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RETROSPECTIVE ANALYSIS OF REGULATORY AND LEGAL ACTS ON COMBATING DOMESTIC VIOLENCE IN UKRAINE

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Article is devoted to the retrospective analysis of regulatory and legal acts on combating domestic violence in Ukraine. The author carried out a fundamental analysis of the Ukrainian legislation and international legal acts that are relevant to the problem, defines the essence of family violence and identifies the subjects that are engaged in its prevention.

Key words: domestic violence, family violence, prevention of domestic violence, the subjects of prevention of domestic violence, forms of domestic violence.

Омельянчик С.В. РЕТРОСПЕКТИВНИЙ АНАЛІЗ НОРМАТИВНО-ПРАВОВИХ АКТОВ ПО ПРЕДУПРЕЖДЕННЮ НАСИЛЛЯ В СЕМЬЕ В УКРАЇНЕ / Запорізький національний університет, Україна

Стаття посвячена проблемі розвитку законодавства України в сфері насильства в сім'ї. Автором проводиться фундаментальний аналіз українського законодавства та міжнародно-правових актів, які мають стосунок до даної проблеми, розкривається сутність насильства в сім'ї та визначаються суб'єкти, які займаються його попередженням.

Ключевые слова: домашнее насилие, насилие в семье, семейное насилие, предупреждение насилия в семье, субъекты предупреждения насилия в семье, формы насилия в семье.

Омельянчик С.В. РЕТРОСПЕКТИВНИЙ АНАЛІЗ НОРМАТИВНО-ПРАВОВИХ АКТИВ ІЗ ПРОТИДІЇ НАСИЛЬСТВА В СІМ'Ї В УКРАЇНІ / Запорізький національний університет, Україна

Проблема насильства в сім'ї набула особливої актуальності з проголошенням України незалежною державою, визнанням людини найвищою суспільною цінністю, забезпеченням і гарантією її прав і свобод, створенням демократичного, гуманного, правового і громадянського суспільства. У світі ця проблема спричинила прийняття численного ряду міжнародно-правових актів різними міжнародними організаціями, учасницею яких є і Україна. У зв'язку з цим, українським законодавцем було також розпочато бурхливу роботу із створення ефективного механізму протидії насильству в сім'ї.

Метою статті є здійснення ґрунтовного ретроспективного аналізу українського законодавства зі створення та розвитку інституту протидії домашньому насильству.

У статті комплексно проаналізовано Закон України «Про попередження насильства в сім'ї» від 15.11.2001 року та підзаконні нормативно-правові акти, прийняті задля ефективного виконання вказаного Закону. Розкрито форми домашнього насильства та суб'єктів із протидії йому. Окремо проаналізовано адміністративно-деліктний та адміністративно-деліктологічний аспекти попередження домашнього насильства. Зокрема, зроблено висновок, що проведення ефективної профілактичної роботи після вчинення адміністративного делікту має стати важливим кроком у попередженні такого злочину в родині.

Значна увага приділена вдосконаленню відповідальності за вчинення насильства в сім'ї. У ретроспективі проаналізована система адміністративних стягнень, доведено, що громадські роботи мають кращий профілактичний ефект із протидії насильству в сім'ї.

Зроблено висновок, що для попередження насильства в сім'ї та практичної реалізації відповідного закону в Україні прийнята численна кількість підзаконних актів, сформовано коло спеціальних суб'єктів, відпрацьовується ефективний механізм попередження домашнього насильства, постійно вносяться зміни до законодавства. З метою вдосконалення останнього, особливу увагу необхідно звернути на закордонний досвід із попередження насильства в сім'ї, який і стане предметом майбутніх наукових досліджень.

Ключові слова: домашнє насильство, насильство в сім'ї, сімейне насильство, попередження насильства в сім'ї, суб'єкти попередження насильства в сім'ї, форми насильства в сім'ї.

