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Legal regulation of prevention of domestic violence in Ukraine

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Abstract

The aim of the article is to clarify the limits and content of the normative regulation of the prevention of domestic violence in Ukraine based on the values of natural law, the theory of criminal, civil and administrative law, and current legislation. In addition, an analysis of the legal support for the training and implementation of State policy in the field of protection of victims of domestic violence is carried out. The legal nature and content of the legal regulation of the prevention of domestic violence in Ukraine are revealed. The dialectical method contributed to the consideration and study of the problem in the unity of its social content and legal form and to the implementation of a systematic analysis of the normative regulation of the prevention of domestic violence in Ukraine. Everything allows us to conclude that the norms of international, European, and national law that regulate the relations of prevention and fight against domestic violence in Ukraine are articulated. Finally, special attention is paid to the organizational and legal aspects of the fight against domestic violence in relation to changes in Ukrainian legislation.

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Keywords: domestic violence; international standards; gender equality; Ukrainian legislation; prevention of domestic violence.

Regulación legal de la prevención de la violencia doméstica en Ucrania

Resumen

El objetivo del artículo es aclarar los límites y el contenido de la regulación normativa de la prevención de la violencia doméstica en Ucrania sobre la base de los valores del derecho natural, la teoría del derecho penal, civil y administrativo y la legislación vigente. Adicionalmente, se realiza un análisis del soporte legal para la formación e implementación de la política de Estado en el campo de la protección de víctimas de violencia intrafamiliar. Se revelan la naturaleza jurídica y el contenido de la regulación legal de la prevención de la violencia doméstica en Ucrania. El método dialéctico contribuyó a la consideración y el estudio del problema en la unidad de su contenido social y forma jurídica y a la aplicación de un análisis sistemático de la regulación normativa de la prevención de la violencia doméstica en Ucrania. Todo permite concluir que, están articuladas las normas de derecho internacional, europeo y nacional que regulan las relaciones de prevención y lucha contra la violencia doméstica en Ucrania. Por último, se presta especial atención a los aspectos organizativos y legales de la lucha contra la violencia doméstica en relación con los cambios en la legislación de Ucrania.

Palabras clave: violencia intrafamiliar; estándares internacionales; igualdad de género; legislación ucraniana; prevención de violencia intrafamiliar.

Introduction

Domestic violence is a recognized global problem. If the victims of domestic violence are distributed according to gender, the number of women victims is 90–95%, and the number of men victims is 5–10% (Bandurka, 2015). According to United Nations research, now every third woman in the world has faced one of the types of domestic violence in her life (Kaczynska, 2016). According to age, about 40% of victims of domestic violence are children and 60% are adult family members. According to various estimates, every year 2 million children in the world become victims of violence. A total of 40 million children suffer from disability, including those who were injured in the family (Bandurka, 2015).

At the beginning of the 21st century, Ukraine became one of the first countries in Eastern Europe to recognize domestic violence as an important social problem, depriving offenders of the opportunity to hide behind the screen of non-interference in private life. At the same time, in some segments of Ukrainian society, including, unfortunately, legal circles, there is a generally accepted, erroneous and dangerous position, according to which family relations are a family affair and even domestic violence is not a crime. According to the Ukrainian Institute for Social Research, only 27% of women consider offences as a manifestation of violence and only 32% similarly assess humiliation. Victims tend to justify their tormentors for many reasons: financial dependence, lack of housing, lack of understanding of how to avoid aggression, and disbelief that someone can help. Such disbelief is not unfounded. After all, almost 40% of employees of the criminal justice system - police, prosecutors, judges - consider domestic violence a private matter, and about 60% believe that the victims are to blame for what happened to them (*Economic Consequences Of Violence Against Women In Ukraine, 2017*).

Modern legal doctrine, international law and the European Convention Heritage oblige Ukraine to create an effective system for preventing and combating domestic violence, accessible to victims of such violence, aimed at protecting their security, and the state policy of protection of victims of domestic violence and other illegal actions should put a strong barrier that would provide protection of potential victims from violent encroachments (Lesko, 2019). However, according to scientists, this system is far from adequate to the current state of society, which is now widespread negative phenomena and processes that directly and indirectly contribute to the commission of crimes against children (increasing divorce, increasing the number of disadvantaged families, alcoholism, drug addiction, drug addiction, the dominance of legal nihilism, the growth of offenses in general) (Levitska, 2003).

