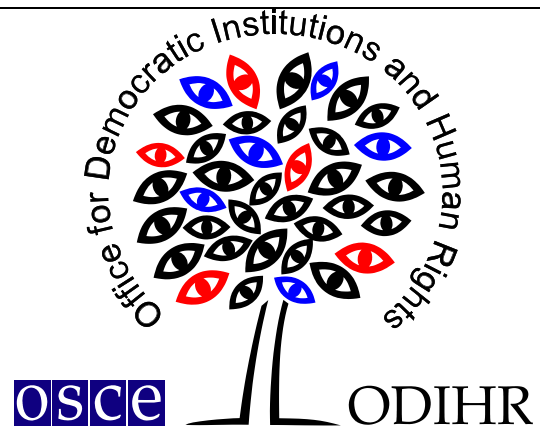


Warsaw, 12 September, 2009

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Opinion
On the Draft Law of
The Republic of Azerbaijan
On Domestic Violence.

**based on an English translation of the draft Laws
commissioned by the ODIHR and the OSCE Office in Baku.**

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1. INTRODUCTION

1. *On 25 July, 2009, by a letter addressed to the OSCE Office in Baku, the State Committee on Family, Women and Children Affairs of the Republic of Azerbaijan requested an assessment of the Draft Law of the Republic of Azerbaijan on the Prevention of Domestic Violence (hereinafter referred to as the “draft Law”), which constitutes Annex 1 hereto.*
2. *The OSCE Office in Baku, referred the request to the OSCE Office for Democratic Institutions and Human Rights (hereinafter referred to as “OSCE ODIHR”), for opinion. 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.¹”*
3. *While the OSCE ODIHR is aware that this draft Law constitutes a most recent version and that prior versions of the draft Law were subjected to scrutiny, the OSCE ODIHR has not had the benefit of reviewing the previous versions, and thus, the Opinion contained herein, is not a reference to nor a comparison of such prior versions.*

2. SCOPE OF REVIEW

4. The scope of the Opinion includes solely the draft Law, constituting Annex 1 hereto.
5. The Opinion is not a comprehensive review of all regulations which may pertain to the prevention of domestic violence in the Republic of Azerbaijan, but is rather restricted only to an analysis of the drafts of legislation mentioned in the paragraph above. The Opinion has been drafted to serve as a set of considerations which should be taken into account in light of international standards and practice in the field of prevention of domestic violence.
6. The Opinion has been developed with a view to assistance in refining and improving the draft Law.
7. The Opinion is based on unofficial translations of draft Law. Errors from translations may result.
8. In view of the above, the OSCE ODIHR would like to make mention that this Opinion is without prejudice to any recommendations and comments to the mentioned draft Laws that the OSCE ODIHR may make in the future.

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

3. EXECUTIVE SUMMARY

9. It is recommended as follows;
- A. to consider an amendment to the title of the law; [par 10]
 - B. to consider supplementing the legislative preamble of the draft Law an explicit acknowledgment that domestic violence affects women in particular, and that it constitutes a form of discrimination and violation of women’s human rights; [par 11, 12]
 - C. to consider listing the criminal acts which fall into the realm of domestic violence within the definition of “domestic violence”; [par 13,14,15,17]
 - D. to consider a review of other acts pertaining to domestic violence which may come into conflict with the present draft Law;[par 16,42]
 - E. to include the principle of non-discrimination in Article 3 of the draft Law; [par 19]
 - F. to expand the subject of the law, as provided in Article 4, to those who may not be living together or sharing a dwelling; [par 20]
 - G. to make consistent terminology referring to “complaints” and “petitions” (Article 6); [par 22]
 - H. to ensure that Article 6 on reporting requirements, is amended to include a exhaustive list of persons who may report domestic violence, and provide for the exemption of “privileged communication”; [par 23]
 - I. to clarify Article 7 of the draft Law; [par 26,27]
 - J. to clarify or delete the category of acts referred to in Article 8 of the draft Law as “acts associated with domestic violence”, ensuring a zero tolerance approach to domestic violence; [par 29, 31, 33]
 - K. to remove the provision of “warning”; [par 30, 32]
 - L. to consider introducing emergency intervention orders, in addition to ordinary orders for protection and provisions allowing to remove the perpetrator from the home; [par 33]
 - M. to expand the breadth of actions which may come within an ordinary protection order, currently stipulated in Article 11 and 12 of the draft Law; [par 34]
 - N. to clarify the moment from which protective orders come into force; [par 36]
 - O. to demarcate in a more precise manner the authorities responsible for the wide range of tasks in prevention of domestic violence, contained in Chapter III of the draft Law; [par. 37]
 - P. to assess and assign budgetary resources to the implementation of the law in particular, the setting up and management of shelters; [par. 38]
 - Q. to ensure that and alternative to administrative and criminal liability in the form of fiscal penalties imposed on the perpetrator are provided in the draft law; [par. 40]
 - R. to systematize the introduction of this draft law through an accompanying act which would serve to amend and conflicting provisions in other laws; [par 16, 42]
 - S. to include a schedule of secondary legislation called for by various provisions of the draft Law; [par.43]
 - T. to consider, if not already the case, a thorough process of consultation on the draft Law with members of civil society working in the field of domestic violence and protection of victims. [par 44]

