Fighting Domestic Violence

Pro Bono Initiative

Asia

In association with

GLOBAL RIGHTS for WOMEN
Justice for Victims of Violence

EVERY WOMAN TREATY
Uzbekistan

Domestic Violence Legislation

“According to the Constitution, no one may be subject to torture, violence, and cruel or inhumane treatment.”
Uzbekistan

1 Legal provisions

1.1 What are the relevant statutes and codes?

The relevant legislation on domestic violence in Uzbekistan is as follows:

<table>
<thead>
<tr>
<th>General rules</th>
<th>Uzbekistan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 24 (right to life), Article 25 (right to freedom and inviolability of the person), Article 26 (prohibition of torture, violence, other cruel or humiliating human dignity treatment), Article 27 (right to protection against encroachments on honor and dignity of a human being), Article 43 (The state will safeguard the rights and freedoms of citizens proclaimed by the Constitution and laws), Article 46 (Women and men will have equal rights).</td>
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</tr>
<tr>
<td>Constitution of the Republic of Uzbekistan (adopted by the Supreme Council of the Republic of Uzbekistan on 8 December 1992)</td>
<td>Article 97 (intentional killing), Article 102 (reckless (negligent) killing), Article 103 (bringing (incitement) to suicide), Article 104 (intentional infliction of serious bodily injury), Article 105 (intentional infliction of medium bodily injury), Article 109 (intentional infliction of slight bodily injury), Article 110 (torture), Article 111 (reckless (negligent) infliction of serious or medium bodily injury), Article 112, (threats to kill or use violence), Article 118 – 121, 128, 129 (sex crimes, including rape), Article 136 (forced marriage).</td>
</tr>
<tr>
<td>Law of the Republic of Uzbekistan No. ZRU-561 09/02/2019 &quot;On the Protection of Women from Oppression (Harassment) and Violence&quot; (adopted by the Legislative Chamber on 17 August 2019, approved by the Senate on 23 August 2019, approved by the president and published on 2 September 2019)</td>
<td>Law on the protection of women against all forms of oppression and violence (&quot;Women Protection Law&quot;), defining various forms of violence against women and introducing forms of protective measures available to women in Uzbekistan.</td>
</tr>
</tbody>
</table>
General rules

Resolution of the Government of Uzbekistan No. 3 "On measures to improve the system for protecting women and girls from oppression and violence" dated 4 January 2020

Regulation on the issuance of a protective order, ensuring its execution and monitoring; identification and correction of latent forms of violence.

International treaties

If the international treaty of the Republic of Uzbekistan establishes rules other than those that are stipulated by the legislation of the Republic of Uzbekistan about protection of women against oppression and violence, then the rules of the international treaty (Article 2 of the Women Protection Law) apply.

1.2 What is the controlling case law?

Uzbekistan, not being a common law country, does not recognize case law as a separate source of legislation. However, under Article 17 of the Law of Uzbekistan No. 162-II 14.12.2000 "On courts" dated 14 December 2000, the Supreme Court of Uzbekistan summarizes court practice and provides comments on the application of legislation.

On a regular basis, the plenum of the Supreme Court of Uzbekistan issues resolutions with summaries on certain types of cases. These summaries consist of the Supreme Court's explanations on how to apply the provisions of criminal and procedural law — for instance, how to correctly qualify particular actions as one or another type of crime, what exactly will be written in court judgments in different circumstances etc. Some such summaries potentially apply to cases involving violence against women (e.g., Resolution of the Supreme Court of the Republic of Uzbekistan No. 13 "On court practice on rape and sex crimes" dated 29 October 2010; № 6 "On court practice on cases involving intentional infliction of bodily injuries" dated 27 June 2007). However, these Resolutions provide no direct specific guidance on domestic violence cases or cases of violence against women.

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

Cases of domestic violence can be addressed in Uzbekistan by regional, city and district courts for administrative and criminal cases. Civil cases between citizens are heard in regional, city and district courts for civil cases. The upper level of the Uzbek judicial system consists of the Constitutional Court and the Supreme Court. The latter acts as both a court of first instance and an appellate court for civil and criminal cases that analyzes court practice and oversees the work of the lower level courts.