The rules of law permeate the entire legal matter of society. It is not enough just the constitutional declarations proclaimed in Art. 3 of the Constitution of Ukraine: "A person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and direction of the state. The state is accountable to man for his activities. The establishment and protection of human rights and freedoms is the main duty of the state" (Constitution of Ukraine, 1996). Freedom and human rights without a mechanism for their implementation and effective protection, which takes into account the realities of modern life - fiction. The twenty-first century is the age of informatization, the information resources industry and, most importantly, the process of actively ensuring the protection of human rights and freedoms. Fulfillment of the task of ensuring rights and freedoms as components of the process of formation and

development of spirituality in society - this is the reality of human progress towards a humanistic future (Bryzhko *et al.*, 2006). Public relations that arise in the field of preventing and combating domestic violence cannot be an exception to this rule (Manjos, 2019).

Based on the values of natural law, the theory of criminal, civil and administrative law, and current legislation, we aim to clarify the boundaries and content of regulations on the prevention of domestic violence in Ukraine.

1. Methodology of the study

A system of methods of scientific knowledge is used to achieve the goal and objectives of the scientific article, to ensure the reliability of the results and conclusions. The dialectical method contributed to the consideration and study of the problem in the unity of its social content and legal form and the implementation of a systematic analysis of the normative regulation of the prevention of domestic violence in Ukraine.

The system-structural method allowed to study the main international and national regulations that regulate the relationship to prevent and combat domestic violence as a holistic set of elements that interact with each other. The use of the statistical method contributed to the generalization of legal practice, analysis of empirical information related to the topic of the scientific article. The historical and legal method was used to study the stages of development of legislation on the state policy of Ukraine in the field of protection of victims of domestic violence and other illegal actions. The comparative legal method was used during the review and study of legal literature, the main scientific approaches to solving the tasks of research and analysis of domestic legislation in the process of clarifying its relationship with international standards for regulating this problem. The formal-legal method was used in the study of normative sources of scientific work, which allowed to identify shortcomings of current legislation of Ukraine, which regulates the activities of entities in the field of protection of victims of domestic violence and other illegal actions and formulate proposals to improve their activities.

These methods in conjunction with general logical methods and techniques (analysis, synthesis, induction, deduction, analogy) allowed a comprehensive and effective study of regulatory and legal support for the formation and implementation of state policy in the field of domestic violence prevention in Ukraine, aimed at bringing national legislation in a state that would lead to the possibility of ratification of the Istanbul Convention.

2. Analysis of recent research

We consider it expedient to give a general description of normative-legal documents aimed at preventing domestic violence in Ukraine.

Legal theorists inextricably link regulation with legal regulation as the regulation of people's behavior through regulations designed to be reused in the circumstances. That is, the scope of public relations, which is subject to regulatory legal regulation, is quantitatively uncertain (Kurakin, 2013).

In general, such a construction is suitable for public relations of normative regulation of prevention and counteraction to domestic violence in Ukraine, which involve numerous norms of international, European and domestic law. Moreover, the latter consist of the norms of the Constitution and other laws of Ukraine, in particular codes and bylaws. Among the international legal acts it is worth mentioning the Universal Declaration of Human Rights, the preamble of which emphasizes the belief in fundamental human rights, the dignity and worth of the human person, equality of men and women (Universal Declaration Of Human Rights, 1948).

International and European regulations, such as the United Nations Declaration on the Elimination of Violence against Women (UN Declaration On The Elimination Of Violence Against Women, 1993), the UN Convention, are literally permeated with positive principles for preventing and combating domestic violence against women and children. on the Rights of the Child (UN Convention On The Rights Of The Child, 1989), the UN Convention on the Elimination of All Forms of Discrimination against Women (UN Convention On The Elimination Of All Forms Of Discrimination Against Women, 1999), Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (Council Of Europe Convention For The Protection Of Human Rights And Fundamental Freedoms, 1997), Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter referred to as the Istanbul Convention) prevention of and fight against violence against women and domestic violence), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Council Of Europe Convention On The Protection Of Children Against Sexual Exploitation And Sexual Abuse, 2012).

