

Position Paper: Challenges in adopting and implementing the domestic violence legislation in EaP countries

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Introduction

Domestic violence is the most widespread form of violence on which data exists – 35% of women worldwide have experienced domestic violence; in some countries, the number goes up to 70%. The economic costs of domestic violence for societies are enormous – according to UN estimates, the total amounts to a higher value than homicides and civil wars combined. In 20 Deliverables for 2020, the governments of the EaP countries set themselves a goal to adopt the domestic violence legislation by 2020. So far, the legislative accomplishments have been rather limited. At the moment, only Georgia has substantially aligned its legislation with the international standards. Stereotypes and traditional views are still prevailing in societies – there is strong resistance to the legislative measures, which are pictured as inappropriate encroachments on the family.

Despite the legislative improvements in several EaP countries, the region is facing backlash for implementing women's rights and the gender equality agenda. Domestic violence and gender based violence continues to be underreported and silenced. Most of the EaP countries are facing difficulties with collecting reliable information and data that would provide for a full picture of the situation concerning domestic and gender based violence. An increased and improved coordination between relevant governmental agencies to gather information and understand the magnitude of the problem is thus essential. So far, civil society has been making a lot of effort to maintain relevant statistics and databases and to provide services to the victims, replacing the role of the state. Civil society should be fully involved and incorporated into the work of state agencies in order to transfer best practices and knowledge gathered on the ground.

One of the major identified challenges is the fact the domestic and gender based violence is not addressed as a societal problem, and hence the measures tailored to change the behavior and general attitudes towards this issue are rather weak. The change in the area of domestic and gender based violence requires political will, capacities and resources. Political will is instrumental for tackling all other challenges. There is a general gender discriminatory practice that stands behind the domestic and gender based violence and they should not be approached as stand-alone phenomena. A holistic approach is needed and the EaP governments should adopt such policies.

Armenia

Challenges in adopting domestic violence legislation and ensuring effective implementation

The law on the “Prevention of Violence within Family, the Protection of Victims of Violence within Family and Restoration of Peace in the Family” was adopted on 13 December 2017 and entered into force on 1 January 2018, but some provisions (Chapter 2 of the law, as well as part 2 of the Article 22) entered into force only on 1 July 2018.

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The main issues that existed before the adoption of the law were related to the improper perception of the domestic violence phenomenon: public authorities have not taken proper steps to ensure the public awareness that domestic violence is not a private issue, but a crime of public danger. Besides, the Republic of Armenia did not ratify the Istanbul Convention.

The term "domestic violence" has been replaced by "violence within the family", which even in the broadest interpretation cannot express international legal content of domestic violence, thereby reducing the scope and effectiveness of the law. It is problematic that partner relationships are excluded from the law. Referring to the amendments to the Criminal and Criminal Procedure Code of the Republic of Armenia, it should be noted that not all types of domestic violence have been qualified as such.

The circumstances of mitigating liability and punishment provided by Article 62 (1) (7) of the RA Criminal Code is also problematic. It concerns the unlawful or immoral behavior of a victim that caused the violence. In case of domestic violence, such mitigating circumstances are at least incompatible with accepted international standards.

Effective referral mechanisms in place

In 2012, the Rapid Response Unit (RRU) was established. RRU is aimed at revealing domestic violence cases, raise public awareness over the cases of violence, ensure fair and transparent investigation. RRU functions through an online platform, through which victims of domestic violence can contact organisations. Now, RRU tends to be the main platform assisting victims of domestic violence and reporting the cases of any kind of violence.

Besides, after the adoption of the law, relevant police officers have participated in trainings but these trainings should be periodic and include judges, prosecutors and other professionals. The outcomes of the trainings are not yet visible in real terms.

Violence preventive programmes for perpetrators

There is no legal framework for measures to stop violence or aggression at the early stage.

As an example of preventive measures, Society Without Violence (SWV) organises public events on a monthly basis to raise societal awareness over the cases of domestic violence. More importantly, most of the public events take place in diverse regions of Armenia to ensure that the issues of domestic violence are known throughout the country. Event agendas, highlighted topics and their outcomes are usually monitored by SWV. Based on the results, the further events are carried out respectively.