1.4 What are potential causes of action?

Uzbekistan has no specific criminal statute against domestic violence. Individuals who use physical violence against their spouses or others can, in principle, be prosecuted under the general articles of the Criminal Code covering crimes against the life or health of persons. In particular, the Criminal Code criminalizes killing (Articles 97, 98, 102), bringing (incitement) to commit suicide (Article 103), harm to health depending on the gravity of damage and intention of the offender (Articles 104, 105, 109, and 111), torture (Article 110) (defined as "systematic
beatings or other actions constituting torture”), various sex offenses (Articles 118 – 121, 128, and 129), forced marriage (Article 136), forced abortion (Article 115), and threats to kill or use violence (Article 112).

There are no separate causes of action in cases of domestic violence against children. However, in certain cases the age of the victim may be an aggravating factor (e.g., in case of torture (Article 110) or rape (Article 118)).

Assault resulting in light injury to the victim but without any short-term health consequences is punished as a misdemeanor offense under the administrative law (Article 52 of the Administrative Offense Code). Verbal humiliations are treated as administrative offenses as well (Article 41 of the Administrative Offense Codes). Repeated assault or verbal humiliation is treated as a criminal offense (Article 109 and Article 140 of the Criminal Code, respectively).
2 Introduction: framework guiding domestic violence law

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

In Uzbekistan, a victim of violence has the right to:

- apply to the relevant authorized bodies and courts with claims concerning the facts of oppression (harassment) or violence against her or threat of their making
- file a claim for compensation for the material damage caused to her and compensation for moral harm owing to oppression and violence
- petition the law enforcement bodies to receive the protective order

To protect victims of violence and abuse, the Women Protection Law provides for any of the following individual measures:

1. An authority that revealed the fact of violence and abuse may carry out a preventive conversation with the abuser.
2. An internal affairs body may issue a protective order.
3. A victim of violence and abuse may be placed in a special center (i.e., a shelter).
4. An abuser may be forced to go through a correctional program to change his violent behavior.

Such measures may be used by the internal affairs body (i.e., police). The person authorized to issue a protective order is called a preventive inspector. The list of individual measures is exhaustive. No other measures may be applied at the discretion of a preventive inspector.

2.2 Is domestic violence identified in national law as a human right (noting that at a European level protection from domestic violence has not been explicitly identified as a human right but is indirectly captured by the other provisions)?

According to Article 26 of the Constitution, no one may be subject to torture, violence, and cruel or inhumane treatment. Under Article 46 of the Constitution, women and men will have equal rights in Uzbekistan. More specifically, the right to be protected against domestic violence is not defined in national law as a human right.

The state will safeguard the rights and freedoms of citizens proclaimed by the Constitution and laws (Article 43 of the Constitution: Everyone will be entitled to legally defend their rights and freedoms, and will have the right to appeal any unlawful action of state bodies, officials and public associations (Article 44)).
2.3 Has Uzbekistan signed and ratified the Conventions?

Uzbekistan has joined the 1979 Convention on the Elimination of All Forms of Discrimination against Women ("1979 Convention") and ratified it on 19 July 1995. Uzbekistan has not signed the Maputo Protocol.

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

N/A

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

In recent years Uzbekistan has supplemented its legislation with a number of provisions in the sphere of human rights. The most remarkable initiative in the sphere of domestic violence and abuse prevention was the Women Protection Law, which came into effect on 3 September 2019.

At the same time, there exists a number of issues that require the attention of the state, including, for example, the necessity to explicitly criminalize rape in marriage and intimate partner relationships as a separate article in the Criminal Code, or as an aggravating circumstance within the existing sexual violence articles, and to update the Criminal Procedure Code in order to make sure that all sexual violence crimes are investigated/prosecuted ex officio by the State and that the investigation/prosecution does not depend on the complaint of the victim or their legal representative.

