

Challenges in the Protection of Domestic Violence Victims in Azerbaijan: An Overview of the National Legislation in Light of the 2011 CoE Istanbul Convention

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This article focuses on the following issues: the list of people offered victim status under the Law on Prevention of Domestic Violence of Azerbaijan, the legal remedies available to them, and the legal measures taken by state authorities in all kinds of domestic violence episodes. Additionally, the Law is scrutinized in light of the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence. Hence, the benefits and shortcomings of the current legislation are easily found.

Keywords: domestic violence, victims, protection orders, resumption of family affairs, states' obligations.

Smurto šeimoje aukų apsaugos iššūkiai Azerbaidžane: nacionalinių teisės aktų apžvalga atsižvelgiant į 2011 m. Europos Tarybos Stambulo konvenciją

Šiame straipsnyje daugiausia dėmesio skiriama šiems klausimams: aukos statusą turinčių asmenų sąrašas pagal įstatymą dėl smurto šeimoje prevencijos, jiems prieinamos teisės gynimo priemonės, teisinės priemonės, kurių imasi valstybės dėl visų smurto šeimoje epizodų. Be to, įstatymas yra išnagrinėtas atsižvelgiant į Europos Tarybos konvenciją dėl smurto prieš moteris ir smurto šeimoje prevencijos ir kovos su juo. Taigi būtų lengva rasti dabartinių teisės aktų naudą ir trūkumus.

Pagrindiniai žodžiai: smurtas šeimoje, aukos, apsaugos orderiai, šeimos reikalų atnaujinimas, valstybių įsipareigojimai.

Introduction

During the recent decades, the problem of gender-based violence, mainly domestic violence, became a leading one and requiring a solution. Despite the fact that many countries have adopted legislative acts wherein the principle of gender equality is enshrined, very few of them actually protect women, which

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affects women's health and well-being adversely.¹ The study of women's rights illustrates the increasing ambition and complexity of the human rights movement.² Emphasizing the fight against domestic violence, this article analyzes various approaches to defining domestic violence within the framework of the state's obligation to protect victims against domestic violence as well as legal and other measures taken by state bodies on the basis of national legislation in comparison with the CoE Convention on Preventing and Combating Violence against women and Domestic Violence (Istanbul Convention).

Domestic violence is a problem within society as a whole. The aim of this study is to explore how the protection of domestic violence victims is developing under Azerbaijani laws by giving a definition to victims of it. Azerbaijan has made progress in its fight against domestic violence by adopting the Law "On the Prevention of Domestic Violence," dated June 22, 2010.

The problem of violence within the family unit was not considered as such before that date, and no legal means were available for the protection of domestic violence victims; to this day, many issues remain unsolved. According to a WAVE survey, 14% of women in Azerbaijan are victims of physical abuse in their lifetimes.³ This data is surely relative, since many episodes remain unreported.

The object of this research is to assess the domestic legislation in light of the Istanbul Convention. The objective of the study is to examine the impact of the abovementioned law on actions of government agencies dealing with the prevention of domestic violence episodes. Moreover, the defined list of victims is subject to scrutiny throughout the article. In order to acquire a general overview of the problem and its ways of legal solution, we are going to research the Law on the Prevention of Domestic Violence in light of the experience and good practices of several states and international legal documents. Hence, the pros and cons of the current legislation will be easily found.

Furthermore, types of legal remedies available to victims of domestic violence and the obligations of state bodies to combat domestic violence are also analyzed in the article. The research is based on a comparison of national laws in accordance with the Istanbul Convention and highlights distinctions in its approaches.

1. The Question of Combating Domestic Violence in National Legislation

1.1 Definition of Domestic Violence

Domestic violence can be classified variously. "Domestic" covers more than relations between spouses but also relations among other members of the family unit, such as children, the elderly, and others out of intimate intercourse. This is a broad definition of victims of domestic violence. However, it is worth focusing on intimate partners, as a change in their legal status led to the extension of the list of people under protection.

Traditionally, domestic violence occurs among intimate partners. Violence within a family unit is defined as violence happening between heterosexual couples living together as husband and wife.⁴

¹ FAGAN, A. *The Atlas of Human Rights: Mapping Violations of Freedom Around the Globe*. Myriad ed., 2010, p. 73.

² STEINER, H., et al. *International Human Rights in Context: Law, Politics, Morals*. Oxford University Press ed., 3rd ed., 2008, p. 175.

³ STELMASZEK, B. and FISHER, H. WAVE- Country Report. Vienna, 2012. Reality Checkon Data Collection and European Services for Women and Children Survivors of Violence: A Right for Protection and Support?, p. 5, available at <http://files.wave-network.org/researchreports/COUNTRY_REPORT_2012.pdf>.

