

**Baker  
McKenzie.**

# Fighting Domestic Violence

Pro Bono Initiative

**Asia**

In association with



# Kazakhstan

## Domestic Violence Legislation



“... the prevention of domestic violence is based on certain principles, including the principle of guaranteeing human rights.”

# Kazakhstan

## 1 Legal provisions

### 1.1 What are the relevant statutes and codes?

The relevant statutes include the following:

- (a) Constitution of the Republic of Kazakhstan of 30 August 1995 ("**Constitution**") ([https://www.akorda.kz/ru/official\\_documents/constitution](https://www.akorda.kz/ru/official_documents/constitution))
- (b) Code on Administrative Offenses of the Republic of Kazakhstan of 5 July 2014 No. 235-V ("**Administrative Code**") ([https://online.zakon.kz/document/?doc\\_id=31577399](https://online.zakon.kz/document/?doc_id=31577399))
- (c) Criminal Code of the Republic of Kazakhstan of 3 July 2014 No. 226-V ("**Criminal Code**") ([https://online.zakon.kz/document/?doc\\_id=31575252](https://online.zakon.kz/document/?doc_id=31575252))
- (d) Criminal Procedural Code of the Republic of Kazakhstan of 4 July 2014 No. 231-V ("**Criminal Procedure Code**") ([https://online.zakon.kz/document/?doc\\_id=31575852](https://online.zakon.kz/document/?doc_id=31575852))
- (e) Code On Marriage (Matrimony) and Family of the Republic of Kazakhstan dated 26 December 2011 ("**Family Code**") ([https://online.zakon.kz/document/?doc\\_id=31102748](https://online.zakon.kz/document/?doc_id=31102748))
- (f) Law of the Republic of Kazakhstan of 4 December 2009 No. 214-IV "On Prevention of Domestic Violence" ("**Domestic Violence Prevention Law**") ([https://online.zakon.kz/document/?doc\\_id=30525680](https://online.zakon.kz/document/?doc_id=30525680))
- (g) Law of the Republic of Kazakhstan of 4 December 2009 No. 214-IV "On Prevention of Legal Offences" ([https://online.zakon.kz/document/?doc\\_id=30657323](https://online.zakon.kz/document/?doc_id=30657323));
- (h) Law of the Republic of Kazakhstan of 8 August 2002 No. 345-II "On Children's Rights in the Republic of Kazakhstan" ([https://online.zakon.kz/m/document/?doc\\_id=1032460](https://online.zakon.kz/m/document/?doc_id=1032460))
- (i) Law of the Republic of Kazakhstan of 29 June 1998 No. 248 "On accession of the Republic of Kazakhstan to the Convention on the Elimination of all Forms of Discrimination Against Women" ([https://online.zakon.kz/document/?doc\\_id=1009741](https://online.zakon.kz/document/?doc_id=1009741))
- (j) Law of the Republic of Kazakhstan of 29 December 2008 No. 114-IV "On Special Social Services" ([https://online.zakon.kz/Document/?doc\\_id=30369331](https://online.zakon.kz/Document/?doc_id=30369331))
- (k) Law of the Republic of Kazakhstan of 5 July 2000 No. 72-II "On State Protection of Participants in Criminal Proceedings" ([https://online.zakon.kz/document/?doc\\_id=1018939](https://online.zakon.kz/document/?doc_id=1018939))

- (l) The Order of the Ministry of Healthcare and Social Development of the Republic of Kazakhstan of 21 December 2016 No. 1079 "On Establishment of Standard of Provision of Special Social Services to Domestic Violence Victims"  
([https://tengrinews.kz/zakon/pravitelstvo\\_respubliki\\_kazahstan\\_premier\\_ministr\\_rk/bpak\\_i\\_semya/id-V1600014701/](https://tengrinews.kz/zakon/pravitelstvo_respubliki_kazahstan_premier_ministr_rk/bpak_i_semya/id-V1600014701/))
- (m) Joint Order of the Ministry of Internal Affairs of the Republic of Kazakhstan of 22 September 2014 No. 630, Ministry of Education of the Republic of Kazakhstan of 26 September 2014 No. 399 and Ministry of Healthcare and Social Development of the Republic of Kazakhstan of 19 November 2014 No. 240 "On Establishment of Criteria of Assessment of Availability of Abuse Which Caused Social Deadadaptation and Social Deprivation"

## 1.2 What is the controlling case law?

Not applicable, as Kazakhstan is a civil law country, and there is no case law and court decisions that have a binding force in Kazakhstan.