The problem of domestic violence is not new for the Ukrainian society. For many centuries, parents have used (and are still using it now) violent parenting practices and control of their children, the men through the use of violence against wives showing their marital status, and maintained themselves as head of the family. The use of violence in the family, taking into account previous experience has become the norm for the Ukrainian society. And if you had seen this situation for granted before, so that after the declaration of Ukraine's independence, the recognition Rights as highest social value, provision and guarantee of rights and freedoms, a democratic, humane, legal and civil society and the state, the initial recognition of the family unit of society on which depends the further formation, development and establishment of a complete personality – the theme of domestic violence has gained special importance for Ukrainian society. The attitude toward domestic violence has radically changed on the part of the public, as evidenced by the many NGOs that deal with this issue, adopted a number of legal acts, confirming recognition of domestic violence as socially negative phenomenon, against which require compulsory intervention by State.

From the legal aspect of the problem of domestic violence in his writings, there were plenty of researches who were actively engaged: N.V. Anischuk, V.V. Vitvitska, P.O. Vlasov, G.E. Zaporozhtseva, O.V. Kovaleva, D.V. Kolomoets, T.V. Laktionova, K.B. Levchenko, Y.V. Lysyuk, V.A. Tuliakov, G.O. Christova and others. However, a systematic analysis of the genesis of legislation on domestic violence has been conducted, which determines the relevance and purpose of the article.

The problem of domestic violence is the subject of numerous international instruments ratified by many democratic countries. First of all, it is about the International Covenant on civil and political rights [1], the UN Convention on economic, social, cultural rights [2], the Convention on the elimination of all forms of discrimination against women [3], the Declaration on the protection of all persons from torture and cruelty, inhuman or degrading treatment or punishment species [4], the Convention on the rights of the child [5], United Nations Declaration on the elimination of violence against women from the 20th of December 1993. The article № 1 of the UN Declaration on the Elimination of violence against women defines violence against women as any act of gender-based violence, which causes or may cause physical, sexual, psychological harm or suffering to women, as well as threats of such acts, compulsion or forced confinement in a public or private life [6, 2]. Ukraine ratified all the above mentioned regulations, and in accordance with Part 1 of Art.9 of the Constitution of Ukraine, international treaties ratified by the Verkhovna Rada of Ukraine is part of the national legislation of Ukraine [7]. Furthermore, according to Art.19 Law of Ukraine «On International Treaties of Ukraine» if an international agreement establishes rules other than those provided for in the relevant legislation act, the rules of the international agreement [8]. That ensured the primacy of international law over national law. The ratification of these documents creates favorable conditions for the formation of high-quality national legislation in this area.

The Council of Europe makes considerable efforts to overcome family violence, a party of which is Ukraine. It's also known that 25% of all serious crimes committed in Europe were done by men who use violence against their wives or girlfriends [9, 10]. In this regard, the Council of Europe have adopted the following important documents: Recommendation NR (85) 4 on violence in the family [10] Recommendation NR (91) 11 on sexual exploitation, pornography and prostitution of, children and adolescents trafficking [11] Recommendation on the protection of women against violence of April 30, 2002, Resolution 1512 2006 on the association of parliamentarians to combat domestic violence against women.

Active work to combat domestic violence is led by Ukrainian legislator. An important step in addressing family violence had become the Law of Ukraine "On Prevention of Domestic Violence" from 15.11.2001. It should be noted that Ukraine was the first country in the former Soviet Union, which adopted a similar law. First of all, it's an evidence of formal recognition of domestic violence as a negative social phenomenon with which should grapple the assistance of the State. That means, the

problem of domestic violence has moved from the private to the State level, which requires the creation and adoption of legal acts, attracting the necessary organs and institutions of the government, the public, creating an effective mechanism to combat domestic violence.

Law of Ukraine from 15.11.2001 "On prevention of domestic violence" defines domestic violence as «any intentional acts of physical, sexual, psychological or economic nature one family member against another family member if these actions violate constitutional rights and freedoms of members of the family as a person and citizen and inflict moral damage, harm his physical or mental health» [12, 1].