European Convention on the Exercise of Children's Rights (European Convention On The Exercise Of Children's Rights, 2006). Thus, according to the UN Declaration on the Elimination of Violence against Women, States must condemn violence against women and must not invoke any customs, traditions or religious motives to evade their obligations to eradicate it. States must immediately implement policies to eradicate violence against women by all appropriate means (UN Declaration On The Elimination Of Violence Against Women, 1993). The Council of Europe Convention

on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, 2013) is the first legal instrument on this issue at European level, as well as one of the most promising international treaties in this field. The Convention enshrines the absolute inadmissibility of violence against women and domestic violence. It also sets out a number of responsibilities of participating countries to protect refugees and asylum seekers from domestic and gender-based violence and establishes a number of safeguards for this category of persons. In particular, Art. 60 of the Convention obliges countries to take measures to ensure that gender-based violence against women can be recognized as a form of persecution. Parties should take the necessary legislative or other measures to develop gender-sensitive reception and support procedures for asylum seekers, as well as gender-based gender guidelines and asylum procedures, including refugee status determination and applications for international protection (Convention Council Of Europe On The Protection Of Human Rights And Fundamental Freedoms, 1997).

Despite positive developments in public policy and practice, various forms of domestic violence remain a common problem at all levels of society in all Council of Europe member states, including Ukraine. So far, there are virtually no comprehensive international legal acts that would systematically establish international standards for the prevention of domestic violence. Most international acts are aimed at promoting gender equality and preventing violence against children and women (UN Convention On The Rights Of The Child, 1989; Declaration On The Elimination Of Violence Against Women, 1993) (Lomakina, 2020).

The Constitution of Ukraine clearly states that citizens have equal constitutional rights and freedoms and are equal before the law. There may be no privileges or restrictions based on race, color, political, religious or other beliefs, gender, ethnic or social origin, property status, place of residence, language or other characteristics. Equality of rights of women and men is ensured by: providing women with equal opportunities with men in socio-political and cultural activities, in education and training, in work and remuneration for it; special measures for the protection of labor and health of women, the establishment of pension benefits; creating conditions that enable women to combine work with motherhood; legal protection, material and moral support of motherhood and childhood, including the provision of paid leave and other benefits to pregnant women and mothers.

The use of women and minors for work that is hazardous to their health is prohibited. Marriage is based on the free consent of a woman and a man. Each spouse has equal rights and responsibilities in marriage and family. Parents are obliged to support their children until they reach the age of majority. Adult children are obliged to take care of their disabled parents.

The family, childhood, motherhood and fatherhood are protected by the state. Children are equal in their rights regardless of their origin, as well as whether they are born in or out of wedlock. Any violence against and exploitation of a child is prosecuted under the law (European Convention On The Exercise Of Children's Rights, 2016).

Ukraine's adoption of the latest legislative changes in this direction is aimed, among other things, at bringing national legislation into a state that would lead to the possibility of ratification of the Istanbul Convention. In particular, the relevant Law of Ukraine "On Prevention and Counteraction to Domestic Violence" defines the organizational and legal framework for preventing and combating domestic violence, the main directions of state policy in this area, aimed at protecting the rights and interests of victims of such violence (On Prevention And Counteraction To Domestic Violence, 2017).