⁴ MIRRLEES-BLACK, C. *Domestic Violence: Findings from a New British Crime Survey Self-Completion Questionnaire*. London: Home Office, 2001, p. 29.

However, the definition differs from country to country, depending on the comprehension of the problem by societies.

According to the Law, domestic violence is a deliberate infliction of physical and moral damage by persons to others, envisaged under this law, caused by the abuse of close relatives, or current or past cohabitants.⁵ Thus, the Law categorizes a much broader range of people under the term “domestic.” The Law is applicable to women and men living both in an official marriage and without official registration.⁶ Thus, it protects both current and ex-partners regardless of official wedlock.

To our mind, being more general, the definition encircles a broader swath of people as victims. It unifies violence committed against both intimate partners and other family members. The Law defines domestic violence as a deliberate infliction of physical and moral damage by persons to others, envisaged under this law, caused by abuse of close relative relations, and current or past cohabitants.⁷ We suppose that this definition is also broad enough to cover all family members. Yet there are some shortcomings.

The commentary to the Law notes that the main element of domestic violence are close family ties of those living together and the relations of dependency created during cohabitation.⁸ As seen from the commentary, in order to classify a misdemeanor as domestic violence, family ties and cohabitation should exist together. Of course, the Law stipulates cohabitation, either current or past, for recognizing a person as a victim. To offer protection to a wider range of people, it would be better to use “either or” instead of “and”: domestic violence is a deliberate infliction of physical and moral damage by persons to others, envisaged under this law, caused either by abuse of close relative relations or current or past cohabitants.

For encompassing a wider range of victims, it would be better to use the definition enshrined in the Istanbul Convention, namely that ““domestic violence”” shall mean all acts of physical, sexual, psychological, or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.”⁹ Although the term “domestic” may appear to limit the context of where such violence can occur, the drafters recognized that violence often continues after a relationship has ended, and therefore agreed that a joint residence of the victim and perpetrator is not required.¹⁰

The list of people protected by the Law is enshrined in Article 4. The Law applies to close family members; other relatives living together; ex-spouses living together or separately after divorce; and men and women living as husband and wife out of official wedlock and other relatives living with them.¹¹ However, the range of relatives cohabitating is wider, particularly in rural areas. Close relatives are husbands, wives, parents, children, grandparents, grandchildren, siblings, step- brothers and sisters, adopted children, and other relatives if living together.

Nevertheless, the desire to intervene in the private life of a female relative and punishing her for “losing honor” are inherent not only to close family members, but also to other relatives not living

⁵ The Law of the Republic of Azerbaijan on the Prevention of Domestic Violence, dated 22 June 2010, №1058-IIIQ.

⁶ The Law on the Prevention of Domestic Violence 2010 <...> Art. 4.

⁷ The Law on the Prevention of Domestic Violence 2010 <...> Art.1.0.1.

⁸ QARACAYEV, C. *Məişət zorakılığının qarşısının alınması haqqında Azərbaycan Respublikası Qanununun Komentariyası*. Baku, 2011, p. 72 [GARACHAYEV, Jeyhun. *Commentary of the Law of the Republic of Azerbaijan “On Prevention of Domestic Violence”*], All translations from Azerbaijani into English are made by the author of the present paper unless stated otherwise.

⁹ CoE Convention on Preventing and Combating Violence against Women and Domestic Violence 11.05.2011, CETS № 210, Art. 3, § b.

¹⁰ Explanatory Report to the CoE Convention on Preventing and Combating Violence Against Women and Domestic Violence, CoE Treaty Series – No. 210, 11 May 2011, para. 42

¹¹ The Law on the Prevention of Domestic Violence 2010 [...] Art. 4.

under one roof. For example, a so-called “obscene” lifestyle of a woman or acting “Western”¹² can lay the ground for active measures to be taken by her cousins, and such a perpetrator may be given permission to act on behalf of the family by the victim’s family itself.¹³ Unfortunately, honor crimes are widespread in this region, and Azerbaijan is not an exception. Nevertheless, the potential victims of honor crimes are beyond the reach of the Law. Hence, potential perpetrators, such as cousins, are not close relatives in accordance with the legal provisions. Given the fact that those persons are not classified as close relatives, the definition “other relatives in case of cohabitation” included in Article 4.0.1. does not reflect present-day realities. Obviously, cohabitation is not a vital condition for an offense to happen. Therefore, the abolition of Article 4.0.1. would be preferable.

If talking about the strengths of the Law, we can mention that it applies to both current and ex-partners, since women can be abused even after official divorce has taken place.

