

Legalizing the stereotypes: women victims' access to justice and gender stereotyping in the framework of gender based violence judicial proceedings

SUMMARY

Access to Justice is the fundamental human rights principle of the Rule of Law enshrined in the milestone human rights instruments and the RA Constitution. Particularly, the RA local and international legal framework stipulates that the Republic of Armenia shall take appropriate measures to ensure that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law¹ providing effective legal means of protection² and free from discrimination and unequal treatment³.

Anyhow the nationwide survey conducted by the SWV revealed that the 72% female respondents faced gender inequality, while due diligence of 9 gender based violence cases(8 of them domestic violence cases) revealed that the main reason of domestic violence crime is stereotypical gender roles and prejudices in the Armenian society related to behaviour and characteristics of women and men. Moreover, these stereotypical assumptions (hereinafter gender stereotypes) in society has not only victimized women to crimes committed by men perpetrators (in most cases women were either in current or ex factual marital relationship with them) , but also revictimized them hurdling their access to justice in courtrooms.

Gender based stereotyping is not an ad hoc Armenian problem. Rather OHCHR has recently paid a highlighted attention to this issue addressing harm gender stereotyping in courtrooms as an obstacle to the woman's fundamental right to fair trial and access to justice, qualifying it a manifest of sex discrimination and developing several guidelines to enroot these practices.

The report summarized data. Since 2010 the Coalition has attended judicial proceedings of 9 women in 11 RA courts:- 3 cases of femicide, 2 cases of torture, 3 battery and 1 illegal case of separation of the child from the parents. Except the latter that is the gross violation of the right to a fair trial on the grounds of gender discrimination, in all other cases the victims and perpetrators have de facto marital relations at the time of the offense and in one case the perpetrator was her mother-in-law.

¹ Article 63 , RA Constitution

<http://www.arlis.am/documentview.aspx?docID=102510>

Article 6 ,Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

http://www.echr.coe.int/Documents/Convention_ENG.pdf

² Article 2(3), International Covenant on Civil and Political Rights, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

“The Nature of the General Legal Obligation Imposed on States Parties to the Covenant”, Human rights committee General Comment No. 31 [80], 29 Mar, 2004, para 21

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en

³ Article 8,Convention on the Elimination of All forms of Discrimination against Women

<http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

Article , RA Constitution

The report is prepared on the basis of the media articles and minutes recorded by the Coalition to Stop Violence Against Women (hereinafter the Coalition), the cases of judicial proceedings obtained from the datalex.am judicial information system of the RA Ministry of Justice, and interviews with the Coalition member organizations representatives, victims' attorneys and victims as well.

The aim of the study is to reveal whether women living in the RA has de jure access to justice in the framework of local legal acts and international human rights instruments ratified by the RA on the one hand. The analyzes of these 9 judicial cases is aimed to reveal de facto situation for women subjected to domestic violence or gender based violence on the other hand. To reveal whether the RA accomplished its positive and negative obligations to prevent, protect and punish⁴ gender based violence three main indicators (right to fair trial- access to courts and quasi-judicial bodies, effective legal remedies availability and equal and free from gender stereotyping treatment in courtrooms) were used for both factual and legal analyzes. All the findings are mentioned below are limited to the frame of 9 analyzed judicial cases.

Main findings

1. The study showed that although the lack of definition of gender based violence and domestic violence law, the RA Constitution, legal acts (among them the RA Criminal Code, Judicial Code) and international human rights instruments ratified by Armenia (ICCPR, CEDAW,ECHR) not only prohibits any discrimination against women (including in courtrooms), but also provides an opportunity to Judges to apply international legal standards (ECtHR case law, CEDAW recommendations etc) to provide effective legal remedies to women subjected to gender based violence (including domestic violence). It also revealed that there is no discriminatory clause in any legal act diminishing women's access to justice, however the judicial practice proves the opposite.
2. The principal cause of gender based violence are gender stereotypes:- especially the male perpetrator's subjective opinion over the female victim roles and social behaviour. Thus, the reason for committing crimes were as following " she wasn't a good mother", "she wasn't obedient and virtuous women". On the opposite edge men are treated as "head of the family", "decision makers" and have a "right" "to abuse power to control life of family members and prevent any immorality". These roles were not only the reason of crimes, but unfortunately, they were "legalized" in courtrooms by judges behaviours, questions, attitudes to victims and perpetrators as well as final decisions that emphasized impunity of perpetrators and revictimize the victims.