## 1.3 What are the specific parts of the court system that address domestic violence?

The relevant parts of the court system that address domestic violence are local and regional courts and the Supreme Court of Kazakhstan.<sup>1</sup>

## 1.4 What are potential causes of action?

The primary cause of action is the act/conduct that constitutes "domestic violence" for the purposes of the Domestic Violence Prevention Law. Domestic violence is defined as intentional wrongful conduct (act or omission to act) committed by an individual (natural person) against another person in the context of a family and domestic relationship, causing or threatening to cause physical and/or mental abuse.<sup>2</sup>

There are several types of domestic violence: physical; mental; sexual; and economic (or financial). Those terms are defined as follows:

- (i) Physical violence — intentional injury to health by the use of physical force and by causing of physical pain.
- (ii) Mental violence — intentional impact on person's psychology, humiliation and degradation by threats, insult, blackmail or coercion to commit an offense or actions that are dangerous for life or health, and that lead to mental, physical and personal development disruption.
- (iii) Sexual violence — intentional wrongful action infringing sexual integrity or sexual freedom of a person, as well as actions of sexual nature with regard to the underage.
- (iv) Economic (or financial) violence — intentional deprivation of an individual of shelter, food, clothing, property and means, to which this individual has a legal right.<sup>3</sup>

## **2 Introduction: framework guiding domestic violence law**

### **2.1 Are there civil and criminal legal remedies for domestic violence victims?**

Yes. The Domestic Violence Prevention Law<sup>4</sup> provides for the following prevention measures:

- (a) preventive conversation
- (b) delivery to the internal affairs bodies (i.e., police) of a person who has committed domestic violence in order to draw up a protocol on an administrative offense or issue a domestic violence protection order
- (c) a domestic violence protection order
- (d) administrative detention
- (e) compulsory measures of a medical nature
- (f) the establishment of special requirements for the offender's behavior (or the civil protection order)
- (g) administrative penalty
- (h) deprivation or restriction of parental rights, cancellation of an adoption of a child, release and removal of guardians and sponsors from the performance of their duties, early termination of the agreement on the transfer of the child to foster care
- (i) measures of procedural coercion and security measures for victims in criminal proceedings
- (j) measures taken upon a court judgment

### **2.2 Is protection from domestic violence identified in national law as a human right?**

There is no specific provision in national law identifying domestic violence as a human right. However, according to the Domestic Violence Prevention Law,<sup>5</sup> the term "prevention of domestic violence" is defined as the set of measures directed to protect human rights. The law<sup>6</sup> also expressly states that the prevention of domestic violence is based on certain principles, including the principle of guaranteeing human rights. Therefore, while there is no express statement to this effect, we believe that national law treats freedom from domestic violence as a human right.

### **2.3 Has your country signed and ratified the conventions?**

No, in respect of the Maputo Protocol. Kazakhstan is not part of the African Union and it has not ratified the Maputo Protocol.

Yes, in respect of the 1979 Convention. The Republic of Kazakhstan has signed and ratified both (i) the Convention on the Elimination of All Forms of Discrimination Against Women and (ii) the Optional Protocol to the Convention (New York, 6 September 2000), in accordance with the Law No. 248 of 29 June 1998.

## **2.4 If it has ratified the Maputo Protocol, how has it been implemented into national law (African Union member states only)?**

Not applicable, Kazakhstan is not a member state of the African Union.

## **2.5 If it has ratified the 1979 Convention, how has the recommendations part of General Comment No. 35 been implemented into national law?**

Under the 1979 Convention, Kazakhstan is obligated to protect women and girls against domestic and sexual violence and harassment. This includes implementing adequate legal measures and systems, including appropriate remedies, the state's liability for acts/omissions committed by its agents, and repealing all laws that directly or indirectly excuse or facilitate violence.

The main mechanism for meeting this obligation is the implementation of the Domestic Violence Prevention Law. This law primarily focuses on protection orders and measures and addresses other issues such as rehabilitation and support of victims, roles and duties of police forces, etc. The law does not appear to contain any provisions facilitating or excusing violence.

However, we note that the legislation in Kazakhstan does not appear to include specific rules regarding gender-based violence, which is recognized under the 1979 Convention.

In addition (and as a general note), Kazakhstan has taken the following measures in line with the recommendations part of General Comment No. 35:

- (a) The Constitution provides that no one can be subjected to any discrimination on any grounds, including sex, and that all are equal before the law and the courts.
- (b) The Administrative Code provides for sanctions for unlawful actions in the sphere of family and household relations. The Criminal Procedure Code establishes liability for rape and sexual assault.

## **2.6 If the Conventions have not been ratified or signed, is it envisaged that your country will do so?**

Not applicable, see above.