Moreover, the Law grants protection to couples living out of official wedlock. This provision provides equal protection opportunities both to married couples and couples living out of wedlock. Non-official marriage is widespread among the population residing in rural areas. Therefore, this provision protects a huge part of the population from domestic violence. Despite the equal protection of couples living in official marriage or out of wedlock by the legislation, couple status is not recognized to the same extent. Therefore, the protection of individuals living out of official wedlock is restricted to the period of time of cohabitation. Consequently, ex-partners are not entitled to any kind of protection under the Law. Apparently, this distinction creates grounds for discrimination. Regardless of the flaws in the Law, it covers and provides protection to a wide range of the population.

With regard to the protection of LGBT representatives, they are not protected from domestic violence under the law. Azerbaijani legislation does not specifically enumerate LGBT among the grounds for non-discrimination.¹⁴ Same-sex marriage is outlawed; however, sexual intercourse between men was decriminalized after the adoption of the new Criminal Code of 2000. Despite the fact that intimate relations within male couples are no longer prohibited by law, victims of such relations are not duly protected under the Law. Therefore, there is no official data on physical violence within such couples either. Pursuant to the Law, only husbands and wives are offered protection¹⁵ and same-sex couples are not encompassed by the legislation.

1.2. Types of Legal Remedies Available to Victims of Domestic Violence

To ensure the effective implementation of the Law, victims should be provided with adequate legal remedies. After ensuring immediate physical safety through offering shelter, the next step of support for many women is advice on how the law protects them.¹⁶

One of the available tools in countering domestic violence is the “protection order.”¹⁷ This is a legally binding document inhibiting a perpetrator from directly contacting the victim. Its purpose is

¹² BRANDON, J. & HAFEZ, S. *Crimes of the Community: Honour-Based Violence in the UK*. The Cromwell Press, Trowbridge, Wiltshire, 2008, p. 31.

¹³ Crimes Committed in the Name of “Honor” (November 2008), available at <http://www.stopvaw.org/honor_killings>.

¹⁴ BAYRAMOVA, P. *Report on Azerbaijan in Barriers, Remedies and Good Practices for Women’s Access to Justice in Five Eastern Partnership Countries Prepared in the Framework of the Project Improving Women’s Access to Justice in Five Eastern Partnership Countries*, 2016, p. 35–48.

¹⁵ The Law on the Prevention of Domestic Violence 2010 [...] Art. 4.

¹⁶ PICKUP, F., et al. *Ending Violence Against Women: A Challenge for Development and Humanitarian Work*. Oxfam Publishing, 2001, p. 175.

¹⁷ PICKUP, F., et al. *Ending Violence Against Women* [...], p. 262.

to offer a fast legal remedy to protect persons at risk of any of the forms of violence by prohibiting, restraining, or prescribing a certain behavior by the perpetrator.¹⁸ Such measures exist under various names, such as restraining, barring, eviction, protection orders, or injunction, and the main purpose of each is to protect the victim from further violent behavior.¹⁹

The Law provides for the possibility of obtaining a protection order. Pursuant to the Law, the protection order denotes an act of limitations applied on contingent actions of the person who committed domestic violence against the aggrieved person.²⁰ In accordance with the Rule of consideration of complaints in domestic violence cases in the absence of signs of criminal offence, a short-term protection order is issued by the local administration²¹ for up to 30 days, and the application should be considered within 24 hours.²² Long-term protection orders may be issued within 3 days after applying to the court²³ and may be valid from 30 up to 180 days.²⁴

Pursuant to Istanbul Convention, “parties shall take the necessary legislative or other measures to ensure that the restraining or protection orders referred to in paragraph 1 are available for immediate protection and without undue financial or administrative burdens placed on the victim; issued for a specified period or until modified or discharged; where necessary, issued on an *ex parte* basis which has immediate effect; available irrespective of, or in addition to, other legal proceedings; allowed to be introduced in subsequent legal proceedings.”²⁵ From that standpoint, Azerbaijani legislation complies with the standards set in the Istanbul Convention.

While the Law provides us with a wide range of information on the conditions and requirements of issuance of both short-term and long-term protection orders, there is no provision concerning eviction orders to be found in the national legislation. In spite of not clearly mentioning eviction orders in the Istanbul Convention, it is however implied. The protection orders may exist under various names, such as restraining orders, barring orders, eviction orders, protection orders, or injunctions, since, serving the same purpose, they cover a wide range of measures.²⁶

The CoE also encourages member states “to enable the judiciary to adopt, as interim measures aimed at protecting the victims, the banning of a perpetrator from contacting, communicating with or approaching the victim, residing in or entering certain defined areas.”²⁷ In such type of a situation where the perpetrator is the one regularly or occasionally living with the victim, police should be enabled to expel the perpetrator immediately from the dwelling, irrespective of the property relations.²⁸

Taking into account the abovementioned example, Azerbaijani Law should also prescribe the issuance of eviction orders for victims of domestic violence before applying for a long-term order, since

¹⁸ Explanatory Report to the CoE Convention on Preventing and Combating [...], para. 268.

