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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

KYRGYZSTAN

OPINION

**ON THE DRAFT AMENDMENTS TO THE LAW ON PROTECTION
AND DEFENCE FROM DOMESTIC VIOLENCE
AND TO THE CODE OF OFFENCES
ENHANCING THE PROTECTION OF VICTIMS
OF DOMESTIC VIOLENCE THROUGH THE INTRODUCTION OF
ELECTRONIC MONITORING OF THE OFFENDERS**

**Adopted by the Venice Commission
at its 142nd Plenary Session
(Venice, 14 – 15 March 2025)**

on the basis of comments by

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I. Introduction

1. By letter dated 21 January 2025, the Minister of Justice of the Kyrgyz Republic, Mr Ayaz Baetov, requested an opinion of the Venice Commission on the Draft Law of the Kyrgyz Republic On Amendments to the Law of the Kyrgyz Republic On the Protection and Defense against Domestic Violence (hereinafter “the Law on Domestic Violence”) and to the Code of the Kyrgyz Republic, “On Offenses” submitted for public discussion on 27 November 2024, (CDL-REF(2025)010, hereinafter the “draft amendments”).

2. Mr Jørgen Steen Sørensen, Ms Mary O'Toole and Ms Lisa Gormley (expert, Venice Commission) acted as rapporteurs for this Opinion.

3. On 11-12 February 2025, the rapporteurs, along with Ms Gullholmer and Ms Silvestri from the Secretariat, had online meetings with representatives of the Ministry of Justice of the Kyrgyz Republic, the Ministry of Internal Affairs of the Kyrgyz Republic, the Ministry of Labor, Social Security and Migration of the Kyrgyz Republic, the Supreme Court of the Kyrgyz Republic, the Delegation of the European Union to Kyrgyzstan, the United Nations Office on Drugs and Crime (UNODC), the Ombudsman of the Kyrgyz Republic (Akyikatchy) and civil society organisations. The Commission is grateful to the Ministry of Justice for the excellent support provided in organising the online meetings.

4. This opinion was prepared in reliance on the English translation of the draft amendments. The translation may not accurately reflect the original version on all points.

5. This Opinion was drafted on the basis of comments by the rapporteurs and the results of the online meetings on 11 and 12 February 2025. The draft opinion was examined at the meeting of the Sub-Commissions on Fundamental Rights, Non-Discrimination, and the Protection of National Minorities on 13 March 2025. Following an exchange of views with Mr Ayaz Baetov, the Minister of Justice of the Kyrgyz Republic, the Opinion was adopted by the Venice Commission at its 142nd Plenary Session (Venice, 14-15 March 2025).

II. Background and scope of the opinion

6. The adoption of the Law on Domestic Violence in 2017 has previously been welcomed by the Committee on the Elimination of Discrimination against Women (CEDAW Committee) and by Human Rights defenders.¹ Likewise, the CEDAW Committee welcomed the adoption of a National Action Plan for Gender Equality.² A further National Action Plan for Achieving Gender Equality was adopted for the period 2022–2024.

7. The expressed main objective of the draft amendments is to improve the effectiveness of the implementation of Kyrgyzstan's international obligations under two documents: the Declaration on the Elimination of Violence against Women, adopted by the United Nations General Assembly resolution 48/104 of 20 December 1993, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Convention), adopted by the United Nations General Assembly resolution 34/180 of 18 December 1979.³ The Kyrgyz Republic is, in addition to this, bound by other UN conventions, such as the and the Convention on the Rights of the Child.⁴

¹ CEDAW Committee, Fifth CEDAW review of Kyrgyzstan, 29 November 2021, UN Doc CEDAW/C/KGZ/CO/5, (Fifth CEDAW review of Kyrgyzstan), para. 4(a); Human Rights Watch, “Kyrgyzstan: New Domestic Violence Law Government Moves to Improve Response to Abuse”, <https://www.hrw.org/news/2017/05/10/kyrgyzstan-new-domestic-violence-law>, 10 May 2017, accessed on 25 February 2025.

² Fifth CEDAW review of Kyrgyzstan, 29 November 2021, UN Doc CEDAW/C/KGZ/CO/5, para. 5(a).

³ It may be noted, however, that the declaration does not have the status of binding international law.

⁴ Practice and jurisprudence of the other core human rights treaties from the UN contain provisions on preventing, investigating, prosecuting and providing reparations to women and girls who have been subjected to violence may also be found in the International Covenant on Civil and Political Rights (ICCPR), General Assembly resolution 2200A (XXI), adopted 16 December 1966; the Convention against Torture (CAT), General Assembly resolution 39/46, adopted 10 December 1984; the Convention on Economic, Social and Cultural Rights, General Assembly resolution 2200A (XXI), adopted 16 December 1966, and the Convention on the Rights of the Child, General

Furthermore, the provided explanatory report expresses that a main objective of the draft amendments is to improve the effectiveness of the implementation of paragraph 25.2, goal 8 of the National Action Plan for Achieving Gender Equality for 2022-2024⁵ which provides the following:

Goal 8. [Build a gender-sensitive system for identifying, responding to and preventing gender discrimination and gender-based violence],

Task no 25: [Building a comprehensive system of services and assistance for survivors of gender discrimination and gender-based violence],

Paragraph 25.2: Expand existing NAPs on interagency co-operation and provision of coordinated assistance for family violence and other gender-based violence.⁶

8. Lastly, the objective of the amendments is to expand the methods of monitoring the behaviour of individuals who have committed acts of domestic violence, through introducing electronic and other technical means. The amendments to the Law on Domestic Violence build on top of an already existing system of temporary protection orders (present Article 29) which the Venice Commission has not previously examined. However, in this Opinion, the Venice Commission will limit its analysis to the draft amendments, although exceptions may follow when necessary for gaining a clearer understanding.

9. The explanatory report to the draft amendments has placed its focus on the international obligations concerning the protection of women against violence. The Venice Commission is of the view, nonetheless, that in addition to the *protection of women from domestic violence*, the introduction of means of electronic surveillance calls for considerations under international obligations concerning *electronic monitoring (digital surveillance of offenders)* and concerning *data protection*.⁷

10. The Kyrgyz Republic is bound by the CEDAW Convention. It is not, however, party to relevant Council of Europe Conventions, such as the Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention)⁸ and the Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data (Convention 108+)⁹. It may be noted, however, that the practice of the CEDAW Convention is generally aligned with the provisions of the Istanbul Convention, so that both instruments are useful in addressing this topic.¹⁰ Kyrgyzstan is also not directly concerned with recommendations of the Committee of Ministers of the Council of Europe. The Venice Commission is of the view, however, that being a full member of the Venice Commission, the Kyrgyz Republic has expressed interest in the European constitutional heritage and in the Council of Europe acquis: the Commission will therefore also assess the draft amendments against relevant conventions, case law from the European Court of Human Rights (ECtHR) and Council of Europe soft law, as sources of inspiration for achieving the best and most appropriate level of protection against domestic violence.

Assembly resolution 44/25, adopted 20 November 1989. See: General Comment 28, HRI/GEN/1/Rev.9 (Vol. I), 29 March 2000, para. 11; General Comment 2, CAT.C/GC/2, 24 January 2008, paragraph 18; General Comment 22, E/C.12/GC/22, 2 May 2016, paragraphs 7, 26, 29, 30, 32; CEDAW/C/GC/31/REV.1 - CRC/C/GC/18/Rev.1 Joint General Comment on harmful practices, adopted by the Committee on the Elimination against Women and the Committee on the Rights of the Child, 8 May 2019.

⁵ The National Action Plan is however not further brought up in this Opinion.

⁶ Unofficial translation.

⁷ In this Opinion, the term *offender* is to be understood as also including *alleged* offenders (where applicable).

⁸ Council of Europe, Convention on preventing and combating violence against women and domestic violence, CETS No. 210, Istanbul, 11.V.2011 (Istanbul Convention).

⁹ Council of Europe, Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data including, adopted by the Committee of Ministers 128th session of the Committee of Ministers, Elnore, 18 May 2018 (Convention 108+).

¹⁰ See, for instance, General Recommendation No. 35.

11. In conclusion, the Venice Commission will assess the draft amendments against the background of international as well as Council of Europe standards on the protection of women against violence, electronic monitoring and data protection. In its analysis of the amendments, the Venice Commission will focus on the most pertinent changes and issues arising from discussions with the relevant stakeholders. The absence of comments on certain provisions of the amendments should not be interpreted as tacit approval of those provisions.