4. ANALYSIS AND RECOMMENDATIONS

10. The title of the draft Law may be supplemented by adding the phrase “and Protection of Victims of Domestic Violence”. While it is assumed that the question of the title of the draft Law, depending on the importance placed in the extant legal order of the Republic of Azerbaijan, does not constitute an issue of legal interpretation, it may nevertheless serve to signal to those to whom it is addressed the primary aim of the draft Law. In another words, such an amendment to the title may add emphasis to the goal of the draft Law in protection victims of domestic violence.
11. In contrast to the title, the legislative preamble (or otherwise, so-called purpose) of the Draft Law may serve an interpretative function to the draft Law. The ascribed legislative preamble of the draft Law is welcomed, as it certainly establishes the draft Law as having not only the purpose of prevention of domestic violence, but also protection and assistance to victims of domestic violence.
12. Further to the above, and in line with international standards² it may be considered to supplement the legislative preamble with an explicit acknowledgment that domestic violence affects women in particular, and that it constitutes a form of discrimination and violation of women’s human rights³.

4.1 Chapter I : Basic Definitions

13. The definition of domestic violence is broad and seeks to cover the field of many actions whether “intentional action or inaction”, “direct or indirect” which may constitute domestic violence. The breadth of the definition is welcomed. However, the definition may be refined and supplemented in the manner described below.
14. In general a *lex specialis* on prevention of domestic violence and protection of victims, while not having the requisite standing in the hierarchy of legal acts which would allow it to introduce changes into the Criminal Code of the country, may serve the purpose of delineating those acts already carrying criminal and civil responsibility which may fall within the ambit of domestic violence. Therefore, the definition is recommended to contain a list of acts which defines crimes involving domestic violence.⁴ For instance, the

² Declaration on the Elimination of Violence against Women, United Nations Resolution 48/104 of 1993, and Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, and general recommendations No 12 (1989) and 19 (1992) of the Committee on the Elimination of Discrimination against Women.

³ See judgment of: *Opouz v Turkey* (Application No 33401/02), Strasbourg, 9 June 2009.

⁴ 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,

supplementary paragraph may state those crimes from the criminal code of the Republic of Azerbaijan, 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.

15. Further to the above, 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 committed⁵ 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. This is one of the key purposes of a special law on domestic violence.
16. Alternatively, an act amending other acts pertaining to domestic violence or the criminal code may be introduced in tandem with the draft Law, which would commit to their amendment.
17. It is welcomed that the draft Law includes the definitions of both psychological and economic violence, notwithstanding the difficult evidentiary obstacles which arise in practice in proving such violence as having occurred.
18. Both the definitions of “support centres” and “protective orders” should have a direct reference to the relevant Articles of the draft Law which regulate both of these essential elements for protection of victims of domestic violence.
19. In outlining the main principles in the field of Prevention of Domestic Violence, Article 3 of the draft Law is recommended to include the principle of non-discrimination. It has been found that both legislation and practice may discriminate against certain women⁶. While the draft Law speaks of constitutional provisions as remaining applicable (Article 2) and assumingly containing provisions on non-discrimination, the draft Law may nonetheless take this opportunity to repeat the principle, as it has others.

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...”

⁵ “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.

⁶ As an example, and in order to address this type of discrimination, the Turkish Penal Code reform of 2004, removed provisions that imposed lesser or no penalties in cases of violence against unmarried or non-virgin women, as compared to married or virginal women, ensuring that now, legislation protects all women equally- Report of the Expert Group Meeting on Good Practices In Legislation on Violence Against Women, Expert Group Meeting organized by the United Nations Division for Advancement of Women, United Nations Office on Drugs and Crime, Vienna Austria, 26-28 May, 2008. Pg.14

20. Article 4 of the draft Law on persons who are the subjects of the law is welcomed, as it provides for both persons living together whether related by blood, or by law (adoptive parents, and adoptees) as well as those who are cohabitating in informal marriages, amongst others. However, the focus of the article is specifically on those persons living together. While the intention behind the article is comprehensible, it is nevertheless recommended to consider to excluding the requirement of common dwelling. The recommendation is justified by reason of the fact that acts of domestic violence may occur between ex-spouses or ex-boyfriends and girlfriends, no longer living together.

4.2 Chapter II: Procedure for Review of Complaints About Domestic Violence

21. In addition to key definitional elements, the draft Law provides the opportunity for introducing the requisite procedure and state structure for combating domestic violence and protecting victims⁷. Therefore, Article 5 of the draft Law is recommended to indicate exactly which “relevant executive authority” in addition to the police and prosecution, is responsible for reviewing complaints of domestic violence. The same applies to all references to the “relevant executive authority” throughout the draft Law.
22. Unless by reason of translation, Article 6, contains the notions of “a complaint” and “a petition” (Articles 6.1.1 and 6.1.2. respectively). The terminology is recommended to be made consistent.
23. It is positive that information on the committing of domestic violence, may be received by a broad range of state bodies, and educational and health care institutions. Such a comprehensive approach to the occurrence of domestic violence is necessary in the context of the crimes which it entails, as victims are often unwilling or unable to come forward of their own volition, for fear of retaliation by the perpetrator. The passage of information, however, should always be in line with the right to privacy and on consent of a victim. Mandatory reporting requirements have frequently been applied in other OSCE participating States only to instances of domestic violence against minors. Therefore, it is recommended that any provisions in the draft Law on mandatory reporting not only strictly define and provide an exhaustive list (which is not the case in Article 6) of the persons empowered to report, but should be based on ‘reasonable suspicion of the occurrence of domestic violence and include a “privileged communication” exemption, recognizing