In addition, some provisions relating to the analyzed issues are concentrated in other laws of Ukraine, namely: "On Child Protection" (On Child Protection, 2002), "On Social Services" (On Social Services, 2019), "On Free Legal Aid" (On Free Legal Aid, 2011), the Code of Ukraine on Administrative Offenses (Code Of Ukraine On Administrative Offenses, 1984), the Civil (Civil Code Of Ukraine, 2003), the Criminal (Criminal Code Of Ukraine, 2001) and the Family (Family Code Of Ukraine, 2002) codes. In particular, according to Art. 173 2 Code of Ukraine on Administrative Offenses, provides for administrative liability for domestic violence, on the grounds of sex, i.e. intentional commission of any acts (actions or omissions) of a physical, psychological or economic nature (use of violence that did not Cause bodily harm, threats, insults or harassment, deprivation of housing, food, clothing, other property or funds to which the victim is entitled by law, etc.), as a result of which the physical or mental health of the victim may or has not been harmed. Such acts are punishable by a fine of ten to twenty non-taxable minimum incomes or public works for a period of thirty to forty hours, or administrative arrest for up to seven days (Code Of Ukraine On Administrative Offenses, 1984).

The legislative act, which contains norms aimed at protecting the rights of the child, is the Civil Code of Ukraine of 16.01.2003, which states: "Personal intangible goods protected by civil law are: health, life; honor, dignity "(Article 201) (Civil Code Of Ukraine, 2003). The Code provides for the right to "restoration of the violated right, as well as compensation for non-pecuniary damage caused by its violation" (Article 276), "refutation of inaccurate information" about an individual (Article 277). In Art. 288 of the Civil Code of Ukraine states that "any form of physical or mental pressure on an individual, his involvement in the use of alcohol, drugs and psychotropic substances, other acts that violate the right to liberty" (Civil Code). In paragraphs 1, 2 of Art. 289 of the Civil Code of Ukraine

stipulates that an individual has the right to personal inviolability, that he may not be subjected to torture, cruel, inhuman, or degrading treatment or punishment. Paragraph 3 of this article states the inadmissibility of corporal punishment by parents (adoptive parents), guardians, trustees, educators of minors, minors, and wards. In Art. 293 of the Civil Code of Ukraine states that an individual has the right to appropriate, safe, and healthy learning conditions, etc. (Civil Code Of Ukraine, 2003). Thus, the norms of the Civil Code of Ukraine provide the idea of the inadmissibility of any violence against a person, and therefore against a child, as legal capacity is acquired from birth, as well as the right to safe learning conditions. It should be emphasized that in the Civil Code of Ukraine violence is identified with pressure. Thus, Article 231 “Legal consequences of a transaction committed under the influence of violence” stipulates that “a transaction committed by a person against his true will as a result of physical or mental pressure from another party or another person is declared invalid by a court (Civil Code Of Ukraine, 2003).

In Art. 173-2 of the Code of Ukraine on Administrative Offenses, the term “violence” is used only to establish liability for domestic violence, violence on the grounds of sex (Article 173-2 of the Code of Ukraine on Administrative Offenses) (Code Of Ukraine On Administrative Offenses, 1984).

There is also no definition of violence in the Criminal Code of Ukraine, although the term and its derivatives are used in both the General and Special Parts (Criminal Code Of Ukraine, 2001). Thus in the General part they are used at construction of norms about the circumstances excluding criminality of act (item 36 “Necessary defense” and item 43 “Execution of a special task on the prevention or disclosure of criminal activity of the organized group or the criminal organization”). Such types of violence are not negative and have no antisocial character. In the Special Part, the term “violence” is used more than 100 times. In addition to the above, the Criminal Code provides for a number of socially dangerous acts, which are inherently violent, but in their construction were used other means of describing the crime without the use of the term “violence” (Blaga, 2014).

Although the Criminal Code of Ukraine does not contain a special rule that would provide for liability for domestic violence, it contains a number of sections that provide punishment for the actions of a person who has committed a domestic offense, which is a crime, namely: crimes against life and health of a person; crimes against the will, honor and dignity of the person; crimes against electoral, labor and other human and civil rights and freedoms; crimes against property; crimes against public order and morality; crimes in the field of trafficking in narcotic drugs, psychotropic substances, their analogues or precursors and other crimes against public health, etc.

Special attention of criminal law is focused on violations of children's rights and violence against them by parents. Criminal liability is provided for the involvement of parents of minors in criminal activities, drunkenness, begging, gambling (Article 304 of the Criminal Code of Ukraine). For inflicting light bodily injuries in the event of domestic violence, criminal liability arises under Art. 125 of the Criminal Code of Ukraine (Criminal Code Of Ukraine, 2001).