⁴ THE DUE DILIGENCE STANDARD AS A TOOL FOR THE ELIMINATION OF VIOLENCE AGAINST WOMEN Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk , E/CN.4/2006/61 20 January 2006 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/103/50/PDF/G0610350.pdf?OpenElement>

3. “Have you lived there [in perpetrator's family] in sake of a piece of bread”, or “ tell the truth:- what are you hiding”, “I cannot see a mother here”, “How could you tolerate as an Armenian man [refers to a teenage son of a femicide victim] that your mother talks with the Turkish man [stressing the nationality and sex]” :- are some expressions recorded in the courtroom expressed by the judges and prosecutors, which are not only the manifest of discrimination and hate speech, but also the violation of the Code of Ethics and the RA Constitution along with laws.
4. Besides verbal revictimization, we encounter ineffective legal remedies as well:- only were femicide perpetrators arrested, while on other cases no measures were taken during and after court proceedings to protect women, while threats to victims by perpetrators and their relatives were recorded even during the court proceedings (reported to police).
5. Application of mitigating factors in contrast of total negligence of aggravating circumstances by court is another cause feeding impunity. Court considered as mitigating factors
 - existence of a -12-year-old child under father’s care (even in cases when the court considered the father is not living with the family and is not employed, or children witness about father’s cruelty towards them including sexual abuse),
 - a positive characteristics (even in cases when perpetrator is accused in long-term and periodical psychological, economical and physical abuse of family members / not allowed to play, beat them, not socialized children without letting to meet relatives etc/, there is proved fact of perpetrator’s adultery)
 - the fact of perpetrator’s service in the Army (militarization is one of main causes of gender based violence)
 - Applying amnesty to perpetrators is also warning, because there is no proper law stipulating the amnesty principles and stipulating it effectively on the one hand, on the other hand the amnesty was applied in cases when a perpetrator committed the 2nd crime just a week later of the verdict.
6. On the other hand court never considered the fact of using alcohol by the perpetrator during the crime commitment (RA criminal code considers as aggravating factor), the statements of long-term abuse by perpetrator, rather in all cases the crimes were proceed as a sole one-time crime over the household dispute never considering perpetrators previous physical violence acts towards victims (proved by medical examination and statements of witnesses). In this framework it is pointless to mention psychological, sexual and economic violence acts. Moreover, in Diana Nahapetyan femicide case the Court considered proved that Volodya Muradyan committed the murder because of the victim's regular immoral behavior which led to sudden state of temporary insanity (verdict was 3.5 years of imprisonment for murder of his factual wife with 21 stubs),
7. In fact, no proper punishment and compensation of damages (main factors sustaining the right to fair trial and access to justice) was recorded.

- No women pecuniary claim was fully satisfied (except one case when perpetrator make no objection in the court over the claimed amount).
 - As for the punishment, we have the following picture:
 - 3 murderers are imprisoned for 3.5, 10 and 11.5 years,
 - 2 torture cases (now renamed as “ causing strong physical pain or mental suffering”) the punishment was 2.5 years of imprisonment (he was set free by amnesty application) and 0.5 years of imprisonment conditional sentencing (in both cases the perpetrators committed crimes:- the latest one axed his mother-in-law)
 - 3 cases of battery were fined with fines of 50 tsd and 150 tsd drams
 - 1 case of illegal separation of child from parent (mother) :- in all cases, all three judicial instances claim was not satisfied, the woman is not identified as victim despite of dozen facts proving negligence and inactivity of state bodies (prosecutor office and civil acts registration office).
8. Moreover, although Armenian court system gives an opportunity to appeal the verdict of lower court instances in the Appeal and Cassation Courts, none out of 9 verdicts were reversed (besides one interim judicial act), although only in 2 cases the victims didn’t apply to the Court of Appeal and in 4 cases to the Cassation Court.
 9. Ratification of ICCPR, CEDAW protocols and ECHR allows these women to litigate individual complaints to the Human Rights Committee, Committee on Elimination of Discrimination Against Women and the European Court of Human Rights, but so far there are no application to the Committees from Armenia and no verdict by ECtHR. Taking into consideration the abovementioned and low gender sensitiveness of attorneys representing these women indicates the lack of gender sensitive human rights education in Armenian universities. A small inquiry to the bachelor’s curricula of the Yerevan State University Law department (biggest law department), RA Justice Academy (the mere institution responsible for training and education of judges and prosecutors) and the RA Attorneys School proves the lack of not only gender sensitive, but also human rights courses in general.
 10. Here is why the recommendations that are based on the CEDAW concluding observations for Armenia (CEDAW/2016) are divided in two main sectors:- educational and legal. Inter alia the adoption of anti-discrimination and domestic violence law, recommendations regarding police work (integration of s.a.r.a. model into community police work), reference to using Armenian legal provisions to integrate international case law into Armenian judicial reasoning, to integrate gender sensitive indicators in assessment of judges performance and licensing of TV stations. Recommendations on human rights course integration in curricula of educational institutions, establishment of ad hoc courts for domestic violence and anti-discrimination cases examination.