

Challenges in adoption of domestic violence legislation in Ukraine and ensuring its effective implementation

Проблеми прийняття законодавства про домашнє насильство в Україні та забезпечення його ефективного впровадження

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domestic violence, combating domestic violence, Council of Europe Convention on Prevention and Combating Violence against Women and Domestic Violence, mobile team, police mobile team.

Ключові слова:

домашнє насильство, боротьба з насильством у сім'ї, Конвенція Ради Європи про запобігання та боротьбу з насильством щодо жінок та домашнього насильства, мобільна команда, мобільна поліція.

Combating domestic violence and violence against women is important direction of the Gender Equality Policy and one of the priorities of the Ukrainian Government, reflected in the Action Plan on Implementation the Association Agreement between Ukraine and European Union, adopted by Cabinet of Ministers of Ukraine in October 2017, Government Decree № 1106¹.

Scientific interest to the domestic violence is connected with wide dissemination of domestic violence in Ukrainian society and necessity to find the ways to combat this crime. In 2018, the National Police of Ukraine received 115 473 appeals related to domestic violence. The article is dedicated to the overview of the main legislative documents, adopted by Ukrainian Government in 2018, the analysis of their practical implementation and formulation the main problems and obstacles in this area with the aim to propose the proper solution.

The Action Plan includes among others such tasks as: supporting ratification of the Council of Europe Convention on the Prevention and Combating of Violence against Women and Domestic Violence (Istanbul Convention) (para. 22); improvement of mechanisms and procedures for investigating and prosecuting human rights violations, in particular those related to domestic, gender and sexual violence, ensuring support to the Law of Ukraine "On Amendments to the Criminal and Criminal Procedural Codes of Ukraine in order to implement the provisions of the Council of Europe Convention on Prevention and Combating of Violence against Women and Domestic Violence" (para. 54); conducting interim assessment of the implementation status of the National Plan of Action on implementation of the UN Security Council Resolution 1325 "Women, Peace, Security" for the period up to 2020 and making proposals to improve the activities of the authorities responsible for the implementation of the National Action Plan (para. 56) and others.

In September 2018, Cabinet of Ministers of Ukraine adopted the updated NAP on UNSCR 1325 which was based on the results of evaluation and extended the circle of responsible actors (Ministry of Temporary occupied Territories), included new issues (preventing and combating conflict related sexual violence), concretized some tasks and actions according to the new demands.

In December 2017, the Laws "On Preventing and Combating Domestic Violence" and "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine to Implement the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence"² were adopted by Ukrainian Parlia-

¹ Про виконання Угоди про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони : Постанова Кабінету Міністрів України від 25 жовтня 2017 р. № 1106 / Кабінет Міністрів України. URL: http://search.ligazakon.ua/l_doc2.nsf/link1/KP171106.html.

² The Law "On Preventing and Combating Domestic Violence" entered into force in January 2018. Changes to the Criminal and Criminal Procedural Code – in January 2019 what gave opportunity to be prepared to implement crucial changes.

ment³. As result – the year 2018 has become a year of intensive legislative activity, developing and conducting training courses for different groups of specialists, public discussions around some legislative novels and informative campaigns aimed on raising awareness of different target groups and society in whole.

The next by-law legal acts were developed and adopted to enforce the legal rules in 2018:

- the Cabinet of Ministries of Ukraine (CMU) Resolution “On approving the Procedure for liaison between entities implementing measures in the field of preventing and combating domestic violence and gender-based violence” (№ 658 dated August 22, 2018);
- the CMU Resolution “On approving the Standard Regulations for domestic violence and/or gender-based violence shelter” (№ 655 dated August 22, 2018);
- the CMU Resolution “On approving the Standard Regulations for mobile psychosocial support team to provide psychosocial assistance to victims of gender-based and/or domestic violence” (№ 654 dated August 22, 2018);
- the Order of the Ministry of Internal Affairs “On approving the Procedure for issuance of urgent restraining orders against offenders by the authorized subunits of the National Police of Ukraine” (№ 654 dated August 1, 2018);
- the CMU Order “On approving the Concept of state social programme for preventing and combating domestic violence and gender-based violence” (№ 728-r dated October 10, 2018);
- the Order of the Ministry of Education and Science of Ukraine “On approving the Regulations on the psychological service in Ukraine’s education system” (№ 509 dated May 22, 2018 and registered at the Ministry of Justice at № 885/32337 on July 31, 2018) and others.