Part 2 of Article 155 of the Criminal Code of Ukraine provides for liability for sexual intercourse with a person under the age of sixteen, committed by a father, mother or a person replacing them. Also the sanction of Art. 156 of the Criminal Code of Ukraine determines the responsibility for committing lewd acts against a minor by a father, mother or a person who replaces them. Other crimes committed during domestic violence are also prosecuted (Criminal Code Of Ukraine, 2001).

Law of Ukraine "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine in order to implement the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence" of 06.12.2017 № 2227-VIII (On Amendments To The Criminal And Criminal Procedure Codes Of Ukraine In Order To Implement The Provisions Of The Council Of Europe Convention On Preventing And Combating Violence Against Women And Domestic Violence, 2017) amended the Criminal Code of Ukraine to determine liability for any form of intentional systematic domestic violence (psychological, physical, sexual or economic) (Article 126-1 of the Criminal Code of Ukraine). Persons who force another person to marry will also be prosecuted. An amendment was made to Art. 154 of the Criminal Code of Ukraine. It provides for the onset of criminal liability for forcing sexual intercourse with another person.

Although the Criminal Procedure Code of Ukraine does not provide a definition of the term "violence", it does use it several times: firstly, when explaining the procedure for establishing the voluntary conclusion of an agreement by the parties (Article 474), and secondly, to specify the scope of certain criminal offenses in respect of which certain specifics of criminal proceedings are provided (Articles 224 and 477) (Criminal Procedure Code Of Ukraine, 2012). In Part 3 of Art. 477 of this Code specifies the procedure for instituting a criminal case in the form of private prosecution in case of crimes under this article, if they are committed by the victim's husband (wife), another close relative or family member of the victim (Criminal Procedure Code Of Ukraine, 2012).

These laws are aimed at introducing an integrated approach to preventing and combating domestic and gender-based violence, expanding the list of tools and instruments to combat domestic and gender-based violence, and creating a legal basis for ratification of the Council of Europe Convention on

Preventing Violence against Women and Domestic Violence. violence and combating these phenomena. The most numerous among the normative legal acts in the researched sphere are by-laws of general action. Among them are: Decree of the President of Ukraine № 501/2015 of August 25, 2015 “On approval of the National Strategy in the field of human rights” (On Approval Of The National Strategy In The Field Of Human Rights, 2015), Resolution of the Cabinet of Ministers of Ukraine of August 22, 2018 № 658 “On Approval of the Procedure for Interaction of Entities Carrying Out Measures in the Sphere of Prevention and Counteraction to Domestic Violence and Gender-Based Violence” (On Approval Of The Procedure For Interaction Of Entities Implementing Measures In The Field Of Prevention And Counteraction To Domestic And Gender-Based Violence, 2018), Resolution of the Cabinet of Ministers of Ukraine of August 22, 2018 № 655 “On approval of the Standard Regulations on Asylum for Victims from domestic and / or gender-based violence ” (Standard Regulations On Asylum For Victims Of Domestic Violence And / Or Gender-Based Violence, 2018), Resolution of the Cabinet of Ministers of Ukraine of January 23, 2019 № 43 “On Approval of the Standard Regulations on Mobile Brigade of Social and Psychological Assistance to Victims from domestic and / or gender-based violence ” (Standard Regulation On The Mobile Brigade Of Social And Psychological Assistance To Victims Of Domestic Violence And / Or Gender-Based Violence, 2019), Resolution of the Cabinet of Ministers of Ukraine of March 20, 2019 № 234 “On Approval of the Procedure for Forming, Maintaining and Accessing the Unified State Register of Domestic Violence and Gender-Based Violence “ (On Approval Of The Procedure For Formation, Maintenance And Access To The Unified State Register Of Domestic Violence And Gender-Based Violence, 2019), Order of the Ministry of Internal Affairs of Ukraine of August 1, 2018 № 654 “On approval of the Procedure for issuing urgent prohibitions by authorized units of the National Police of Ukraine regarding the offender “ (On Approval Of The Procedure For Issuing Urgent Prohibitive Instructions Against The Offender By Authorized Units Of The National Police Of Ukraine, 2018), Order of the Ministry of Education and Science of Ukraine of May 22, 2018 № 509 “On approval of the Regulations on psychological services in the education system of Ukraine” service in the education system of Ukraine), the order of the Ministry of Education and Science of Ukraine dated October 2, 2018 №1047 “On approval of Guidelines for detection, response to cases of domestic violence and interaction of teachers with other bodies and services” (On approval of Guidelines for detection, response to cases of domestic violence and interaction of teachers with other bodies and services), order of the Ministry of Social Policy of October 1, 2018 № 1434 “On approval of the Standard program for abusers” (On Approval Of The Standard Program For Abusers) Offenders, 2018), order of the Ministry of Social Policy of Ukraine № 564/836/945/577 of August 19, 2014. “On approval of the Procedure for consideration of appeals and reports