### 3 Similarities and differences in terminology

Term	Description
Domestic violence	<p>The current definition of the term "domestic violence" in the Domestic Violence Prevention Law includes "intentional wrongful conduct (act or omission to act) committed by an individual (natural person) against another person in the context of a family and domestic relationship, causing or threatening to cause physical and/or mental abuse."<sup>7</sup></p> <p>A person is deemed to be in a family and domestic relationship with another person if the person is or has previously been married to another person, is living in the same household with the other person, is a close family member of that other person or has a common child with that other person.</p> <p>There is a draft of a new Law "On Fighting Family and Domestic Violence" that was announced by the government in March 2020 ("<b>Draft Law</b>"). The Draft Law generally contains the same definition of the term "domestic violence," except that it refers to sexual and financial abuse (in addition to the physical and mental abuse mentioned in the current definition).</p>
Stalking	<p>This is not specifically defined in the current legislation or in the Draft Law.</p>
Harassment	<p>This is not specifically defined in the current legislation or in the Draft Law.</p>
Victim	<p>"Victim" is defined in the Domestic Violence Prevention Law<sup>8</sup> as an individual (natural person) concerning whom there is a good reason to believe that he or she suffered from moral, physical or property damage as a result of domestic violence.</p> <p>However, the Draft Law contains a different definition of the term "victim," as follows: an individual (natural person) who suffers from physical, sexual, psychological or financial violent actions of another person.</p> <p>Therefore, unlike the existing Domestic Violence Prevention Law, the Draft Law does not refer to "moral, physical or property damage," and instead focuses on different types of violent actions of the abuser.</p>
Abuser	<p>This is not specifically defined in the current legislation. However, the Draft Law refers to a "person who committed domestic violence," defined as a person who abuses another person's rights through engaging in conduct constituting domestic violence or who threatened domestic violence.</p>
Civil protection order	<p>Please see Section 4 (Protection for domestic violence victims and relief granted) below.</p>

Causes of action	This is not specifically defined in the legislation. However, please see the response to Section 1 (Legal provisions: What are potential causes of action?) above.
Marital rape	This is not specifically defined in the legislation. Thus, the Criminal Code (Article 120) does not distinguish between marital rape and any other forms of rape. In accordance with the Criminal Code, rape is sexual intercourse accompanied with the threat or use of force against the victim or other persons, or while the victim is helpless.

### 3.1 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

Yes. The following additional terms are relevant:

Term	Description
Difficult living situation	Is a situation that is deemed to disturb the vital activity of an individual in accordance with the Law of the Republic of Kazakhstan No. 114-IV "On Special Social Services" of 29 December 2008 and that this individual cannot overcome independently. Abuse is listed as one of the possible difficult living situations.
Abuse that causes social deadaptation and social deprivation	Actions committed in the form of domestic violence, human trafficking, including with regard to minors, other types of exploit, as well as kidnapping regardless of whether a criminal case has been opened regarding these actions. <sup>9</sup>



## 4 Protection for domestic violence victims and relief granted

### 4.1 Civil Protection orders

#### 4.1.1 Are there civil protection orders available to victims of domestic abuse?

Yes. There are three types of protection orders in Kazakhstan available to victims of domestic abuse:

- (i) civil protection orders (*установление особых требований к поведению правонарушителя*)<sup>10</sup>
- (ii) domestic violence protection orders (*защитное предписание*)<sup>11</sup>
- (iii) restraining orders (*запрет на приближение*)<sup>12</sup>

In all three cases, the purpose of the protection orders is to restrict or prohibit contact between the victim and abuser.

Civil protection orders are issued by the court after the commencement of formal proceedings on account of administrative charges brought against the abuser. A civil protection order can last from three months to one year and can include different provisions, including provisions to prohibit (a) the abuser (respondent) from seeking, stalking, approaching, calling, meeting or otherwise engaging in communications with the victim, and (b) the respondent from using, maintaining or purchasing a firearm. A civil protection order can also order the abuser to attend counselling (i.e., up to four meetings/conversations per month with the appropriate members of the police force).

In addition, there are certain powers available to the police to protect domestic violence victims under the Domestic Violence Prevention Law. Thus, it is possible for police forces to issue domestic violence protection orders. A domestic violence protection order can be issued by a member of a police force to a person over the age of 16 to give the victim immediate protection from the abuser. Unlike the civil protection orders, no formal administrative proceedings are needed in order for the domestic violence protection order to be available to victims of domestic abuse. A domestic violence protection order can last for 30 days and can be granted where it is necessary to protect the victim from violence or the threat of violence.

The law also provides for the possibility of 24-hour administrative detention of abusers where it is believed that the domestic violence protection order will not actually prevent the abuser from further engaging in conduct constituting violence toward the victim.<sup>13</sup>

In certain aggravated cases where criminal proceedings are commenced against the abuser, there is a possibility of applying for restraining orders. The court can only issue restraining orders on the conviction or acquittal of the respondent for a criminal offense. The court will issue the restraining order only where it is demonstrated that a conduct has occurred that would constitute violence toward the applicant (or his/her family and children) or there is a real threat of the respondent engaging in such conduct.

#### **4.1.2 Who can petition for civil protection orders?**

All three forms of protection orders (i.e., civil protection orders, domestic violence protection orders and restraining orders) can be petitioned directly by domestic violence victims. In addition, the law<sup>14</sup> provides that the basis for applying protection orders are: (i) an application from individuals (natural persons), other than the victim; (ii) the detection of the conduct constituting domestic violence or the threat of violence by members of the police force; or (iii) information received from government agencies (e.g., children's authority).

Further, under the law, the civil protection orders can be applied by the court at its own initiative or the initiative of police forces (regardless of the victim's or any other party's petition).<sup>15</sup>

#### **4.1.3 Are there temporary custody of a child or child support orders?**

The legislation governing protection orders<sup>16</sup> does not specifically mention the temporary custody of a child or child support orders. However, temporary custody of a child and child support orders are available under a separate framework set forth in the Family Code.