Forms of domestic violence, according to the Law of Ukraine on 15.11.2001 «On prevention of domestic violence» is physical, sexual, psychological and economic abuses. Physical abuse is manifested in the form of slaps in the face, shot, suffocation, hand-wringing, bites, bruises in different parts of the body, throwing household objects, use weapons to brutal treatment and more. Sexual violence is manifested in the form of any enforcement actions of a sexual nature: intimacy with third party objects, the imposition of specific sexual encounters that hurt the partner, the partner demands that carry the partner desires against her will, etc. Psychological abuse is manifested in the form of verbal abuse, degrading the person criticized values, feelings, beliefs, attitudes and actions of the partner, the charges of all the problems, bullying in any form, harassment, dealing with both the servant restriction on freedom of movement, lack of communication with relatives and friends in the background of jealousy. Economic violence is manifested in its exclusion, restriction or trifling audit the family budget, refusing to provide funds for vital needs, impeding use, dispose of their own property jointly or partner.

Also, this law defines the term «victim of domestic violence», «domestic violence prevention», explains when there is a «real danger of domestic violence» is introducing special measures aimed at preventing domestic violence: an official warning about the unacceptability of domestic violence, taking into prophylactic registry, making the protective order.

According to the Law of Ukraine «On prevention of domestic violence» subjects of prevention from family violence is specially authorized by executive body on prevention of domestic violence – the Ministry of Social Policy of Ukraine and its management at the local level, the service district police officers and criminal police juvenile guardianship authority, specialized agencies for victims of domestic violence. Crisis centers and medical and social rehabilitation of victims of domestic violence.

Specially authorized executive body on prevention of domestic violence concentrates on following activities:

- participates in the development and implement the national policy on the prevention of domestic violence;
- coordinates the activities of the Home Affair departments, the guardianship and custody of prevention of domestic violence;
- determines the need for regions to create specialized establishments for victims of domestic violence and organizes the work of their formation;
- supervises the organization and activities of the specialized agencies for victims of domestic violence;
- develop and approve guidelines on correctional programs and organizes the software crisis centers, such as various methodological recommendations;
- has been collecting and summarizing data on domestic violence in accordance with the law;
- organizes and conducts sociological, psychological, educational and criminological studies of domestic violence;
- provides executive bodies and local authorities, enterprises, institutions and organizations regardless of ownership, citizens' associations and individual citizens methodical and practical assistance, advice on the prevention of domestic violence;
- organizes and conducts awareness and outreach work among family members where there is a real threat of domestic violence or where it was committed domestic violence, rights, activities and services that they can easily use;

- organizes and conducts awareness and outreach to the public about the problem of domestic violence and the measures that exist for the prevention of domestic violence;
- organizes correctional program for people who commit domestic violence;
- refers to the central and local executive authorities, local self-government in the provision of appropriate assistance to victims of domestic violence;
- receives and considers applications and reports of domestic violence and the real threat of it;
- refers victims of domestic violence and family members, for which there is a real threat to commit to specialized establishments for victims of domestic violence [12, 3].

At the service of district inspectors and criminal police they rely identify the causes and circumstances of domestic violence, measures to their elimination, driving records and preventive educational and preventive work with those people who likely to commit domestic violence, visiting families whose members are in the care accounting for place of residence to carry out their preventive work, adopting and reviewing of statements and reports of domestic violence or real threat of it, taking appropriate measures to eliminate domestic violence, making a formal warning and protective order, referring of victims of domestic violence to the specialized agencies, as well as perpetrators of domestic violence, the crisis centers for correctional programs, monitoring of protective order, etc.

Guardianship authority assists and represents in court the interests of minors and incapacitated family members who committed domestic violence or have been victims of domestic violence.

Crisis centers accept family members who may be or have been victims of domestic violence, providing them with psychological, educational, medical, legal aid, shelter for temporary stay, develop corrective programs and organize their passage by persons who committed domestic family; they study and summarize the causes and conditions of specific acts of violence in the family and so on. Medical and social rehabilitations of victims of domestic violence provide victims of domestic violence medical, psychological and legal assistance.