¹⁹ Explanatory Report to the CoE Convention on Preventing and Combating [...], para. 268.

²⁰ The Law on the Prevention of Domestic Violence 2010 [...], Art.1.0.9.

²¹ Məişət zorakılığı barədə şikayətdə cinayət tərkibinin əlamətləri olmadıqda, şikayətlərə baxılma Qaydasının təsdiq edilməsi haqqında Azərbaycan Respublikası Nazirlər Kabinetinin Qərarı [Resolution of the Cabinet of Ministers of the Republic of Azerbaijan on the Confirmation of the Rule of Consideration of Complaints in Domestic Violence Cases in the Absence of Signs of Criminal Offence], Art. 1.2..

²² Məişət zorakılığı barədə şikayətdə cinayət tərkibinin əlamətləri olmadıqda, şikayətlərə baxılma Qaydası'nın təsdiq edilməsi haqqında [...], Art. 5.2.

²³ Azərbaycan Respublikası Mülki Prosessual Məcəlləsi [AR MPM] [Civil Procedural Code] art. 355 (Republic of Azerbaijan)

²⁴ The Law on the Prevention of Domestic Violence 2010 [...], Art. 12.

²⁵ CoE Convention on Preventing and Combating Violence [...], Art. 53.

²⁶ Explanatory Report to the CoE Convention on Preventing and Combating [...], para. 268

²⁷ Recommendation No.R (2002) 5 of the CoE Committee of Ministers, para. 58b., 30 April 2002, available at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e2612>.

²⁸ Explanatory Memorandum to the Recommendation No. R (2002) 5 of the Committee of Ministers, para. 91–92.

it may be awarded within three days,²⁹ not immediately. Given the lack of an adequate number of shelters and beds offered for victims in the country, the issuance of eviction orders as interim measures would be a solution.

In addition to protection orders, the Law provides for the possibility of issuing a “warning” to the perpetrator not to use violence in the future.³⁰ However, it is not clear when and in what circumstances the warning will be issued. Moreover, the procedure of issuance of the warning is vague as well. For example, the Law does not give a specific answer whether it should be issued together with a protection order, or as a prerequisite to it. The lack of lucidity of the text of the Law may result in inaction and passivity on the part of law enforcement bodies. Unfortunately, the lack of systematic collection of data on domestic violence,³¹ especially on the issuance of protection orders and warnings, does not reflect the real situation regarding those tools and their effectiveness.

2. Legal Measures Taken by State Authorities to Combat Domestic Violence

2.1 Episodes of Domestic Violence Constituting Criminal Offense

The fight against domestic violence would be quite ineffective without putting in place national legislation prescribing criminal liability for domestic violence. The recognition of domestic violence as a criminal act, an effective implementation of laws, and the prosecution of offenders are of paramount importance for claiming due implementation of national action plans and legislation. Women who wish to report to the police must be supported at all phases of the criminal justice system, from reporting through to sentencing and release of offenders from prison.³²

Domestic violence is not defined as a separate criminal offense in the Criminal Code. Nevertheless, the definition of domestic violence given in the Law, namely “the deliberate infliction of physical and moral damage.” It encircles a wide range of crimes already enumerated in the Criminal Code. In its opinion, OSCE/ODIHR highlighted the potential benefits of including in the definition of domestic violence a list of the acts that define crimes involving domestic violence.³³ “Such an enumeration of the range of criminal conduct employed by many perpetrators of domestic violence would underscore the breadth of violent crimes and fear-inducing or harmful conduct often committed but most importantly, it would be clear to those tasked with implementing the law that those crimes ordinarily ascribed to third parties can and do occur in the home and/or amongst persons who remain in a family, or similar relationship.”³⁴

Failure to include domestic violence as a specific crime into the Criminal Code can pose problems in regard to the proper application of the Law. Pursuant to the Law, “If there are any data on committed or prepared crimes in a complaint on domestic violence, this kind of complaint shall be considered in

²⁹ Azərbaycan Respublikası Mülki Prosessual Məcəlləsi [...], Art. 355

³⁰ The Law on the Prevention of Domestic Violence 2010 [...], Art. 11.

³¹ Concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW), CEDAW/C/AZE/CO/5. 12 March 2015, Para 22 (b).

³² JOHNSON, H., et al. *Violence Against Women: An International Perspective*. Springer Science+Business Media, New-York, 2008, p. 172.