Under the Family Code,<sup>17</sup> the court may issue an order against the abuser limiting his or her parental rights by taking the child away from the abuser. In doing so, the court must act in the best interests of the child. The court will issue an order against the abuser where the child is deemed to be in danger of physical injury from the respondent. In certain aggravated cases involving immediate risk to life or health of the child, the children's authority can immediately take the child away from the respondent without a court decision.<sup>18</sup>

When limiting the respondent's parental rights, the court may order the respondent to financially support the child by making alimony payments.<sup>19</sup>

#### **4.1.4 Is there a provision to order the abuser to move out or stay away from places that the victims frequent?**

Yes. Under the Administrative Code,<sup>20</sup> a civil protection order can include a provision prohibiting the abuser from living in residential premises specified in the civil protection order frequented by the victim for a period not exceeding 30 days. Such order can be issued only by the court in certain exceptional cases (exceptional cases are not defined in the law), provided that the abuser has another residence to live/inhabit.

With respect to "staying away from places that the victims frequent" mentioned in the question, please note that all three forms of protection orders (i.e., civil protection order, domestic violence protection orders and restraining orders) are intended to order the abuser to stay away from the victim, i.e., they prohibit the abuser from seeking, approaching, calling, meeting or otherwise engaging in communications (contacts) with the victim.

#### **4.1.5 Are there any other types of emergency, preventive and civil protection orders?**

No, there are no other types of emergency, preventive or civil protection orders in Kazakhstan.

#### **4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?**

Yes. All three orders (i.e., civil protection orders, domestic violence protection orders and restraining orders) can be requested directly by the victim of domestic abuse. The child protection orders discussed in Section 4.1 Civil Protection Orders: Are there temporary custody of a child or child support orders? above, can be requested by legal representatives (as well as the children's authority and public prosecutor).<sup>21</sup>

#### **4.1.7 Are there different types of civil protection orders, e.g., for a short-term period?**

Yes. As mentioned above, there are different types of protection orders in Kazakhstan, including a domestic violence protection order, which is a short-term protection order available for 30 days. See Section 4.1 Civil protection orders: Are there civil protection orders available to victims of domestic abuse? above.

#### **4.1.8 Are *ex parte* orders permitted without the aggressor being present?**

Yes, but only in certain limited situations. restraining orders can be requested and granted *ex parte* without the aggressor being present.<sup>22</sup> With respect to civil protection orders, *ex parte* orders are permitted as long as the correct procedure has been followed to serve notice on the respondent that the hearing will take place and no request has been made by the respondent to delay the hearing.<sup>23</sup>

Regarding the domestic violence protection orders, the law is unclear on whether the domestic violence protection orders can be requested without the involvement of the aggressor. As a matter of law,<sup>24</sup> if granted, the domestic violence protection order must be delivered to the respondent with the respondent confirming in writing the receipt of the domestic violence protection order. (If the respondent refuses to confirm the receipt, then a corresponding record will be made in the domestic violence protection order.) Since the law does not expressly require the aggressor to be present in order for the domestic violence protection order to be requested (or granted), we believe *ex parte* domestic violence protection orders are permitted, provided the domestic violence protection order is subsequently delivered to the respondent in the manner prescribed by law.

#### **4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?**

Yes, all forms of protection orders extend protection to family members of the victim. For such purposes, "family members" include minors under the age of majority (generally, 18) and individuals (natural persons) recognized by a court order to have no legal capacity due to insanity, medical illness, medical condition, etc.

#### **4.1.10 How long do the orders last?**

Each order is different. Therefore, for example, the domestic violence protection order lasts for 30 days, while the civil protection order can be in force for a period from three months to one year. The restraining orders are in force until they are canceled by the decision of the respective criminal investigation authority (or the court) as a result of the circumstances warranting the restraining orders ceasing to exist.<sup>25</sup>

#### **4.1.11 Please provide any resources or hyperlinks to websites displaying data on how often civil protection orders are granted, and any demographic information from the last two to four years, e.g., police complaints related to domestic violence, prosecutions of domestic violence and convictions for domestic and sexual violence.**

There is no specific/single resource or website displaying data on how often civil protection orders are granted. However, based on various sources available in the public domain, we note as follows:

- (i) As of 6 August 2020, the courts issued more than 5,000 civil protection orders protecting victims of domestic violence, more than 3,500 abusers were held administratively liable and members of police forces issued in excess of 43,000 domestic violence protection orders against the abusers.<sup>26</sup>
- (ii) In 2019, the courts issued more than 6,000 civil protection orders, more 58,000 domestic violence protection orders were issued by the police forces.<sup>27</sup>
- (iii) In 2018, the court issued 221 civil protection orders, more than 3,500 abusers were held administratively or criminally liable and 2,604 domestic violence protection orders were issued by the police forces.<sup>28</sup>

## **4.2 Steps for receiving a protective order**

### **4.2.1 What documentation is needed to obtain a civil protection order?**

There is no specific set of documentation that is needed to obtain a protection order in Kazakhstan. Therefore, the basic step for obtaining a protection order is for the victim to go to the police as soon as possible after the incident occurs.

