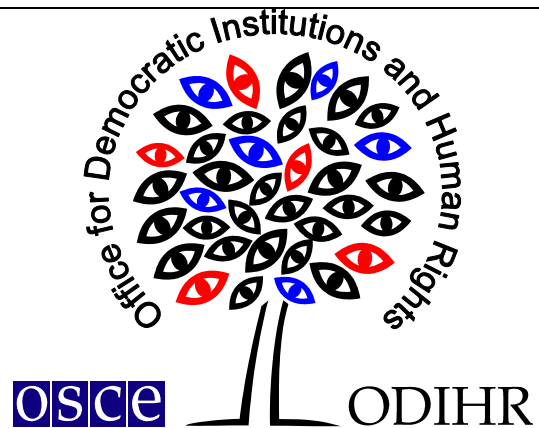


Warsaw, 25 October, 2006

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(MASz)

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**Comments**  
**on the Law of Ukraine**  
**on Prevention of Domestic Violence**

**based on an English translation of the draft  
provided by the OSCE Project Coordinator's Office in Ukraine**

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## **1. INTRODUCTION**

1. At the end of the month of August, 2006 a written request was made by the OSCE Project Coordinator's Office in Ukraine for an expert evaluation by the OSCE ODIHR of the Law of Ukraine on the Prevention of Domestic Violence, of 15 November, 2001 (already in force) (hereinafter also referred to as "the Law"). The drafting of an evaluation of the Law was consulted and agreed with the Ministry of Family, Youth and Sport of Ukraine, who have responsibility over the monitoring of the Law.

2. The OSCE ODIHR decided to conduct such an evaluation of the Law with the result being the drafting of this "Comment on the Law of Ukraine on Prevention of Domestic Violence" contained herein (hereinafter, "Comment") as a response to the request described above.

3. Further, in view of the fact that the Law has been in force since the year 2001, efforts were made to collect data on the implementation of the Law, for instance, by the gathering of available statistics on the number of recorded complaints of domestic violence, by law enforcement personnel, as well as the number of prosecutions instigated against suspected perpetrators of domestic violence. Additionally, on 21 September, 2006 in Kiev, Ukraine, the OSCE ODIHR and the OSCE Project Coordinator's Office in Ukraine had a meeting with the Director of the non-governmental organisation "Chaika", which organisation provides legal and psychological support to victims of domestic violence in Rivne, Ukraine. The purpose of the meeting was to gain some insight on the current operation of the Law – its advantages and disadvantages in implementation.

4. The OSCE ODIHR conducts this evaluation within the mandate established by the OSCE Action Plan for the Promotion of Gender Equality, which states that, "The ODIHR, in co-operation with other international organisations and relevant national bodies and institutions, will assist OSCE participating States in complying with international instruments for the promotion of gender equality and women's rights, and in reviewing legislation to ensure appropriate legal guarantees for the promotion of gender equality in accordance with OSCE and other commitments."<sup>1</sup>

## **2. SCOPE OF REVIEW**

5. This Comment does not equate to a full and comprehensive review, rather it has been drafted to serve as considerations which should be taken into account in light of international standards and practice in the field of prevention of domestic violence. It is important to note, that the Law is already in force and that it has been reviewed in isolation of any other legislation which may be pertinent to the issue at hand.

6. Further to the above, it must be borne in mind that the Comment has been drafted based on an unofficial translation commissioned by the OSCE Project Coordinator's Office in Ukraine, from which some errors in interpretation may result.

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<sup>1</sup> Point 44(b) Chapter 5, MC DEC/14/04 7 December, 2004

7. In this regard, the OSCE ODIHR would like to make mention that this Comment is without prejudice to any recommendations and comments on the Law that the OSCE ODIHR may wish to make in the future.

### **3. EXECUTIVE SUMMARY**

8. In consideration of the commitments of the Republic of Ukraine<sup>2</sup>, and the commitment of authorities to prevent domestic violence, amongst others, by improving where necessary laws already in force, and given that a comprehensive law on prevention of domestic violence provides an ideal opportunity to set up national mechanisms to enhance the response to this problem, the following recommendations are offered for consideration:

