family violence.