Given that a civil protection order can be granted as part of formal administrative proceedings, a motion to commence administrative proceedings will need to be filed by the victim. There is no specific form of the motion or other prescribed requirements, and the authorities should open proceedings, provided there is enough data indicating that violence might have occurred.<sup>29</sup> After the proceedings are opened, the victim can petition for a civil protection order or, alternatively, the civil protection order can be granted by the court at its own initiative or at the initiative of the police forces.

Regarding the restraining orders, the law<sup>30</sup> provides that the authorities conducting pretrial investigations are required, based upon an application from the victim, to issue a resolution initiating proceedings before the court for the application of the restraining order. Thus, a written application from the victim is needed and there are no other requirements in this respect.

### **4.2.2 Does the victim need to attend a hearing?**

No. A domestic violence protection order can be granted outside any formal proceedings (whether administrative or criminal), so no hearings will be conducted and a domestic violence protection order would be granted based upon a report from the victim (or third parties) about the incident.

With respect to civil protection orders and restraining orders, those forms of protection orders require formal proceedings that involve a court hearing. Generally, the victim (his/her advocate/legal representative) is required to attend the hearing.<sup>31</sup>

### **4.2.3 Can you request remedies?**

The Domestic Violence Prevention Law does not appear to contain any provisions regarding remedies, other than those described in this section and also in Section 2 (Introduction: Framework guiding domestic violence law).

### **4.2.4 Are there time limits?**

There are no time limits specified in the law, although we note that the protection orders can last for a certain specified period. See Section 4.1 Civil Protection Orders: How long do the orders last?, above.

### **4.2.5 Are there different rules in emergencies?**

No, there are no different rules in emergencies.

## **4.3 Judicial discretion**

### **4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?**

Not applicable in respect of the domestic violence protection orders, since domestic violence protection orders are granted by police forces, not judges.

With respect to the civil protection orders and restraining orders, the law does not appear to mandate the judge to grant a civil protection order or restraining order upon satisfaction of certain objective/specific condition. Therefore, the judge appears to have discretion in granting the civil protection order or restraining order and determining the term for which the protective order will run.

The judge also has leeway to include in the terms of the civil protection order the restrictions and prohibitions that will apply to the respondent (abuser), e.g., counselling provisions, prohibition on contacts with the victim, prohibition from living together with the victim.

The applicant's (victim's) presence is required for the hearing. However, the judge may continue with the hearing if the applicant does not appear in the court and make a decision on granting or refusing to grant the civil protection order, if it can be proven that a notice of the hearing was properly served on the applicant and the applicant has not requested the court to delay the hearing.<sup>32</sup>

### **4.3.2 Are there age limits on who can obtain orders?**

The law does not provide any specific age limits on who can obtain orders. Therefore, the general rule of law applies, and individuals (natural persons) must be over the age of majority (generally, 18, and in certain exceptional cases, 16) to be able to seek and obtain orders.

## **4.4 Restitution and remedies available to victims**

### **4.4.1 Can victims ask for costs and restitution to be paid?**

The Domestic Violence Prevention Law does not specifically address whether the victims can ask for costs and restitution to be paid. However, under the general rules of the Civil Code,<sup>33</sup> the victims should be entitled to compensation of costs and restitution, including loss of earnings, medical and dental costs, transportation costs, etc.

### **4.4.2 Can they recover wages and profits lost?**

Yes. The victims can recover wages and profits lost in accordance with the Civil Code.

### **4.4.3 Is a separate civil process required?**

Yes, in most cases. Where criminal proceedings are opened in respect of the abuser, the victim is entitled to bring his/her claim for costs, etc., within the criminal proceedings, without having to initiate separate civil proceedings. This is permissible under Chapter 20 (Civil Claim in Criminal Proceedings) of the Criminal Procedure Code.

## 5 Prosecutorial considerations

### 5.1 Police procedures

#### 5.1.1 When do the police get involved in domestic disputes or legal actions?

The police may get involved in domestic violence disputes upon receipt of information about acts of domestic violence in order to stop the violence and prevent other offensive actions.

#### 5.1.2 What circumstances affect law firm involvement?

Law firms provide legal aid and advice on domestic violence at the request of the victim of domestic violence.

In addition, the Kazakh legislation provides for specific "aid organizations." They are established by local authorities and are financed by the Kazakh budget. These organizations assist victims of domestic violence. Among other things, they may provide assistance on legal matters.<sup>34</sup>

### 5.2 Standard of proof

#### 5.2.1 Is proof required by any legal means?

Yes. There is a fundamental principle of the presumption of innocence, which is applicable in both criminal and administrative proceedings.<sup>35</sup> A person is innocent until proven guilty in a manner prescribed by law. A guilty verdict may not be based on suppositions.