⁷ In Recommendation Rec(2002)5 of 30 April 2002 on the protection of women against violence, the Committee of Ministers of the Council of Europe stated, *inter alia*, that member States should introduce/develop and/or improve where necessary national policies against violence based on maximum safety and protection of victims, support and assistance, adjustment of the criminal and civil law, raising of public awareness, training for professionals confronted with violence against women and prevention.

the right to maintain the confidentiality of communications between certain categories of professionals and their clients or patients⁸.

24. Unless, by reason of editorial error, Article 6.2 refers to Article 5.3 of the draft Law, which does not exist.
25. Article 6.3 points to a pivotal aspect of the reporting and submission of complaints (and/or petitions). It is recommended that the draft Law be submitted for adoption together with the ‘special instruction’ referred to in the Article, so as to ensure effective implementation on entry into force of the law.
26. As mentioned in the paragraphs above, the draft Law presents an opportunity to specifically establish exactly what measures may be taken and by whom, in the event of occurrence of domestic violence. At this juncture it is useful to mention the recent landmark decision of *Opuz v Turkey*⁹ of the European Court of Human Rights (hereinafter, “the Court”) , the Court stated in its judgment, in no uncertain terms, that a failure by the State authorities to address adequately the instances of domestic violence (in this case) amounted to a violation of Article 14 (non-discrimination) in conjunction with Article 2 (right to life) and Article 3 (prohibition of torture) of the European Convention for the Protection of Human Rights and Fundamental Freedoms¹⁰.
27. Further to the above, Article 7 makes an attempt to set out the range of actions that need to be taken when there is a “confirmation of occurrence of domestic violence”, however it appears to confuse the situation in which domestic violence actually occurs and where there is a mere reasonable suspicion of it having occurred or likely to occur in the future. It is not clear why, as set out in Article 7.1.5, the “state entity carrying out the examination of the case of domestic violence” after having confirmed that it has occurred, would register the person for preventative measures and deterrent works. On interception and confirmation of domestic violence, the state entity, assumingly the police, has the task (and duty, as affirmed by the case of *Opuz v Turkey*¹¹) of providing for protection of the victim and referring the case to investigation. On point of contact, the state entity, should have the capacity to issue a protection order on the spot (an emergency order, discussed below) or an ordinary order under Article 12 of the draft Law. The Article is therefore recommended to be clarified, as on the one hand it is titled “prosecution” while on the other, it speaks of referral to prosecutorial authorities.
28. Article 8 of the draft Law contains many positive provisions, or parts of provisions, such as, hearing of parties separately (Article 8.1.1) and the provision of legal assistance to victims (Article 8.1.6). Nevertheless, it also contains some provisions which may raise concern and should be reconsidered. It appears to make a distinction between acts of domestic

⁸ 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>

⁹ (Application No 33401/02), Strasbourg, 9 June 2009

¹⁰ Rome, 1950

¹¹ (Application No 33401/02), Strasbourg, 9 June 2009

violence which are considered criminal and able to be prosecuted, and those that are not “related to criminal prosecution”. This margin of discretion is ambiguous and leaves the authorities tasked with prevention of domestic violence, with a decision on whether the act has occurred or has not occurred and whether it is serious enough in nature to undertake investigations and issue protection orders. It also leaves a question as to liability for those acts which in this case, would not fall into the category of “not related to criminal prosecution”.

29. Further to the above, Article 8 is recommended to be clarified. The law should send a clear message of zero tolerance for domestic violence, and while the Criminal Code is not able to be amended in through this draft Law – the listing of crimes applicable, in the definition of the term “domestic violence”, as recommended above, would make this principle clear and would leave little room for discretion as to what constitutes domestic violence and the liability attached thereto.
30. Furthermore, it is recommended that the measure and concept of “warning” established by Article 8.1.9 be removed in its entirety. It is clear from ordinary criminal procedure that the police always have the discretion to provide a ‘warning’, where there is insufficient evidence to suggest that a crime or violation of the law has been committed. The situation for the victim could be further exacerbated by the fact that, according to the draft Law, the perpetrator who has committed an act of domestic violence falling into the ambiguous category of “not related to criminal prosecution”, will remain in the home, with the victim. Practice in the OSCE region has shown that the system of providing a warning may only serve to aggravate the violence in the home further and confuses once again, the action that should be taken by state authorities in cases where they have reason to believe that domestic violence has occurred. In the case that this provision is not removed, as recommended, at the very least, the victim should not have to wait until an official warning is served to make a complaint. He or she, should be able to do so, notwithstanding the provision of a warning.
31. Regarding Article 9 of the draft Law, similar recommendations are made as in relation to Article 8. The Article appears to create a separate category of acts which are called “actions associated with domestic violence”. Just as the category of acts “not related to criminal prosecution”, discussed above, these “associated actions”, appear to carry no criminal, administrative, nor civil liability and remain undefined and ambiguous. It is highly recommended that this be clarified, in particular of the duty of the State to protect the life and health of victims of domestic violence.
32. As stated above, Article 10 of the draft Law on the issuance of an official warning is recommended to be removed from the draft Law. Where domestic violence has occurred or where there exists a reasonable suspicion (as with any other crime or violation) on the part of the authorities that it has occurred, or is likely to occur, immediate action should be taken. The police, should be provided with the legal tools to protect the victim on the spot. The draft Law therefore presents an opportunity to establish a clear system of issuance of