³³ OSCE, Domestic Violence Cases in the Justice System of Azerbaijan. Rule of Law and Human Rights Unit. OSCE Office in Baku, 2013.

³⁴ ODIHR Opinion of the Draft Law of the Republic of Azerbaijan on Domestic Violence, paragraph 15. Citing “Model Code on Domestic and Family Violence,” Advisory Committee of the Conrad N. Hilton Foundation Model Code Project of the Family Violence Project, National Council of Juvenile and Family Court Judges, California. 1994, p. 3.

the manner prescribed by the criminal procedure law.”³⁵ However, domestic violence is not a specific crime in according to the criminal law. It is noteworthy that the procedural aspects of conducting investigations into the crimes listed in the Criminal Code are regulated by the Criminal Procedural Code, which does not envisage any specific provision on duties of law-enforcement bodies in connection with addressing the particular needs of or the protection of domestic violence victims during the investigation period. Article 215 simply lists crimes against the person enshrined in Section VIII of the Criminal Code to be carried out by the prosecutor’s office.³⁶

In addition, the aforementioned Law provides the measures taken along with the criminal prosecution when considering complaints of domestic violence in the manner prescribed by the Criminal Procedural Code. The overwhelming list of duties are in line with established international standards – namely providing urgent medical care, temporary accommodation, clothes and food, to take measures related to the issuance of protection orders to the victim, etc.³⁷

However, the Law indicates the state’s duty to “assist in the normalisation of relations between parties and resumption of family affairs,”³⁸ thereby running contrary to its main objectives and reducing the efficiency of measures against domestic violence. This provision can be interpreted as privileging mediation and reconciliation over the protection of women’s human rights.³⁹ The main task of the criminal prosecution authorities is to punish the perpetrator and restore the rights of the victim, but not to assume the role of a mediator or family psychologist.

Given the fact that the Law recognizes the possibility of reconciliation for parties in domestic violence cases, it is inappropriate to presume that state agencies will refer to any provision other than this one in considering domestic violence cases. Recent history shows that this practice is widespread among state agencies and even judges. For example, on one occasion, the judge repeatedly asked that the victim say the word “reconcile” for the court record, despite the victim’s apparent reluctance to do so.⁴⁰

The provision on reconciliation hampers the struggle against domestic violence, since it acknowledges the possibility for officials to terminate legal proceedings against the perpetrator, thereby posing a real threat to the life and safety of the victim. The Criminal Code also provides for the possibility for an individual, one who has committed a crime for the first time and who does not represent serious danger to the public, to be released from criminal liability in connection with reconciliation with the victim.⁴¹ This legal approach stems from the Soviet tradition, which was embedded in the previous Criminal Code of 1960.⁴²

Taking into account that the overwhelming majority of crimes perpetrated in 2017, namely 83% of closed crimes,⁴³ were considered minor crimes and crimes not posing a great threat to public safety, it seems highly likely that most of the domestic violence crimes were of the “minor” character. Deliberate causing of minor serious harm to health and deliberate causing of less serious harm to health fall under the umbrella of crimes not posing a great threat to public safety. Statistics show that it takes a

³⁵ The Law on the Prevention of Domestic Violence 2010 [...], Art. 5.1.

³⁶ Azərbaycan Respublikası Cinayət Prosesual Məcəlləsi [AR CPM] [Criminal Procedural Code] art. 215 (Republic of Azerbaijan)

³⁷ The Law on the Prevention of Domestic Violence 2010 [...], Art. 7.

³⁸ The Law on the Prevention of Domestic Violence 2010 [...], Art. 7.4.

³⁹ MANJOO, R. Report of the Special Rapporteur on Violence against Women, its causes and consequences, Addendum, Mission to Azerbaijan.2014, para. 64.

⁴⁰ OSCE, Domestic Violence Cases in the Justice System of Azerbaijan [...].

⁴¹ Azərbaycan Respublikası Cinayət Məcəlləsi [AR CM] [Criminal Code] art. 73 (Republic of Azerbaijan)

⁴² Samedova, Sh. *Problemyugolovnogoprava: klassifikatsiia prestuplenii, differentsiatsiia ugolovnoiotvetstvennosti i postroeniiesanktsii*. (Ecoprint, Baku, 2017, p. 204.)