III. Domestic Legal Framework

12. The national legislation on domestic violence is mainly regulated in three Kyrgyz laws: the Criminal Code, the Code on Offences and the Law on Domestic Violence.

13. In Kyrgyzstan, the Criminal Code covers acts that are *criminalised* and entail criminal liability. Domestic violence¹¹ is criminalised under article 177 in the Criminal Code,¹² as follows:

Article 177. Family violence

Any intentional actions of one family member/ equivalent person against another family member/ equivalent person, causing physical or mental suffering or harm to physical or mental development, resulting in less serious harm to health, - Any intentional actions of one family member/ equivalent person against another family member/ equivalent person, causing physical or mental suffering or harm to physical or mental development, resulting in less serious harm to health, -

is punished by attraction to public works from forty up to hundred hours or imprisonment for the term from two up to five years.

Note: A person who has committed an offence shall undergo a violent behaviour modification programme in accordance with Article 71-1 of this Code.

(In the wording of the Law of the KR dated 7 August 2024 N161)

14. The Code on Offences applies to acts that do not constitute crimes and *are not subject to criminal liability*. Instead, the Code on Offences provides for sanctions, such as warning, community service, fine, revocation of the right to drive vehicles, expulsion of foreign nationals and short-term arrest. This follows the legislative logic in many post-Soviet states on separating criminal offences from administrative, non-criminal, offences.¹³ In the Code on Offences, domestic violence is at present regulated by Article 70,¹⁴ as follows:

Article 70. Family violence

Family violence (domestic violence) is the deliberate use of physical, psychological, economic violence or threat of physical violence, as well as neglect committed by one family member/peer against another family member/peer, - the family member/peer.

shall entail community service for 40 hours or arrest from three to seven days.

15. The 2017 Law on Domestic Violence regulates the circle of actors protecting and defending against domestic violence (Chapter 2), different ways to protect and defend against domestic violence (chapter 3), statistical recording and reporting on family violence (chapter 4) and responsibility for failure to enforce the law (chapter 5).

¹¹ According to information provided to the Venice Commission during the online meetings, the terms *family violence* and *domestic violence* seem virtually interchangeable in Kyrgyz legislation.

¹² It may be noted that the definitions of *family violence* in the Kyrgyz Criminal Code do not fully correspond to the definition of *domestic violence* in the Istanbul Convention.

¹³ See also Venice Commission, CDL-AD(2024)028 Armenia – Joint Opinion of the Venice Commission and the Directorate General Human Rights and Rule of Law of the Council of Europe on the draft amendments to the criminal code and the criminal procedure code concerning the collection of evidence without consent in criminal investigations, paras. 55-56.

¹⁴ It may be noted that the definitions of *family violence* in the Kyrgyz Code on Offences do not fully correspond to the definition of *domestic violence* in the Istanbul Convention.

IV. International standards

A. International standards concerning protection of women

16. Concerning *protection of women*, the CEDAW Convention is directly applicable to Kyrgyzstan as international law.¹⁵ As related soft law tools, the CEDAW Committee, which is the monitoring body of the CEDAW Convention, has issued the General Recommendation No. 35 on gender-based violence against women which provides expert details of the obligations of the State parties under the treaty.¹⁶ General Recommendation No. 35 states that *the principle of prohibition of gender-based violence* against women has evolved into a principle of customary international law.¹⁷ Although general comments and general recommendations are not binding to State Parties, they are important and authoritative explanations of the content of the state duties under the conventions.

17. Member States to the CEDAW Convention have an obligation to exercise *due diligence* to eradicate all forms of discrimination against women, including gender-based violence.¹⁸ This is a treaty-based duty, applicable irrespective of who is the perpetrator of that violence, whether a state agent or a non-state actor, such as a violent family member. The obligation of due diligence entails that a Member State must adopt and implement measures to tackle gender-based violence against women, including having laws, institutions and a system in place to address the violence and ensure efficient functioning in practice.¹⁹ The CEDAW Committee has further elaborated on this obligation, through stating that a *failure* to take all appropriate measures to prevent such violence could be seen as tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations.²⁰

18. For instance, in the case of *Ms. A.T. v. Hungary* from 2006, the CEDAW Committee found that the Member State had failed to fulfil its obligations under Articles 2, 5 and 16 of the Convention.²¹ The Special Rapporteur on violence against women noted that although the Committee's finding in this case didn't explicitly mention an absence of diligence, the Committee determined that the State had failed to fulfil the obligations specified in the Convention to prevent the violence against the person concerned.²²

19. The CEDAW Committee recommends that Member States to the Convention provide appropriate and accessible protective mechanisms to prevent further or potential violence.²³ Such mechanisms should, according to the Committee, "include immediate risk assessment and

¹⁵ Kyrgyzstan is a State Party through ratification/accession in 1997: <https://indicators.ohchr.org/>, accessed on 5 March 2025.

¹⁶ CEDAW Committee, General Recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 (1992) (General Recommendation No. 35). Another relevant soft law instrument is the UN Women Handbook for Legislation on Violence Against Women: UN Women, Handbook for Legislation on Violence Against Women (2012):

https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2012/12/UNW_Legislation-Handbook%20pdf.pdf, accessed on 25 February 2025.

¹⁷ General Recommendation No. 35, para. 2.

¹⁸ Articles 1 and 2(e) the CEDAW Convention and Article 4(c) the Declaration on the Elimination of Violence against Women.

¹⁹ General Recommendation No. 35, section III.B.2. See also United Nations, E/CN.4/2006/61, Integration of the human rights of women and the gender perspective: violence against women 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, 20 January 2006, (Report of the Special Rapporteur on Violence Against Women, 2006).

²⁰ General recommendation No. 35, section III.B.2. Full quote: "(...) States parties will be held responsible should they fail to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, to prosecute and punish perpetrators and to provide reparations to victims/survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations"

²¹ Communication No. 2/2003, *Ms. A.T. v. Hungary*, views adopted on 26 January 2005.

²² Report of the Special Rapporteur on Violence Against Women, 2006, para. 23.

²³ General recommendation No. 35 para. 31(a)(ii).

protection comprising a wide range of effective measures and, where appropriate, the issuance and monitoring of eviction, protection, restraining or emergency barring orders against alleged perpetrators, including adequate sanctions for non-compliance”.²⁴

20. The expressed main objective of the draft amendments considered in this Opinion is to improve the effectiveness of the implementation of the Kyrgyzstan’s international obligations under UN documents. Kyrgyzstan is a member of the UN but not of the Council of Europe. Consequently, it makes sense that the explanatory report refers to UN obligations whereas no reference is made to Council of Europe obligations. Nevertheless, as an expression of general standards and best practices, inspiration may be drawn from the Istanbul Convention.

21. The Istanbul Convention, while not binding on Kyrgyzstan, is consistent with the recommendations of the CEDAW Committee and provides the current international best practice on the issue, including on immediate response, prevention and protection; risk assessment and risk management; emergency barring orders; restraining and protection orders.²⁵

22. *Immediate response, prevention and protection* includes a responsibility of the State to ensure that law enforcement agencies respond to the domestic violence promptly and appropriately “by offering adequate and immediate protection to victims.”²⁶ *Risk assessment and risk management* includes a responsibility of the State to take necessary measures to “ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities”.²⁷ According to GREVIO’s minimum standards in professionalism, the risk assessors should be appropriately trained, supervised and provided with guidelines on how to conduct risk assessments.²⁸

23. *Emergency barring orders* include a responsibility of the State to take necessary measures to ensure that the competent authorities are granted the power to order a barring order, in situations where there’s an immediate danger. *Barring orders* would entail that the perpetrator of domestic violence needs to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk.²⁹ A barring order is considered to be the most effective way of guaranteeing a victim safety in situations of immediate danger, since it prescribes a physical distance between the offender and the victim. International standards have found that it’s better to exclude the *perpetrator* from the home, than the *victim*, who is often accompanied by children.³⁰

24. *Restraining and protection orders* includes a responsibility of the State to take necessary measures to “ensure that appropriate restraining or protection order are available to victims”, which should allow for immediate protection during – following the principle of legal certainty – a specified (or until modified or discharged) period of time.³¹ Any breaches of the restraining or protection order should be subject to “effective, proportionate and dissuasive criminal or other legal sanctions”³², which may be considered as an important aspect of a State’s due diligence

²⁴ General recommendation No. 35 para. 31(a)(ii).

²⁵ Articles 50-53 the Istanbul Convention.

²⁶ Council of Europe, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence: <https://rm.coe.int/1680a48903>, accessed on 25 February 2025, paras. 257-259 (Explanatory Report to the Istanbul Convention). See Article 50.1 the Istanbul Convention.

