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აბსტრაქტი

სტატია უკრაინის საკანონმდებლო დებულებების ანალიზზე დაყრდნობით განიხილავს სახელმწიფო პოლიტიკის მიმართულებებს ოჯახური ძალადობის თავიდან აცილებისა და დამარცხების კუთხით. დადგენილია, რომ ოჯახური ძალადობის თავიდან აცილება და დამარცხება ხორციელდება სახელმწიფოს მიერ უზრუნველყოფილი მრავალფეროვანი მარეგულირებელი მექანიზმების მეშვეობით. გამოვლენილია ოჯახური ძალადობის თავიდან აცილებისა და დამარცხების სფეროში სახელმწიფო პოლიტიკის ორგანიზაციული და სამართლებრივი საფუძველი და დახასიათებულია ოჯახური ძალადობის სუბიექტები უკრაინაში.

საკვანძო სიტყვები: პრევენცია, წინააღმდეგობა, ძალაუფლება

STATE POLICY IN THE FIELD OF PREVENTING AND COMBATING DOMESTIC VIOLENCE IN UKRAINE

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ABSTRACT

The article considers the directions of state policy in the field of preventing and combating domestic violence based on the analysis of the provisions of the legislation of Ukraine. It has been established that combating and preventing domestic violence is carried out through a wide range of regulatory tools provided by the state. The organizational and legal foundations for implementing state policy in combating domestic violence sphere are revealed and the subjects of combating domestic violence in Ukraine are characterized.

KEYWORDS: Prevention, Counteraction, Powers

The provisions of the national legislation indicate that the state policy in the field of preventing and combating domestic violence is one of the priorities of the state-legal policy of Ukraine since by taking care of the family, the nation takes care of its future. The study of this issue, given all its modern specifics, determined the relevance of the chosen topic.

Legal regulation of state policy in the field of preventing and combating domestic violence is a set of legislative and other legal acts that regulate the activities of authorised state authorities, local governments, non-governmental institutions, organisations, as well as the society in the field of preventing, detecting and stopping the facts of violence on the family and domestic grounds, bringing the guilty to the responsibility established by law¹.

A. E. Babenko defined the state policy in the field of preventing domestic violence as

1. a systematically developed and formalised, delimited by levels and tasks of the subjects of its implementation, a set of measures aimed at increasing the level of social protection of families, especially those with children;
2. creation of optimal socio-economic conditions for the formation, development of full-fledged and self-sufficient functioning of the family and the upbringing children;
3. the formation of a culture of family relations, increasing the responsibility of parents for the family and for the upbringing children. From his perspective, the state policy in this area covers not only legal but also social, medical, cultural, economic and other measures. These

facts imply participation in a wide range of subjects including authorities, educational institutions, healthcare, and law enforcement agencies at its practical implementation².

In particular Art. 2 the Law of Ukraine "On Preventing and Combating Domestic Violence" dated 07.12.2017 No. 2229-VIII provides that this legislation consists of the Constitution of Ukraine, international treaties, the consent to be bound by which is provided by the Supreme Soviet of Ukraine, this Law and other legal acts on prevention of violence.

Thus, the main legislative document declaring the principles of legal regulation in the sphere of prevention and combating domestic violence is the Constitution of Ukraine. Although the Basic Law of Ukraine does not mention the prevention and combating of domestic violence, however, it declares several provisions, the implementation of which should be directed by legislative acts. In particular, according to part 1 of Art. 28 and part 1 of Art. 29 of the Constitution of Ukraine, no one may be subjected to torture, cruel, inhuman, or degrading treatment or punishment. Every person has the right to liberty and security of person. However, despite the constitutional provisions, the state is not always able to fully provide them, thereby the problem of domestic violence has not been fully resolved. Among the international treaties of Ukraine that can be attributed to the sphere of prevention and combating domestic violence, it is advisable to highlight the following:

1. Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others;
2. Convention for the Protection of Human Rights and Fundamental Freedoms;

1 Bilichenko, V., 2018. The Role of the Police in Social Security in Case of Violence. Prykarpatyya Legal Bulletin, Vip. 3 (24), p. 118.