⁴³ Crime Analysis for 2017 available at <<https://www.mia.gov.az/index.php?/en/content/29958/>>.

while for a perpetrator to cause serious harm to health or attempt a murder. Most experienced physical violence covers beatings that result either in cuts, bruises, aches,⁴⁴ eye injuries, sprains, or burns.⁴⁵ In comparison with the minor physical injuries, only 6.1% of women received more serious injuries, such as deep wounds, broken bones, broken teeth, etc.⁴⁶

“One of the purposes of imposing criminal sanctions is to restrain and deter the offender from causing further harm.”⁴⁷ The state should not merely restore the violated rights of victims but also to prevent any much more serious harm to be inflicted by the perpetrator. Otherwise, rights enunciated in the national legislation will be ineffective and remain on paper. General and discriminatory judicial ineffectiveness also creates a climate that is conducive to domestic violence, since the society sees no evidence of willingness by the State, as the representative of the society, to take any effective action to sanction such acts.⁴⁸

Additionally, the ECtHR highlighted that the state’s obligation involves a primary duty to secure the individual’s right to life by putting effective criminal-law provisions in place to deter offences against the person backed by law-enforcement machinery for the prevention and punishment of any breaches of such provisions. It also extends in appropriate circumstances to a positive obligation to take preventive measures to protect an individual whose life is at risk from the criminal acts of another individual.⁴⁹

Hence, this provision, taken together with the legal approach used in the Law, videlicet the assistance in normalization of relations between parties, only further emboldens the state agencies to neglect victims’ complaints on domestic violence episodes.

Therefore, it is crucial that the willingness of a legislator to assist in the normalization of relations between parties would not prevail over a victim’s physical integrity or safety. In this regard, we see a discrepancy in the Law itself, since the legislator fails to find a fair balance between the aims pursued.

Furthermore, this provision does not comply with the requirements of the Istanbul Convention, stipulating the parties’ obligation to 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.⁵⁰

Moreover, we can mention the lack of gender perspective of the Law, an adherence to mediation rather than prosecution, and punishment as the main aspects hindering the struggle with domestic violence.

Before moving on, it is worth noting that several articles may be used for better punishment and the prevention of domestic violence episodes. In order to eradicate the deeply rooted stereotypes allowing the use of violence within a family unit, it is noteworthy to regard domestic violence as an aggravating factor while issuing judgment. Art. 61 of the Criminal Code stipulates the circumstances aggravating punishment as the following: commitment of a crime concerning a woman obviously known as pregnant, and concerning a juvenile, elderly, or helpless person, or a person who is dependent on the guilty individual.⁵¹

⁴⁴ Pursuant to The **2006 Demographic and Health Survey in Azerbaijan**, 41.1% of surveyed have ever received cuts, bruises, aches. See 2006 Demographic and Health Survey in Azerbaijan, <<https://dhsprogram.com/pubs/pdf/fr195/fr195.pdf>>.

⁴⁵ Demographic and Health Survey in Azerbaijan [...].

⁴⁶ Demographic and Health Survey in Azerbaijan [...].

⁴⁷ VALIULIENĖ, V. Lithuania, No. 33234/07, § 85, ECHR, 2013.

⁴⁸ *Maria Da Penha Maia Fernandes v. Brazil*, 12.051, reportno. 54/01, §§ 55 and 56, Inter-Am.Comm’n H.R., 2001.

⁴⁹ *Opuz v. Turkey*, no. 33401/02, §.128, ECHR, 2009.

⁵⁰ CoE Convention on Preventing and Combating Violence [...], Art. 5.2.

⁵¹ Azərbaycan Respublikası Cinayət Məcəlləsi [...], Art. 61.1.7.

However, this provision does not overtly protect victims of domestic violence. Pursuant to the Criminal Code, the commitment of a crime concerning an obviously pregnant woman and any person dependent on a perpetrator may be regarded as circumstances aggravating punishment, which precludes other persons protected by the Law. For instance, crimes committed against former spouses living after divorce together or separately will not constitute circumstances aggravating punishment. Therefore, it would be better to apply the wording used in the Istanbul Convention.⁵²

Thus, the inclusion of new provisions covering an all-encompassing range of victims would enhance the efficiency of prevention policy and the protection of victims.

2.2. Episodes of Domestic Violence Without *Corpus Delicti*

The national legislation also offers protection against domestic violence episodes that do not constitute a criminal offence. Thus, the Law states that complaints related to domestic violence are reviewed only with the consent of an aggravated person or their legal representative if such complaints do not contain elements of the composition of a crime.⁵³ The legislators attempted to strike a fair balance between the protection of victims and the normalization of relations between parties, as, from their point of view, minor episodes of non-criminal violence should not automatically give rise to an investigation that may have a negative effect on family relations, with the possibility of ending up in divorce.⁵⁴

Therefore, the victim of domestic violence is given a choice – either to initiate proceedings or forgive the perpetrator. On the one hand, the intention of the state bodies is clear. However, is this intention in line with the standard laid down in the Istanbul Convention? In order to answer this question, we should have a look at the national laws regulating punishment for administrative offences.

