

УДК 343.3

Svitlana Soroka

Lviv Polytechnic National University,
Educational-Scientific Institute of Law,
Psychology and Innovative Education
Department of Criminal Law and Process,
Cand. of Law
soroka.sv66@gmail.com

DOMESTIC VIOLENCE: CRIMINAL-LEGAL ASPECT

<http://doi.org/10.23939/law2022.36.238>

© Soroka S., 2022

The issue of the criminal-legal aspect of domestic violence is considered. It was noted that in many countries, for a long time, violence in the family was not considered a crime, but was considered a form of appropriate behavior. In the 90s of the last century, views on the phenomenon of violence against women, which was recognized as a socio-gender problem, changed radically, during which a new vision of it was opened in terms of gender law. Therefore, the issue of gender balance and combating discrimination based on sex has gained wide popularity in all developed countries of the world. As a result, on December 20, 1993, the UN General Assembly adopted the “Declaration on the Eradication of Violence against Women”, then on August 1, 2014, the Council of Europe Convention “On preventing and combating violence against women and domestic violence”, known as Istanbul Convention. The main purpose of which was to declare the protection and support of women who suffered from all types of violence and the eradication of the latter in general. It has been analyzed that this problem is typical for Ukrainian society as well. Today, overcoming violence in the family is one of the priority tasks of the legal state, which is also recognized in Ukraine.

Ukraine signed the Istanbul Convention on November 7, 2011, but only on June 20, 2022, the Verkhovna Rada supported the ratification of this convention. At the end of 2017, Article was introduced into the Criminal Code of Ukraine. 126-1 of the Criminal Code of Ukraine “Domestic violence”, which entered into force on January 1, 2019. In this article, domestic violence is defined as the intentional systematic perpetration of physical, psychological or economic violence against a spouse or exspouse or another person with whom the perpetrator is (was) in a family or close relationship, which leads to physical or psychological suffering, health disorders, loss of work capacity, emotional dependence or deterioration of the victim's quality of life. It is noted that the legislation of Ukraine in the field of combating domestic violence enshrines four forms of violence: physical, sexual, psychological and economic.

According to the current legislation, persons who have committed domestic violence are criminally, administratively, or civilly liable. Criminal liability is provided for in Art. 126-1 of the Criminal Code of Ukraine “domestic violence”, however, after analyzing the norms of criminal legislation, we came to the conclusion that the Criminal Code of Ukraine also provides for criminal liability for criminal offenses related to domestic violence in other articles. An important step towards the prevention of domestic violence was the addition of Chapter XIII-1 “Restrictive measures” to the Criminal Code of Ukraine, which provides for

the possibility of applying certain measures in the interests of the victim of a criminal offense related to domestic violence. It was concluded that the introduction of amendments to the Criminal Code of Ukraine with the introduction of criminal liability for domestic violence was a significant step towards overcoming the problem of domestic violence in the country, and the ratification of the Istanbul Convention contributes to strengthening the legal protection of victims of violence and will ensure their access to justice.

Key words: criminal responsibility; domestic violence; discrimination; gender equality.

Formulation of the problem. In many countries, for a long time, violence in the family was not considered a crime, but was considered a form of appropriate behavior. It was in the second half of the 20th century that special attention was paid to the observance of human rights, as a result of which scientists began to study more deeply the problems associated with the violation of human rights. In the 90s of the last century, views on the phenomenon of violence against women, which was recognized as a socio-gender problem, changed radically, during which a new vision of it was opened in terms of gender law. Therefore, the issue of gender balance and combating discrimination based on sex has gained wide popularity in all developed countries of the world. Thus, on December 20, 1993, the UN General Assembly adopted the “Declaration on the Elimination of Violence against Women”, under the influence of which, in accordance with the UN Human Rights Committee resolution No. 1994/45 of March 4, 1994, the UN Special Rapporteur on the issue of violence against women, its causes and consequences. These events forced society to look at this phenomenon in a new way, connecting it with the problem of gender discrimination. In addition, the Council of Europe Convention “On preventing and combating violence against women and domestic violence”, known as the Istanbul Convention, entered into force on August 1, 2014. It is the result of many years of efforts of the Council of Europe, its Parliamentary Assembly and civil society. Its main goal is the protection and support of women who have suffered from all types of violence and the eradication of the latter in general. The Istanbul Convention is a revolutionary document that should provide a comprehensive set of measures to prevent and combat violence against women and domestic violence and recognizes violence against women as both a violation of human rights and a form of discrimination. Ukraine signed the Convention “On the prevention of violence against women and domestic violence and the fight against these phenomena” on November 7, 2011, but only on June 20, 2022, the Verkhovna Rada supported its ratification. Therefore, the problem of domestic violence is relevant and timely.

Analysis of the study of the problem. The issue of violation of human rights in the form of violent acts against women was considered in their works by such scientists as Y. Antonyan, Y. Gilinsky, B. Golovkin, K. Gurkovska, O. Dudorov, O. Knyzhenko, V. Kudryavtsev, V. Malyshev, T. Sydorenkova, M. Havronyuk and others. However, despite numerous studies, some of its aspects require further theoretical consideration and scientific justification.