- A. The definitions of “domestic violence”, “victims of domestic violence”, “real threat of domestic violence” are proposed to be supplemented and clarified [pars. 10, 11, 12];
- B. The definition of “provocative behaviour as to domestic violence” is proposed to be deleted [par 13];
- C. The laws and provisions applicable to the prevention of domestic violence should be clearly stipulated in Article 2 [par. 14];
- D. Article 5 is recommended to be supplemented by a detailed provision of the authority responsible for taking measures on prevention of domestic violence, its composition and responsibilities, otherwise, such detailed provisions should be established in secondary legislation [par.16];
- E. Article 6 is recommended to further clarify and specify the role and responsibilities of law enforcement authorities in intervention in cases of domestic violence [par. 17];
- F. The Law should consider expanding and specifying the category of parties that may identify and report on cases of domestic violence, in particular, the role of health care workers is emphasized in this context [par.20];
- G. Article 11 is recommended to be struck-out from the Law [pars.21, 22];
- H. The Law should provide for more categories of protective orders available [par. 24, 25];
- I. The Law may consider imposing alternative forms of punishment rather than fines, in cases where the perpetrator and the victim continue to share a household or financial obligations [par.26];
- J. Section IV of the Law should be far more specific and clear as to liability for acts of domestic violence [par. 27];
- K. Section V is considered essential to the implementation and operation of the Law [par.28];
- L. The Law may consider providing for the referral of perpetrators of domestic violence to psychological treatment [par. 29];
- M. The Final Provisions of the Law should contain a detailed list of those laws which ought to be amended [par.30]

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<sup>2</sup> United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) signed by Ukraine 17 July 1980, and ratified on 12 March 1981; OSCE Document of the Moscow Conference on the Human Dimension (1991); Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms CETS No.: 117 ratified by Ukraine on 11 September 1997; and, the OSCE Action Plan for the Promotion of Gender Equality, MC DEC/14/04 7 December, 2004.

- N. Additional recommendations for additions to the Law include importantly, provisions on recourse and compensation for victims, training for law enforcement personnel and lawyers of victims, special measures of protection for child victims and the possibility of specialised prosecution and investigating authorities taking cases of domestic violence [pars. 31, 32 and 33]

## **4. ANALYSIS AND RECOMMENDATIONS**

### **4.1 Section I: General Provisions**

9. It is considered positive for the Law to include the definitions established in Article 1. In particular, the enumeration of physical, sexual, psychological and economic violence, serves to show that domestic violence may take many forms, but also that it is usually a complicated combination of various forms of violence. However, some of the definitions are recommended to be clarified and supplemented.

10. The first definition which may require supplementing is the definition of “domestic violence”. It may be useful for this definition to be supplemented by another paragraph which would contain a list of acts which defines crimes involving domestic violence.<sup>3</sup> For instance, the supplementary paragraph may state those crimes from the criminal code which may occur within the context of domestic violence – for instance, arson, assault offenses such as aggravated assault, intimidation, burglary, breaking and entering, destruction, damage and vandalism of property, homicide offenses, including murder, manslaughter, as well as, kidnapping, abduction, sexual offenses, including rape, weapons law violations, stalking, trespass, etc. 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.<sup>4</sup>

11. The second definition which is recommended to be reviewed is the definition of “victim of domestic violence”. At present this paragraph of Article 1 speaks of a “family member”. Although this term may on the one hand be interpreted broadly, on the other it may exclude certain family or household relationships from the protection offered by the Law. For this reason, it is proposed for the paragraph to list precisely the relationships which come within the purview of the Law. These should include, but are not limited to, wives, husbands, live-in partners or other partner, former husbands or wives, (including those not living in the same household), relatives

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<sup>3</sup> Paragraph 3, Part II, “A Framework for Model Legislation on Domestic Violence”, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights Resolution 1995/85, United Nations Commission on Human Rights, E/CN.4/1996/53/Add.2 2 February 1996, states that “It is urged that States adopt **the broadest possible definitions of acts of domestic violence** and relationships within which domestic violence occurs...”

<sup>4</sup> “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, page 3.

(including but not restricted to sisters, brothers, daughters, sons) and household workers.<sup>5</sup>

12. It is further proposed to consider supplementing the definition of “real threat of committing domestic violence”. The current wording suggests that it would have to be proven, (that is, evidence would have to be presented to the investigating police, or to the courts) that there were grounds to expect that the perpetrator would go through with the physical harm. In practice, this would most likely mean providing evidence of previous incidences of physical harm. Unfortunately, in cases of domestic violence such incidences often go undocumented, therefore making it difficult to provide the “solid grounds” required by the paragraph to prove that a threat was real. Therefore, it is suggested for the definition to include also the concept of “fear”. This means that an act of domestic violence may occur, when the perpetrator “places the victim in fear of physical harm”, but may never actually go through with the harm (or where solid evidence is lacking that he/she would in fact do so). Introducing this concept in the definition would give recognition to the fact that abusive persons (perpetrators) often instill fear in their victims<sup>6</sup> in order to exert other types of violence, such as psychological or economic.