These documents are based both on the holistic approach towards assistance to victims and on the principle of interagency cooperation between main actors – police, social workers, prosecutors, bar associations, educational, health protection and social institutions, judges, local authorities and NGOs. As the result of this activity, Ukraine already has strong legislative basement to prevent and combat violence against women and domestic violence. Developing the legislation is still ongoing process and multidisciplinary working group as well as specialists from different governmental institutions, international and non-government organizations continue their work. Among new coming documents – the Order on Risks Assessment in cases of Domestic Violence adoption of which is a crucial condition for the issuance of urgent restraining orders against offenders by the authorized subunits of the National Police of Ukraine.

In 2018, police, social services and other ministries have been established the cooperation to combat domestic violence. As example of the implementation the Resolution on Mobile team regulation, operation of 49 mobile teams has been organized in 12 Ukrainian oblasts by the Ministry of Social Policy together with “Ukrainian Foundation for Health Rights” and oblast state administrations, with the support of the UNFPA Office in Ukraine. Each mobile team includes a social worker, two psychologists and has been provided with vehicles to reach people in need. In during six months of 2018 assistance has been provided to more than 16 thousand people, 90% of them – women. In case of necessity of legal consultation, free legal aid system and its Coordination Center for Legal Aid Provision play important role in improving victim’s access to justice. There are wide network of such centers and bureaus in Ukraine.

In order to ensure better access to information and services for victims of domestic violence, the National Toll Free Hotline for prevention of domestic violence, human trafficking and gender discrimination has been maintained 24/7 by Civil Society Organisation “La Strada-Ukraine” with the support of international organisations, including UNFPA and other donors. All consultations provided at the Hot Line are anonymous and confidential. The Hot Line is a part of the national referral mechanism in providing assistance to suffered from domestic violence. In 2018 – 22 542 consultations were given at the Hot Line. Among them requests regarding domestic violence – 97,8% of the total number of calls. Among those who call – 81,9% women, 18,1% – men.

Psychological and legal support is very important for victims of violence. But some of them ought to leave their houses to keep themselves and children in safe environment. For such cases, shelters are needed. It is not a secret, that lack of places in shelters for victims of violence or absence of the shelters in some regions was and still is a big problem in Ukraine. To solve this problem in 2017–2018 seven shelters for women – victims of

³ The Council of Europe CETs 210 Convention on Prevention and Combating Violence against Women and Domestic Violence (Istanbul Convention) is not ratified by Ukraine (March, 2019) (Chart of signatures and ratifications of Treaty 210. Council of Europe Convention on preventing and combating violence against women and domestic violence. Status as of 16.07.2019. URL: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>).

violence have been set up in Kharkiv, Kryvyi Rih, Berdyansk, Slovyansk, Mariupol, the Lozivsky District in the Kharkiv Oblast, and the Vinnytsia District with support of Government, International Organizations and local authorities. Regionally these shelters are located in East part of Ukraine – region with high number of Internally Displaced Persons suffered from Russian Aggression in Donetsk and Lugansk regions and Crimea⁴.

The last but not least example – Polina – Police Mobile Groups against Violence. In 2017, the Ministry of the Interior established the mobile groups to combat domestic violence named “POLINA” (Police against Violence) in three regions of Ukraine. The team includes police officers from various units with experience on the counteracting domestic violence (patrol police, district police officers, and juvenile inspectors). In 2018, operation of the POLINA network expanded to 12 oblasts of Ukraine. The key objectives of the project include: introduction of new forms and current practice of responding to domestic violence, identification and elimination of drawbacks in cooperation with units of the National Police or other entities working in the field of preventing and combating domestic violence, development of response algorithms in these instances, development and introduction of training curricula for police officers to teach them the latest techniques and forms of preventing and combating domestic violence, improved technical capacity of the National Police units operating in this field, as well as supply of information materials on preventing and combating domestic violence to police officers. In the second half of 2019, it is planned to launch mobile groups POLINA in all regions of Ukraine. As result of this decision, 450 police officers were selected to work in 45 Police mobile groups in each region of Ukraine.