Purpose of the article. The purpose of the proposed article is to study the criminal-legal aspect of domestic violence.

Presenting main material. Violence is understood as the use of force or the threat of its use. In the broadest semantic context, power is a manifestation of arbitrariness and its implementation in accordance with the intentions of a certain subject. In view of this, violence is a restriction, up to nullification, of the possibilities of free life of individuals and human communities. Violence includes imposing on subjects, in one way or another, living conditions inadequate to their nature; to suffer violence means to lose freedom [1]. According to the official position of the World Health Organization, the causes of violence are partly determined by biological and other factors that give reasons to talk about a certain tendency of some people to aggression, but most often these factors interact with family, social, cultural and other factors of

an external nature and thus create a situation in which violence occurs [2]. Violence is one of the most common types of deviant behavior that violates basic human rights and freedoms. Domestic violence is the most common and the most difficult to combat. According to statistics, more than 3 million Ukrainian children annually witness acts of domestic violence or are forced to participate in them, and about 70 % of women experience various forms of abuse and humiliation. Almost 100 % of mothers who suffered from violence gave birth to sick children, most of whom suffer from neuroses, stuttering, cerebral palsy and mental disorders [3, p. 23]. Calculations by the Institute of Demography and Social Research commissioned by the UN Population Fund indicate that 1.1 million Ukrainian women are victims of physical and sexual violence in their families every year, and the worst thing is that most of them remain silent [4, p. 4].

For a long time, cases of violence in the family were hushed up or ignored, considered an internal problem of the family. The state only recently paid attention to domestic violence as a serious socio-legal problem and regulated it at the legislative level. On December 7, 2017, the Law of Ukraine “On Prevention and Combating Domestic Violence” was adopted, and on January 1, 2019, the 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 the Prevention of Violence against Women and domestic violence and the fight against these phenomena”. This law amended the Criminal Code of Ukraine, in particular, it was supplemented by Article 126-1 “Domestic violence”. This was a serious step in combating manifestations of domestic violence. As Deputy Minister of Internal Affairs Kateryna Pavlichenko reported, in 2021, 56 % more citizens reported domestic violence to the police than in 2020. At the same time, 10 % more administrative protocols were drawn up and 19 % more urgent restraining orders were issued against offenders [5].

In accordance with the provisions of Article 126-1 of the Criminal Code of Ukraine: domestic violence is the intentional systematic commission of physical, psychological or economic violence against a spouse or ex-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, loss of working capacity, emotional dependence or deterioration of the victim’s quality of life [6].

The legislation of Ukraine in the field of combating domestic violence enshrines four forms of such violence: physical, sexual, psychological and economic.

Y. I. Yurkiv the following main types of family violence are highlighted:

- between spouses (man - woman, in most cases the man commits violence, but there are opposite cases);
- between parents and minor children (both father and mother can commit violence);
- between adult children and parents (violence can be committed both by adult children towards parents and vice versa, although the first case is more widespread);
- between children of the same family (this behavior usually occurs against the background of violent relations between adult family members and can have a different character – older children can commit acts of violence against younger ones, brothers against sisters, children can unite to abuse someone from children);
- violence between other family members (between mother-in-law or father-in-law and son-in-law, father-in-law or mother-in-law and daughter-in-law, grandchildren and grandfather or grandmother, etc.) [7, p. 234].

According to the current legislation, persons who have committed domestic violence are criminally, administratively, or civilly liable. Criminal liability is provided for in Art. 126-1 of the Criminal Code of Ukraine “Domestic violence”, however, after analyzing the norms of criminal legislation, we came to the conclusion that the Criminal Code of Ukraine also provides for criminal liability for criminal offenses related to domestic violence:

1) physical violence: intentional slight bodily injury (Article 125), intentional moderate bodily injury (Article 122), intentional serious bodily injury (Article 121), beatings and beatings (Article 126), torture (Article 127), leaving in danger (Article 135 of the Criminal Code), illegal deprivation of liberty or

abduction of a person (Article 146), enforced disappearance (Article 146-1), hostage-taking (Article 147), human trafficking (Article 149), exploitation of children (Article 150), illegal introduction into the body of narcotic drugs, psychotropic substances or their analogues (Article 314 of the Criminal Code), malicious non-fulfilment of duties to care for a child or a person for whom guardianship or guardianship has been established (Article 166 of the Criminal Code);

2) sexual violence: rape (Article 152 of the Criminal Code), sexual violence (Article 153 of the Criminal Code), coercion into sexual intercourse (Article 154 of the Criminal Code); committing acts of a sexual nature with a person who has not reached the age of sixteen (art. 155), depravity of minors (art. 156), harassment of a child for sexual purposes (art. 156-1);

3) economic violence: exploitation of children (Article 150), use of a minor child for begging (Article 150-1 of the Criminal Code); abuse of guardianship rights (Article 167 of the Criminal Code);

4) psychological violence: threat of murder (Article 129 of the Criminal Code), disclosure of the secret of adoption (Article 168 of the Criminal Code), forced marriage (Article 151-2) [6].