13. It suggested that the definition of “provocative behaviour as to domestic violence” be removed in its entirety. It is clear, under ordinary principles of criminal law, that any offence or crime committed by a perpetrator may be mitigated by circumstances which may reduce the gravity of the offence, upon providing such evidence. These are the common mitigating circumstances and defences found in criminal law such as “self-defence”, or in some jurisdictions, “intoxication” or “proven psychological instability” of the offender. Providing such a broad definition of “provocation” as may be found in this paragraph, which is furthermore open to subjective assessment (for instance, would it be the police officer of first contact who assesses what constitutes sufficient provocation to justify domestic violence? And based on this an investigation will be commenced or not) completely misinterprets the reasons behind the occurrence of domestic violence. It is exactly the mentality of the perpetrator that the victim “deserved” to be physically harmed “because I was provoked” and the unfortunate mentality of the victim of “I deserved to be injured for what I said or did” that permits domestic violence to continue in families and households for years.<sup>7</sup> It is this understanding of the problem which the Law should seek to change.

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<sup>5</sup> Paragraph 7, Part II B “A Framework for Model Legislation on Domestic Violence”, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights Resolution 1995/85, United Nations Commission on Human Rights, E/CN.4/1996/53/Add.2 2 February 1996

<sup>6</sup> “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, Page 2

<sup>7</sup> Otherwise known as the “Stockholm Syndrome”, which is defined as “a psychological response sometimes seen in an abducted hostage, in which the hostage exhibits loyalty to the hostage-taker, in spite of the danger (or at least risk) in which the hostage has been placed. Stockholm syndrome is also sometimes discussed in reference to other situations with similar tensions, such as battered person syndrome, child abuse cases, and bride kidnapping.” Source:

[http://en.wikipedia.org/wiki/Stockholm\\_syndrome](http://en.wikipedia.org/wiki/Stockholm_syndrome)

14. Article 2 states that the Constitution, this Law, other Laws and normative acts are applicable to prevention of domestic violence”. The statement, while understandably stating the principle of the hierarchy and applicability of other legal acts, is declaratory and not especially helpful in understanding the framework of prevention of domestic violence and protection of the victims of this offence. A decision should be made at this point in the Law, whether it will serve to compile all applicable rules and address the issue comprehensively, in which case it is recommended for codes, acts and regulations to be referenced, or whether it will be a Law amending other acts, that is providing a ‘legislative map’ indicating which other laws are amended and applicable to this field. Therefore, the exact scope of the Law is recommended to be re-considered. At this point it is worth mentioning that a variety of models exist within the OSCE region. Some States have opted for a comprehensive Law or Code which addresses all aspects of domestic violence, others have enacted Laws which group together and amend where necessary all applicable articles and provisions of other normative acts.

15. Article 3 establishes lists the bodies and establishments, which are in charge of taking measures on prevention of domestic violence. This article overlaps to some extent with Section II of the Law, and it is not entirely clear what purpose it serves. The bodies responsible for prevention of domestic violence are stated in general terms and it is therefore recommended for the specifics of which bodies are responsible for implementing the law, what their exact duties are etc., to be left to further articles of the Law.

#### **4.2 Section II: Organs and Establishments, Which are in Charge of Taking Measures on Preventing Domestic Violence.**

16. Article 5 outlines an important role for the authority responsible for prevention of domestic violence. It is further recommended that the article be supplemented or that adequate secondary legislation is introduced that would set up the concrete operations of this key body, as required by Section VII of this Law. For instance, the composition, term, election to the body, and election of the chairperson of the body should be clear. Also, the frequency of meetings and reporting cycles should be stipulated. Ideally, the body envisaged, should be a multi-disciplinary body, which would be able to address all aspects of the problem of domestic violence.

17. Regarding Article 6, it is of great importance that the Law seeks to outline the role of the police<sup>8</sup> in prevention of domestic violence. It is further contended that the role of the police, or any law enforcement authority may be described in greater details, as frequently (apart from social workers), personnel of these authorities are the first to intervene in cases and instances of physical domestic violence. For instance, the current requirement to “take proper measures” to discontinue instances of domestic violence, may include a further list of specific tasks such as, the responsibilities of law enforcement officials may also include, confiscating any weapon involved in the alleged act of domestic violence, assisting the victim in removing personal effects from the household, transporting or obtaining transport for the victims and any children to a shelter, etc.,

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<sup>8</sup> It should be noted that the translation provided speaks of “militia” and not police.