#### 5.2.2 Are there any requirements regarding evidence and documents?

Yes. In all cases, evidence must be lawfully obtained. This means that evidence must be: (i) formalized in a specific procedural form (for example, real evidence, documentary evidence, testimonial evidence, etc. – the list is exhaustive); (ii) obtained pursuant to a special procedure (for example, testimonial evidence will be reflected in the record of witness's interview or minutes of a court hearing).

Certain evidence is inadmissible, for example, evidence obtained by torture or under undue duress. Video and audio recordings may be treated as inadmissible evidence if they were made in breach of a special procedure set out by law (for example, if video and audio recordings were made without the abuser's consent by a person who is not authorized to carry out official surveillance activities).<sup>36</sup>

#### 5.2.3 Is proof "beyond a reasonable doubt" required?

Yes. Any doubts are to be interpreted in favor of the defendant;<sup>37</sup> "beyond reasonable doubt" proof must be presented.

#### 5.2.4 Is the standard of proof different for *ex parte* orders?

The question refers to an *ex parte* order and we assume this refers to legal proceedings brought by one party (e.g., victim) in the absence of the other party (abuser), i.e., the abuser is not notified and is not present at the hearing. There is no specific provision on this matter in the law. As a result, the standard of proof does not appear to be different for *ex parte* orders.

## **5.3 Affirmative defenses**

### **5.3.1 Are affirmative defenses available to the accused?**

Yes. The accused have the right to provide explanations and evidence in cases against him/her or to refuse to provide explanations or evidence.

### **5.3.2 Is willful intent required?**

Yes. According to the Domestic Violence Prevention Law, "domestic violence" is defined as intentional wrongful conduct (act or omission to act) committed by an individual (natural person) against another person in the context of a family and domestic relationship, causing or threatening to cause physical and/or mental abuse. Since the law refers to "intentional" wrongful conduct, willful intent is required.

### **5.3.3 Are false accusations punishable for the victim?**

Yes. False accusations constitute a criminal offense.<sup>38</sup>

### **5.3.4 How is consent discussed in the law?**

There is no definition of consent in the context of domestic violence. Any act of domestic violence is presupposed to occur without the victim's consent.

### **5.3.5 Is self-defense or insanity a defense?**

Yes, both are a defense.

## **5.4 Witness status**

### **5.4.1 What is a witness's duty to testify honestly and completely?**

A witness is obliged to:

- appear when summoned by a request of an officer, investigator, prosecutor or court
- testify honestly and completely<sup>39</sup>

For failure to fulfill these obligations, preventive measures and liability are provided.

### **5.4.2 Who may abstain from testifying in certain situations?**

The following categories may abstain from testifying:

1. close relatives and the spouse of the accused
2. professionals with respect to information they obtained during proceedings in which they were involved (such as judge, juror, arbitrator, lawyer and mediator)
3. clergy with respect to information they obtained during a confession
4. minors and mentally or physically disabled persons who cannot correctly understand the circumstances important for the case



### **5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?**

A witness can refuse to testify against himself or herself, his or her close relatives and his or her spouse.

### **5.4.4 What is the impact of domestic violence on witnesses who are children?**

Minors are not required to testify if they cannot correctly understand the circumstances important for the case due to their age.<sup>40</sup>

A teacher or psychologist must attend an interview of a witness who is a child. In addition, the child's legal representatives (e.g., parents) may be in attendance.

### **5.4.5 Can children be called upon to testify?**

In general, children may be called upon to testify. However, minors are not required to testify if they cannot correctly understand the circumstances important for the case due to their age.<sup>41</sup>

### **5.4.6 What is the effect of a child victim on the charges against the offender?**

Domestic violence against a child usually leads to a more severe liability.

Generally, a crime or administrative offense against a minor is an aggravating circumstance.<sup>42</sup> In addition, certain crimes and administrative offenses imply higher sanctions if committed against a minor.

## **5.5 Penalties and sentencing; penalty enhancements**

### **5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?**

The Administrative Code sets out specific domestic violence offenses:

- unlawful actions in domestic relations (e.g., use of obscene language, humiliation, harassment, destruction of household items, and other actions that show disrespect toward a person with whom an offender is in a domestic relationship)<sup>43</sup>
- intentional causing of minor injury to a person with whom an offender is in a domestic relationship<sup>44</sup>
- battery or committing other violent actions that caused physical pain to a person with whom an offender is in a domestic relationship<sup>45</sup>

The penalties for the above first-time domestic violence offenses are as follows:

1. warning
2. administrative arrest

If an offender's behavior amounts to a crime (for example, intentionally causing serious injury or injury of medium gravity, murder, incitement to suicide, rape, other forms of sexual assault, child sexual abuse, torture and unlawful limitation of freedom), an offender may be subject to criminal liability. The range of the criminal penalties varies depending on the gravity of the crime and includes a fine, corrective labor, compulsory works, liberty restriction and imprisonment.

### **5.5.2 Are there criminal penalties?**

Specific domestic violence offenses are considered administrative offenses, these do not involve criminal penalties. However, if an offender's behavior amounts to a crime, he/she may be subject to criminal liability. For further details, please refer to Section 5.5 Penalties and sentencing; penalty enhancements: What are the penalties and sentencing laws for first-time domestic violence offenses? above.