The subjects of the prevention of domestic violence must be considered: the courts, medical institutions and teachers of preschool and secondary schools who engaged fixation and detection of domestic violence. The important role in the prevention of domestic violence plays NGOs («La Strada-Ukraine», «Kharkiv Human Rights Group», etc.).

But the fact of the adoption of the Law of Ukraine "On prevention of domestic violence," was no panacea for solving the problem of domestic violence. This was noted in the reports of the public organizations dealing with domestic violence, it is officially recognized and Parliament of Ukraine during the parliamentary hearings «Current status and challenges in prevention of gender violence», which took place on November 21st, in 2006. The problem is that the social relations that arise in the family, by their nature were, still remain and will be completely private. Therefore, the State, represented by the public authorities, institutions and organizations is extremely difficult to intervene and influence the processes of family violence. To solve this problem, it's not enough just to take several legal acts which are necessary, but to create an effective mechanism from establishment of domestic violence.

For practical implementation of the Law of Ukraine «On Prevention of domestic violence» in Ukraine they have adopted such legal regulations: Ministry of Home Affairs of Ukraine approved the Instruction «On the procedure for taking preventive account and order the removal of prophylactic account perpetrators of violence in the family» on April 9, 2002 № 329 [13], the Ministry of Health of Ukraine «On approval of the Law of Ukraine «On prevention of domestic violence» and of some of the medical and social rehabilitation of victims domestic violence on January 23d, in 2004 № 38 [14], a joint order of the Ministry of Ukraine for family, children and youth and the Ministry of Home Affairs of Ukraine from the 30th of March 2004, the number 3/235 (399/8998) «On approval of the instruction on the procedure of interaction between departments on family issues and youth services juvenile social services for families, children and young people and police on the implementation of measures to prevent domestic violence» [15], since September 30, 2009 the decree repealed under the decree of the Ministry of Ukraine for family, children and youth and the Ministry of Home Affairs of Ukraine on September 30, 2009 under number 3131/386 (№ 917/16933) "On approval instructions for interaction between departments (divisions) of family, youth and sports, services for children, social services for

families, children and young people and relevant departments of the Ministry of Home Affairs on the implementation of measures to prevent violence in the family theme" [16] Resolution of the Supreme Council (Verkhovna Rada) of Ukraine on the recommendations of the parliamentary hearings "Current status and challenges in preventing gender-based violence" from March 22, 2007 № 817 [17], the Cabinet of Ministers of Ukraine dated April 26, 2003 № 616 "Procedure for considering applications and reports of domestic violence, or a real threat" [18] and the "Order of consideration of appeals and reports about child abuse or actual such a threat" on January 16, 2004 № 5 / 34/24/11 [19].

In order to address these gaps in the legislation of Ukraine the Law of Ukraine «On Amendments to the Code of Ukraine on Administrative Offences to establish liability for a domestic violence protective order or default» was adopted on the 15th of May in 2003. According to this law, the Code of Ukraine on Administrative Offences were introduced Article 173-2 on "domestic violence protective order or default": domestic violence, i.e. the intentional commission of any act of physical, psychological or economic (use of physical violence did not cause physical pain but no bodily harm, threats, insults or harassment, denial of housing, food, clothing, money or other property to which the victim is by the law, etc.), so that could be or caused any harm to the physical or psychological health of the victim, as well as the failure of protective order person about whom it is imposed, – should be punishable by a fine of from one to three tax-free minimum incomes, or correctional labor for up to one month minus twenty percent earnings. The second part of the article assumes responsibility for another year for the commission of said offense, adding to these penalties administrative detention up to fifteen days. Such an administrative penalty as administrative detention should be used with caution, because according to Part 3 of Art.328 CAO wages of persons, who are in detention, are not paid – suffering family budget, especially the danger of the use of arrest is a high risk of job loss violator in the near future.