2.6 If the 1979 Convention has not been ratified or signed, is it envisaged that your country will do so?

Uzbekistan has signed and ratified the 1979 Convention.
### 3 Similarities and differences in terminology

Most of the definitions are contained in Article 3 of the Women Protection Law.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>Domestic violence</td>
<td>Under the Women Protection Law, there are four types of violence: sexual, physical, economic and psychological.</td>
</tr>
<tr>
<td>Violence</td>
<td>Is an unlawful act (omission) against women, infringing on their life, health, sexual integrity, honor, dignity and other rights and freedoms protected by law by using or threatening to use methods of physical, psychological, sexual or economic pressure.</td>
</tr>
<tr>
<td>Sexual violence</td>
<td>Is a form of violence against women that infringes on sexual integrity and sexual freedom by committing acts of a sexual nature without their consent, as well as coercion to have sexual intercourse with a third party through the use of violence or the threat of its use or committing indecent acts against female minors.</td>
</tr>
<tr>
<td>Physical violence</td>
<td>Is a form of violence against women that infringes on their life, health, freedom and other rights and freedoms protected by law by causing bodily harm of varying severity, leaving them in danger, refusing to provide assistance to a woman in a life-threatening situation, committing other offenses of a violent nature, or using or threatening to use other physical measures.</td>
</tr>
<tr>
<td>Economic violence</td>
<td>Is a form of violence carried out in everyday life, at workplaces and in other places, as an action (inaction) against women, causing a restriction of their right to food, housing and other conditions necessary for normal existence and development, restricting the exercise of the right to property, education and labor.</td>
</tr>
<tr>
<td>Psychological violence</td>
<td>Is a form of violence expressed in insulting women, defamation, threat, humiliation, dignity, discrimination, as well as other actions aimed at limiting their expression of will, including control in the reproductive sphere, action (inaction) that causes the victim to fear for her safety and violence, resulting in the inability to protect herself or causing harm to mental health.</td>
</tr>
<tr>
<td>Stalking</td>
<td>No definition.</td>
</tr>
<tr>
<td>Harassment (oppression)</td>
<td>In the Women Protection Law contains the term oppression, which includes harassment. Oppression is determined as an action (inaction) that degrades the honor and dignity of women but does not entail administrative or criminal liability.</td>
</tr>
<tr>
<td>Victim (of oppression or violence)</td>
<td>Is a female person who is under threat of oppression or violence against her or has suffered as a result of oppression and violence.</td>
</tr>
<tr>
<td>Abuser</td>
<td>No definition.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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<td>-------------------------------------------</td>
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<tr>
<td>Civil protection order</td>
<td>In the Women Protection Law refers to a protection order and defines it as a document that provides state protection to the victim of oppression and violence, entailing the application of measures of influence determined by the Women Protection Law against a person or group of persons who oppress women or have committed violence against them.</td>
</tr>
<tr>
<td>Causes of action</td>
<td>No definition.</td>
</tr>
<tr>
<td>Marital rape</td>
<td>No definition. The term marital rape is not included in the Criminal Code. However, in Article 118 of the Criminal Code rape committed by a close relative is an especially serious crime. Close relatives are defined as persons who are related, that is, parents, blood brothers and sisters, spouses, children, including adopted children, grandfathers, grandmothers, grandchildren, as well as parents, blood and half brothers and sisters of the spouses (Chapter 8 of the Criminal Code). The Criminal Code contains only a general definition of rape as sexual intercourse committed by force, threats, or abuse of the helpless. Additionally, Article 121 of the Criminal Code prohibits coercion of a woman into sexual intercourse in a natural or unnatural form by a person, on which the woman was in financial, service, or other dependence.</td>
</tr>
</tbody>
</table>

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

Yes, the Women Protection Law defines several additional terms as described below.

<table>
<thead>
<tr>
<th>Term</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Protection from oppression and violence</td>
<td>Is a system of urgent measures of an economic, social, legal, organizational, psychological and other nature in order to eliminate the danger that has arisen for the life and health of women, to ensure their safety in the event of life circumstances requiring urgent measures, as well as to prevent repeated illegal actions by a person who oppresses and commits violence against the victim of oppression and violence.</td>
</tr>
<tr>
<td>Prevention of oppression and violence</td>
<td>Is a system of economic, social, legal, medical and other measures aimed at identifying and eliminating the causes and conditions conducive to the oppression and perpetration of violence against women, raising awareness in society about the rights of women to be free from violence.</td>
</tr>
</tbody>
</table>
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?

Victims of violence and domestic abuse may obtain a protective order. Article 3 of the Women Protection Law defines a protective order as "a document providing state protection to a victim of violence and abuse, entailing the application of individual impact measures determined by the Women Protection Law against a person or a group of persons who oppress women or have committed violence against them."