SWV implements "Love and Respect – Preventing teen-date violence" project. The objectives of the project are to contribute to the establishment of healthy relationships and to abolish diverse manifestations of violence. The project uses channels of social media (Instagram, Facebook) to integrate young people into its activities.

A priority issue for Armenia is to collectively lobby for the ratification of the Istanbul Convention. The ratification would pave the way for significant improvements and reforms.

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Belarus

Challenges in adopting domestic violence legislation and ensuring effective implementation

Taking into consideration the recent rejection of the law concept “On Counteracting Domestic Violence” by the government, there is a clear need of a special law on domestic violence in Belarus – which will modify the existing definition of “domestic violence”, define rights and obligations of all subjects and much more.

Currently the definition of “domestic violence” in Belarus exists in the Law “On the Basics of Crime Prevention Activities”. Only violent acts against family members or close relatives fall under this definition. If spouses were divorced or a violent conflict happens between unregistered spouses or distant relatives living under the same roof, the law enforcement agencies will not assess this as “domestic violence”.

In the current legislation, there is a concept of physical and psychological violence, but not economic. Meanwhile, the organisations that work with victims point out that quite often an aggressor takes the whole family budget into own hands, does not allow a victim to manage, for example, childcare benefits, deprive a victim of the opportunity to earn money and to have own finance. Defining economic violence is not easy – therefore there is a need of the law enforcement practice, which Belarus currently does not have.

Effective referral mechanisms in place

The most effective mechanism is a protective order, which for a period of three to thirty days can prohibit attempts to find out the victim’s whereabouts, visit his/her places of residence and communicate with him/her. In addition, a protective order, with the written consent of a victim, obliges a citizen who has committed domestic violence to temporarily leave the common dwelling and prohibits dispose of common joint property. It is a rather serious tool, but in practice it is very difficult to obtain a protective order.

Today, physicians, social workers, psychologists provide assistance to victims of violence. There are several “crisis rooms” in the country, but often only close relations to the aggressor can use them. At the same time, if a woman hid from an aggressor in a “crisis room” with children, the problem of their education (especially for preschool children) may turn out to be too complicated and sometimes unresolved.

Violence preventive programmes for perpetrators

Key tools of the prevention of domestic violence in Belarus are described in the law on crime prevention. It includes a preventive conversation (oral conversation with law enforcement officials), a formal written warning, preventive registration (an aggressor will be monitored for a while) and a protective order.

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Correctional work with perpetrators of domestic violence, which was developed in 2014 with the support of international technical assistance programme "Developing National Capacity to Counteract Domestic Violence in the Republic of Belarus", is still a new activity, which requires adaptation to the national context and conditions.

The existing Belarusian law cannot force an aggressor to go to a psychologist or a psychiatrist, neither can he/she be forced to attend support groups or special courses to suppress anger. Additionally, there are practically no courses and correction programmes developed so far. Therefore, it is necessary to develop violence preventive programmes for perpetrators, to introduce mandatory participation in correctional programmes for perpetrators of sexual and domestic violence and to prescribe legal conditions for such measures.

Georgia

Challenges in adopting domestic violence legislation and ensuring effective implementation

In Georgia, the legislative framework is decent, important steps have been taken through the ratification of the Istanbul convention, but the political will and economic resources needed to ensure effective implementation is still to a large extent missing.

The Istanbul Convention and its ratification in Georgia has given the civil society a useful tool to hold authorities accountable. The convention also led to important amendments of the Georgian bylaw.

Effective referral mechanisms in place

Flaws in implementation of the legislation, which were raised by women's groups, relate to existing enforcement mechanisms and monitoring. Concerns have been raised around the effective and qualitative operation of state-run shelters and crisis centres.

Civil society, which has so far been maintaining relevant statistics/databases and providing services, need to be included as mentors for state agencies in order to transfer best practices, including referrals, and for training law enforcement agencies.

Moldova

Challenges in adopting domestic violence legislation and ensuring effective implementation

Gender based violence and domestic violence are still common in the Republic of Moldova, proving to be a reoccurring issue. Although certain legislative progresses in the field of preventing and combating domestic violence were registered, an efficient mechanism for the prevention and protection against violence has not been established so far.