²⁷ Article 51.1 the Istanbul Convention; Explanatory Report to the Istanbul Convention, paras. 260-263.

²⁸ Sara De Vido and Micaela Frulli (editors), Preventing and Combating Violence Against Women and Domestic Violence A Commentary on the Istanbul Convention. Elgar Commentaries in Human Rights series, (De Vido and Frulli) para. 51.019. See also GREVIO Baseline Evaluation Report Turkey, GREVIO(2018)6: <https://rm.coe.int/eng-grevio-report-turquie/16808e5283>, accessed on 25 February 2025, para 287 and 289.

²⁹ Article 52 the Istanbul Convention.

³⁰ Explanatory Report to the Istanbul Convention, paras. 264-266.

³¹ Article 53 the Istanbul Convention. The order should further be, “where necessary, issued on an *ex parte* basis which has immediate effect; [be] available irrespective of, or in addition to, other legal proceedings; [be] allowed to be introduced in subsequent legal proceedings”; Explanatory Report to the Istanbul Convention, paras. 267-276.

³² Article 53.3 the Istanbul Convention.

obligations, since it ensures that offenders are aware of that violence will lead to legal consequences.

B. International standards concerning electronic monitoring

25. Concerning *electronic monitoring*, international standards that apply to the issue of digital surveillance of offenders for non-criminal acts are few and general. Some sources, for instance the Istanbul Convention, mention the use of restraining or protection orders, but without detailed regulation of (digital) monitoring of compliance with such orders.³³ To some extent, obligations to use digital monitoring could be considered as following from the general obligation to *exercise due diligence* (see above, Section IV.A.).³⁴

26. The Venice Commission has not identified any hard law instruments that are directly applicable to Kyrgyzstan in the matter of electronic monitoring. The Commission will nevertheless consider international standards and best practices that are not directly applicable to Kyrgyzstan, in order to support the interests of Kyrgyz authorities in complying with international law and in their obligation of exercising due diligence.

27. The Council of Europe's recommendation on electronic monitoring defines a set of basic principles related to ethical issues and professional standards enabling national authorities to provide just, proportionate and effective use of different forms of electronic monitoring in the framework of the criminal justice process in full respect of the rights of the persons concerned.³⁵ It is clear, however, that this recommendation applies to *criminal* proceedings.

28. The above-mentioned recommendation on electronic monitoring sets out the following (here selected) basic principles:

- The use, types, duration and modalities of execution of the orders should be regulated by law.³⁶
- The decision to impose electronic monitoring should be taken by the judiciary or allow for judicial review.³⁷
- The execution should be proportionate in duration and intrusiveness to the seriousness of the offence.³⁸
- The execution of the protection orders should not discriminate.³⁹
- Public authorities remain responsible for implementation according to international and professional standards, even if private actors are involved in the implementation.⁴⁰

29. In the same recommendation, the following (here selected) conditions are set out for the *execution* of electronic monitoring, and ethical issues relating to the safety of people at risk of violence:

- The victim should give their consent to the electronic monitoring, and it should be ensured that the victim understands the capacities and limitations with the technology.⁴¹
- In use of exclusion of or limitation to specific zones, the restrictions should not prevent a "reasonable quality of everyday life".⁴²

³³ Article 53 the Istanbul Convention.

³⁴ See e.g. Article 5.2 the Istanbul Convention.

³⁵ Council of Europe, Recommendation CM/Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring, Adopted by the Committee of Ministers on 19 February 2014, at the 1192nd meeting of the Ministers' Deputies (CM/Rec(2014)4). It may be noted that, in general, there's an absence of international standards on electronic monitoring.

³⁶ CM/Rec(2014)4, Basic Principles (Section III), para. 1.

³⁷ CM/Rec(2014)4 para. 2.

³⁸ CM/Rec(2014)4 paras. 4-5.

³⁹ CM/Rec(2014)4 para. 7.

⁴⁰ CM/Rec(2014)4 para. 9.

⁴¹ CM/Rec(2014)4 para. 18.

⁴² CM/Rec(2014)4 para. 19.

- Personal circumstances (such as age or disability) should be taken into account and electronic monitoring equipment should not be used to cause intentional physical or mental harm or suffering to the offender.⁴³

30. There do not appear to exist clearly defined international or European standards concerning the use of electronic monitoring in the context of domestic violence – whether civil, criminal, or a mix of measures, and where each of those measures are monitored by electronic monitoring.⁴⁴ However, the right to private life is a human right that protects a person from unlawful interference in their private life, family life, home and correspondence. The right is protected by several human rights instruments including the International Covenant on Civil and Political Rights (ICCPR),⁴⁵ which Kyrgyzstan is party to, and the European Convention of Human Rights (ECHR),⁴⁶ which in this Opinion is treated as part of the European constitutional heritage and the Council of Europe acquis.⁴⁷ The right is of particular importance for this Opinion since the introduction of electronic monitoring constitutes an intrusion in the privacy of the offender, who would need to carry a device that allows for monitoring of their movement at all, or at some, time. In order for an interference with the right to private life to be legitimate, there must both be an adequate *legal basis* for the interfering measure and an assessment that the interference is *necessary and proportionate to a legitimate aim*.⁴⁸

C. International standards concerning data protection

31. The right to private life is a human right that protects a person from unlawful interference in their private life, family life, home and correspondence. The right is protected by several human rights instruments including ICCPR.⁴⁹ The right to privacy includes a *responsible protection of data*. UN holds that the collecting and processing of data must have a legal basis; be protected by safeguards that prevents misuse and be in line with international human rights law.⁵⁰

32. Moreover, Convention 108+ sets out basic principles for the protection of personal data. These principles (here selected) include that data processing should be proportionate in relation to the legitimate purpose pursued;⁵¹ that the processing of data could be carried out on consent of the individuals involved;⁵² that the processing of data should be lawful;⁵³ and that the

⁴³ CM/Rec(2014)4 para. 26-27.

⁴⁴ Of some assistance, however, is a Council of Europe Research Study into electronic monitoring in the context of domestic violence cases: Council of Europe, *Electronic Monitoring in Interpersonal Violence Cases: Standards, Principles and State Practice*, Louise Hooper, 2023: <https://rm.coe.int/electronic-monitoring-arm-fra-publication-eng/1680ace74b>, accessed on 25 February 2025 (The Study *Electronic Monitoring in Interpersonal Violence Cases*). The study was carried out under the framework of project *Ending Violence Against Women and Promoting Gender Equality in Armenia* at the request of the Armenian police. The purpose of the study was to examine and share the experiences of selected countries in implementing electronic monitoring of perpetrators of domestic violence or other forms of interpersonal violence. While acknowledging that electronic monitoring is often used by probation services, or as an alternative to detention, the study examined the use of electronic monitoring in connection with emergency barring orders, protection orders and restraining orders made in both the civil and criminal context, in France, Georgia, Portugal and Spain. The study relies on the provisions of the Istanbul Convention; Recommendation CM/Rec (2014)4 including its explanatory memorandum and a handbook for professional responsible for the establishment and use of electronic monitoring in identifying the applicable principles. It notes that as Member States implement the Istanbul Convention, electronic monitoring had subsequently been adopted in interpersonal violence cases, prior to the establishment of guilt, to reinforce *emergency barring orders*, *restraining orders* or *protection orders*. The study sets out 20 key considerations to the success of an electronic monitoring programme in the domestic violence context which are essentially recommendations based on the aforementioned documents, and represent best practice, if not recognised European standards.

⁴⁵ Article 17, United Nations, International Covenant on Civil and Political Rights, Adopted the General Assembly resolution 2200A (XXI) of 16 December 1966 (ICCPR).

⁴⁶ Article 8 ECHR.

⁴⁷ See also United Nations, General comment No. 16: Article 17 (Right to privacy), Thirty second session, 1988; Guide on Article 8 of the European Convention on Human Rights, ECHR-KS, updated 31 August 2024.

⁴⁸ Article 8.2 ECHR. Such a legitimate aim may be the rights and freedoms of others.

⁴⁹ Article 17 ICCPR.

⁵⁰ United Nations, General comment No. 16: Article 17 (Right to privacy), Thirty second session, 1988, (General comment No. 16), para. 10.

⁵¹ Article 5(1) Convention 108+.

⁵² Article 5(2) Convention 108+. The consent should be free, specific, informed and unambiguous.