In 2012, battery was precluded from the Criminal Code and was acknowledged as an administrative offence.⁵⁵ Since the criminal legislation comprises the Criminal Code only,⁵⁶ battery will not be regarded as a criminal offence; therefore, such complaints, based on physical assault not considered as a crime, will be reviewed only with the consent of the victim. Moreover, pursuant to the Istanbul Convention, parties shall take the necessary legislative or other measures to ensure that the intentional conduct of committing acts of physical violence against another person is criminalized.⁵⁷ As a matter of fact, battery is not embedded in the criminal legislation; therefore, a victim is not duly protected. Hence, this legal provision serves to further aggravate the victim's situation rather than the protection of family ties.

Looking through the recent statistic data, we can see that domestic violence episodes are growing in a geometric progression. The percentage of women in the 15–19 years group in 2006 who have experienced physical violence was 8.4, whereas the percentage of women aged 30 to 39 increased up to 12.5.⁵⁸ Moreover, episodes of physical violence that do not constitute a criminal offence may slightly shift to more serious forms of domestic violence, with irreversible damage resulting in serious physical injuries or even decease. So, while the total number of offences of the domestic violence character in

⁵² CoE Convention on Preventing and Combating Violence [...], Art. 46.

⁵³ The Law on the Prevention of Domestic Violence 2010 [...], Art. 6.3.

⁵⁴ QARACAYEV, Ceyhun. *Məişət zorakılığının qarşısının alınması haqqında [...]*, s. 97

⁵⁵ Döyməməddəsi Cinayət Məcəlləsindən çıxarıldı, 02 November 2012, available at <<http://olaylar.az/news/social/17811>>.

⁵⁶ Azərbaycan Respublikası Cinayət Məcəlləsi. [...], Art. 1

⁵⁷ CoE Convention on Preventing and Combating Violence [...], Art. 35.

⁵⁸ *Demographic and Health Survey in Azerbaijan 2006 [...]*.

2007 accounted for 874 cases, in 2008, it climbed to 1596.⁵⁹ The number of crimes committed against women in a family unit in 2010 was 1471, whilst it reached 1957 in 2011.⁶⁰ As is seen from the data, administrative offences may, after a while, lead to criminal offences. This correlates with the rise in murder cases, as the number of women victims in 2013 was 30, which is over double than that of 2007.⁶¹

It is worth looking at the statistics regarding physical violence against women in different regions. The WHO estimates that up to 52 percent of women worldwide suffer physical violence from their male partners.⁶² Many of the survivors have been beaten many times or have been subject to escalating abuse over a substantial period of time.⁶³ The British Crime Survey indicates that while 25% of interviewed female victims were only once subject to physical violence such as being kicked or beat, 31% of the female victims experienced such violence from 6 up to 50 times.⁶⁴

Finally, we consider the current condition regarding physical assault in Turkey, since we share a common religion, mentality, and attitude toward domestic violence. In Turkey, 6.7% of women experienced physical abuse only once in their lifetimes, while women beaten on multiple occasions account for 8.2% of surveyed cases.⁶⁵

These examples once more support the view that physical abuse will get more savage and reiterate in the future. Thus, this provision is considered to increase the impunity of abusers and much more severe crimes in the future. Article 5.2 sets out the Parties' obligation to exercise due diligence in relation to acts covered by the scope of this Convention perpetrated by non-state actors, and failure to do so will incur state responsibility.⁶⁶ Abandoning legal interventions is not justifiable, since the state has obligations to protect the victims of domestic violence.

Compared with the Istanbul Convention, the abovementioned provision does not meet the requirements ensuring that State authorities act in conformity with this obligation. 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 the Convention that are perpetrated by non-State actors.⁶⁷

Conclusion

Following the data and the arguments provided in this paper, the subsequent statements can be laid out:

1. The adoption of the Law on the Prevention of Domestic Violence was an effective step to protect victims. However, the national legislation does not properly provide efficient protection to victims, and even the list of individuals recognized as victims enshrined in the Law is not comprehensive. As mentioned above, the Law does not provide proper legal protection to all those under state jurisdiction. Former civil partners can be displayed as an example. LGBT individuals are also

⁵⁹ State Statistical Committee of the Republic of Azerbaijan. *Report on the results of the statistical survey on violence against the person*. Baku, 2014, p. 223.

⁶⁰ Crime Analysis for 2017 [...].

⁶¹ Crime Analysis for 2017 [...].

⁶² World Health Organisation (1997) *Information Pack*, Geneva: WHO.

⁶³ United Nations (1995a) *The World's Women 1995: Trends and Statistics*, New York: United Nations.

⁶⁴ WALBY, S. & ALLEN, J. *Home Office Research Study 276 Domestic Violence, Sexual Assault and Stalking: Findings from the British Crime Survey Home Office Research*, 2004, p. 22, available at <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.477.2558&rep=rep1&type=pdf>>.