4.1.2 Who can petition for civil protection orders?

A protective order may be petitioned by the victim of violence and abuse herself and, if such victim of violence and abuse is under 18 years old or declared legally incompetent, also by her legal representative or custody authority. Protective orders may only be petitioned by or on behalf of female persons.

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

There are no such temporary custody of a child/child support orders under the Women Protection Law. Only a general protective order may be issued.

However, Article 79 of the Family Code provides that parents (or one of the parents) may be deprived of parental rights if they are found to have performed physical or psychological violence against the child. If both parents are deprived of parental rights, the child will be put under custody.

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

A protective order may include a prohibition on the woman and her abuser to occupy the same premises. At the same time, it is not a requirement for the abuser to leave the residence. Rather, the law implies that a woman will move to the shelter in such a case. The standard maximum term of a protective order (30 days) is the same as the standard maximum term for accommodation in a shelter.

Since the Women Protection Law was passed in September 2019, as of the date of this memorandum it is impossible to determine how often protective orders prohibiting a woman and her abuser from occupying the same premises are issued. There is no such data publicly available.

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

The Women Protection Law provides for general protective orders only. No other types of protective orders are available.
4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children’s cases?

A protective order may be requested by a victim of violence and abuse herself and by her legal representative or custody authority if such victim of violence and abuse is under 18 years old or declared legally incompetent. There is no legal distinction between direct and indirect victims.

Victims of violence and abuse under 18 years old may personally apply for a protective order. In this case, a protective order is granted to her legal representative or custody authority representative.

Since protective orders may only be petitioned by or on behalf of female persons, protective orders do not protect male children. However, the child may be taken into custody if both parents are deprived of parental rights due to child abuse.

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

The Women Protection Law provides for general protective orders only. Protective orders are issued for a period of up to 30 days. Upon application of a victim, and if the threat has not been eliminated, the term of a protective order may be extended for another 30 days.

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

Protective orders are issued to the victim upon her application. As part of the procedure for issuing the protection order, a preventive inspector should as a matter of investigation interview the victim and the abuser separately, but such interview with an abuser is not positioned as a necessary precondition to the protective order’s issuance. A copy of a protective order will be provided to the abuser by the representative of internal affairs body (i.e., a preventive inspector). The preventive inspector informs the abuser about the terms and conditions of the protective order and about the legal consequences of their breach.

The abuser will sign the document confirming receipt of the copy of the protective order. If the abuser refuses to sign the document, the representative of internal affairs body draws up an act with witnesses present.

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

No, protective orders do not extend protection for abuse and intimidation to family members of a victim of violence and abuse. Protective orders are issued only to a female person suffering from violence and abuse (or her legal representative or custody authority as the case may be). Thus, each woman suffering from violence and abuse will personally apply for a protective order.

4.1.10 How long do the orders last?

Protective orders are issued for a period of up to 30 days. Upon application of a victim, and if the threat has not been eliminated, the term of a protective order may be extended for another 30 days.
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, convictions on domestic and sexual violence.

As of the date of this memorandum, there are no official sources where data on how often protective orders are issued in Uzbekistan is periodically disclosed.

Based on the information provided by the Tashkent internal affairs body to the news agency of Uzbekistan1 during the first six months of 2020, the number of protective orders issued to victims of violence and abuse totaled 709 (583 protective orders were issued due to conflicts related to domestic disputes; 52 were due to difficult family relationships caused by financial difficulties; 39 cases were associated with intervention in the family of a third party; and 35 involved jealousy of one of the spouses).

4.2 Steps for receiving a protective order

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

The grounds for the preventive inspector to issue a protective order are as follows:

1. application of a victim of violence and abuse; or
2. information received from individuals and legal persons, including information received through media sources and/or social networks; or
3. information received from state authorities and other organizations; or/and
4. if the employee of the respective authority reveals the fact (or attempt) of violence and abuse

Persons who revealed the fact of violence and abuse will report to the police. Such report will immediately be provided to the preventive inspector.

Within 24 hours upon receipt of the report, the preventive inspector will: (i) review the report and information provided and interview the victim and her abuser (separately) as well as third parties involved; (ii) examine the lifestyle of the victim and her abuser, the reasons for and circumstances of violence and abuse; and (iii) take measures for the rehabilitation and social adjustment of the victim and her abuser. These activities may continue after the protective order is issued.