regarding child abuse or threat of its commission (Ministry of Social Policy of Ukraine, Ministry of Internal Affairs of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Health of Ukraine)” (On approval of the Procedure for consideration of appeals and reports on child abuse or threats of child abuse), Order of the Ministry of Social Policy of Ukraine № 281 of May 8, 2014 “On approval of Guidelines for the organization of correctional programs for perpetrators of domestic violence” (On Approval Of Methodical Recommendations On The Organization Of Correctional Programs For Persons Who Commit Domestic Violence, 2014), Order of the Ministry of Social Policy of Ukraine № 1852 of December 11, 2018 “On the establishment of the State Institution” Call Center of the Ministry of Social Policy of Ukraine trafficking in human beings, prevention and counteraction to domestic violence, gender-based violence and violence against children” (On the establishment of the State Institution “Call Center of the Ministry of Social Policy of Ukraine for Combating Trafficking in Human Beings, Prevention and Counteraction to Domestic Violence children).

For example, according to the latest legal act, the Call Center is a non-profit state budget institution established to ensure the implementation of tasks related to the proper response to citizens’ complaints about human trafficking, domestic violence, gender-based violence and violence against children. The main tasks of the Call Center are: to ensure a proper response within the competence to citizens’ complaints about the facts of human trafficking, domestic violence, gender-based violence, violence against children; informing and advising on combating trafficking in human beings, preventing and combating domestic violence, gender-based violence, violence against children; interaction with actors implementing measures in the field of preventing and combating domestic and gender-based violence; ensuring response within the competence to citizens’ appeals on the facts of human trafficking through interaction with entities that implement measures in the field of combating human trafficking; maintaining, filling and updating the database for consultations on issues and exchange of information with entities implementing measures in the field of prevention and counteraction to domestic violence and gender-based violence (On The Establishment Of The State Institution “Call Center Of The Ministry Of Social Policy Of Ukraine Combating Trafficking In Human Beings, Preventing And Combating Domestic Violence, Gender-Based Violence And Violence Against Children, 2018).

The state policy of protection of victims of domestic violence and other illegal actions is a direction of the internal legal policy of the state, which forms the main tasks, principles of legal influence on violence and other illegal actions against children, as well as providing comprehensive assistance to victims and expressed in law, the practice of their application.

An important normative legal act in the field of protection of victims of domestic violence and other illegal actions is the Concept of the State Social Program “National Action Plan for the Implementation of the UN Convention on the Rights of the Child” until 2021 from April 5, 2017 N^o230-r. The State Social Program “National Action Plan for the Implementation of the UN Convention on the Rights of the Child” until 2021 is a logical continuation of the National Program “National Action Plan for the Implementation of the UN Convention on the Rights of the Child” until 2016, which should promote an updated model public authorities and local governments at all levels in the direction of ensuring the best interests of children (On The National Program “National Action Plan For The Implementation Of The Un Convention On The Rights Of The Child” Until 2016, 2009). Understanding the relevance of these issues is reflected in the Council of Europe Strategy on the Rights of the Child (2016-2021), adopted on March 2, 2016 by the Committee of Ministers of the Council of Europe. The Council of Europe will help to eradicate violence in all areas, including education, the media, justice, equality, the family, migration, alternative care, and violence against children with disabilities. The Council of Europe will act as a focal point for ensuring access to national strategies in this area at national, regional and local levels (Council Of Europe Strategy On The Rights Of The Child (2016-2021, 2016)).