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On 28 July 2016, the Parliament of the Republic of Moldova passed the Law No. 196 amending and supplementing some legislative acts in the field of preventing and combating domestic violence, in force since the publication date. The purpose of the law was to harmonise the national legislation with the provisions of CEDAW and Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) which was signed in February 2017.

Various legislative acts were amended in order to improve the national mechanism for assistance and protection of domestic violence victims and the intervention of professionals to hold liable and re-socialise domestic violence perpetrators. However, many of these provisions are declarative due to the delay in the development of law enforcement tools, insufficient funding, reserved attitude of the specialised authorities and structures decentralised in the region and of the local public administration towards joint activities organised to prevent and combat violence.

In order to strengthen the practice of applying the criminal law to fight domestic violence, Law No. 196/2016 amended the Penal Code, Article 20/1 of the Criminal Code (Domestic Violence). It provides for more serious punishments and establishes criminal liability also for other forms of violence, including psychological and economic violence.

The restriction orders issued by the police for ten days was introduced as well as contravention sanction for infringement. For the violation of the protection order was established criminal liability. Moreover, the procedure of obtaining the protection order in criminal and civil proceeding was simplified although is not always respected in practice.

In order to strengthen the practice of applying the criminal law to fight domestic violence, Law No. 196/2016 ensured: extension of the list of family members¹. However, following the insistence of some MPs, the Parliament approved the inclusion into the Contravention Code of the Republic of Moldova of Article 78/1 (Domestic violence). The contravention, which penalizes domestic violence, is differentiated from the criminal rule (Article 201/1 of the Criminal Code) by the degree of bodily injury. Currently, the perpetrator who caused the victim an insignificant bodily injury is subjected to contravention liability. If a light, medium or serious bodily injury is caused, the perpetrator might be subjected to criminal liability. This way, deliberately or not, the legislators conditioned the criminal sanctioning of acts of violence on bodily injuries caused to the victim, which are typically characteristic of physical violence and in some cases of sexual violence. As a consequence, even if Article 201/1 of the Criminal Code, in a new wording, toughens the punishment for committing the domestic violence crime, the prosecution and justice institutions qualified the legislative

¹ 'Family member' shall mean: a) in joint habitation: persons in marriage relationship, divorced spouses, persons under guardianship and trusteeship, their relatives and in-laws, relatives of the spouses, persons who are in relations similar to those between spouses (domestic partners) or between parents and children; b) in separate habitation: persons in marriage relationships, divorced spouses, their relatives and in-laws, adopted children, persons under trusteeship, persons who are or have been in relationships similar to those between spouses (domestic partners)

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amendments of 2016 as a decriminalisation of domestic violence acts. As a result, since 16 September 2016, when the Law No. 196/2016 came into force, the courts of law pronounced acquittals or terminated the proceedings in several pending criminal domestic violence cases on the ground that the defendants were not charged with causing light, medium or severe bodily injuries.

This practice is also determined by the quasi-general perception among professionals that the psychological, economic or spiritual violence causes a significantly lower social danger than the physical violence. This does not help strengthening the criminal law enforcement mechanism for domestic violence.

Regarding the sexual violence, criminal investigative bodies are reluctant to ensure the investigation of rape and other sexual violence cases in compliance with international standards. As a result, sexual violence against women will always be one of the less known forms of violence in the Republic of Moldova. Most cases of sexual violence are not reported to the authorities. Due to the lack of a national legislative framework aligned to the requirements of the applicable international standards and due to professionals' stereotypical perception of victims of sexual violence, the latter are often pressed and manipulated by the perpetrators, who take advantage of the procedural gaps.

Effective referral mechanisms in place

The referral mechanism has to be insured by the multidisciplinary teams in preventing and combating domestic violence formed from the main accountable stakeholders. However, their functionality and efficiency is proved only in few communities where specialized service providers (NGOs and public institutions) are working.