### **5.5.3 What is the result of a violation of an existing order for protection?**

The violation of civil protection orders (*особые требования к поведению правонарушителя*) may result in the imposition of an administrative fine of approximately USD 33 or administrative arrest for up to seven days.<sup>46</sup>

The violation of domestic violence protection orders (*защитное предписание*) may result in the issuance of a warning or administrative arrest for up to five days.<sup>47</sup>

The violation of restraining orders (*запрет на приближение*) may result in the imposition of a fine or the putting in place of a preventive measure by a court (for example, house arrest or detention).<sup>48</sup>

### **5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?**

The penalties for specific domestic violence offenses include a warning and administrative arrest.

If an offender's behavior amounts to a crime, an offender may be subject to criminal liability. The range of criminal penalties varies depending on the gravity of the crime and, besides liberty restriction and imprisonment, includes a fine, corrective labor and compulsory works.

## **5.6 Post-release restrictions**

### **5.6.1 Does the law notify the victim of the offender's release from custody?**

Generally, no.

However, if a victim is subject to special protection under the Law of the Republic of Kazakhstan No. 72-II "On protection of participants in criminal proceedings" of 5 July 2000, he or she may be notified of the offender's release from custody, if the release of the offender may endanger the victim's security.

## 6 Special issues

### 6.1 Battered woman syndrome

#### 6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered woman syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)

The laws do not specifically address battered woman syndrome. Other criminal law concepts can be relevant if the woman has this condition and has committed or attempted to commit a crime.

One of the relevant concepts is "necessary self-defense" and "exceeding the self-defense limits." A crime committed as necessary self-defense does not entail liability, while exceeding the limits of self-defense generally results in significantly less stringent liability as compared to similar crimes in a nondefense environment.<sup>49</sup>

The other concept is "temporary insanity" or "heat of passion." Crimes committed in such state of temporary condition developed, among others, through suffering violence, entail significantly less stringent liability as compared to similar crimes committed in the absence of this condition.<sup>50</sup>

### 6.2 Domestic violence in the workplace

#### 6.2.1 Can courts issue orders to protect employees suffering from domestic violence?

The courts can issue civil orders to protect anyone suffering from domestic violence as set out in Section 4.1 above, but such orders are directed at the violators. The laws do not envisage the possibility of issuing an order to the employer of the suffering employee to take any actions to protect the suffering employee or to ensure some special work regime.

Victim protection measures may be granted in a criminal case if they are deemed necessary in view of the threats to the victim, but these are more likely to dwell on the safety of the victim rather than the comfort of the working environment or special work regime.

#### 6.2.2 Can departure be deemed "for good cause" if related to domestic violence?

There is no "good cause" departure concept and, as such, no rule that the employer may terminate the contract with an employee who had committed a domestic violence offense, unless it resulted in disqualification for certain professions.

#### 6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?

There is no obligation for the employer to provide leave for this cause. The employer will use discretion on whether paid or unpaid leave should be provided.

## **6.3 Immigration**

### **6.3.1 Does the law include provisions that are intended to prevent abusers who are citizens or permanent residents of your country from using immigration laws to perpetrate domestic violence against their spouse?**

No.

### **6.3.2 If battered immigrants cooperate with law enforcement in domestic violence, can they obtain immigration remedies?**

No, but further to the Draft Law,<sup>51</sup> foreign citizens and stateless persons may seek temporary residence and recourse to protection measures envisaged by Kazakhstan, including access to crisis centers.

### **6.3.3 Does domestic violence law discuss asylum accessibility?**

No, but a temporary residence permit may be granted.

## **6.4 Armed forces**

### **6.4.1 Can a victim seek a military protective order if the abuser is in active military?**

No, there is no such remedy.

## **6.5 Child custody and child/spousal support**

### **6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?**

Custody of a child when their parents live separately is determined by the agreement of parents or, if parents fail to reach an agreement, in mediation or court proceedings. A court will determine the custody based on the child's interest and taking into account the child's opinion. Among other things, a judge will take into account the personal and moral qualities of both parents, the relationship between each parent and the child, and other relevant factors. Domestic violence will be one of such factors.

Visitation of a child by a parent living separately may be restricted if the visitation may harm the child's physical and mental health. Domestic violence may qualify as a matter that may cause harm to the child's physical and mental health.

### **6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?**

Yes. The judge should make a decision on the determination of custody taking into account, among other things, personal and moral qualities of both parents and the relationship between each parent and the child. Testimonies of both parents and children are crucial in assessing these matters.

## **6.6 Housing rights of domestic violence victims**

### **6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?**

No special provisions have been found.

### **6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?**

No special provisions have been found.

### **6.6.3 Can an order exclude the abuser from the residence?**

In exceptional cases, a court may issue a civil protection order ordering an exclusion of the abuser from the place of joint residence with a victim, but such civil protection order is only possible if the abuser has another place to live.<sup>52</sup>

### **6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?**

No special provisions have been found.