Summing up this block of research, we note that the problem of protection of victims of violence and other illegal actions is extremely serious, and its solution requires the joint efforts of not only government agencies, public and international organizations, but also scientists and practitioners. In this process, the most important role is given to the state, which should formulate an appropriate state policy to protect victims of violence and other illegal actions, and purposefully implement it. Ukraine takes the problem of domestic violence seriously. Important steps have been taken to combat gender-based violence and domestic violence, namely, Ukraine has joined the Biarritz Partnership, and the President of Ukraine has signed Decree N^o 398/2020 “On Urgent Measures to Prevent and Combat Domestic Violence, Gender-Based Violence, and Protection of Rights victims of such violence” (Protecting Human Rights And Combating Violence Is A Priority For The Ministry Of The Interior, 2020).

It would be logical to proceed to the analysis of the relevant law on the prevention and combating of domestic violence.

Since the entry into force of the Law of Ukraine “On Prevention and Counteraction to Domestic Violence” on December 7, 2017, the Law of Ukraine “On Prevention of Domestic Violence”, which applied only to family members, has expired. This act also regulates the relationship not only between the spouses and their children, but also between the former spouses, the bride and groom; persons who are in a civil marriage; persons

with common children; grandparents, grandchildren, adopted children, guardians, trustees, stepsons, stepdaughters, stepfathers, stepmothers, brothers, sisters. The law applies to such persons regardless of the fact of cohabitation. The legislator also provided for an open list on the possibility of applying the provisions of the Law to other relatives or persons who have a common life and have mutual rights and obligations. However, subject to cohabitation.

The Law of Ukraine “On Prevention and Counteraction to Domestic Violence” defines the concept of domestic violence as acts (acts or omissions) of physical, sexual, psychological or economic violence committed in the family or within the place of residence or between relatives, or between past or present spouses, or between other persons who live (lived) together with one family, but are not (were not) in a family relationship or marriage with each other, regardless of whether the person who committed (lived) lives (lived), in the same place as the injured person, as well as threats to commit such acts. The term “domestic violence” has replaced the term “domestic violence” used in the repealed Law of Ukraine “On Prevention of Domestic Violence”.

In our view, the definition of threats to commit acts as a form of domestic violence does not seem entirely justified given that psychological violence includes threats and intimidation. Article 1 of the Law stipulates that a person who has suffered from domestic violence (victim) is a person who has suffered domestic violence in any form (On Prevention and Counteraction To Domestic Violence, 2017).

Progressive is the provision of the Law that a child victim of domestic violence (victim child) is not only a person who has not reached 18 years of age and has experienced domestic violence in any form, but also who has witnessed (eyewitness) such domestic violence. In addition, the rights of the injured child are defined separately, and it is emphasized that the exercise of such rights should be in the best interests of the child, his or her age, gender, health, intellectual and physical development (On Preventing And Combating Domestic Violence, 2017). This provision of the Law is in line with the provisions of the Istanbul Convention, the preamble of which recognizes that children are victims of domestic violence, including as witnesses of domestic violence. Article 26 of the Convention imposes an obligation on States parties to aid children who witness domestic violence. The term “child witnesses” refers not only to those children who were present during the violence and became active witnesses to what was happening, but also to those who heard howls and other noise from their hiding places, or those who became hostages of long-term consequences of such violence proceedings (On Prevention And Counteraction To Domestic Violence, 2017).

The understanding of sexual violence has changed significantly. Thus, if earlier sexual violence was considered an unlawful encroachment on the sexual integrity of another family member, now it is any act of a sexual nature, the key is the concept of “consent”. In the note to Art. 152 of the Criminal code of Ukraine the consent is recognized as voluntary as a result of free will to enter into sexual intercourse or carrying out actions of sexual character (Criminal Code Of Ukraine, 2001). The issue of consent must be considered in conjunction with the accompanying circumstances and in accordance with the rules of criminal procedure. Also, according to Ukrainian law, sexual violence differs from rape in that it is not related to penetration into the partner’s body. It does not matter whether such an act was committed with the help of genitals or any other objects.