18. It may be considered to introduce, as in some OSCE States, presumptive arrests, meaning that law enforcement officers would arrest alleged perpetrators of domestic violence, unless, there are clear and compelling reasons not to arrest.<sup>9</sup>

19. In order to ensure the proper implementation of Articles 8 and 9 of the Law, it is indisputably the case that first and foremost, adequate funding must be available to support the centres and shelters. Another important aspect which is recommended to be taken into consideration is that the shelters and centres for rehabilitation of victims should be covered by absolute confidentiality as to address, employees and persons/victims present in the centres at any time.

20. While it is important to state at this point that the protection of private and family life articulated in Article 8 of the European Convention on Human Rights<sup>10</sup> as a matter of principle must be respected by the State, this undisturbed status of the home must end whenever State intervention is required to protect the safety of individuals in the domestic sphere. Following this interpretation, it may be of value to consider including in this part of the law any other parties who may report on suspicion of the occurrence of domestic violence, to be included within the operation of the Law. From the Law it is understood that request for assistance may be made by the victim or a family members. Other parties which may be useful in identifying possible occurrences of domestic violence are health care workers<sup>11</sup>, amongst others. Their role in assisting by identification may also be set out in the Law. It is noteworthy that the Council of Europe Committee of Ministers Recommendation No. R (85) 4 on Violence in the Family encourages States to “consider the possibility of removing the obligation of secrecy from the members of certain professions so as to enable them to disclose [...] any information concerning cases of violence in the family.” Whereas, concerning reporting on children who are suspected to be suffering

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<sup>9</sup> “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, Page 7.

<sup>10</sup> Article 8 states that: “(1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

<sup>11</sup> As an example from outside the OSCE region, health care workers have been deemed pivotal in the prevention of domestic violence, in New Zealand the following guidelines for identification and response to domestic violence within health care settings were established: 1. Identification - This includes asking adults about possible abuse in a non-threatening manner, recognising symptoms and in some cases screening for abuse. 2. Emotional Support/Empowerment of Confirmed or Suspected Victims of Abuse - Victims of all ages need clear messages of support and reassure them that they are not at fault, and that help is available. 3. Risk Assessment - The purpose of risk assessment and subsequent referral is to determine the likely level of immediate risk for a patient leaving the health care setting. 4. Safety Planning/Intervention - Useful intervention options help victims to contact support services and access legal options for protection of abused women. Safety plans prepared for victims can include helping them avoid injury and escape violent situations 5. Documentation - Careful documentation of injuries can assist abused partners to obtain protection orders immediately or in the future, and can assist police investigations of child abuse. 6. Referral Agencies - External referral agencies are vital in providing support to actual or suspected victims of partner abuse and child abuse. Source: <http://www.scoop.co.nz/stories/PO0211/S00065.htm> “Domestic violence guidelines launched” Monday, 11 November 2002, 9:38 am Press Release: Ministry of Health, New Zealand

or have suffered from domestic violence, a different standard is suggested, as explained in paragraph 33 below.

### **4.3 Special Measures on Prevention of Domestic Violence**

21. Regarding Article 11, the recommendation is to strike out this Article in its entirety, just as it was recommended in relation to the definition of “provocative behaviour as to domestic violence” found in the current Article 1 of the Law. The reasons for the proposal to delete this paragraph are the same, and further explanation is offered as follows: By reducing the occurrence of domestic violence to a singular or repetitive act of mere “conflict” between family members, resulting from an escalation of a particular situation involving two “conflicting parties” where one party, for instance, “provokes” to which the other “reacts”, misreads the essence of relational violence. Relational violence consists in one individual’s (for instance, the husband’s) wish to control the behaviour of another individual (for instance, the wife’s).

22. Following from the above, it is important to note that looking merely at the act of “provocation” and “reaction”, and an attempt to settle individual instances of conflict does not address therefore, the heart of the problem of domestic violence. The relations of individuals, who share a home, are not to be compared with conflict which may arise between strangers, as in the case of family relations every action and reaction forms a part of a long history of events, behaviour, patterns etc., and it may not be stated that acts occur completely unexpectedly. Domestic violence is therefore a demonstration of relations in which one party seeks to establish control, and are therefore, relationships which are first and foremost characterised by illegitimate domination.<sup>12</sup> Emphasis therefore, on the “provocation” of one party, serves only to dilute the responsibility for acts of the person who is the dominator, expressing such domination in acts of violence.

