

DOI <https://doi.org/10.61345/2734-8873.2024.1.7>

DOMESTIC VIOLENCE: CURRENT ISSUES THROUGH THE PRISM OF LEGISLATIVE CHANGES

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Annotation. The article is devoted to the study of a problem that is an urgent and negative manifestation of public life not only in Ukraine but also in most foreign countries. Domestic and gender-based violence is one of the most widespread violations of constitutional human rights and freedoms, which not only causes physical pain and moral suffering, but also undermines the sense of security of a person; it is a global problem that daily harms the most valuable human goods - honor, dignity, life and well-being.

For Ukraine, as well as for many other countries around the world, this problem is quite acute, so the international community is trying to actively counteract all forms of violence. Violence remains a global phenomenon that causes devastating losses at the social, economic and national level, with domestic violence being a particularly negative form of it. Ukrainian legislation has its own tools for the prevention and fair punishment of such torts, which are reflected in the Law on Preventing and Combating Domestic Violence adopted in 2018 and the relevant amendments to the Criminal Code of Ukraine. Thus, Article 126-1 of the Criminal Code of Ukraine was added to the criminal law, which stipulates that domestic violence is the intentional systematic commission of physical, psychological or economic violence against a spouse or former spouse or another person with whom the perpetrator is (was) in a family or close relationship, which leads to physical or psychological suffering, health disorders, disability, emotional dependence or deterioration in the quality of life of the victim.

However, in Ukraine, since the outbreak of full-scale war, law enforcement attention has naturally shifted to war crimes, and the challenges of domestic and gender-based violence have been relegated to the background.

With the ratification of the Istanbul Convention, the country faces the problem of standardizing national regulations, which Ukrainian lawmakers have the opportunity to improve guided by international means of overcoming

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and combating domestic violence. Such mechanisms can be implemented, in particular, through changes in national legal acts related to combating violence. First of all, we are talking about the Law of Ukraine of January 4, 2018 "On Preventing and Combating Domestic Violence". For the comprehensive and productive fulfillment of Ukraine's obligations, it is worth focusing on certain gaps that, in our opinion, exist in the relevant law, namely: identification of gender-based violence and introduction of the concept of "gender" in procedural acts to overcome the so-called "gender blindness" and the conflict of variability of domestic violence and the degree of responsibility for each of its types in terms of recognizing the systematic nature of acts.

Key words: gender-based violence, domestic violence, Istanbul Convention, problems of law enforcement, criminalization of acts

Problem statement. Domestic and gender-based violence is an urgent problem of our time, which until recently was considered a private issue and to which the State did not pay due attention. The modern legal system should adequately and timely respond to the development and functioning of various social challenges, threats and phenomena. Moreover, the improvement of the organizational and legal framework for combating violence should be ensured in line with the trends in international law and legislation. By ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Ukraine has committed itself to protecting, prosecuting and eliminating all forms of violence against women (men and children, boys and girls) and domestic violence.

Analysis of recent research and publications. The relevance of the proposed topic is due to the growing level of violence against women, domestic violence and, as a result, the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence. Certain issues of improving criminal law counteraction to domestic violence and gender-based violence have been studied in the works of such scholars as O.M. Bandurka, A.B. Blaga, T.I. Bugayets, I.V. Hloviuk, B.M. Holovkin, O.M. Dzhuzha, M.V. Zmysla, O.M. Kostenko, R.V. Perelygina, O.V. Stepanenko and other scholars. However, the authors did not cover the problematic aspects faced by society in law enforcement and rulemaking practice.

The purpose of the article is to study and find ways to address the problematic aspects of domestic violence arising in the course of law enforcement practice in connection with Ukraine's ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence.

Summary of the main material. Violence remains a global phenomenon that causes devastating losses at the social, economic and national level, and domestic violence is a particularly negative form of it. Ukrainian legislation has its own tools for the prevention and fair punishment of such torts, which are expressed in the Law on Prevention and Counteraction to Domestic Violence (*hereinafter - the Law of Ukraine*) adopted in 2018 [1] and the relevant amendments to the Criminal Code of Ukraine (*hereinafter - the CC of Ukraine*). Thus, Article 126-1 of the Criminal Code of Ukraine was added to the criminal

law, which stipulates that domestic violence is the intentional systematic commission of physical, psychological or economic violence against a spouse or former spouse or another person with whom the perpetrator is (was) in a family or close relationship, which leads to physical or psychological suffering, health disorders, disability, emotional dependence or deterioration in the quality of life of the victim [2].