Based on the results of such investigation, the preventive inspector issues a protective order if the fact of violence and abuse is confirmed.

Since the Women Protection Law was passed in September 2019, as of the date of this memorandum there is no publicly available data on whether the preventive inspector may issue a protective order without the abuser being involved in the investigation process (e.g., without the abuser's participation in the conversation with the preventive inspector). At least, this is not legally stipulated as a necessary precondition to issuing a protective order.

In addition, if during the investigation the preventive inspector reveals the elements of criminal offense, as specified in the Criminal Code, the materials will be submitted to the respective internal affairs body to determine whether the abuser will be prosecuted.
4.2.2 Does the victim need to attend a hearing?

Since the preventive inspector is authorized to issue protective orders, no court hearings are held.

4.2.3 Can you request remedies?

The Women Protection Law as such does not provide for a right of a victim of violence and abuse to request specific remedies.

Based on its investigation, the preventive inspector may determine one or a combination of the below remedies to be included in the protective order:

- a prohibition to commit violence and abuse
- a prohibition of contact between the victim and her abuser (indirect contact is allowed between the victim and her abuser at work and in educational institutions)
- a prohibition on being alone in the same room for the victim and her abuser
- an obligation to reimburse the costs of treatment, counseling, placement of the victim in a shelter, material and moral damages
- a restriction/prohibition imposed on the abuser to possess and carry weapons (except for service weapons) for the term of a protective order or for the term specified in a protective order, as well as the prohibition to obtain permission to acquire weapons

If the term of a protective order is extended, such protective order will be supplemented by the obligation of the abuser to undergo a correctional program to change his violent behavior.

4.2.4 Are there time limits?

The protective order is issued by the preventive inspector within 24 hours upon receipt of information about the fact of violence and abuse and lasts for 30 days from the date of issue. Upon application of the victim, and if the threat has not been eliminated, the term of a protective order may be extended for another 30 days.

4.2.5 Are there different rules in emergencies?

The laws of Uzbekistan do not provide for any specific rules in emergencies.

4.3 Judicial discretion

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

Protective orders are issued by the preventive inspector, who determines the individual measures to be included in the protective order based on information received during the investigation process.

4.3.2 Are there age limits on who can obtain orders?

Protective orders may be petitioned by the victim of violence and abuse and by her legal representative or custody authority if the victim violence and abuse is under 18 years old or declared legally incompetent.
Since protective orders may only be petitioned by or on behalf of female persons, protective orders do not protect male children.

Victims of violence and abuse under 18 years old may personally apply for a protective order. In this case, a protective order is issued to the legal representative or custody authority representative.

4.4 Restitution and remedies available to victims

4.4.1 Can victims obtain reimbursement for costs and restitution paid?

The Women Protection Law establishes that the protective order may contain an obligation on the abuser to reimburse the costs of treatment, counseling, placement of the victim in a shelter, and material and moral damages.

Since the Women Protection Law was passed in September 2019, as of the date of this memorandum it is impossible to determine how often such measures are included in the protective order.

Generally, the Civil Code allows a claim for damages caused by the unlawful actions of an abuser.

4.4.2 Can they recover wages and profits lost?

There are no such specific provisions in the Women Protection Law according to which victims of violence and abuse may recover wages and profits lost because of the abuser's actions. Nevertheless, a protective order may contain an obligation on the abuser to reimburse the costs of treatment, counseling, placement of the victim in a shelter, and material and moral damages.

Apart from that, the Civil Code generally allows a claim for damages (including wages and profits lost) caused by the unlawful actions of an abuser. We are, however, unaware of how often such claims are raised in practice in relation to domestic violence.

4.4.3 Is a separate civil process required?

If a victim refers to the Civil Code, a separate civil process is implied. The procedure related to enforcement of a protective order in the part of costs reimbursement is not provided in the law.
5 Prosecutorial considerations

5.1 Police procedures

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

The police are to be constantly involved in legal actions related to domestic violence. For instance, the police are obliged to take measures to prevent harassment and violence, including identification and elimination of their causes and conditions, and to carry out preventive work on a regular basis with persons who harass and commit violence against women. Certainly, the police will react if a victim calls the police.