2 Babenko, O. E., 2009. State Policy of Ukraine in the Sphere of Prevention of Family Violence. Problems of Jurisprudence and Law Enforcement Activity: coll. of science pr., 3. p. 107.

3. International Covenant on Civil and Political Rights;
4. United Nations Convention on the Elimination of All Forms of Discrimination against Women and others.

If the victim is a child, then any actions aimed at protecting him are based on the principles defined by the UN Convention on the Rights of the Child, the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse, the European Convention on the Exercise of Children's Rights and legislative acts of Ukraine in the field for protection of the children's rights.

In the context of this study, it is appropriate to point out that the European Court of Human Rights' practice has contributed much to the formation of European standards in the area of combating and preventing domestic violence. The problem of domestic violence ceased to be considered private and began to be considered a global one due to the decisions of the European Court of Human Rights. For example, in *Opuz v. Turkey*, domestic violence was recognised as a violation of fundamental human rights such as the right to life and the right to live free from inhuman or degrading treatment. In the case "*Bevacqua and S. v. Bulgaria*", for the first time at the level of the European Court of Human Rights, it was declared that domestic violence is not a private problem of a particular family, therefore, is a public problem, and the improper response of state bodies to this problem constitutes a violation of Art. 8 of Convention for the Protection of Human Rights and Fundamental Freedoms³.

Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence is an important direction in improving

the effectiveness of state policy in the field of preventing and combating domestic violence. The European Union and 44 countries signed the Convention. However, 11 of them, including Ukraine, have not ratified this agreement. The EU, the UK, Norway, Switzerland and several international organisations, in a joint statement of November 25, 2021, appealed for Ukraine to ratify the Istanbul Convention. "We call for the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, also known as the Istanbul Convention, which will strengthen the implementation of national legislation on violence against women and domestic violence. Ratification of the Istanbul Convention will encourage Ukraine to take further measures to prevent violence against women, protect victims, hold perpetrators accountable and generally adopt a comprehensive policy to stop this violation of human rights. We also recognise and support the efforts of Ukrainian women's organisations advocating for the need to ratify the Istanbul Convention," the statement says.

The signatories note that, according to studies, 67% of women in Ukraine have experienced psychological, physical or sexual violence from a partner or other person, and the coronavirus epidemic has further exacerbated the issues leading to violence. People who commit such acts do not consider their behaviour to be abnormal in general. In official data, the figures are significantly lower than the real ones, and the proportion of convictions in cases that reach trial is very low.

Although the Istanbul Convention is not in force in Ukraine yet, its requirements for the implementation of a comprehensive approach to combating domestic violence has reflected in Art. 5 of the Law of Ukraine "On Preventing and Combating Domestic Violence".

3 Yevsyukova, M., 2013. Assistance and Protection to Victims of Domestic Violence: an analysis of Council of Europe standards. *European law*, 1-2, p. 124.

lence", the state policy in the field of preventing and combating domestic violence is aimed at providing an integrated approach to overcoming domestic violence, providing extensive assistance to victims and asserting the non-violent nature of private relations. The main directions of the implementation of state policy in the field of prevention and combating of domestic violence are

1. prevention of domestic violence;
2. effective response to the facts of domestic violence by introducing a mechanism for the interaction of entities implementing measures in the field of preventing and combating domestic violence;
3. providing assistance and protection to victims, providing compensation for harm caused by domestic violence;
4. proper investigation of the domestic violence facts, bringing perpetrators to legal responsibility and changing their behaviour.

The Law of Ukraine "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine to implement the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence" establishes criminal liability for committing domestic violence, failure to comply with restrictive measures, restrictive orders or non-performance the program for offenders, also a new section on restrictive measures applied to persons who have committed domestic violence has appeared in the Criminal Code of Ukraine.