⁵³ Article 5(3) Convention 108+.

processing of data as such should be fair, transparent, legitimate, subject to appropriate safeguards, adequate, relevant, non-excessive to the purpose, accurate and preserved no longer than necessary⁵⁴. Furthermore, a state should take appropriate security measures against risks such as unauthorised access to the collected data or the loss of data.⁵⁵

33. Furthermore, the Council of Europe's recommendation on electronic monitoring set out the following (here selected) recommendations concerning data protection:

- The processing of collected data should be regulated by law.⁵⁶
- Staff with responsibility for implementation of decisions related to electronic monitoring should be sufficient in number, as well as adequately and regularly trained (data protection included).⁵⁷
- Collected data should be subject to specific regulations based on international standards including the specification that the data may not be used for other purposes than what is regulated in law; specification on how long the data may be kept; and the right to have one's data deleted.⁵⁸
- Effective sanctions should be in place for carelessness or misuse of handling data.⁵⁹
- Private actors that provided equipment for electronic monitoring should be subject to the same rules [as public actors] regarding handling data in their possession.⁶⁰

V. Analysis

A. The procedure of preparation of the draft amendments

34. Respect for the Rule of Law requires that law-making procedures should be transparent, accountable, inclusive and democratic.⁶¹ The Venice Commission has previously underlined that the public should have access to the draft legislation and with a meaningful opportunity to provide input.⁶² Where appropriate, impact assessments should be made before the legislation is adopted; the proposed legislation should be debated publicly by parliament; and the draft legislation should be adequately justified – for instance by explanatory reports.⁶³ The Venice Commission has also underlined that the use of accelerated law-making procedures may be problematic in two ways. Firstly, because it may affect the inclusiveness of the law-making process,⁶⁴ secondly because a hasty law-making process without proper consultation and impact assessments may lead to badly written laws, inconsistencies, and gaps, which may have a negative impact on the public trust towards the institutions concerned.⁶⁵

35. The Venice Commission has not been able to fully assess to what degree the law-making procedure of the draft amendments at hand has been accelerated compared to a normal Kyrgyz

⁵⁴ Article 5(4) Convention 108+.

⁵⁵ Article 7 Convention 108+.

⁵⁶ CM/Rec(2014)4 para. 12.

⁵⁷ CM/Rec(2014)4 para. 13.

⁵⁸ CM/Rec(2014)4 para. 29.

⁵⁹ CM/Rec(2014)4 para. 31.

⁶⁰ CM/Rec(2014)4 para. 32.

⁶¹ Venice Commission, [CDL-AD\(2016\)007](#), The Rule of Law Checklist, benchmark A.5.

⁶² UN Human Rights Committee, CCPR/C/21/Rev.1/Add.7, General Comment No. 25 (1996), Article 25 (Participation in Public Affairs and the Right to Vote), para 8.

⁶³ Venice Commission, [CDL-AD\(2023\)044](#), Georgia, Opinion on the Law on the Special Investigation Service and on the provisions of the Law on Personal Data Protection concerning the Personal Data Protection Service, para. 28; the Rule of Law Checklist, benchmark A.5.

⁶⁴ Venice Commission, [CDL-AD\(2011\)001](#), Hungary, Opinion on three legal questions arising in the process of drafting the New Constitution of Hungary, paras 16-19; Venice Commission, [CDL-AD\(2012\)026](#), Romania, Opinion on the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to the Law N° 47/1992 regarding the organization and functioning of the Constitutional Court and on the Government emergency ordinance on amending and completing the Law N° 3/2000 regarding the organisation of a referendum of Romania, para 74.

⁶⁵ Venice Commission, [CDL-AD\(2023\)044](#), Georgia, Opinion on the Law on the Special Investigation Service and on the provisions of the Law on Personal Data Protection concerning the Personal Data Protection Service, para. 34.

law-making procedure. In its explanatory report, the Kyrgyz Republic points out that the draft amendments have undergone public discussion procedure through being posted on the Unified Portal of Public Discussion of Regulatory Legal Acts of the Kyrgyz Republic.⁶⁶ This seems to fulfil the criterion of public discussion according to Kyrgyz law.

36. During the online meetings with the stakeholders, however, the Commission delegation was told that the Kyrgyz authorities have prepared the draft amendments in a relatively speedy manner, which would explain the limited material found in the explanatory report,⁶⁷ the lack of certain key elements in the draft amendments, and some unclarities.

37. The Commission wishes to stress that it is important to ensure a law-making procedure that results in high quality of the law – especially when the consequences may be severe.⁶⁸ The Venice Commission wishes to encourage the Kyrgyz authorities to pursue inclusive discussions with all the relevant stakeholders before finalising this draft law.

B. Possible interference with the right to privacy

1. Measures introduced

38. In the Law on Domestic Violence, the following changes are proposed.⁶⁹ Draft Article 29 (sub-paragraph 31) which regulates the conditions of a temporary protection order, provides (in addition to existing conditions) that a temporary protection order would entail the obligation of the offender to “implement measures to ensure control over the execution of the terms of the temporary protection order using technical means”.

39. Draft new Article 29¹ clarifies the meaning of “measures to ensure control over the execution of the terms of the temporary protection order using technical means”. The *technical means*, according to the draft article, means remote control and tracking of the location of the offender, through technical means in order to ensure that the persons comply with the prohibitions and/or restrictions that they have been placed under through the temporary protection order. The article further points out that “relevant internal affairs agency” is competent to decide to apply these measures. Such a decision would need to specify the conditions⁷⁰ for the execution and the body or official actor responsible for monitoring the compliance with established restrictions. The person who has committed domestic violence is required to sign a written commitment not to leave the relevant territory without permission and to comply with the established prohibitions and/or restrictions. The draft Article 29¹ further establishes that the Cabinet of Ministers will determine who determines the conditions for the implementation of the measures in question.

40. In the Code on Offences, the following changes are proposed.⁷¹ Draft Article 28 sub-paragraph 32) introduces a new type of (non-criminal) penalty, namely “prohibitions and (or) restrictions with electronic surveillance”.

41. Draft Article 31² provides that the new penalty shall be applied for committed offences related to domestic violence (sub-paragraph 1); that the new penalty is imposed by the court for a period of up to three months (sub-paragraph 2); and enumerates the various prohibitions and restrictions for which the court, in cases of domestic violence, has the right to decide on additional electronic

⁶⁶ Venice Commission, [CDL-REF\(2025\)010](#), Kyrgyzstan, Draft Law of the Kyrgyz Republic on Amendments to the Law of the Kyrgyz Republic “on the Protection and Defence Against Domestic Violence” and to the Code of the Kyrgyz Republic “on Offenses”.

⁶⁷ See Venice Commission, [CDL-REF\(2025\)010](#), Kyrgyzstan, Draft Law of the Kyrgyz Republic on Amendments to the Law of the Kyrgyz Republic “on the Protection and Defence Against Domestic Violence” and to the Code of the Kyrgyz Republic “on Offenses”.

⁶⁸ See the Rule of Law Checklist, benchmark A.5.

⁶⁹ Rephrased summary based on the draft amendments, see [CDL-REF\(2025\)010](#).

⁷⁰ Such conditions would, according to the draft amendments, include the territory which he cannot leave; the territory in which he cannot be; and the prohibitions and/or restrictions established in relation to him, draft Article 29¹ the Law on Domestic Violence.

⁷¹ Rephrased summary based on the draft amendments, see [CDL-REF\(2025\)010](#).

surveillance (sub-paragraph 3). These cases are prohibition of direct and indirect contacts with the victim; restriction of parental rights in terms of contacts with minor children; and restriction on location in certain areas.

42. Draft Article 33 in the Code on Offences extends the number of days for arrest or the holding the offender in conditions of isolation from society from up to seven days to up to fourteen days.

43. Articles 56, 57 and 70 in the Code on Offences contain regulations on beatings, intentional infliction of minor bodily harm and domestic violence. The current penalties of either community service for 40 hours or arrest for three to seven days for each one of these offences are, according to the draft amendments, suggested to be accompanied by the alternative penalty of prohibition and/or restrictions with electronic surveillance. The three types of penalties are facultative.

44. Draft Article 71 in the Code on Offences regulates the consequences for failure to comply with the terms of a temporary protection order which has been issued to a victim of domestic violence, and prohibitions and/or restrictions with electronic surveillance according to the Code on Offences. Such failure, in the absence of elements of a crime, entails community service for 40 hours or arrest for seven to fourteen days – the present provision allows for seven days at a maximum.