both emergency and ordinary protection orders for victims and referral of them to the necessary services.

33. Article 11 on protective orders is welcomed as it contains many essential elements that should be contained in an ordinary (as opposed to emergency order) protective order issued to a victim. However, it is recommended for a final version of the law to include a clear provision on not only an ordinary protective order, but what is important in domestic violence cases – an order for “emergency” intervention (emergency order). The emergency order could be served by the police and subject to court confirmation within 24 hours of issuance.
34. Many OSCE participating States have also introduced protection orders that would include the possibility of removing the perpetrator from the residence¹², 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 order requiring the payment of certain costs and fees, and order concerning any other property rights.¹³ Therefore, the ordinary order Article 11 and 12 may be supplemented.
35. Article 12 of the draft Law continues provides the mechanism of issuance of protective orders. It is welcomed in particular, that the provision permits the issuance of an order at a closed session of the court (Article 12.3). However, in line with the above, it is recommended to consider providing the manner of issuance of “emergency orders” for protection. An immediate response by the State would fulfill its duty to protect victims of domestic violence.
36. Furthermore it is recommended that Article 12.4 be clarified, as the formulation stating that the “protective order comes into force and its term is counted from the date it is *announced*” does not provide a clear indication of who indeed announces the order. In the case of ordinary protection orders, assumingly, this would be an announcement by the court. However, in the event that the institution of emergency orders were to be introduced as recommended above, the moment of coming into force would be the moment of issuance by the police, later confirmed (or not) by a court of law.

4.3 Chapter III : Preventative Actions Against Domestic Violence

¹² This measure (removal of the perpetrator from the home) has been applied in many OSCE participating States, including Austria, Germany, Switzerland, Liechtenstein, Luxembourg, Spain and Poland.

¹³ “*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.

37. The provisions contained in this chapter of the draft Law are welcomed. It would be beneficial however, if the provisions were to demarcate the wide responsible authorities for this wide range of tasks that are to be undertaken in a more precise manner, as well as refer to the state authority which is responsible under Article 13.2 for the drafting of an action plan or state programme on prevention of domestic violence and protection of victims.
38. The wide range of actions set out in the Chapter will necessarily have large financial and budgetary implications, in particular, Article 19 on support centres, which is a pivotal article in the draft Law. The draft Law is therefore recommended to foresee the budgetary implications whether directly or through reference to secondary legislation. It is welcomed that the draft Law considers providing the possibility of financing non-state actors (non-governmental organizations, specialized in this field) to provide assistance to victims of domestic violence.
39. Article 17 on Confidentiality of aggrieved persons (victims) is welcomed. However, it is recommended that any transfer of information, as required under Article 18.5 is conducted in line with European standards on processing of personal data¹⁴.

4.4 Chapter IV. Final Provisions

40. In terms of criminal and administrative liability for acts of violence committed in the home, as stipulated by Article 20 of the draft Law, it must be borne in mind that where fines may be applicable to the perpetrator, 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.
41. It is also considered important to reiterate that the draft Law appears to create a separate category of acts “associated with domestic violence” and it is unclear whether such acts fall under criminal or administrative or indeed civil provisions.

5. ADDITIONAL RECOMMENDATIONS

¹⁴ Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data Strasbourg, 28.I.1981- ETS No 108

42. In relation to the introduction of the draft Law and while, as mentioned above, it may not have the requisite standing in the hierarchy of legal norms, the introduction of this draft Law, should be accompanied by a review and where necessary, and amendment of all other acts pertaining to domestic violence, that could be in conflict with the draft Law.
43. It is recommended that from a legislative technique point of view, an act which would review and remove any conflicting provisions in other laws be introduced together with this draft law. Furthermore a schedule of secondary legislation to be introduced should accompany the draft law, in particular since many provision on the draft Law refer to the introduction of instructions Article 6.3) or guidelines (ie., Article 19.5) to ensure implementation. Finally, a financial impact statement which would indicate budgetary implications and commit state funds to the implementation of the draft Law.
44. If not already the case, the draft Law would benefit from consultation with civil society and service providers working with victims of domestic violence, in particular those, who would be instrumental in implementing Article 19.4 of the draft Law.