The development of a national network of shelters and daily centres for victims and centres for perpetrators, as well as the appropriate funding of the necessary services are still undeveloped. The local authorities did not prioritize budgeting the services although is prescribed by the law. The Republic of Moldova did not comply with the United Nations standards concerning the safe accommodation in shelters available in all regions and ensuring the necessary number of beds. The services for victims of sexual services are inexistent. About 60% of the costs of services provided to victims of domestic violence and of violence against women are covered by civil society organizations².

Violence preventive programmes for perpetrators

Currently, there are 4 Centre for Perpetrators working in capital city and regions (three of them started their activity in 2018). The Law No. 196/2016 introduced some changes, according to which the perpetrators who were convicted or sanctioned for acts of domestic violence may be forced by the court to participate in probation programs, which could be implemented by probation counsellor individually or together with other professionals, depending on the addressed topic. The

² UN Women, Women's Law Centre, Report on Costing of Domestic Violence and Violence against Women in Moldova, 2016

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perpetrators will be obliged also to participate in the specialized programme as one of the measures of the protection order if the judge decides so.

However, the sentences are not accompanied by measures obliging the convict to participate in programs aimed at diminishing the violent behaviour. Another measure of a coercive nature (conditional suspension of the criminal investigation with subsequent release from criminal liability) is still not being applied.

Ukraine

Challenges in adopting domestic violence legislation and ensuring effective implementation

The new legislation that recently came into place needs to be properly monitored and it should involve local actors and have local ownership to ensure effective implementation. As it is now, international donor agencies are very much in the driving seat.

A problem concerns the difficulties of accessing reliable information and data to get a full picture of the situation concerning gender based violence in Ukraine. The lack of coordination between relevant agencies further obstructs a systematic approach.

The resistance toward the Istanbul Convention and anything perceived as “gender ideology” creates an unconducive environment for effective law implementation and response to violence.

Women’s organisations report lack of knowledge, skills and (clear) procedures among the police and service providers on how to implement new legislation and coordinate a multidisciplinary/interagency response. There is also a lack of clarity of how the law enforcement should determine the “lack of consent” in sexual violence cases.

Effective referral mechanisms in place

Referral mechanisms exists, but do not work systematically. Areas close to the contact line are largely excluded from the referral mechanisms. In their absence, systems are set up locally by NGOs with support of international donors.

There appears to be little accountability for professionals that are part of the mechanisms (from the health sector, law enforcement, educational institutions) if they fail to report and refer cases, particularly outside larger cities.

Training for law enforcement has not yet outreached and has not become systematic even in a number of larger cities (e.g. Lviv, Kharkiv). Women’s organisations have reported low awareness among law enforcement of how to speak and refer to survivors.

Some women’s organisations have reported that services (assistance, shelters, mobile teams) are inadequate in terms of both outreach, accessibility and quality, including the lack of a professional

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and survivor-centred approach. Bureaucracy and /or corruption poses a challenge to providing prompt and adequate services.

It was reported that in at least one major city no emergency orders were issued by the police since the law came into force in December 2017. The police do not appear to have necessary skills and awareness on how to issue such orders.

Recommendations

- EaP countries should invest in awareness raising campaigns regarding gender roles, stereotypes of masculinity and gender equality. The topic should be addressed by the EaP governments at the national level.
- It is important for the civil society to push for the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) in all countries in the EaP region (apart from Georgia).
- EaP governments should include violence preventative programmes for perpetrators in a long-term strategy to combat sexual and domestic violence.
- It is necessary to minimise the differences between the situation with prevention of domestic violence in rural areas and capitals.
- The EaP countries need to work harder to reach international standards in preventing and combatting domestic violence and to ensure that the support provided to victims is effective.
- It is important to strengthen knowledge among citizens about the right to a life free from violence and to work on combating destructive stereotypes, invest in preventative programmes for perpetrators and education.

More Information

The Eastern Partnership Civil Society Forum (EaP CSF) is a unique multi-layered regional civil society platform aimed at promoting European integration, facilitating reforms and democratic transformations in the six Eastern Partnership countries - Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. Serving as the civil society and people-to-people dimension of the Eastern Partnership, the EaP CSF strives to strengthen civil society in the region, boost pluralism in public discourse and policy making by promoting participatory democracy and fundamental freedoms.

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