45. Draft Article 72 in the Code on Offences regulates the consequences when an offender of either domestic violence, beatings or intentional infliction of minor bodily harm (under Articles 56, 57 or 70) does not undergo a correctional program and evades fulfilling prohibitions and/or restrictions with electronic surveillance. Evasion of fulfilling such sentences shall entail community service for 40 hours or, which is a new addition, arrest for seven to *fourteen* days.

46. Draft Article 564⁷², which is new to the Code on Offences, lays out the procedure and terms for execution of prohibition and/or restrictions with electronic surveillance. It stipulates that court-imposed prohibitions and/or restrictions with electronic surveillance shall be enforced by internal affairs agencies (sub-paragraph 1); that the offender is obliged to comply with the requirements of the established prohibition and/or restrictions (sub-paragraph 2); that the control over the offender is assigned to internal affairs agencies (sub-paragraph 3); that if the offenders evade the imposed penalty, they shall be held liable in accordance with the Code on Offences (sub-paragraph 4); and that the procedure and conditions for electronic surveillance and the procedure for using electronic and other technical means of control shall be determined by the Cabinet of Ministers (sub-paragraph 5).

47. The Venice Commission notes that the draft law aims specifically at introducing technology which, according to information provided through online meetings with the Kyrgyz authorities, entails a *bracelet* for the offender and a *mobile app* for the victim. The bracelet is expected to send out GPS⁷² signals and breaches of the offender will be signalled both to the victim through the mobile app, and to a *central monitoring service* located under the Ministry of Internal Affairs, that – in case of breaches – will contact the internal affairs office located geographically nearest to the offender, which will act upon the breach. Hence, the draft amendments introduce *electronic monitoring*. There is no provision for either placing or removal of monitoring devices, such as by whom it may be placed or removed or if it may be removed for medical reasons.

48. Based on the understanding of what technology Kyrgyzstan is aiming at using, interference with the right to respect for private and family life, protected by Article 17 ICCPR and Article 8 ECHR, may occur at several stages of the application of draft amendments by:

- The geographic limitation of the offender, to a place and/or a person,
- The physical attachment of an electronic bracelet on the offender's body without them being able to remove it themselves,
- The constant or repeated monitoring of the offender's geographic location, and

⁷² GPS stands for *Global Positioning System* using satellite technologies.

- That the responsible authority (or delegated entity) has permission to act upon any breaches of the set geographic limitations.

49. Rule of law requires that any interference by authorities in the human rights of an individual would need to be subject to effective control.⁷³ A State *may* interfere in the rights of citizens to act for specified aims but only if it's regulated by law; if it can be justified through a certain need and if there's a reasonable balance between the goal pursued and the means used. In other words: in order for an interference with the right to private life to be legitimate, it needs to be in lawful, pursue one or more of the legitimate aims, and be necessary in a democratic society – hence, proportionate.⁷⁴ The lawfulness criteria, in Article 8 expressed as of “in accordance with the law”, implies conditions which go beyond the existence of a legal basis in domestic law and requires that the legal basis be “accessible” and “foreseeable”. Domestic law must be sufficiently clear in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to any such measures.

2. Legal basis

50. The Venice Commission wishes to recall that legal certainty, including accessibility and foreseeability of the law, is one of the cornerstones of the rule of law.⁷⁵ The law must be formulated in an intelligible manner, with sufficient precision and clarity to enable legal subjects to regulate their conduct in conformity with it. As concerns the draft amendments, the Commission wishes to point out that there are numerous unclarities in the text that the Commission delegation has been unable to clarify during and after the online meetings. These unclarities render this assessment difficult and concerns: the character of the offence; hierarchy between legal acts; definitions; temporal issues; material issues including technology introduced; access to judicial review; circumstances for cancelling or suspending the measures; clarification regarding discrimination; and clarification regarding emergency barring order.

51. First, regarding *the character of the offence*, the Commission notes that it is not clear whether or not the act of *domestic violence* is fully criminalised in Kyrgyzstan, on account of its dual classification as crime under Article 177 of the Criminal Code and as offence under Article 70 of the Code on Offences. The majority of the provisions and the draft amendments are to be found in the Code on Offences meanwhile only one provision and no amendments are to be found in the Criminal Code. The situation as such seems to provide for that domestic violence is mostly an administrative or civil offence.

52. The dual placement of domestic violence as both a crime and an offence was presented by some interlocutors as a de facto decriminalisation of domestic violence, which has led to legal ambiguities within Kyrgyzstan, to the undermining of the seriousness of such crimes and to complications of the access to legal proceedings for victims seeking justice.

53. International standards are clear on that all forms of violation of women's physical, sexual or psychological integrity, including acts of domestic violence, should be criminalised.⁷⁶ The criminalisation should include acts such as psychological violence; stalking; physical violence; sexual violence, including rape; forced marriage; female genital mutilation; forced abortion and forced sterilisation; and sexual harassment.⁷⁷ In the case of *Opuz v. Turkey*, it was underlined that it is in the public interest to prosecute acts of domestic violence, even if the victim would

⁷³ See e.g. *Case of Silver and Others v. the United Kingdom*, application no. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75, judgment on 25 March 1983, para. 90.

⁷⁴ Article 8.2 ECHR. Such a legitimate aim may be the rights and freedoms of others.

⁷⁵ The Rule of Law Checklist, benchmark B.

⁷⁶ Para. 29 (a) General Recommendation No. 35, where the Committee recommends that “States parties implement the following legislative measures: (a) Ensure that all forms of gender-based violence against women in all spheres, which amount to a violation of their physical, sexual or psychological integrity, are criminalized and introduce, without delay, or strengthen, legal sanctions commensurate with the gravity of the offence, as well as civil remedies; (...)”.

⁷⁷ Articles 33-40 the Istanbul convention.

happen to withdraw the complaint.⁷⁸ This principle has been approved in subsequent cases, such as *Volodina v. Russia*, 2019.⁷⁹ The Venice Commission therefore recommends Kyrgyzstan to consider changing the legal status of domestic violence so that it is regulated exclusively by the Criminal Code.

54. Second, the *hierarchy between* the Law on Domestic Violence, the Code of Offences and the Criminal Code has not been clarified by the Kyrgyz authorities. As far as the Venice Commission understands, the legal status of a Kyrgyz *Law* is that it is subordinated to a *Code*. However, the interaction between the legal acts is not fully addressed in the laws or in the explanatory report. References to legislation on criminal procedure and legislation on offences are made in the Law on Domestic Violence, which indicates that the law interplays with legislation on both criminal and non-criminal offences.⁸⁰ The exact application of the three legal acts should be clarified in the explanatory report.

55. Third, regarding *definitions*, the draft amendments introduce temporary protection orders using technical means (ordered by the internal affairs office/law enforcement/police, draft Articles 29, 29¹ the Law on Domestic Violence) on the one hand, and the penalty prohibitions and (or) restrictions with electronic surveillance (ordered by the court, draft article 28 the Code on Offences) on the other hand. Following online meetings, there is no indication that the technology used pre-trial is different from the technology used post-trial. International standards regarding electronic monitoring stress that use, types, duration and modalities of execution of electronic monitoring should be regulated by law.⁸¹ The Venice Commission therefore recommends the Kyrgyz legislators to streamline the definitions used in the draft amendments and to indicate what kind of technology is envisaged to be used, and whether there is a difference between the Law on Domestic Violence and the Code on Offences; or between pre-trial and post-trial.

56. Fourth, regarding *temporal issues*, the following might be noted. The relation between temporary protection orders and restrictions with electronic surveillance is unclear. It appears that the temporary protection order mentioned in the Law on Domestic Violence may be implemented at an *earlier* stage, such as from the time when law enforcement (police) arrives at the place where domestic violence has (been suspected to have) occurred (Article 24 the Law on Domestic Violence); while the digital surveillance mentioned in the Code on Offences is to be implemented at a *later* stage, such as from the time of a court decision (Article 28 the Code on Offences). As mentioned above, it remains unclear whether the use of the electronic surveillance in the Code on Offences suspends or excludes the use of a temporary protection order under the Law on Domestic Violence, or whether they may be used at the same time: this matter should be clarified.

57. Another question on temporal matters is that a decision regarding electronic monitoring would, logically, need to be taken *subsequent to or at the same time as* a (material) decision on a temporary protection order. The draft amendments do not seem to make any difference between such material decision and a decision to impose electronic monitoring, see Articles 29¹ p. 1 the Law on Domestic Violence and Article 31² sub-paragraph 2 the Code on Offences. The Venice Commission therefore recommends Kyrgyzstan to clarify the matter on temporal issues.