The Law also defines the list of rights of victims of domestic violence, as well as establishes the types of assistance and protection provided to such persons. The age, health, gender, religious beliefs, ethnic origin, and special needs of such persons are taken into account when providing assistance and protection to victims. Assistance to victims is provided at the place of application and does not depend on the application to law enforcement agencies or the court, on their participation in criminal or civil proceedings (On The Prevention And Combating Of Domestic Violence).

It is important from the point of view of the researched problem that the Law of Ukraine “On Prevention and Counteraction to Domestic Violence” expands, in comparison with the previous legislation, the system of measures to counteract domestic violence. Special measures to combat domestic violence include: an urgent injunction against the perpetrator; restrictive injunction against the offender; taking on preventive maintenance of the offender and carrying out preventive work with him; referral of the offender to the program for offenders (On Prevention And Counteraction To Domestic Violence, 2017). It is seen that the most prompt and effective measures to combat domestic violence will be an urgent injunction and a restraining order against the perpetrator. The other two measures are aimed both at combating violence and at re-educating and correcting the offender.

It should be noted that with the help of the Law of Ukraine “On Prevention and Counteraction to Domestic Violence” Ukraine, declaring zero tolerance for domestic violence and recognizing its social danger, introduced new approaches to combating this social phenomenon and introduced such a new legal instrument - a restrictive prescription. In deciding whether there are grounds for issuing a restraining order, courts should establish what forms of domestic violence the applicant has been subjected to and assess the risks of future domestic violence in any form.

Thus, the analysis of the provisions of the Law of Ukraine “On Prevention and Counteraction to Domestic Violence”, as well as the practice of its law

enforcement, that the adoption of this legal act will undoubtedly contribute to: combating discrimination on the basis of gender; prevention of all forms of domestic violence against women; introduction of additional measures aimed at creating preventive and protective mechanisms to combat all forms of domestic violence, in particular gender-based violence, violence against children; providing additional guarantees for the protection of the right to equality between men and women, parents and children, removal of legal provisions that cause discrimination; improving legal remedies for victims of domestic violence.

Conclusions

Thus, the effectiveness of state policy to protect victims of domestic violence and other illegal actions is primarily based on the effectiveness of the law, depends on the operation of the entire mechanism of legal regulation and is determined by the level of achievement, adequacy between planned and achieved.

The similarity of the laws governing the prevention and combating of domestic violence in Europe is not only a desire to implement the provisions of the Istanbul Convention, but also common social values that are protected - health and life, peace and well-being of the family and more. Undoubtedly, the European experience should be studied and analyzed in our country in order to avoid possible mistakes and implement useful developments in overcoming domestic violence in Ukraine. The introduction of modern forms and methods of combating domestic violence, based on international best practices, requires the development of an appropriate system for monitoring not only the effectiveness of legislation, but also monitoring the effectiveness of actors implementing measures to prevent and combat domestic violence. The criterion for the effectiveness of these actors may be an increase in the total number of complaints about domestic violence, which will increase confidence in the system of actors implementing measures to prevent and combat domestic violence, increase their awareness of the possibility of assistance and reduce the overall tolerance of violence in society.

Despite the deep doctrinal development of the basics of prevention policy, it has not been consolidated in Ukraine at the conceptual level. Today, at the conceptual level, there is an urgent need to develop and approve at the state level the concept of crime prevention, the adoption of the Law of Ukraine "On Crime Prevention", theoretical substantiation and consolidation at the normative level of the system and types of crime prevention measures, procedures for their implementation. Ukraine should take all possible measures to ratify the Council of Europe Convention on Preventing and

Combating Violence against Women and Domestic Violence. By ratifying the Istanbul Convention, Ukraine will be able to receive specialized support from the Council of Europe and the international community on these issues.

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