⁶⁵ ALTINAY, A. & ARAT, Y. *Violence Against Women in Turkey: A Nationwide Survey*. Punto, İstanbul, 2009, p. 39.

⁶⁶ Explanatory Report to the CoE Convention on Preventing and Combating [...], para. 57.

⁶⁷ CoE Convention on Preventing and Combating Violence [...], Art.5.

denied protection, as homosexual relationships are outlawed. Therefore, members of the LGBT community are totally beyond the reach of the Law, while the community and its issues are still taboo topics in Azerbaijani society.

2. Furthermore, the Law does not envisage any possibility for the issuance of eviction orders. The issuance of so-called “warnings” is also mainly not implemented due to its vague language. The legal provisions regulating issuance of orders should be more precise.
3. On top of that, a provision on “the duty to assist in the normalization of relations between parties and resumption of family affairs” indeed hampers the due protection of victims and reinforces certain stereotypes, such as the submissiveness of women and their obligation to make compromises for the normalization of family relations. Therefore, it is highly recommended to remove this provision.
4. Additionally, domestic violence is not stipulated in the Criminal Code as a circumstance aggravating punishment. Moreover, battery is not embedded in the Criminal Code. Hence, this serves further aggravation of the victim’s situation rather than the protection of family ties.
5. To conclude, it is worth mentioning that the adoption of the Law on the Prevention of Domestic Violence was a breakthrough in the protection of victims. However, gaps pointed out throughout this article have shown the suboptimal effectiveness of the Law. Enhancements of the national legislation will put it in line with the requirements and standards of the Istanbul Convention. With regard to the implementation of the legislation and the actual situation, there is still a long way to go.

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Challenges in the Protection of Domestic Violence Victims in Azerbaijan: An Overview of the National Legislation in Light of the 2011 CoE Istanbul Convention

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S u m m a r y

This article attempts to reveal the pros and cons of the provisions regulating the protection of domestic violence victims in Azerbaijan and to present the possibilities of improvement, i.e., proposals on how to improve the provisions of the Law of the Republic of Azerbaijan on the Prevention of Domestic Violence and other legislative acts regulating the legal protection of victims. The analysis is held in the light of provisions of the 2011 CoE Istanbul Convention. This work mainly focuses on the following problematic aspects: a list of victims offered protection; to what extent

do state agencies implement due diligence obligations; the types of legal remedies available to victims. This work arrived at the conclusion that the list of individuals recognized as victims enshrined in the Law is not comprehensive. The requirement of cohabitation with not close relatives, included in Article 4, does not reflect present-day realities.

Moreover, the Law does not envisage any possibility for the issuance of eviction orders. The issuance of so-called “warnings” is also mainly not implemented due to its vague language. Legislators should use much more concrete legal frameworks. Criminal charges for battery are proposed to be returned to the Criminal Code.

Smurto šeimoje aukų apsaugos iššūkiai Azerbaidžane: nacionalinių teisės aktų apžvalga atsižvelgiant į 2011 m. Europos Tarybos Stambulo konvenciją

Gulnaz Alasgarova

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S a n t r a u k a

Šiame straipsnyje siekiama atskleisti teisės aktų nuostatas, reglamentuojančias smurto šeimoje aukų apsaugą Azerbaidžane ir pateikti pasiūlymų, kaip pagerinti Azerbaidžano Respublikos smurto šeimoje prevencijos įstatymą ir kitus teisės aktus, reglamentuojančius nukentėjusiųjų teisinę apsaugą. Tyrimas atliktas atsižvelgiant į 2011 m. Europos Tarybos Stambulo konvencijos nuostatas. Šiame darbe daugiausia dėmesio skiriama šiems probleminiams aspektams: aukoms siūloma apsauga; kiek valstybės institucijos įgyvendina deramo patikrinimo įsipareigojimus; nukentėjusiesiems prieinami teisiniai būdai ginti savo teises. Šis darbas leido daryti išvadą, kad Smurto šeimoje prevencijos įstatyme įtvirtintas asmenų, pripažintų aukomis, sąrašas nėra išsamus. Minėto įstatymo 4 straipsnyje nurodytas reikalavimas sugyventi su neartimais giminaičiais neatspindi šių dienų realijų. Be to, šis įstatymas nenumato jokios galimybės išduoti iškeldinimo įsakymus. Vadinamieji perspėjimai taip pat nėra išleidžiami dėl neaiškios teisinės kalbos. Įstatymų leidėjai turėtų naudoti daug konkretesnes teisinės definicijas. Siūloma grąžinti į Baudžiamąjį kodeksą baudžiamąją atsakomybę už sumušimus.