In Ukraine, since the outbreak of full-scale war, law enforcement attention has naturally shifted to war crimes, and the challenges of domestic and gender-based violence have been relegated to the background. This is emphasized by M. Zmysla, citing statistics from the National Police of Ukraine, which shows that the increase in reports of domestic violence in 2022 was 40% higher than in 2021 [3]. And such dynamics were recorded at the time of the final ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (*hereinafter - the Convention*) by the Law of Ukraine of June 20, 2022. This negative trend in the number of cases of domestic violence during the Russian-Ukrainian war may be based on the myth that Ukrainian legislation on domestic violence is perfect. However, this thesis significantly limits the progressive development of Ukrainian legislation in the field of violence, and therefore it is worth paying attention to the factual arguments of E. Kuzmenko and O. Holub, who provide examples of promising changes in the Ukrainian legal field due to the obligations imposed by the Convention, the possibility of adopting international experience and prospects for interaction with the community of signatories to the Convention [4].

At its core, the Convention is an international legal instrument on violence against women and domestic violence, and each of its provisions is defined by the leading goal of preventing violence, assisting victims and ensuring accountability of perpetrators. An effective mechanism for achieving the Convention's goal is to focus on violence as a crime that manifests itself in domestic violence, forced marriage, sexual violence and rape, genital mutilation and harassment, which must be put to an end. The Convention also opposes attempts to:

- a) confining women and men to traditional roles, thereby limiting their personal, educational and professional development and opportunities for life in general;
- b) justification and preservation of patriarchy, historical relations of power of men over women, as well as sexist views that hinder the promotion of gender equality [5, p. 10].

Accordingly, guided by international means of overcoming existing problems, Ukrainian lawmakers have the opportunity to improve effective mechanisms for combating domestic violence. In our opinion, such mechanisms can be implemented, in particular, through changes in national legal acts related to combating violence. First of all, we are talking about the Law of Ukraine of January 4, 2018 "On Preventing and Combating Domestic Violence", which contains a list of types of domestic violence: psychological, economic, physical and sexual; specifies the specifics of the subjects of domestic violence; provides for mechanisms for deterring and preventing domestic violence, etc.

This legal act can already be considered a valuable achievement of Ukrainian lawmakers in the field of addressing the objectives of the Convention, but for the comprehensive and productive fulfillment of Ukraine's obligations, it is worth focusing on certain gaps that, in our opinion, exist in the relevant law:

First, identification of gender-based violence and introduction of the concept of gender into procedural acts to overcome the so-called «gender blindness». Article 6 of the Convention provides for the state's obligation to incorporate a gender perspective. Long before the ratification of the Convention, namely on November 14, 2017, N. Muiznieks, the Council of Europe Commissioner for Human Rights, sent a letter to the Chairman of the Verkhovna Rada of Ukraine, A. Parubiy, urging him to facilitate the ratification of the Istanbul Convention. The letter, in particular, stated: «During my visits to the country, I have been confronted with several objections and/or misconceptions about the Convention. These arguments can be summarized and countered as follows: some critics recognize that violence against women is a problem, but want to prevent the authorities from challenging traditional gender roles and stereotypes due to the cultural belief that men and women should play different roles in public life and in the family. This approach restricts women to the stereotypical role of a mother, which is limited to giving birth and staying at home to take care of children» [6].

Given the current Law of Ukraine «On Ensuring Equal Rights and Opportunities for Women and Men» [7], there are grounds to assert that the above-mentioned gender norm is fully implemented, but this thesis is shattered by the realities and indicators of the gender gap in Ukraine, in particular in the social and economic spheres, as well as prejudice against women and men at the political, cultural and everyday levels. Gender refers to the socially assigned roles, behaviors, activities and characteristics that a society considers appropriate for women and men [8, p. 13]. In our opinion, the first step and a progressive mechanism for change can be the introduction of the facts of any type of domestic violence against the victim as a gender representative, not just a wife or mother of common children, in the plots of court decisions under Article 126-1 of the Criminal Code of Ukraine, as exemplified by the verdict of the Khust District Court of the Zakarpattia region No. 303/488/22: «...started a quarrel with his mother, in the presence of her husband, witness PERSON_7, during which he insulted the victim with foul language humiliating her as a woman and mother, thereby harming the victim's mental health" [10].

So, the above fragments of the operative parts of court decisions emphasize the gender aspect and take into account that, first of all, when psychological or any type of violence is committed against a victim, humiliation is directed at her as a woman. Such a practical implementation will be able to clarify the situation and represent the real indicators of «gender blindness» and the gender gap in the country!