On the background of the best practices in developing activity on combating domestic violence it is important to stress the existing problems of implementation process of already adopted legislation. One of the main difficulties is connected with the lack of knowledge and understanding of the problem of domestic violence and violence against women, lack of individual capacity, and strong gender stereotypes among different categories of specialists and society in whole. The assessment conducted in 2017 by DCAF – Geneva Centre on Democratic Control on Armed Forces, La Strada-Ukraine in cooperation with National Police, National Academy for prosecutors and National School of Judges gives base for conclusion, that gender stereotypes and negative attitudes toward victims of domestic violence and violence against women present in Ukrainian society are thus present within the criminal justice system as well. Some tendencies were: minimize the importance of phenomenon of domestic violence and violence against women – 39% of the criminal justice practitioners surveyed in 2017 believe domestic violence a private matter; blame victims for their own victimization – 60% of the criminal justice practitioners surveyed believe victims of sexual assault are sometimes responsible for their own victimization; approach cases of domestic violence and violence against women with scepticism and distrust of victims – 58% of the criminal justice practitioners surveyed believe that, in most cases, domestic violence reports made to police are false⁵. Prior to the reform of the Ministry of Internal Affairs, very little attention was devoted to the problems related to gender-based violence and domestic violence. These issues were considered as a minor problem and a non-serious matter. The victims could wait for a police officer for weeks. Police officer just compiled a report on the violation and left victim. Then in a meantime the protocol was sent to court.

As assessment’s authors concluded, “these attitudes, built on stereotypes, not only mitigate the willingness of police officers, prosecutors, and judges to address domestic violence and violence against women but impact criminal justice practice generally and taint court decisions”⁶.

That is why intensive trainings for different groups of specialists from criminal justice system and social workers are so important for effective implementation of adopted legislation. Look at some examples.

Preventing and combating domestic violence has been included in the functions of practical psychologists and social care teachers at educational institutions.

Thematic trainings on the instances of domestic and gender-based violence have been conducted for representatives of the free legal aid system, for the 102 police hotline operators, patrol police and district police inspectors.

⁴ Council of Europe Gender Equality Strategy 2018–2023: First Year of Implementation in Ukraine (October 2017 – October 2018). Kyiv : Office of Council of Europe in Ukraine, 2018. 30 p.

⁵ Assessment of the Readiness of the Ukrainian Criminal Justice System to Implement the Principles of the Istanbul Convention / K. Cherepakha, A. Laferté, K. Levchenko, M. Legenka, M. Socquet-Juglard, H. Huhtanen. Geneva : DCAF, 2017. P. 8.

⁶ Assessment of the Readiness of the Ukrainian Criminal Justice System to Implement the Principles of the Istanbul Convention / K. Cherepakha, A. Laferté, K. Levchenko, M. Legenka, M. Socquet-Juglard, H. Huhtanen. Geneva : DCAF, 2017. P. 8.

The lecture “The role of public prosecutors in combating domestic violence” has been developed by the National Prosecution Academy of Ukraine in cooperation with DCAF, La Strada-Ukraine (in the framework of the EU Project “PRAVO – JUSTICE”) and EUAM support, and is to be integrated into the permanent educational process. Legislative changes in the field of preventing and combating domestic violence were discussed with specialists of newly created State Investigative Bureau as well.

The National School of Judges developed and implemented training course for judges “Peculiarities of the considering cases related to domestic violence”. This activity was conducted in cooperation with DCAF, La Strada-Ukraine (in the framework of the EU Project “PRAVO – JUSTICE”) and support of the USAID – New Justice Project. 25 trainers-judges – representing all regional divisions of the NSJ – were prepared during the ToTs held in 2018. More than 260 judges passed this training course in 2018. Since 2019 this course is planned to be obligatory for judges and candidates for judges in the system of preparing and improving qualification. Due to the Regional Project ‘Strengthening Access to Justice for Women Victims of Violence in the Six Eastern Partnership Countries’, a CoE initiative implemented via bilateral work with national authorities and regional exchange as well as in the development and promotion of a new online e-learning course on women’s access to justice that targets judges, prosecutors, lawyers, and civil society advocates.