It is expedient to include acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, Ministries, etc., to other legal acts adopted in pursuance of both the laws of Ukraine and international treaties of Ukraine. Among them: the Decree of the President of Ukraine "On Approval of the National Strategy in the Sphere of Human Rights"; Resolutions of the Cabinet of Ministers of Ukraine

"On Approval of the Model Regulations on the Mobile Team of Social and Psychological Assistance to Persons Victims of Domestic Violence and/or Gender-Based Violence", "On Approval of the Model Regulations on Shelter for Persons of Domestic Violence and/or Gender-Based Violence Victims", "On Approval of the Procedure for Interaction of Entities Carrying out Measures in the Sphere of Prevention and Combating Domestic Violence and Gender-Based Violence"; Decree of the Cabinet of Ministers of Ukraine "On Approval of the Concept of the State Social Program for the Prevention and Combating of Domestic Violence and Gender-Based Violence for the Period until 2023", etc.

In summarising, the organizational and legal frameworks for the implementation of state policy preventing and combating domestic violence sphere have a branched structure, and there are the reasons to believe that they will be supplemented by new legal acts. The implementation of the above-mentioned directions of state policy in combating and preventing domestic violence presupposes the existence of an entity system carrying out activities in preventing and combating the domestic violence sphere. According to part 1 of Art. 6 of the Law of Ukraine "On Prevention and Combating of Domestic Violence" such subjects are

1. specially authorised bodies in the field of prevention and combating of domestic violence;
2. other bodies and institutions that are entrusted the functions to implementation of measures in the field of preventing and combating domestic violence;
3. general and specialised victim support services;
4. citizens of Ukraine, foreigners and stateless persons who are legally in Ukraine.

The law clearly and comprehensively provides a classification of specially authorised

bodies in the field of prevention and combating of domestic violence, which are

1. the central executive body that ensures the formation of state policy in the field of prevention and combating of domestic violence;
2. the central executive body implementing the state policy in the field of preventing and combating domestic violence;
3. the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, including their structural subdivisions, whose powers include the implementation of measures in the field of preventing and combating domestic violence;
4. village, township, city, city district (in case of their creation) councils, their executive bodies, whose powers include the implementation of measures in the field of preventing and combating domestic violence.

The list of other bodies and institutions that are entrusted with the functions of implementing measures in the field of preventing and combating domestic violence includes

1. services for children;
2. authorised subdivisions of the National Police of Ukraine;
3. educational manager authorities, educational institutions, establishment and organisations of the education system;
4. health authorities, health care institutions;
5. centres for the provision of free secondary legal assistance;
6. courts;
7. prosecutor's office;
8. authorised bodies on probation issues.

The criterion for classifying general support services for victims as subjects of administrative and legal response to domestic vio-

lence is the possibility of assisting victims of such violence⁴.

Thus, the following are defined

1. social services centres for families, children and young people;
2. shelters for children;
3. centres for social and psychological rehabilitation of children;
4. social rehabilitation centres (children's towns);
5. centres of socio-psychological assistance;
6. territorial centres of social services (provision of social services);
7. other institutions and organisations providing social services to affected persons.

Specialised support services for victims include shelters for victims, centres for medical and social rehabilitation of victims, a call centre for the prevention and combating of domestic violence, gender-based violence and violence against children, mobile teams of social and psychological assistance to victims of violence gender-based, as well as institutions designed exclusively for victims and victims of gender-based violence.

The list of other bodies and institutions that are entrusted with the functions of implementing measures in the field of preventing and combating domestic violence includes

1. services for children;
2. authorised subdivisions of the National Police of Ukraine;
3. educational manager authorities, educational institutions, establishment, and organisations of the education system;
4. health authorities, health care institutions;
5. centres for the provision of free secondary legal assistance;
6. courts;
7. prosecutor's office;
8. authorised bodies on probation issues.

4 Lehenka, M., 2019. Subjects of Administrative and Legal Response to Domestic Violence and their Powers. *Entrepreneurship, economy and law*, 3. p. 155.