Secondly, another aspect that requires regulatory and practical improvement is the conflict between the variability of domestic violence and the degree of responsibility for each of its types. The fact is that crimes of domestic violence are also qualified according to the systematic nature of the perpetrator's

actions. According to I. Hloviuk, the system can be either repeatedly applied one of the three forms of violence specified in Article 126-1 of the CC, or a different combination of physical, psychological and economic violence against the same victim or victims. At the same time, the quantitative criterion of systematic nature as a sign of domestic violence is the commission of three or more acts of violence [11].

The Convention imposed on Ukraine the obligation to criminalize physical and psychological violence. The relevant law of Ukraine defines physical violence as a type of violence and as a component of domestic violence in general, along with psychological violence; it also provides an interpretation of economic violence. The practice of prosecuting perpetrators of domestic violence under Article 126-1 of the Criminal Code of Ukraine shows that the lion's share of judges focus on the quantitative indicator of the systematic nature of domestic violence episodes when imposing punishment. O. Stepanenko pays attention to this problem, summarizing the results of her own research, which resulted in the thesis that «...the content of the quantitative criterion of systematicity as a sign of domestic violence, Article 126-1 of the Criminal Code of Ukraine provides for the commission of an act by a person three or more times, and this set includes previous administrative prosecution. It is also important to note that if a person has already been brought to administrative responsibility for all the acts under Art. 173-2 of the Code of Administrative Offenses «Committing domestic violence, gender-based violence, failure to comply with an urgent restraining order or failure to report the place of his or her temporary stay,» then his or her repeated prosecution is under Art. 126-1 of the Criminal Code of Ukraine as the commission of systematic acts» [12].

At the same time, in law enforcement practice, the judicial system ignores the combination of psychological and economic, physical and psychological types of domestic violence. An example of this thesis is court decision 153/1361/22 of the Yampil District Court of Vinnytsia Oblast: «...Despite repeated administrative prosecutions for domestic violence and preventive measures taken by the police, PERSON_3 did not draw proper conclusions for himself and on September 04, 2022, while committing illegal actions against PERSON_5, he inflicted injuries to her in the form of an abrasion on the bridge of her nose with his fingers. On September 07, 2022, at approximately 19 hours. 00 min. PERSON_3, while intoxicated at ADDRESS_1, again committed domestic violence of a psychological, physical and economic nature against his mother PERSON_5, namely, he came to PERSON_5's house and started a verbal argument during which he used obscene and offensive words against her, threatened her with physical violence, pushed her with his hands in her body, causing her to fall to the floor, then verbally expelled her from the place of residence to the street. Fearing for herself and her health, PERSON_5 was forced to leave her home on September 07, 2022 and seek help from citizens and the police» [13].

Or the verdict of the Sadhirsy District Court of Chernivtsi726/522/22 «... Having been repeatedly brought to administrative responsibility for committing intentional unlawful acts aimed at committing domestic violence, PERSON_3

did not draw proper conclusions for himself, continued to commit domestic violence against his father PERSON_7 . 05.02.2022 at about 11 hours. 45 min. PERSON_3, while at his place of residence at ADDRESS_1, acting intentionally and purposefully, realizing the nature and consequences of his unlawful actions, wishing them to occur, with obvious signs of alcohol intoxication, committed psychological and physical domestic violence against his father PERSON_8, which consisted of expressing verbal abuse to him using profanity, threats of physical violence, pushing and pulling his clothes, which led to his psychological suffering and worsened the victim's quality of life. 23.02.2022 at about 18 hours. 00 min. PERSON_3, being at his place of residence at ADDRESS_1, acting intentionally and purposefully, realizing the nature and consequences of his unlawful actions, wishing them to occur, committed psychological and physical domestic violence against his father PERSON_7, which consisted in expressing verbal abuse to him using profanity, threats of physical violence, pushing and pulling his clothes, which led to his psychological suffering and worsened the victim's quality of life» [14].

This trend may be an echo of law enforcement agencies' neglect of individualized investigation of each case of psychological, physical and economic violence and may further lead to a devastating disregard for reports of domestic violence.

As a conclusion, in our opinion, effective mechanisms for combating domestic violence are the identification of gender-based violence and the introduction of the concept of «gender» in procedural acts to overcome the so-called «gender blindness» and the conflict between the variability of domestic violence and the degree of responsibility for each type of violence in terms of recognizing the systematic nature of the acts. That is why a successful mechanism for effective work on combating domestic violence is to strengthen the study of psychological violence separately from physical and economic violence and vice versa. This will help prevent the recurrence of criminal intentions, as the perpetrator will have awareness and fresh memory of the committed tort, and will contribute to the effective and coordinated work of law enforcement agencies.