58. Fifth, regarding *material issues*, the draft amendments fail to address several elements that would add to an efficient implementation of international obligations on violence against women and electronic monitoring, such as:

- Which technical means are envisaged (mobile apps, bracelets or both etc.),
- Whether prohibitions and/or restrictions *without* electronic surveillance are introduced,
- Access to judicial review for digital means on the one hand, and digital surveillance on the other hand, as well as for the offender and the victim(s),
- The circumstances under which the measures may be suspended or cancelled,

⁷⁸ ECtHR, case of *Opuz v. Turkey*, application no. 33401/02, judgment 9 June 2009, paras. 137-139; 145.

⁷⁹ ECtHR, case of *Volodina v. Russia*, application no. 41261/17, judgment 9 July 2019.

⁸⁰ E.g. Articles 4 p. 8); 10, p. 7-1) and 7-2); 25 p. 3) the Law on Domestic Violence.

⁸¹ CM/Rec(2014)4 para.1.

- A prohibition of discrimination, and
- Clarification of whether an emergency barring order may be issued based on the draft amendments.

59. Regarding clarification of the legal basis to issue an *emergency barring order* against the offender, the following may be noted. Under international standards, a barring order should be ordered by a competent authority in situations of immediate danger and would result in that the offender vacates the residence of the victim for a certain time.⁸² The draft amendments to Article 31² of the Code on Offences indicate that the prohibitions and/or restrictions with electronic monitoring that may be imposed on the offender, would include a prohibition of direct and indirect contacts with the victim; restriction of parental rights in terms of contacts with minor children; and restrictions on location in certain areas.⁸³ The Venice Commission has made several inquiries of whether or not this particular provision allows for a *de facto* barring order, without any clear answer.

60. Up until now, the procedure in Kyrgyzstan has been to remove the victim to a shelter – which, according to interlocutors, are often full. During the meetings with authorities, it was nevertheless indicated that the removal of the offender, rather than the victim, could be an option in the future. However, the Kyrgyz authorities pointed out that cultural barriers may lead to difficulties in persuading the offender, who usually owns the home and provides for the family, to leave the residence. In response to this, it needs to be stressed that international standards are clear in cases of domestic violence, and that priority should be given to the safety of the victims or persons at risk so that these may remain in the home.⁸⁴ Since it is unclear whether the draft amendments provide for emergency barring orders, the Venice Commission notes that *if* the draft amendments provide for an emergency barring order, *then* it should be clearly spelled out and the legislator should pay attention to the international standards on this matter. The Venice Commission recommends that the question of emergency barring orders is clarified.

61. It was suggested during the meetings that although the draft law (Article 29¹ of the Law on Domestic Violence) provides that the relevant internal affairs agency (the police) takes the decision to order electronic monitoring of an alleged offender when issuing a temporary protection order, it is in fact the *court* that makes the requisite electronic monitoring order, at the *request of* the police. Following the draft amendments, this is not clear. The Venice Commission is of the view that it is necessary to clarify whether the police or the courts have this power and to specify the procedure to be followed.

62. Article 32 of the Law on Domestic Violence provides that the court may extend the duration of a protection order on the application of a victim. However, the draft law does not provide specifically for the possibility of electronic monitoring of an Article 32-Order, referring only to Article 29. It was not possible to achieve clarity during our meetings as to whether the court had the power to make an electronic monitoring order in respect of orders under Article 32. As this is potentially a lacuna in the law, this should be clarified.

63. The unclarity in some of the key details, as mentioned above, leads to that the Venice Commission will analyse the draft amendments on a general level. Although regulated in two legal acts (the Law on Domestic Violence and Code on Offences) and using different terms (technical means; digital surveillance; electronic and other technical means), it is clear that both laws and both terms refer to introducing technical means of tracking the location of the offender in order to protect the victim.⁸⁵ Hence, the Venice Commission will henceforth address the various technical methods of tracking as *electronic monitoring*.

⁸² Article 52 the Istanbul Convention.

⁸³ Draft Article 31² the Code on Offences.

⁸⁴ Article 52 the Istanbul Convention; Council of Europe, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, para. 264.

⁸⁵ See draft Article 29¹ p. 1 the Law on Domestic Violence.

3. Legitimate aim

64. The expressed purpose of the introduction of electronic monitoring of perpetrators of domestic violence is to protect women from violence. Domestic violence can take various forms: physical assault, sexual, economic, emotional or verbal abuse. The problems of domestic violence do not always show in the public, since it often takes place within personal or close relationships. The violence affects different family members, although women make up an overwhelming majority of victims.⁸⁶ Cases of domestic violence are usually considered under Article 2 ECHR, since it concerns the right to life, but the European Court of Human Rights notes that there is a natural interplay between Articles 2, 3 (prohibition of torture) and 8 (right to respect for private and family life), since they all aim to protect individuals from violations of physical and psychological integrity.⁸⁷

65. The UN Declaration on the Elimination of Violence against Women, which the Kyrgyz Republic wishes to better align with through the draft amendments, states that States should “condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination”.⁸⁸ Further on, UN stresses that “States should pursue by all appropriate means and without delay a policy of eliminating violence against women (...)”. These recommendations are reflected in the CEDAW Committee practice, notably and General Recommendation 19 (1992) and 35 (2017).⁸⁹

66. The Venice Commission is of the view that the introduction of electronic monitoring may be considered to pursue the legitimate aim of prevention of crime and protection of the rights of others. Indeed, the Venice Commission commends the authorities of Kyrgyzstan for their determination to enhance the protection from domestic violence.

4. Proportionality

67. The interference with the right to privacy needs to be proportionate to legitimate aims. In this regard, the Commission recommends that the need to respect the principle of proportionality, hence necessity in a democratic society, should be explicitly enshrined in the draft law in general terms.

68. The severity of the interference in the private life of the offender (resulting from the type and manner of use of the device (bracelet), and on the duration of the measure) should be proportional to the risk for the life and security of the victim.⁹⁰ In practice, the tool for balancing the offender’s right to privacy against the security of the victim is done through a *risk assessment*.

69. According to international standards, a risk assessment is carried out to “ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities”.⁹¹ The European Court of Human rights has stressed in the case of *Kurt v. Austria* that authorities should immediately respond to allegations of domestic violence, and must establish whether there exists a *real and immediate risk* to the life of one or more identified victims of domestic violence by carrying out an “autonomous, proactive and comprehensive risk assessment”.⁹² Further on, the Court has stressed that the reality and

⁸⁶ Case of *Kurt v. Austria*, application no. 62903/15, judgment 15 June 2021.

⁸⁷ European Court of Human Rights Knowledge Share (ECHR-KS), *Key Theme Article 2 Domestic violence*, updated 31 August 2024, p. 2.

⁸⁸ Article 4 the Declaration on the Elimination of Violence against Women.

⁸⁹ See also CEDAW Committee Doc. A/47/38, General Recommendation No. 19, Violence against Women, adopted at the Eleventh Session of the Committee on the Elimination of Discrimination against Women, in 1992. The General recommendation No. 35 (2017) on gender-based violence against women, updates the General recommendation No. 19 (1992).

⁹⁰ CM/Rec(2014)4 paras. 4-5. See The Study Electronic Monitoring in Interpersonal Violence Cases, p. 38, key consideration 6-7.

⁹¹ Article 51.1 the Istanbul Convention.

⁹² Case of *Kurt v. Austria*, application no. 62903/15, judgment 15 June 2021, para 190, with references too paras. 164; 165; 168 et seq.; 177 et seq.

immediacy of the risk must be assessed by taking into account the particular context of domestic violence cases. If, the Court concludes, the *outcome* of the risk assessment is that there is a *real and immediate risk to life*, the authorities' obligation to take preventive operational measures is triggered. Such measures must be *adequate and proportionate* to the level of the risk assessed.

70. The Venice Commission notes that pursuant to article 24 of the Law on Domestic Violence a *risk assessment* is carried out by internal affairs bodies. However, there is no indication of whether the assessment is carried out by general law enforcement personnel or by especially trained personnel, which would be preferable.⁹³ The Commission further notes that the risk assessment protocol would need to assess the probability of repeated violence, notably deadly violence, and the seriousness of the situation. This is not addressed in the draft amendments. The Venice Commission has not been provided with the present risk assessment protocol and can thus not assess its compliance with international standards. Neither has the Venice Commission seen any regulation that *connects* the result of a risk assessment with the decision to grant a temporary protection order or to impose electronic monitoring restrictions.⁹⁴ Such a connection is essential, so that the electronic monitoring restrictions that are *imposed* proportionately reflect the level of threat assessed.