23. What may be considered in the Law, in order to in particular, assist law enforcement officials in any interventions in cases of domestic violence, would be the concepts of establishing the “primary aggressor” and “other aggressors” in a given situation.

24. Protective orders are essential to prevention of domestic violence, and breaking of the cycle of violence, as well as firmly attributing the responsibility for violence to the perpetrator. It is proposed for the Law to build upon the order currently outlined in Article 13 of the Law, in order to secure the safety of victims of domestic violence. Protective orders may include also, as applicable in given circumstances: An order removing the perpetrator from the residence, an order directing the perpetrator to stay a specified distance from the residence, school, workplace or any other specified place of the victim, children of the victim or other family member, an order prohibiting the perpetrator from using or possessing firearms or other weapons specified, an order granting the victim possession or use of an automobile, or other essential personal effects, and order granting custody of children, and order denying visitation rights, or specifying visitation under supervision, an

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<sup>12</sup> Page 10, Albin Dearing, Federal Ministry of Interior of Austria, Paper on: “The Austrian Act on the Protection against Domestic Violence – The core element of the comprehensive reform regarding the response to domestic violence with special emphasis on the role of the law enforcement police.”

order requiring the payment of certain costs and fees, and order concerning any other property rights.<sup>13</sup>

25. Further to the above, it should be borne in mind that the application of any order will depend on the circumstances of each case, and any of the orders ought to be decided upon, on the circumstances by a court of law (or as in the case of Ukraine, by the Public Prosecutor). However, the Article should necessarily be expanded as currently, the only manner in which to (even temporarily) stop violence from occurring is to remove the victim from the home and not the perpetrator, whereas, the possibility of removing the perpetrator would clearly illustrate that the responsibility for the act lies on the offender and not the victim, whose life is again turned up-side down by removing him/her from the family dwelling.

26. Regarding Article 14, which is also applicable to paragraph 3 of Article 16, it should be borne in mind that oftentimes, imposing a monetary penalty on perpetrators of domestic violence affects directly the victims of that violence, where they continue to share a common household, financial obligations and/or responsibility over children. In these cases, alternative forms of reimbursement should be established to ensure that the victim does not carry the burden of the punishment together with the perpetrator. One form of alternative reimbursement would be to order the perpetrator a set amount of hour of community work, which would not severely interfere with any employment obligations he or she may have.

#### **4.4 Section IV: Liability for Committing Domestic Violence**

27. It is proposed that this section reflects all applicable offences, whether criminal, civil or administrative, as specified in other acts. For instance, those found in the Criminal and Civil Codes of Ukraine. Special provisions should also be introduced to cater for the specific situation of paying fines (as described in paragraph 26 above) and the violation of protective orders set out in Article 13 of the Law.

#### **4.5 Section V: Financing of Organs and Establishments, Which are in Charge of Taking Measures on Prevention of Domestic Violence**

28. This section of the Law is essential, to implementation and functioning of a system of prevention of domestic violence and protection and rehabilitation of victims of the violence. It is only to be encouraged for the authorities of Ukraine to undertake steps to set aside adequate funds to support the system. It might also be worth adding at this point that many States in the OSCE region have found that the consequences of domestic violence are indeed costly to the States and therefore, aside from the human rights concerns, have “invested in adequate systems of prevention as a response to this.”<sup>14</sup>

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<sup>13</sup> “*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, Page 5.

<sup>14</sup> For instance, in Finland, the costs have been estimated at 91 million EUR per annum, in England and Wales, 34 billion EUR, in Spain, 2.4 billion, source: Council of Europe: Combating Violence Against Women : Stocktaking study on the measures and actions taken in Council of Europe member States” Directorate General of Human Rights, Strasbourg, 2006 <http://www.coe.int/equality/>

#### **4.6 Protection of Rights of Family Members During Taking Measures on Prevention of Domestic Violence**

29. Article 17 establishes that those against whom measures are being taken have rights, and in particular, the right to privacy of personal data. While this Article is welcomed, it may be considered to develop forms of assistance to the perpetrators in not only preserving their personal data as secret, but also directing them to specialised programmes and psychological treatment as appropriate<sup>15</sup>.