5.1.2 What circumstances affect law firm involvement?

Advocates enjoying a state license, rather than commercial law firms without such license, are entitled to perform professional representation of clients in civil, criminal, economic and administrative cases in courts.

Uzbekistani advocates act not only under a contract with a client but also as public defenders appointed by the state at its expense to represent a defendant in a criminal case.

5.2 Standard of proof

5.2.1 Is proof required by any legal means?

In a criminal procedure, the standard of proof is quite high. As a rule, police officers, investigators, prosecutors and judges are obliged to interrogate suspects, accused, defendants, victims and witnesses; listen to expert opinions; examine material evidence; and read protocols and other documents out loud. The judge is to pass a sentence only on the basis of the evidence that was examined at the hearing.

We note that the procedures prescribed by the Women Protection Law are as such not a part of the criminal procedure. Therefore, applicable standards of proof are only being created.

5.2.2 Are there any requirements regarding evidence and documents?

Requirements for evidence and documents are quite strict. In particular, the judge may not rely on evidence and documents that do not meet the following criteria: (i) the evidence must be obtained by a person authorized to carry out the procedural action during which the evidence was obtained; (ii) factual data should be obtained only from prescribed sources like witness statements, videotapes, audiotapes, and protocols of investigative actions; (iii) the evidence must be obtained in compliance with the rules and procedure for the procedural action during which such evidence was obtained; (iv) upon receipt of evidence, all requirements of the law on recording the course and results of the investigative and judicial action must be observed.

Again, the above rules are not directly applicable to the procedures under the Women Protection Law.
5.2.3 Is proof "beyond a reasonable doubt" required?

In the course of criminal proceedings, the law enforcing bodies are to collect all relevant and reliable evidence that indisputably establishes the truth about each and every relevant circumstance of the case (Article 95 of the Criminal Procedure Code). The evidence is deemed relevant even if it represents information that refutes or questions the existence of a wrongful action, guilt etc.

Consequently, this strict statutory standard of proof looks higher than the proof "beyond a reasonable doubt," i.e., the kind of doubt that would make a reasonable person hesitate to act, which may lead to considerable difficulties in imposing sanctions on the accused. Such difficulties may also be due to deep-rooted patriarchal attitudes that are reflected in women's unequal status in marriage and family relations as well as harmful practices that discriminate against women, such as child and/or forced marriage and polygamy.

Again, the above rules are not directly applicable to the procedures under the Women Protection Law.

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

As compared to the above-mentioned standard of indisputable proof, it appears that the standard of proof for the protective order is lower because it is to be issued within 24 hours from the moment the police officer established the fact of harassment and violence or their threat. Furthermore, the issuance of the protective order is not a part of criminal proceedings.

5.3 Affirmative defenses

5.3.1 Are affirmative defenses available to the accused?

The defendant may raise affirmative defenses under Article 35 of the Criminal Code, with the most relevant being the insignificance of the wrongdoing, necessary (justifiable) defense and committing the criminal act as a result of physical or mental coercion or threat.

There are also crimes where corpus delicti includes elements of affirmative defense like emotional disturbance caused by unlawful violence or grave insult on the part of the victim, as well as other unlawful actions of the victim, which resulted or could lead to death or harm to the health of the criminal or a person close to him. The sanctions for such crimes are milder; for instance, the maximum imprisonment for assault is three (rather than five) years.

5.3.2 Is willful intent required?

As a rule, willful intent is required to commit a domestic violence crime. Still, there are also criminal acts that can be committed through negligence (for instance, negligent infliction of bodily injuries under Article 111 of the Criminal Code).

5.3.3 Are false accusations punishable for the victim?

The victim may be punished for defamation (Article 139 of the Criminal Code), knowingly false allegation (Article 237 of the Criminal Code) or perjury (Article 238 of the Criminal Code).
5.3.4 How is consent discussed in the law?

Sexual intercourse with a person known to be under 16 years of age, regardless of consent of such person, is punishable by imprisonment of up to five years (Article 128 of the Criminal Code). The age of marriage is 18 years of age for both men and women.

The *corpus delicti* of a rape, as the Supreme Court explains, consists of sexual intercourse with a female against her will, committed using violence and threats or due to the helpless condition of the victim. The court further explains that violence or threats will necessarily be proven for the defendant's actions to qualify as rape. The Supreme Court does not discuss consent; neither does it get into more detail on what constitutes "against the victim's will" and how this will be proved.