[END OF TEXT]

The Law of the Republic of Azerbaijan on Prevention of Domestic Violence

This Law defines and regulates actions aimed at prevention of violence committed through abuse of close relative relations, or current or past cohabitation and its negative legal, medical and social outcomes; provision of legal assistance and social protection of persons aggrieved from domestic violence in compliance with the international standards; as well as eradication of conditions giving rise to domestic violence.

CHAPTER I. GENERAL PROVISIONS

Article 1. Basic Definitions

1.1. The Law uses the following definitions:

- 1.1.1. "Domestic violence" means an intentional action or inaction resulting in direct or indirect infringement of personal rights and freedoms, infliction of physical and moral damage to a person caused by abuse of close relative relations, or current or past cohabitation through use of deliberate physical or sexual violence or exertion of psychological pressure by one family member upon another (also, if living with a close relative, by one close relative upon another; if cohabiting in an informal marriage, by one cohabitant upon the other or upon close relatives of either one living jointly with them), or through forcing into marriage, breaching sexual inviolability and sexual freedom, involving in forced labour, or illegally applying limitations of economic character.
- 1.1.2. A person aggrieved from domestic violence (hereinafter referred to as "aggrieved person") is a person who has suffered from physical, sexual or psychological pressures or economic limitations as a result of deliberate actions by a member of person's family, a close relative, a person cohabiting in an informal marriage or a person abusing past cohabitation in an informal marriage toward persons who live jointly with them.
- 1.1.3. "Domestic physical violence" denotes deliberate use of physical action by persons covered under this Law towards each other, i.e. using force to breach personal inviolability, beat and batter, inflict injury or damage to health, torture, or limit the right to freedom.
- 1.1.4. "Domestic psychological violence" denotes deliberate use of psychological pressure by persons covered under this Law towards each other, i.e. insulting, degrading honour and dignity, creation of intolerable psychological situation through ill-treatment without use of physical force, threats, limitation of natural needs, deprivation of food or sleep, constraining the freedom of conscience, hindering education or free entry into

marriage, forcing into marriage of persons below the marriage age, and other actions aimed at producing intolerable psychological situation.

- 1.1.5. “Domestic application of illegal limitations of economic character” means actions by persons covered under this Law towards each other aimed at deprivation of the right to own, dispose of or use property, or obtain income, or at creating, sustaining and abusing the situation of economic dependency.
- 1.1.6. “Domestic sexual violence” denotes breach of sexual inviolability and sexual freedom, or compelling into actions of sexual character in any way, committed by persons covered under this Law towards each other through use of physical or psychological force, or threatening with physical force, as well as by taking advantage of dependency or helpless situation of a person.
- 1.1.7. “Prevention of domestic violence” means legal, social and deterrent measures performed to remove the threat of domestic violence.
- 1.1.8. “Support centres” are public and non-governmental institutions established for provision of legal, medical, psychological, social and other assistance to persons aggrieved from domestic violence.
- 1.1.9. “Protective order” denotes an act of limitations applied by the relevant executive authority on contingent actions of the person who committed domestic violence against the aggrieved person.

Article 2. Legislation of the Republic of Azerbaijan on Prevention of Domestic Violence

The legislation of the Republic of Azerbaijan Republic on prevention of domestic violence consists of the Constitution of the Republic of Azerbaijan, international agreements that the Republic of Azerbaijan is a party to, the present Law and other normative legal acts.

Article 3. Main Principles in the Field of Prevention of Domestic Violence

3.1. Main principles of prevention of domestic violence comprise the following:

- 3.1.1. provision of basic human rights and freedoms to everyone as stipulated by the Constitution of the Republic of Azerbaijan and the legislation of the Republic of Azerbaijan;
- 3.1.3. inadmissibility of interference into anyone’s personal and family life, except for cases and within the limits expressly provided in the legislation¹⁵;
- 3.1.4. observance of confidentiality for protection of personal and family privacy;
- 3.1.5. rehabilitation of infringed rights of persons aggrieved from domestic violence;
- 3.1.6. mutual cooperation of state bodies and non-governmental organizations in the field of prevention of domestic violence.

¹⁵ [Note by the translator of the final version] The original text gives 3.1.3. after 3.1.1; an error very common with drafts that are written and rewritten over.

Article 4. Persons subject to the Law

- 4.1. This Law applies to the following persons:
- 4.1.1. close family members (husband, wife, parents, children, grandmothers, grandfathers, grandchildren, siblings, step brothers and sisters, adoptive parents and adoptees) as well as other relatives living jointly;
 - 4.1.2. formerly married couples cohabiting after dissolution of marriage;
 - 4.1.3. individuals appointed guardians or foster parents, as well as persons under guardianship or in foster care;
 - 4.1.4. men and women cohabiting in informal marriages, as well as relatives living jointly with persons cohabiting in informal marriages.

CHAPTER II. PROCEDURE FOR REVIEW OF COMPLAINTS ABOUT DOMESTIC VIOLENCE

Article 5. State Bodies Responsible for Review of Complaints Related to Domestic Violence

- 5.1. Complaints related to domestic violence are reviewed by relevant executive authorities, the police, the procuracy, and the judiciary in cases and within competencies defined by law.
- 5.2. Criminal prosecution with respect to complaints related to domestic violence is undertaken in the manner set forth in the criminal-procedural legislation of the Republic of Azerbaijan.