#### **4.7 Final Provisions**

30. As mentioned above, it is essential for the improved functioning of the Law for all relevant secondary acts and by-laws to be introduced at the level of implementing authorities. All relevant acts and the manner in which they are amended should be set out in the Law.

### **5. ADDITIONAL COMMENTS AND RECOMMENDATIONS**

31. In order to carry out their task in awareness raising about the problem of domestic violence, a system of training for law enforcement (police, prosecution and judicial authorities) should be established and implemented. Specialised courses for lawyers dealing with victims of domestic violence may also be provided for in the Law.

32. The Law does not introduce any special measures on protection of children who are victims of domestic violence, except for their representation expressed in Article 7 of the Law. In particular, such measures are important during rehabilitation, where special care is required for children and in the case of judicial proceedings where special measures should be ensured in order for children's rights to be protected.<sup>16</sup>

33. Further to the above, it is recommended for mandatory reporting requirements to be established for certain professions in the case of children suffering or suspected to be suffering from domestic violence. Although a failure to report

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<sup>15</sup> Recommendation (2002)5 of the Council of Europe Committee of Ministers to Member States on the protection of women against violence states that: "Intervention programmes for the perpetrators of violence: Member states should: 50. organise intervention programmes designed to encourage perpetrators of violence to adopt a violence-free pattern of behaviour by helping them to become aware of their acts and recognise their responsibility; 51. provide the perpetrator with the possibility to follow intervention programmes, not as an alternative to sentence, but as an additional measure aiming at preventing violence; participation in such programmes should be offered on a voluntary basis; 52. consider establishing specialised state-approved intervention centres for violent men and support centres initiated by NGOs and associations within the resources available; 53. ensure co-operation and co-ordination between intervention programmes directed towards men and those dealing with the protection of women."

<sup>16</sup> Recommendation (2002)5 of the Council of Europe Committee of Ministers to Member States on the protection of women against violence states that Member States should: "31. ensure that children are suitably cared for in a comprehensive manner by specialised staff at all the relevant stages (initial reception, police, public prosecutor's department and courts) and that the assistance provided is adapted to the needs of the child; 32. take steps to ensure the necessary psychological and moral support for children who are victims of violence by setting up appropriate facilities and providing trained staff to treat the child from initial contact to recovery; these services should be provided free of charge;"

crime may be criminalized under existing provisions of criminal law, it does not serve as an effective deterrent in child maltreatment cases, especially when the offence committed does not amount to a particularly grave crime and takes place within a family home. Moreover, ordinary principles of criminal law require reporting of known crimes, while mandatory procedures for designated professional categories typically use “known or suspected abuse or neglect” as the standard for reporting. Often, especially in the cases of violence against children in the home reporting by designated individuals would remain the only effective mechanism for child protection. In order to bring this recommendation into effect, the Law would need to first identify the categories of “designated individuals” which would be bound by this requirement. Normally the category of mandatory reporters would include professionals who have frequent contact with children. Secondly, the Law would need to specify that a report must be made when the designated individual has reasonable cause to believe or suspect child maltreatment, or has observed conditions which would reasonably result in child maltreatment. Thirdly, provisions in the Law on mandatory reporting would also have to provide for a “privileged communication” exemption, recognizing the right to maintain the confidentiality of communications between certain categories of professionals and their clients or patients.<sup>17</sup>

34. The Law itself does not seek to cover the recourse available to the victims of domestic violence and any compensation for such acts. It is recommended to consider this addition to the Law.<sup>18</sup>

35. Furthermore, in accordance with the Council of Europe Committee of Ministers Recommendation No. R (85) 4 on Violence in the Family, it is recommended to study the possibility of entrusting cases of violence in the family only to specialist members of prosecuting or investigating authorities or of trial courts.

***[END OF TEXT]***

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<sup>17</sup> Please see for example: Section 11164-11174.3 of the California Penal Code: Child Abuse and Neglect Reporting Act <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=11001-12000&file=11164-11174.3>

<sup>18</sup> Recommendation (2002)5 of the Council of Europe Committee of Ministers to Member States on the protection of women against violence states that: “Civil law: Member states should: 36. ensure that, in cases where the facts of violence have been established, victims receive appropriate compensation for any pecuniary, physical, psychological, moral and social damage suffered, corresponding to the degree of gravity, including legal costs incurred; 37. envisage the establishment of financing systems in order to compensate victims.”