5.3.5 Is self-defense or insanity a defense?

Self-defense may qualify as necessary (justifiable) defense (see item 6.1. of this memorandum).

As for insanity, a person who, at the time of the commission of a socially dangerous act, was in a state of insanity, that is, could not realize the meaning of his actions (inaction) or control them due to a chronic or temporary mental disorder, dementia or other mental disorder, is not subject to criminal liability.

5.4 Witness status

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

A witness is criminally liable for refusing to give testimony and for giving false testimony. The completeness of testimony is not specifically described in the law. The relevant warning is to be mentioned in the interrogation protocol and the court hearing protocol under Article 117 of the Criminal Procedure Code. Perjury is a crime.

5.4.2 Who may abstain from testifying in certain situations?

There are different situations in which a person in a particular capacity may abstain from testifying. For instance, an Uzbekistani advocate may abstain from testifying as a witness about the circumstances that became known to him in connection with the performance of his duties. Also, a member of an Uzbekistani legislative body (i.e., the Legislative Chamber or the Senate) may not be arrested or held criminally liable without such body's consent.

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

The close relatives of the suspect, accused or defendant may abstain from giving testimony on the circumstances related to the suspect, accused or defendant (Article 116 of the Criminal Procedure Code).

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

The consent and presence of a legal representative, an adult close relative or teacher is a condition for a child witness or victim to give testimony.

5.4.5 Can children be called upon to testify?

Children may be called upon to testify.
5.4.6 What is the effect of a child victim on the charges against the offender?

Generally, committing a crime in respect of (or using) a person under the age of 14 an aggravating circumstance.

Apart from this general rule, certain rules of the Criminal Code specifically set forth a more severe punishment if the victim is under 18 years of age. This will be the case for rape (Article 118 of the Criminal Code) and torture (Article 110 of the Criminal Code). As to such rules, if a more severe punishment due to the age of the victim can be imposed, a generally aggravating circumstance is not to be taken into account (Article 56 of the Criminal Code).

5.5 Penalties and sentencing; penalty enhancements

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

There are no specific criminal law rules for first-time domestic violence offenses. Rather, the general rule of Article 66 of the Criminal Code applies, according to which a person who for the first time committed a crime that does not pose a great public danger, or a less serious crime, may be released from liability if he has acknowledged guilt, sincerely repented, actively contributed to the crime solving and made good the harm caused.

5.5.2 Are there criminal penalties?

Criminal acts of great public danger (such as rape or torture) are subject to criminal liability and penalties (mainly, imprisonment). At the same time, administrative fines are imposed for offenses like breach of the age of marriage, including by way of facilitation of such breach by parents or religious authorities (Article 125.1 of the Criminal Code, Article 47.3 of the Administrative Offense Code).

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

No specific consequences are provided for in the Women Protection Law, the Criminal Code and the Administrative Offense Code. Article 194 of the Administrative Offense Code may apply, providing for the administrative fine of up to two base calculations valued at approximately USD 40 (or, in case of repeated violation, arrest of up to 15 calendar days) for failure to comply with the order of the police officer to abstain from the wrongdoing.

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

Besides incarceration and liberty restriction, fines and community service are common sanctions for criminal and administrative domestic violence acts.

5.6 Post-release restrictions

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

There is no requirement to notify a victim. Article 173 of the Correctional Code is not aimed at protection of victims. Rather, it aims to ensure resocialization of criminals and thus requires to notify relatives only if a disabled person, a child, a pregnant woman or a woman with children is released from custody.
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 of Uzbekistan do not position battered woman syndrome or other domestic abuse as a specific or presumably efficient line of affirmative defense. At the same time, the Criminal Code (Article 37) operates with the necessary (justifiable) defense concept. If a battered woman commits a crime (e.g., murder, bodily harm) for reasons of domestic abuse, this may be presented as the necessary (justifiable) defense. This includes proving that the actions of the battered woman were not clearly incommensurate to the nature and degree of (immediate) threat coming from a domestic abuser. Generally, the necessary (justifiable) defense test is high.