Article 6. Examination of Complaints about Domestic Violence

- 6.1. The following are considered as grounds for conducting an examination related to domestic violence:
 - 6.1.1. a complaint by an aggrieved person or his/her family members;
 - 6.1.2. a petition received from natural or legal persons (state and local self-government authorities, educational or health institutions, non-government organisations, neighbours, etc.);
- 6.2. Information about cases of committing domestic violence received by officials of state and local self-government authorities, commissions for affairs and protection of rights of juveniles, guardian and foster care bodies, educational and health institutions, and support centres during performance of their official duties shall be submitted to relevant executive authorities defined in Article 5.2 and 5.3 ¹⁶of this Law.
- 6.3. Complaints about cases of domestic violence are examined by the relevant executive authorities in the manner determined by the legislation, based on a special instruction.
- 6.4. Complaints containing information about crimes related to domestic violence are reviewed in the manner and during the period stipulated in the criminal-procedural legislation.

¹⁶ There is no art 5.3 in this law – [Note by the translator of the final version] Well, the original text says 5.3; an error very common with drafts that are written and rewritten over. Probably, should be read as “Article 5.1 and 5.2.”

Article 7. Duties of the Relevant State Entity Prosecuting Crimes Related to Domestic Violence

7.1. Along with duties related to prosecution of crimes defined in the relevant legislation, the state entity carrying out examination of criminal cases related to domestic violence shall take the following actions after confirmation of occurrence of domestic violence:

- 7.1.1. provide an aggrieved person with immediate medical aid, temporary shelter in a support centre, clothing and food at public expense, as well as forward information about the aggrieved person to the relevant executive authority for conducting a course of psychological rehabilitation;
- 7.1.2. clarify circumstances that have caused and given rise to domestic violence, and take measures to preclude them within its competencies;
- 7.1.3. ensure prevention of violence and its non-recurrence, and provide for security of the aggrieved person during the examination;
- 7.1.4. assist in normalization of relations between parties and resumption of family affairs during the period of examination;
- 7.1.5. ensure registration with preventive purposes of persons who have committed domestic violence, and conduct educational and deterrent works with them;
- 7.1.6. explain to family members suffering from domestic violence their rights and the use of remedies established by the state and determined by this Law;
- 7.1.7. make a decision about issuance of a protective order as established hereunder;
- 7.1.8. if a complaint received is not related to criminal prosecution, forward the complaint to the relevant executive authority as per its competence;
- 7.1.9. as necessary, assist other state entities conducting examination of complaints about domestic violence.

Article 8. Duties of the Relevant Executive Authorities Conducting Examination of Complaints about Domestic Violence not Related to Criminal Prosecution

8.1. Duties of the relevant executive authority conducting examination of complaints about domestic violence which are not related to criminal prosecution consist of the following:

- 8.1.1. accept a case received in relation with domestic violence in the manner determined by law, register it properly, carry out examination of the case in the shortest time feasible, in relevant cases, conduct examination immediately on spot, and hear parties separately;
- 8.1.2. if a complaint received contains information indicating elements of a crime, forward the complaint further in accordance with relevant competencies;
- 8.1.3. explain to a complainant his/her rights and the matter of criminal and administrative responsibility for persons committing domestic violence as well as the procedure for bringing a suit to the court;
- 8.1.4. take measures to prevent repetition of actions causing the complaint and violence;

- 8.1.5. take measures to provide for security of the aggrieved person during the period of examination;
- 8.1.6. as necessary, provide legal assistance to the aggrieved person, provide him/her with shelter in a public support centre, clothing and food, medical and psychological aid, and to take measures to provide him/her with education, a job, vocational retraining and to ensure his/her social protection;
- 8.1.7. take action to protect rights and legal interests of juveniles suffering from domestic violence;
- 8.1.8. assist in normalization of relations between parties and resumption of family affairs;
- 8.1.9. serve a person who has committed domestic violence a warning of non-recurrence, and control execution of this warning;
- 8.1.10. carry out examination in the manner set forth by the legislation on administrative offences related to domestic violence, and apply to the court to call persons who has committed domestic violence to administrative account;
- 8.1.11. apply to the court to issue a protective order to an aggrieved person;
- 8.1.12. organise actions stipulated in Article 13 of this Law;
- 8.1.13. establish a databank related to domestic violence and organise collection of statistic information;
- 8.1.14. implement normative regulation in relation to activities of non-governmental support centres and provide their accreditation;
- 8.1.15. co-operate with international and non-governmental organizations in the field of prevention of domestic violence;
- 8.1.16. render assistance to other state entities in their actions in the field of prevention of domestic violence.

Article 9. Decision Regarding Results of Domestic Violence Examination

- 9.1. The relevant executive authority takes one of the following decisions, depending on the results of the examination:
 - 9.1.1. serve a person who has committed actions associated with domestic violence a warning of non-recurrence with explanation of criminal and administrative responsibility established by law;
 - 9.1.2. apply to the court for termination or restriction of parental rights of a person who has committed actions associated with domestic violence in the manner established by law;
 - 9.1.3. apply to competent state authorities for bringing a person whose actions contain *corpus delicti* or material elements of an administrative offence to criminal or administrative account in the manner established by law;
 - 9.1.4. apply to the court to issue a protective order to an aggrieved person;
 - 9.1.5. provide an aggrieved person with shelter in a support centre.