71. A thorough and professionally composed risk assessment is thus important when deciding on whether to decide on electronic monitoring. According to the standards, in domestic violence cases where there is a *risk of serious injuries or of death* of the victim, it is not electronic monitoring that should be used, but alternatives such as detention of the offender. Such decisions of alternative measures should be subject to judicial review. In domestic violence cases where there is a *risk of continued violence* (but not of death) against the victim, electronic monitoring may be used. In domestic violence cases where there is *low risk of continued violence*, it may not be found proportionate to impose electronic monitoring on the offender. The risk assessment would need to be done on a case-by-case basis.⁹⁵

72. If a decision on electronic monitoring is taken, then the execution of this decision would need to be proportionate too. For instance, a limitation to specific zones should not prevent a reasonable quality of everyday life.⁹⁶ The geographic limitation of a temporary protection order with electronic monitoring has not been specified in the draft amendments more than in a general manner, but it seems appropriate that the question is addressed so that the offender may continue with a reasonable normal life. Likewise, the intrusiveness may be considered as lower if the GSP signals only activate in case of a breach – and not on a 24-hour basis. Furthermore, personal circumstances of the offender, such as age or disability, should be taken into account and electronic monitoring equipment should not be used to cause intentional physical or mental harm or suffering to the offender.⁹⁷ In the Law on Domestic Violence, such personal circumstances are addressed in relation to the victims but not to the offender. The Venice Commission recommends that the draft amendments are being developed on the matter of the principle of proportionality.

C. Considerations concerning procedural matters

73. The draft amendments seem to introduce electronic monitoring at two stages: one in pre-trial stage, one in the post-trial stage. The phenomenon is not uncommon. In order to offer effective protection, the use cannot be limited to the period after a court's proceeding. There must also be a tool at an earlier stage to prevent (further) obtrusions, not yet qualified by a court as civil or criminal offences. A double set of measures therefore seem appropriate. Given this, the use of temporary protection orders at pre-trial stage raises issues of access to judicial review.⁹⁸

⁹³ Articles 1 p. 3-2; 24; 25 the Law on Domestic Violence.

⁹⁴ The issuance of a temporary protection order is regulated in Article 27-29 the Law on Domestic Violence, but there is no mentioning of the risk assessment in these provisions.

⁹⁵ Explanatory Report to the Istanbul Convention paras. 260-263.

⁹⁶ CM/Rec(2014)4 para. 19.

⁹⁷ CM/Rec(2014)4 para. 26-27.

⁹⁸ See the Rule of Law Checklist, benchmark E.2.

74. Electronic monitoring of an offender before trial may be made under the draft law.⁹⁹ As previously stated, it is unclear whether such orders are made by the police (that is, the “relevant internal affairs agency”) or the court. If the application to the court is made *ex-parte*, that is, in the absence of the alleged offender, it is essential – for access to justice reasons – to provide *judicial review* for both the victim and the offender.¹⁰⁰ In the draft amendments to the Law on Domestic Violence, the right to judicial review of a temporary protection order seems only to be granted to the victim.¹⁰¹ The Venice Commission therefore recommends that Kyrgyzstan provides for legal right to judicial review of decisions on temporary protection orders using digital means.

75. International standards are clear that any *breaches* of the restraining or protection order should be subject to “effective, proportionate and dissuasive criminal or other legal sanctions.”¹⁰² This may be considered as particularly important in relation to State’s due diligence obligations, since it ensures that offenders are aware of that violence will lead to legal consequences. The Kyrgyz Code on Offences provides that failure to comply with a temporary protection order, or with electronic monitoring restrictions in respect of same, entails community service for 40 hours or arrest for seven to fourteen days.¹⁰³ Through meetings with interlocutors it has been pointed out that the present administrative penalties for breach of the restrictions in the Code of Offences are considered to be lenient. The reasons for this are, according to the interlocutors, that *arrest* is often not effective because of overcrowding in detention centres, and that there are no *community service* projects that offenders could be sent to fulfil the 40 hours community service penalty. As a result, the penalties for breaching a temporary protection order risk being entirely toothless. The present consequence of a breach does not seem disproportionate as such, however, due to a risk of being ineffective, the Venice Commission would recommend Kyrgyzstan to introduce effective sanctions for breaches of protection orders, and to consider making breaches of such orders a criminal offence.

D. Considerations concerning data protection

76. The use of electronic monitoring, in the form of bracelets, mobile apps and monitoring mechanisms would inevitably entail collection, processing and storing of data. International standards emphasise the need to regulate the handling of collected data in law.¹⁰⁴ Furthermore, the collected data should be subject to specific regulations based on international standards regarding storage, use and sharing of data.¹⁰⁵

77. International standards on data protection call, in general, for the processing of data to be carried out with the consent of the individuals involved.¹⁰⁶ In the case at hand, the individuals involved are both the offender and the victim or person at risk.

78. The draft amendments do not contain any special provisions on data protection, nor is this matter addressed in the explanatory report. The Venice Commission recommends the Kyrgyz authorities to align with international standards on data protection, see Section IV.C.

79. The Commission notes in particular that the law should put in place effective sanctions for carelessness or misuse in handling data.¹⁰⁷ This is particularly important since there might be private actors contracted to carry out some part(s) of the implementation of electric monitoring of offenders. In that case, it needs to be stressed that private actors that provide equipment or other

⁹⁹ Draft Article 29¹ p. 2 the Law on Domestic Violence.

¹⁰⁰ See CM/Rec(2014)4 para. 2.

¹⁰¹ Articles 29.2; 30; 32 the Law on Domestic Violence.

¹⁰² Article 53.3 the Istanbul Convention.

¹⁰³ Article 71 the Code on Offences.

¹⁰⁴ CM/Rec(2014)4 para. 12.

¹⁰⁵ CM/Rec(2014)4 para. 29.

¹⁰⁶ Article 5(2) Convention 108+, the consent should be free, specific, informed and unambiguous; The Study Electronic Monitoring in Interpersonal Violence Cases, p. 38, key consideration No. 5.

¹⁰⁷ CM/Rec(2014)4 para. 31.

services for electronic monitoring should, according to international standards, be subject to the same rules as public actors regarding handling data in their possession.¹⁰⁸

E. Considerations concerning practical issues

80. The Commission wishes to stress that, in order to achieve an effective prevention of domestic violence and an effective protection of victims of domestic violence alongside the *law*, there need to be both proper *enforcement/implementation* and proper *monitoring*. The UN has previously addressed the issue of limited enforcement.¹⁰⁹ In the fifth CEDAW review of Kyrgyzstan, the Committee noted with concern the weak enforcement and monitoring of the implementation of the Law on Domestic Violence; the absence of criminal law provisions specifically criminalising certain forms of gender-based violence; and the impunity for perpetrators and the limited enforcement of protection orders.¹¹⁰ Although the mentioned review was conducted four years ago, the Venice Commission's understanding from its online meetings is that there are still problems with implementing and enforcing actions against offences related to domestic violence under the Law on Domestic Violence.

81. A system of electronic monitoring would need to be prepared in order to be effectively enforced. Among other things, it requires procurement and regulations of technology; education of the internal affair agencies agents that are expected to execute the electronic monitoring; as well as recruitment and training of staff for central monitoring. Staff with responsibility for implementation of decisions related to electronic monitoring should be sufficient in number, as well as adequately and regularly trained (data protection included).¹¹¹

82. Furthermore, if the technology is to be provided or handled (for instance, IT-service etc.) by a private contractor, such a relationship would need to be regulated in law, transparent and contain mechanisms of oversight. The Venice Commission would need to stress that public authorities remain responsible for implementation according to international and professional standards, even if private actors are involved in the implementation.¹¹² The draft amendments are silent on these issues. It may be so that the Kyrgyz authorities plan to use general laws on procurement, within the general provisions on prevention in the Law on Domestic Violence or in ordinary laws on public management, but from online meetings it may be gathered that the practical preparations for electronic monitoring are not yet in place in Kyrgyzstan. The Venice Commission recommends that Kyrgyzstan has a system in place before proceeding with adoption of the draft amendments.

83. From online meetings with Kyrgyz authorities, it appears that a *central monitoring service* is to be installed under the Ministry of Internal Affairs. In case of breaches by the offender, the monitoring service will get a signal and contact the internal affairs office located geographically nearest to the offender, which will act upon the breach. However, the role, mandate and limitation of this central monitoring service is not sufficiently described in the draft amendments. Likewise, the training of staff involved in monitoring is unclear. According to best practice in the area of electronic monitoring,¹¹³ the following (here selected) issues may be considered:

- The monitoring centre is responsible for monitoring compliance with the relevant order, and for contacting the offender in case of breach or technical failures, as well as warn the victim of actual or potential breach of the order,
- The types of issues that will be monitored should be set out with clear operational protocol for relevant agencies,
- The conditions under which monitoring can be cancelled and who can make such an application should be clearly set out, and

¹⁰⁸ CM/Rec(2014)4 para. 32.