6.2 Domestic violence in the workplace

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

Protective orders are issued to women suffering from domestic violence, pursuant to Article 23 of the Women Protection Law. The order protects a woman as such, not as an employee. Protective orders can restrict contacts between a woman and her domestic abuser but allow indirect contacts between them at work. At the same time, labor authorities in Uzbekistan have the right to implement preventive measures aimed at eliminating harassment (oppression) and violence at workplaces and enhancing the proper culture of relations with women at work.

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

The laws and practice in Uzbekistan do not elaborate any specific approach to the employee's departure in case of domestic violence. Generally, an employee has the right to terminate its employment without explaining a cause, with a two-week prior notice.

If a domestic violence victim is placed into a shelter, her workplace will be retained, regardless of whether she is in a position to attend to work, according to Article 28 of the Women Protection Law. Pursuant to the same provisions of the law, such a woman cannot also be expelled from an educational institution for absenteeism while being in a shelter.

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 are no such specific provisions in the laws of Uzbekistan.
6.3 Immigration

6.3.1 Does the law include provisions which are intended to prevent abusers who Uzbek citizens or permanent residents from using immigration laws to perpetrate domestic violence against their spouse?

The laws of Uzbekistan do not include such a provision. Generally, Uzbekistan is not a very popular migration destination, hence less attention is paid to this issue.

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

The laws of Uzbekistan are silent on this.

6.3.3 Does domestic violence law discuss asylum accessibility?

The domestic violence law of Uzbekistan (the Women Protection Law) does not discuss asylum accessibility.

6.4 Armed forces

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

There is no such specific type of order as a military protective order. Only a general protective order may be issued. It should be noted that although a protective order may include the ban on keeping weapons, such ban will not apply to service weapons.

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?

The Women Protection Law is silent regarding the custody or visitation of children. A separate protection order for underage females (as immediate victims of domestic violence) may be issued, in accordance with Article 24 of this law, further to the request of an underage female herself, her legal representative (mother or father), or a custody authority.

There are only general rules in the Family Code regarding custody and visitation of children, mainly in divorce situations. The court will take into account all circumstances, including the arguments of family members, to take the respective decision. Article 79 of the Family Code provides that parents (or one of the parents) may be deprived of parental rights if they perform physical or psychological violence against the child. If both parents are deprived of parental rights, the child will be put under custody.

Apart from that, there is no rule for automatically annulling parental rights of a domestic abuser. Parental rights include the right to see a child and to participate in decisions on upbringing and education of children. A parent may be deprived of his/her parental rights in the court in a limited number of cases, including when he or she performs physical or psychological violence against the child or is sentenced for a crime against life or health of his/her child or spouse (i.e., issuing a protective order against a parent as such does not qualify as grounds for annulling parental rights). The parental rights cannot be exercised contrary to the interests of children.
6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?

A judge will consider all evidence, including the testimonies of both spouses and children, when determining child custody. According to Article 68 of the Family Code, a child will have the right to be heard in the course of any litigation affecting its rights and legitimate interests. At the same time, no testimony or other evidence has predefined validity for the court. The court will act in the best interests of a child when it resolves on issues affecting these interests.

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?

The Women Protection Law as well as other laws of Uzbekistan do not include specific barriers preventing landlords from forcing a tenant to move out because she or he is a victim of domestic violence.

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

The Women Protection Law as well as other laws of Uzbekistan do not specifically allow tenants to terminate lease early due to domestic violence.

6.6.3 Can an order exclude the abuser from the residence?

A protective order may include a prohibition for the woman and her abuser to occupy the same premises. At the same time, it is not exactly a requirement for the abuser to leave the residence. Rather, the law implies that a woman will move to the shelter in such cases. The standard maximum term of a protection order (30 days) is the same as the standard maximum term of accommodation in a shelter.

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?

The Women Protection Law does not envisage that a protective order may prohibit the alienation of the domestic abuser's property being a family domicile. General provisions of family and housing laws of Uzbekistan will apply. Where the property does not represent common property of spouses, the family members of a domestic abuser that is the property owner have the right to reside in the respective property. Privatized apartments or houses (i.e., those earlier state-owned but transferred into the private property of residents by virtue of law) can be sold only with the consent of adult family members.
Endnotes

2 We give the answers in this Section 5 based primarily on the criminal law rules. Still, we believe that there may be cases in which administrative offense law rules may be relevant.
4 Resolution of Supreme Court Plenum No. 24 dated 24 August 2018.
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