The criterion for classifying general support services for victims as subjects of administrative and legal response to domestic violence is the possibility of assisting victims of such violence.

Thus, the following are defined

1. centres of social services for families, children, and young people;
2. shelters for children;
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Specialised support services for victims include shelters for victims, centres for medical and social rehabilitation of victims, a call centre for the prevention and combating of domestic violence, gender-based violence, and violence against children, mobile teams of social and psychological assistance to victims of violence gender-based, as well as institutions designed exclusively for victims and victims of gender-based violence.

General and specialised support services for victims, within the framework of the powers determined by law, accept and consider applications submitted directly by victims or their representatives for assistance, including social services provided for by law, determine the needs of victims, and provide them with complete and comprehensive information about their rights and possibility to obtain effective assistance and providing with free services, medical, social, psychological assistance and, if necessary, provide them with temporary shelter.

There is an opportunity to participate in the implementation of measures in the field

of preventing and combating domestic violence, including identifying facts about domestic violence and providing assistance and protection to victims. In the providing assistants can participate enterprises, institutions and organisations regardless of their form of ownership, public associations and foreign non-governmental organisations, individuals, entrepreneurs, who meet the criteria for the activities of entities providing social services, as well as individuals providing social services, including patronage services for children.

All of the above subjects of administrative and legal response regularly report on the work done and its effectiveness, exchange information and coordinate their activities by the requirements of the Procedure for the interaction of entities carrying out activities in the field of preventing and combating domestic violence and gender-based violence⁵.

Thus, a system of subjects for preventing and combating domestic violence has been created in Ukraine due to the inclusion in the legislation of a complete and exhaustive list of them.

The newest legislation of Ukraine on the prevention and combating of domestic violence defines the organisational and legal framework for the prevention and combating of domestic violence, the main directions for the implementation of state policy in the field of prevention and combating of domestic violence, aimed at protecting the rights and interests of persons affected by such violence.

In Ukraine, domestic violence is not a purely family matter, since the state has introduced and operates an effective mechanism for combating and preventing domestic violence, and a list of entities authorised to carry out relevant activities has been defined. The subjects of the administrative and legal response to the commission of domestic violence are state bodies, executive authorities

5 Dudorov, O. and Khavronyuk, M., 2019. Responsibility for Domestic Violence and Gender-Based Violence (scientific and practical commentary on short stories of the Criminal Code of Ukraine) / ed. M. Havronyuk. K.: Waite, p. 38.

and local self-government bodies and their structural divisions, associations of citizens, enterprises, institutions and organisations, endowed with appropriate powers as well as individuals – citizens of Ukraine, foreigners and stateless persons.

It can be stated that despite this, in Ukraine there is a fairly broad system of providing protection and assistance to victims of domestic violence, aimed at ensuring the rights and legitimate interests of victims of such violence, providing them with effective assistance and protection, as well as preventing the recurrence of domestic violence in the future. In the period from 2017 to 2021, Ukraine's regulatory framework for regulating restrictive measures to prevent and pun-

ish violence has improved significantly. At the same time, the formation of an effective system and institution to combat domestic violence is at an early stage.

At the time of the submission of the article, the Istanbul Convention had not been ratified, but its provisions were actively applied in Ukraine, subject to further ratification. Today in Ukraine there is a Law on the ratification of this convention (Law of Ukraine of June 20, 2022 No. 2319-IX "On the Ratification of the Convention for the Sake of Europe on the Prevention of Violence Against Women and Domestic Violence and the Fight Against These Manifestations of the Ratification of the Istanbul Convention."*)

* Law of Ukraine of June 20, 2022 No. 2319-IX "On the Ratification of the Convention for the Sake of Europe on the Prevention of Violence Against Women and Domestic Violence and the Fight Against These Manifestations of the Ratification of the Istanbul Convention." [Online] available at: <https://zakon.rada.gov.ua/laws/show/2319-20#Text> [Accessed 18 November 2022].

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