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## Endnotes

- <sup>1</sup> Constitutional law of the Republic of Kazakhstan of 25 December 2000 No. 132-II "On Court System and Status of Judges of the Republic of Kazakhstan."
- <sup>2</sup> Article 1.3 of the Domestic Violence Prevention Law.
- <sup>3</sup> Articles 1 and 4 of the Law of the Republic of Kazakhstan of 4 December 2009 No. 214-IV "On Prevention of Domestic Violence."
- <sup>4</sup> Articles 17 to 23.
- <sup>5</sup> Article 1.4.
- <sup>6</sup> Article 3.2 of the Domestic Violence Prevention Law.
- <sup>7</sup> Article 1.3 of the Domestic Violence Prevention Law.
- <sup>8</sup> Article 1.1.
- <sup>9</sup> Article 2 of the Joint Order of the Ministry of Internal Affairs of the Republic of Kazakhstan of 22 September 2014 No, 630, Ministry of Education of the Republic of Kazakhstan of 26 September 2014 No, 399 and Ministry of Healthcare and Social Development of the Republic of Kazakhstan of 19 November 2014 No, 240 "On Establishment of Criteria of Assessment of Availability of Abuse Which Caused Social Deadadaptation and Social Deprivation."
- <sup>10</sup> Article 22 of the Domestic Violence Prevention Law, Article 54 of the Administrative Code.
- <sup>11</sup> Article 20 of the Domestic Violence Prevention Law.
- <sup>12</sup> Article 165 of the Criminal Procedure Code.
- <sup>13</sup> Article 21 of the Domestic Violence Prevention Law.
- <sup>14</sup> Article 18 of the Domestic Violence Prevention Law.
- <sup>15</sup> Article 54.1 of the Administrative Code.
- <sup>16</sup> The Domestic Violence Prevention Law, Administrative Code and Criminal Procedure Code.
- <sup>17</sup> Article 79.
- <sup>18</sup> Article 82 of the Family Code.
- <sup>19</sup> Article 79.5 of the Family Code.
- <sup>20</sup> Article 54.2.
- <sup>21</sup> Article 79.3 of the Family Code.
- <sup>22</sup> Article 165.4 of the Criminal Procedure Code.
- <sup>23</sup> Article 744.2 of the Administrative Code.
- <sup>24</sup> Article 20.1 of the Domestic Violence Prevention Law.
- <sup>25</sup> 165.8 of the Criminal Procedure Code.
- <sup>26</sup> See <https://www.gov.kz/memleket/entities/qriim/press/news/details/o-profilaktike-pravonarusheniy-v-semeyno-bytovoy-sfere-rasskazali-v-mvd?lang=ru>.
- <sup>27</sup> See <https://www.kazpravda.kz/articles/view/shestnadtsat-dnei-protiv-nasiliya>.
- <sup>28</sup> See the website of the Ministry of Internal Affairs of Kazakhstan at <https://www.gov.kz/memleket/entities/qriim?lang=ru>.
- <sup>29</sup> Articles 802.1 and 802.2 of the Administrative Code.
- <sup>30</sup> Article 165.2 of the Criminal Procedure Code.
- <sup>31</sup> Article 745.3 of the Administrative Code.
- <sup>32</sup> Article 745.3 of the Administrative Code.
- <sup>33</sup> Chapter 47 of the Civil Code (Special Part) of the Republic of Kazakhstan dated 1 July 1999, as amended ("**Civil Code**").
- <sup>34</sup> Article 15 of the Domestic Violence Prevention Law.
- <sup>35</sup> Article 19 of the Criminal Procedure Code and Article 10 of the Administrative Code.
- <sup>36</sup> Clause 21 of Resolution of the Plenary Session of the High Court of the Republic of Kazakhstan No. 4 "On certain aspects of assessment of evidence" dated 20 April 2006.
- <sup>37</sup> Article 19 of the Criminal Procedure Code and Article 10 of the Administrative Code.
- <sup>38</sup> Article 419 of the Criminal Code.
- <sup>39</sup> Article 79 of the Criminal Procedure Code and Article 754 of the Administrative Code.
- <sup>40</sup> Article 78 of the Criminal Procedure Code.
- <sup>41</sup> Article 78 of the Criminal Procedure Code.
- <sup>42</sup> Article 54 of the Criminal Code and Article 57 of the Administrative Code.
- <sup>43</sup> Article 73 of the Administrative Code.
- <sup>44</sup> Article 73-1 of the Administrative Code.
- <sup>45</sup> Article 73-2 of the Administrative Code.
- <sup>46</sup> Article 669 of the Administrative Code.
- <sup>47</sup> Article 461 of the Administrative Code.
- <sup>48</sup> Article 165 of the Criminal Procedure Code.

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<sup>49</sup> Articles 32, 66, 102 and 112 of the Criminal Code.

<sup>50</sup> For example, Articles 101 and 111 of the Criminal Code.

<sup>51</sup> Article 37.2.

<sup>52</sup> Article 22.3 of the Domestic Violence Prevention Law.

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