References:

1. Pro zapobihannia ta protydiuu domashnomu nasylstvu. Zakon Ukrainy: Zakon Ukrainy [About preventing and combating domestic violence: Law of Ukraine] vid 07 hrud. 2017 r. № 2229-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2229-19#Text> (data zvernennia: 11.03.2024) [in Ukrainian].
2. Kryminalnyi kodeks Ukrainy: Zakon Ukrainy [Criminal Code of Ukraine: Law of Ukraine dated] vid 05.04.2001r. № 2341-III. URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (data zvernennia: 11.03.2024) [in Ukrainian].
3. Zmysla M. Domashnie nasylstvo kriz pryzmu viŭny. Ukraïnska pravda. 29 lystopada 2022 r. [Domestic violence through the prism of war. Ukrainian Pravda] URL: <https://life.pravda.com.ua/columns/2022/11/29/251536/> (data zvernennia: 11.03.2024) [in Ukrainian].

4. Mify i fakty pro Stambulsku Konventsiiu [Myths and facts about the Istanbul Convention]. URL: <https://rm.coe.int/ukr-2020-brochure-ic-myths-and-facts-ukr-25112020/1680a07ee9> (data zvernennia: 11.03.2024) [in Ukrainian].
5. Konventsiiia Rady Yevropy pro zapobihannia nasyilstvu stosovno zhinok i domashnomu nasyilstvu ta borotbu z tsymy yavyshchamy (Stambulska konventsiiia): zapytannia ta vidpovidi [Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention): questions and answers].2023, 11 s. [in Ukrainian].
6. Yevropeyskyi sud z prav liudyny. Sprava Levchuk proty Ukrainy: URL: <http://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-207637%22%7D> [European Court of Human Rights. The case of Levchuk v. Ukraine] (data zvernennia: 11.03.2024) [in Ukrainian].
7. Pro zabezpechennia rivnykh prav ta mozhlyvostei zhinok i cholovikiv: Zakon Ukrainy vid 08 ver. 2005 r. № 2866-IV. [On ensuring equal rights and opportunities for women and men: Law of Ukraine] URL: <https://zakon.rada.gov.ua/laws/show/2866-15#Text> (data zvernennia: 11.03.2024) [in Ukrainian].
8. Konventsiiia Rady Yevropy pro zapobihannia nasyilstvu stosovno zhinok i domashnomu nasyilstvu ta borotbu z tsymy yavyshchamy. [Council of Europe Convention on preventing and combating violence against women and domestic violence] URL: https://zakon.rada.gov.ua/laws/show/995_004#Text (data zvernennia: 11.03.2024) [in Ukrainian].
9. Vyrok Khustskoho raionnoho sudu Zakarpatskoi oblasti № 309/3250/21. [Verdict of the Khust District Court of Zakarpattia Region No. 309/3250/21] URL: <https://reyestr.court.gov.ua/Review/103587759> (data zvernennia: 11.03.2024) [in Ukrainian].
10. Vyrok Mukachivskoho miskraionnoho sudu Zakarpatskoi oblasti № 303/488/22 [Verdict of the Mukachevo City and District Court of Zakarpattia Oblast No. 303/488/22] URL: <https://reyestr.court.gov.ua/Review/103332003> (data zvernennia: 11.03.2024) [in Ukrainian].
11. Hloviuk I. Kryminalni pravoporushennia, pov'iazani z domashnim nasyilstvom: kvalifikatsiia ta dokazuvannia. [Criminal offenses related to domestic violence: qualification and proof].URL: <https://www.hsa.org.ua/lectors/glovyuk-iryna/articles/kryminalni-pravoporushennia-poviazani-z-domashnim-nasyilstvom-kvalifikatsiia-ta-dokazuvannia> (data zvernennia: 11.03.2024) [in Ukrainian].
12. Stepanenko O.V. Kilkisnyi kryterii systematychnosti yak oznaky domashnoho nasyilstva. Pravove zhyttia suchasnoi Ukrainy: u 3 t.: materialy Mizhnar. nauk. -prakt. konf. (m. Odesa, 15 trav. 2020 r.) Odesa: Helvetyka, [Quantitative criterion of systematicity as a sign of domestic violence. Legal life of modern Ukraine] 2020. S. 136–139. [in Ukrainian].
13. Vyrok Yampil'skoho raionnoho sudu Vinnytskoi oblasti № 153/1361/22. [Verdict of Yampil district court of Vinnytsia region No. 153/1361/22]

URL: <https://reyestr.court.gov.ua/Review/107074076> (data zvernennia: 12.03.2024) [in Ukrainian].

14. Vrok Sadhirskoho raionnoho sudu m. Chernivtsi № 726/522/22. [Verdict of the Sadhirsky District Court of Chernivtsi No. 726/522/22]. URL: <https://reyestr.court.gov.ua/Review/107935156> (data zvernennia: 12.03.2024) [in Ukrainian].