It should be also noted that the appearance of the article 173-2 of the CAO include domestic violence as an administrative offense within the scope of scientific interests administrative delictology. And due to the fact that the said offense is one of the most dangerous envisaged CAO, scientist delictologists should pay special attention to it. This will help to enrich the phenomenon of domestic violence with new information, to identify the causes and circumstances of committing family violence by characterizing individual offender and the identity of the victim, to provide sound recommendations aimed at preventing domestic violence. It should also be noted that the inclusion of Art.173-2 in CAO shifted overseas to domestic violence in other legal framework – with criminal law and criminological in administrative and delictological tortious. If previously responsibility for the offender drew on the results of the crime, but now, as a result of implementation of effective prevention work, it turns that after committing the administrative offense in the commission of a crime should not have come. This should significantly reduce the number of violent crimes committed in the family.

It should be noted that the existing in 2003 year system of administrative penalties was not perfect: mostly it is not established liability for failure to pass remedial programs, and does not take into account this type of recovery as a community service, the need for which is the most effective in terms of prevention. For the latter we can give the following arguments: budgeting the fine or deduction of twenty percent of earnings offender harms, above all, the family budget, and secondly, it does not exert any preventive effect on the individual offender, and thirdly, as the results of the study, 51% offenders don't work [21, 535]. The use of community service, first aimed at correcting the offending person, secondly, does not harm the family budget, the third – the offender engages in socially useful work. These gaps in the legislation were corrected by adopting below mentioned laws.

Law of Ukraine «On amendments to certain legislative acts of Ukraine concerning improvement of legislation concerning domestic violence» 25.09.2008 [22] found responsible for the failure to pass remedial programs at the same level as for domestic violence or failure protective order to include it into Part 1 of Art. CAO 173-2.

Law of Ukraine "On Amendments to the Code of Ukraine on Administrative Offenses with respect for individual offenses" from 02.12.10 [23] included in the list of charges applicable to domestic violence community service. This law also somehow reformed system of penalties, including the Part 1 of Art.173-2 was included in a collection of arrest up to 5 days.

Thus, for the prevention of domestic violence, and practical relevant law in Ukraine was adopted by a large number of regulations formed a circle of special subjects which all worked an effective

mechanism for the prevention of domestic violence, constantly amending legislation. To improve the latter, we concern that special attention should be paid to the foreign experience of domestic violence prevention, which will be the subject of our future researches.

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ПРОЦЕСУАЛЬНІ ОБОВ'ЯЗКИ УЧАСНИКІВ АДМІНІСТРАТИВНОГО ПРОЦЕСУ

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Національна академія внутрішніх справ

У статті досліджуються особливості дії процесуальних обов'язків у адміністративному судочинстві, належність різним суб'єктам, вплив на судовий процес. Також підготовлені ґрунтовні висновки та пропозиції щодо процесуальних обов'язків учасників адміністративного процесу.

Ключові слова: процесуальні обов'язки, процесуальні наслідки, адміністративний процес, суб'єкт владних повноважень.

Павленко Н.Г. ПРОЦЕССУАЛЬНЫЕ ОБЯЗАННОСТИ УЧАСТНИКОВ АДМИНИСТРАТИВНОГО ПРОЦЕССА / Национальная академия внутренних дел, Украина

В статье исследуются особенности действия процессуальных обязанностей в административном судопроизводстве, принадлежность различным субъектам, влияние на судебный процесс. Также в данной статье подготовлены обстоятельные выводы и предложения по процессуальным обязанностям участников административного процесса.

Ключевые слова: процессуальные обязанности, процессуальные последствия, административный процесс, субъект властных полномочий.

Pavlenko N.G. PROTSSESSUALNIYE RESPONSIIBILITIES PARTICIPANTS THE ADMINISTRATIVE PROCESS / National academy of Internal Affairs, Ukraine

This article analyzes the legal literature and provisions of legal acts concerning procedural duties of the administrative process. Analyzed the steady implementation by the parties of their procedural obligations relevant to the implementation of all judicial procedures required by law, which in turn ensures a full installation of the case and an objective assessment of the evidence. The essence of fulfillment member of the administrative process of their judicial duties is his desire to avoid the negative consequences that may result in their failure.