Since September 2018 to April 2019, selected police officers undergo specialized training supported by the OSCE and the UNFPA. Importance of training became high due to changing the law and criminalization of domestic violence since January 2019 and not only for police, but all main actors in the field of prevention and combating domestic violence. With the financial support of the OSCE PCU and the European Union Advisory Mission, training on the topic of “Ways of preventing and combating domestic violence” was organized for members of these mobile teams. As it is seen, cooperation between governmental and educational institutions and international donors and organizations as well as civil society organizations is a crucial factor of the effectiveness of the training courses developing and conducting and strengthening capacities of the criminal justice sector actors.

Summary

Combating domestic violence and violence against women is important direction of the Gender Equality Policy and one of the priorities of the Ukrainian Government, reflected in the Action Plan on Implementation of the Association Agreement between Ukraine and European Union, adopted by Cabinet of Ministers of Ukraine in October 2017, Government Decree № 1106. Scientific interest to the domestic violence is connected with wide dissemination of domestic violence in Ukrainian society and necessity to find the ways to combat this crime. So, in 2018, the National Police of Ukraine has received 115 473 appeals related to domestic violence. The article is dedicated to the overview of the main legislative documents, adopted by Ukrainian Government in 2018, the analysis of their practical implementation and formulation of the main problems and obstacles in this area with the aim to propose the proper solution. The year 2018 has become a year of intensive legislative activity, developing and conducting training courses for different groups of specialists, public discussions around some legislative novelties and informative campaigns aimed on raising awareness of different target groups and society in whole. As the result of this activity, Ukraine already has strong legislative basement to prevent and combat violence against women and domestic violence. At the same time, there are the problems on the way of implementation of already adopted legislation. Among others author stresses the lack of resources, lack of knowledge and understanding the problem of domestic violence and violence against women, lack of institutional and individual capacity, and strong gender stereotypes among different categories of specialists and society in whole. The author has concluded that intensive trainings for different groups of specialists are so important for effective implementation of adopted legislation and has presented the best practices of such activity.

Анотація

Боротьба з насильством у сім’ї та насильством щодо жінок є важливим напрямом політики гендерної рівності та одним із пріоритетів українського уряду, що відображений у Плані заходів щодо виконання Угоди про асоціацію між Україною та Європейським Союзом, ухваленого Кабінетом Міністрів України в жовтні 2017 р. (постанова уряду № 1106). Науковий інтерес до проблеми домашнього насильства пов’язаний із

високим рівнем поширення домашнього насильства в українському суспільстві та з необхідністю пошуку шляхів боротьби із цим злочином. Так, у 2018 р. Національна поліція України отримала 115 473 скарги щодо насильства в сім'ї. Статтю присвячено огляду основних законодавчих документів, прийнятих урядом України у 2018 р., аналізу їх практичної реалізації та формулюванню основних проблем і перешкод у цій сфері з метою запропонувати належне рішення. 2018 р. став роком активної законодавчої діяльності, розроблення та проведення навчальних курсів для різних груп фахівців, публічних дискусій стосовно деяких законодавчих новел, а також інформаційних кампаній, спрямованих на підвищення обізнаності різних цільових груп і суспільства загалом. У результаті цієї діяльності Україна має сильне законодавче підґрунтя для запобігання насильству щодо жінок і домашньому насильству та боротьби із цими явищами. Водночас постають проблеми на шляху реалізації вже прийнятого законодавства. Серед них автор називає брак ресурсів, недостатній рівень знань і розуміння проблеми домашнього насильства та насильства над жінками, відсутність інституційних та індивідуальних можливостей, а також сильні гендерні стереотипи серед різних категорій фахівців і в суспільстві загалом. Автор дійшов висновку про те, що інтенсивні тренінги для різних груп фахівців дуже важливі для ефективної реалізації прийнятого законодавства, та представив світовий досвід такої діяльності.

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