Article 10. Warning of Non-recurrence of Domestic Violence

- 10.1. An aggrieved person or another person acting on his/her behalf in a situation threatening life and health of any family member of the family may apply for issuance of a warning to a person who has committed domestic violence.
- 10.2. If actions of such person do not amount to criminal responsibility, but infringe the rights and legal interests of the aggrieved person, the relevant executive authority shall serve a written warning of non-recurrence of these or similar actions to a person who has committed domestic violence.
- 10.3. The relevant executive authority shall serve a warning within 24 hours of application by an aggrieved person or another person acting on his/her behalf.
- 10.4. A warning is effective for 30 days. A complaint may be lodged at the court about issuance of a warning.
- 10.5. Disregard for the warning of non-recurrence by a person who has committed actions associated with domestic violence is the grounds for issuing a protective order and calling him/her to a more severe administrative account.

Article 11. Protective Order

- 11.1. A protective order may forbid a person who has committed domestic violence to:
 - 11.1.1 commit violence again;
 - 11.1.2. communicate with an aggrieved person;
 - 11.1.3. search for an aggrieved person if his/her whereabouts are unknown to him/her;
 - 11.1.4. take other actions causing nuisance to an aggrieved person;
- 11.2. A protective order may include:
 - 11.2.1. rules for the communication of a person who has committed actions associated with domestic violence with his/her under-age children;
 - 11.2.2. rules for the use of accommodation or shared property;
 - 11.2.3. terms for covering expenses related to medical and legal assistance rendered to an aggrieved person by a person who has committed domestic violence;
 - 11.2.4. an explanation regarding administrative responsibility for non-compliance with the protective order.
- 11.3. A protective order is executed in the manner established by the legislation related to execution of court orders. An individual failing to comply with a protective order bears criminal responsibility in the manner established by the legislation regarding non-compliance with court orders.

Article 12. Rules for Issuance of Protective Order

- 12.1. If a person who has committed actions associated with domestic violence disregards a warning of non-recurrence, an aggrieved person or the relevant executive authority is entitled to apply to the court for obtaining a protective order.

- 12.2. A protective order is effective for a period of 30 to 180 days. A court decision on the issue of a protective order is made in the manner determined by the legislation.
- 12.3. To prevent disclosure of the parties' personal and family secrets as well as to support interests of juveniles, a case about issuance of a protective order may be heard at a closed session of the court in the manner established by law.
- 12.4. A decision on the issuance of a protective order comes into force and its term is counted from the date it is announced. A decision to issue a protective order is forwarded for execution within 24 hours.
- 12.5. A decision about issuance of a protective order may be disputed by lodging a complaint with the court in the manner established by law. An appeal to a court of higher instance shall not cease the execution of the decision about the protective order.
- 12.6. Each party shall be provided with a copy of the protective order on the day it is issued.

CHAPTER III. PREVENTIVE ACTIONS AGAINST DOMESTIC VIOLENCE

Article 13. Types of Preventive Actions against Domestic Violence

13.1. Preventive actions against domestic violence comprise the following types:

- 13.1.1. legal actions, i.e. examination of cases of domestic violence, and calling persons who have committed domestic violence to account;
 - 13.1.2. social actions, i.e. actions concerning social protection of aggrieved persons, including provision at public expense of temporary shelter, legal and medical assistance and socially-oriented measures;
 - 13.1.3. informative actions, i.e. raising awareness of negative legal, medical and social consequences of domestic violence to the public and other public education activities related to prevention of domestic violence.
- 13.2. The relevant executive authority adopts state programs with respect to preventive actions against domestic violence.

Article 14: Legal Actions in the Field of Prevention of Domestic Violence

14.1. Legal actions in the fields of prevention of domestic violence comprise the following:

- 14.1.1. criminal prosecution related to domestic violence;
- 14.1.2. calling persons who has committed administrative offences related to domestic violence to administrative account;
- 14.1.3. protection of the rights, freedoms and legal interests of aggrieved persons, provision for their security during the course of the examination;
- 14.1.4. legal assistance to aggrieved persons at public expense;
- 14.1.5. execution of court decisions regarding cases of domestic violence;
- 14.1.6. supervision of execution of a warning issued with regard to domestic violence;

- 14.1.7. termination or restriction of parental rights of persons who have committed actions associated with domestic violence in the manner established by law;
- 14.1.8. collection of statistical data on domestic violence;
- 14.1.9. ensuring confidentiality of domestic violence information in the manner established by law;
- 14.1.10. normative regulation of activities of non-governmental support centres and their accreditation;
- 14.1.11. submission of proposals for legislative improvement to prevent violence and re-occurrence of actions causing complaints.