¹⁰⁹ Fifth CEDAW Review of Kyrgyzstan, para. 21(c).

¹¹⁰ Fifth CEDAW Review of Kyrgyzstan, para. 21(a)-(c).

¹¹¹ CM/Rec(2014)4 para. 13.

¹¹² CM/Rec(2014)4 para. 9.

¹¹³ The Study Electronic Monitoring in Interpersonal Violence Cases, p. 24 f.

- The conditions under which monitoring may be suspended and/or resumed including for medical emergency for security reasons should be clear and the procedure to follow in such cases set out.

84. While some of the above-mentioned issues on monitoring may be addressed on a subordinated legal level, the Venice Commission finds it reasonable that Kyrgyzstan sets out general provisions in respect of monitoring in the draft amendments and provides for the making of (subordinated) regulations in respect of the same.

85. There are no provisions in the draft amendments on removal of the device (bracelet), nor any regulations on under what circumstances the electronic monitoring may be suspended. Changed conditions, such as need for medical treatment or breaches of the temporary protection order having led to criminal sanctions, would need to be considered in order to enhance the foreseeability for the victim and the offender.

86. During online meetings with various interlocutors, practical aspects were raised with some concern. Although the general opinion among stakeholders is that the draft amendments are expected to improve the situation for victims of domestic violence, the speedy procedure in which the laws are expected to be adopted may cause difficulties. The Venice Commission would in this regard like to underline the importance of making necessary legal and practical arrangements, as well as inviting stakeholders to comment on the (revised) draft amendments.

F. Other considerations

87. According to international standards, there is to be *no discrimination* in the imposition or execution of electronic monitoring on the grounds of race, gender, colour, nationality, language, religion, sexual orientation, political or other opinion, nation or social origin, property, association with a national minority or physical or mental condition.¹¹⁴ Regular monitoring and evaluation of use of electronic monitoring in domestic violence cases are to be conducted to ensure the absence of discrimination is the use of electronic monitoring, and in particular that minority communities are not disproportionately sanctioned.¹¹⁵ The draft amendments do not provide for any provision on non-discrimination related to the imposition or execution of electronic monitoring, and the Venice Commission recommends that this is added.

88. International standards suggest that to ensure compliance, different measures could be implemented in accordance with national law. In particular, the suspect's or offender's cooperation may be sought, or dissuasive sanctions may be established.¹¹⁶ As concerns the offender, the draft amendments specify that the offender is obliged to sign a document committing not to leave the relevant territory without permission from the Internal Affairs Agency, and to comply with the restrictions imposed.¹¹⁷ The draft amendments do not present the consequences if the offender refuses to sign such document. Furthermore, as concerns the victim, it is essential to obtain the victim's prior consent to electronic monitoring and all efforts should be made to explain the capacity and limitations of the technology.

VI. Conclusion

89. By letter dated 21 January 2025, the Minister of Justice of the Kyrgyz Republic, Mr Ayaz Baetov, requested an opinion of the Venice Commission on draft amendments to the Law of the Kyrgyz Republic on Protection and Defense from Domestic Violence and to the Code of the Kyrgyz Republic on Offenses. The Venice Commission would like to thank the Kyrgyz Republic for placing their trust to the Venice Commission in this matter.

¹¹⁴ CM/Rec (2014)4 para. 7.

¹¹⁵ The Study Electronic Monitoring in Interpersonal Violence Cases, p. 12.

¹¹⁶ CM/Rec(2014)4 para. 15.

¹¹⁷ Draft Article 29¹ p. 2 the Law on Domestic Violence.

90. The expressed main objective of the draft amendments is to improve the effectiveness of the implementation of the Kyrgyzstan's international obligations under two UN documents: the Declaration on the Elimination of Violence against Women, and the CEDAW Convention. The Venice Commission is of the view that the introduction of means of electronic surveillance under these amendments also relates to international obligations concerning *electronic monitoring (digital surveillance of offenders)*¹¹⁸ and *data protection*.

91. The Venice Commission is also of the view that by being a full member of the Venice Commission, the Kyrgyz Republic has expressed interest in the European constitutional heritage and in the Council of Europe acquis. The Commission has therefore also assessed the draft amendments against the background of Council of Europe standards, notably on the protection of women against violence, on electronic monitoring and on data protection.

92. The Venice Commission wishes at the outset to commend the determination of the Kyrgyz authorities to enhance the protection of women against domestic violence.

93. The draft amendments use various terms for technology to track an offender: technical means, electronic surveillance, electronic and other technical means. However, in this Opinion, the Venice Commission uses the term *electronic monitoring*.

94. The introduction of electronic monitoring following acts of domestic violence amounts to an interfering with the exercise of their right to private life. It pursues the legitimate aim of prevention of crime and protection of the rights of others. It also needs to be "in accordance with the law" and in this respect, the Venice Commission wishes to underline that legal certainty, including accessibility and foreseeability of the law, is one of the cornerstones of the rule of law: the law must be formulated in an intelligible manner, with sufficient precision and clarity to enable legal subjects to regulate their conduct in conformity with it. The interference also needs to be proportionate to the legitimate aim pursued.

95. In order to improve the draft law and better align it with international standards, the Venice Commission makes the following recommendations (in summary):

- (a) Amending the draft legislation in order to enhance the quality of the law and the foreseeability of its application, including as concerns in particular the qualification of domestic violence as a criminal or an administrative offence; the clarification of the hierarchy between the Law on domestic violence, the Code on offences and the Criminal Code; the streamlining of definitions, especially as concerns the technology; the clarification of the difference between the pre-trial and the post-trial phases, and whether measures may be cumulative; prohibition of discrimination; clarification of whether the police or the courts have the power to issue an electronic monitoring order when a temporary protection order is issued and the procedure for same; clarification as to the possibility to make an electronic monitoring order in respect of an order under Article 32 of the Law on Domestic Violence; the possibility to issue an emergency barring order and whether prohibition and/or restrictions may be used *without* electronic monitoring, as outlined in Section V.B.2;
- (b) Enshrining the principle of proportionality, hence necessity in a democratic society, explicitly in the draft law in general terms, providing for the need to apply it in specific provisions, as outlined in Section V.B.4.;
- (c) Providing in the law that the decisions on a temporary protection order, a potential barring order and eventual electronic monitoring measures are based on a specific risk

¹¹⁸ The Venice Commission has treated the subject of constitutional implications of the ratification of the Istanbul Convention in two separate Opinions, see Venice Commission, [CDL-AD\(2021\)044](#) Republic of Moldova – Amicus curiae Brief for the Constitutional Court on the constitutional Implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention); Venice Commission, [CDL-AD\(2019\)018](#) Armenia – Opinion on the constitutional implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

- assessment, including the possibility of detention of an alleged offender (subject to judicial review) where there is a risk of serious injury or death, as outlined in Section V.B.4.,
- (d) That effective penalties for breach of temporary protection orders are introduced, including consideration of making breaches of such orders a criminal offence, as outlined in Section V.B.;
 - (e) Providing the (alleged) offender as well as the victim with a possibility of *judicial review of the decision* of issuing a temporary protection order, a potential barring order and eventual electronic monitoring measures, as outlined in Section V.C.;
 - (f) Adding provisions on the processing of collected data according to the relevant international standards, as outlined in Section V.D.;
 - (g) Providing for adequate mechanisms for the enforcement and monitoring of the application of the law before proceeding with adopting the amendments, as outlined in Section V.E.;
 - (h) Elaborating on the central monitoring agency through: providing for the role, mandate and limitations of the central monitoring agency, including any private actors involved in monitoring, in the draft law; considering implementing best practice concerning monitoring agencies; providing for non-discrimination in the imposition or execution of electronic monitoring; and considering the issue of the consent of the victim and the seeking of the cooperation of the offender to electronic monitoring, including any dissuasive consequences for the offender if refused, as outlined in Section V.E. and V.F.

96. The Venice Commission encourages the Kyrgyz authorities to pursue an inclusive process of consultation of all the relevant stakeholders before adopting the draft amendments.

97. The Venice Commission remains at the disposal of the Kyrgyz authorities for further assistance in this matter.