Article 15. Social Actions in the Field of Prevention of Domestic Violence

- 15.1. Social actions in the field of prevention of domestic violence comprise the following:
 - 15.1.1. organisation of social protection of aggrieved persons, assistance to them in obtaining relevant documents and social allowances in the manner determined in the legislation;
 - 15.1.2. assistance to aggrieved persons in continuing education;
 - 15.1.3. assistance to aggrieved persons in finding employment and their vocational retraining;
 - 15.1.4. medical aid to aggrieved persons at public expense;
 - 15.1.5. organisation of psychological rehabilitation courses for aggrieved persons;
 - 15.1.6. establishment of support centres for aggrieved persons;
 - 15.1.7. measures to provide social care to aggrieved children;
 - 15.1.8. other measures for protection of aggrieved persons.

Article 16. Informative Actions in the Field of Prevention of Domestic Violence

- 16.1. Informative actions related to domestic violence aim to prevent domestic violence, establish normal relations in the families, eradicate circumstances that give rise to domestic violence and negative legal, medical and social consequences they cause.
- 16.2. Informative actions in the field of prevention of domestic violence comprise the following:
 - 16.2.1. public education activities against domestic violence;
 - 16.2.2. raising awareness of circumstances that give rise to domestic violence and negative legal, medical and social consequences they cause;
 - 16.2.3. raising awareness of means used to prevent domestic violence;
 - 16.2.4. promotion among population family relations based on high culture and mutual respect;
 - 16.2.5. examination and analysis of circumstances that give rise to domestic violence, elaboration of programs and recommendations aimed at prevention of domestic violence, organization of outreach activities;
 - 16.2.6. monitoring of families where cases of domestic violence have occurred, as well as identification of families where they are likely to occur and their monitoring;

- 16.2.7. raising awareness of responsibility for committing domestic violence as set forth in the law;
- 16.2.8. serving a warning of non-recurrence to persons who have committed domestic violence;
- 16.2.9. conducting surveys on domestic violence;
- 16.2.10. public education about fighting domestic violence;
- 16.3. Guidelines for monitoring of families where cases of domestic violence have occurred or likely to occur shall be determined by the relevant executive authority.

Article 17. Ensuring Confidentiality in Assisting Aggrieved Persons

- 17.1. A fact of domestic violence against an individual as well as personal and family information obtained while rendering assistance to aggrieved persons is considered confidential.
- 17.2. Confidentiality of information obtained during the examination of domestic violence complaints, collection of statistical data on domestic violence and rendering assistance to aggrieved persons as well as prevention of disclosure of personal and family secrets shall be guaranteed.
- 17.3. Confidentiality of information collected in a databank is ensured by the relevant executive authority maintaining the databank. Domestic violence information may be disclosed only in cases provided in the legislation. Statistical data on domestic violence shall be disclosed on the anonymous basis.
- 17.4. Officials who failed to ensure confidentiality in examination of domestic violence complaints bear responsibility in accordance with law.

Article 18. Domestic Violence Databank

- 18.1. The domestic violence databank is created by the relevant executive authority.
- 18.2. The databank includes information on occurrence of cases of domestic violence, individuals who complained to state bodies about cases of domestic violence, examination and results of examination of cases of domestic violence, criminal and administrative offenders with regard to cases of domestic violence, court orders, including orders on termination and restriction of parental rights, as well as restoration and removal of restrictions of parental rights, information about accredited support centres and their activities, etc.
- 18.3. Guidelines on organization and performance of the databank are set by the relevant executive authority.
- 18.4. State bodies and non-governmental support centres shall provide information about cases of domestic violence to the relevant executive authority.
- 18.5. The relevant executive authority shall prepare summaries and analytical documents on the basis of domestic violence information contained in the databank.

Article 19. Support Centres

- 19.1. Public support centres for aggrieved persons are established by the relevant executive authority of the Republic of Azerbaijan. Services rendered by public support centres are free of charge.
- 19.2. Support centres shall:
- 19.2.1. provide legal and medical assistance to aggrieved persons;
 - 19.2.2. assist aggrieved persons in finding employment and their vocational retraining;
 - 19.2.3. arrange a psychological rehabilitation course for aggrieved persons;
 - 19.2.4. assist aggrieved persons in preparing relevant documents with respect to social protection and in obtaining social allowances;
 - 19.2.5. provide aggrieved persons with emergency shelters;
 - 19.2.6. take measures to restore normalcy in families of aggrieved persons;
 - 19.2.7. carry out informative actions with regard to domestic violence;
 - 19.2.8. organize mutual support groups of aggrieved persons;
 - 19.2.9. implement other activities related to social protection of aggrieved persons.
- 19.3. As a general rule, support centres shall provide shelter as necessary to aggrieved persons for up to two months, and to juveniles for up to three months.
- 19.4. Support centres may also be established by local self-government authorities and non-governmental organizations. Non-governmental support centres must be accredited by the relevant executive authority.
- 19.5. Guidelines for activities of support centres and accreditation procedures for non-governmental support centres are elaborated by the relevant executive authority.

CHAPTER IV. FINAL PROVISIONS

Article 20. Responsibility for Violation of Law

Persons breaching provisions of this Law and other legislative acts on domestic violence bear responsibility in the manner established by law.

Article 21: Enforcement of the Law

This Law comes into force on the day it is published.