An important step towards the prevention of domestic violence was the addition of Chapter XIII-1 “Restrictive measures” to the Criminal Code of Ukraine, which provides for the possibility of applying certain measures in the interests of the victim of a criminal offense related to domestic violence.

Article 91-1 of the Criminal Code of Ukraine provides for restrictive measures for persons who have committed domestic violence:

1) prohibition to stay in a place of common residence with a person who suffered from domestic violence;

2) restriction of communication with the child if domestic violence is committed against the child or in his presence;

3) prohibition to approach within a specified distance to the place of residence, work, study, or treatment of a person affected by domestic violence;

4) prohibition of correspondence, telephone conversations with a person who suffered from domestic violence, other contacts using means of communication or electronic communications in person or through third parties;

5) referral to a program for offenders or a probation program [6].

Conclusions. Therefore, the introduction of amendments to the Criminal Code of Ukraine with the introduction of criminal liability for domestic violence became a significant step towards overcoming the problem of domestic violence in the country, and the ratification of the Istanbul Convention contributes to strengthening the legal protection of victims of violence and will ensure their access to justice.

REFERENCES

1. Philosophical encyclopedic dictionary (2002). National Academy of Sciences of Ukraine. Institute of Philosophy named after H.S. Skovorody. URL: https://shron1.chtyvo.org.ua/Shynkaruk_Volodymyr/Filosofskyi_entsyklopedychnyi_slovyk.pdf
2. Violence, concepts and types. URL: https://rtpl.com.ua/psiholog_mudr https://rtpl.com.ua/psiholog_mudr.
3. Actual problems of family violence: monograph (2021) / Pertseva T. O., Ogorenko V. V., Kozhina H. M., Zelenska K. O., Nosov S. G., Teryoshina I. F., Gnenna O. M., Mamchur O. Y., Timofeev R. M., Shornikov A. V.; in general ed. Prof. T. O. Pertseva and Prof. V. V. Ogorenko. Dnipro, 188 p.
4. Appendix to the letter of the Ministry of Education and Science of Ukraine dated May 18, 2018 No. 1/11-5480.
5. Prishchepa Ya. (January 14, 2022). “This does not only concern women”. Experts spoke about domestic violence in Ukraine. URL: <https://suspilne.media/197957-ce-stosuetsa-ne-lise-zinok-eksperti-rozpovili-pro-domasne-nasilstvo-v-ukraini/>
6. Criminal Code of Ukraine dated 04/05/2001 No. 2341-III. URL: <https://zakon.rada.gov.ua/laws/show/2341-14>
7. Yurkiv Ya. I. (2013) The essence and content of the social phenomenon “violence in the family”. Scientific Bulletin of the Uzhgorod National University. Series “Pedagogy, social work”. Issue 27. P. 234.

Дата надходження: 13.09.2022 р.

Світлана Сорока
Національний університет “Львівська політехніка”,
Навчально-науковий інститут права,
психології та інноваційної освіти
доцент кафедри кримінального права і процесу
кандидат юридичних наук, доцент
soroka.sv66@gmail.com

ДОМАШНЕ НАСИЛЬСТВО: КРИМІНАЛЬНО-ПРАВОВИЙ АСПЕКТ

Розглянуто питання кримінально-правового аспекту домашнього насильства. Відзначено, що в багатьох країнах протягом тривалого часу насильство в сім’ї не вважалося правопорушенням, а розглядалось як форма належної поведінки. В 90-ті роки минулого століття кардинально змінились погляди щодо феномену насильства стосовно жінок, яке було визнано соціостатевою проблемою. Сформувалось нове її бачення стосовно гендерного права. Отже, проблематика гендерної рівноваги та протидії дискримінації за статевою ознакою набула широкої популярності в усіх розвинених країнах світу, у результаті 20 грудня 1993 року Генеральна Асамблея ООН ухвалила “Декларацію про викорінення насильства щодо жінок”, згодом – із 1 серпня 2014 року набула чинності Конвенція Ради Європи “Про запобігання насильству стосовно жінок і домашньому насильству та боротьбу із цими явищами”, відома як Стамбульська конвенція. Головна мета Стамбульської конвенції – проголошення захисту і підтримки жінок, які постраждали від усіх видів насилля та викорінення останнього загалом. Визначено, що ця проблема характерна і для українського суспільства. Сьогодні подолання насилля в родині є одним із пріоритетних завдань правової держави, якою визнано й Україну.

Україна підписала Стамбульську конвенцію 7 листопада 2011 року, проте тільки 20 червня 2022 року Верховна Рада підтримала ратифікацію цієї конвенції. Наприкінці 2017 р. до КК України введено ст. 126-1 КК України “Домашнє насильство”, яка набула чинності 1 січня 2019 року. У цій статті під домашнім насильством розуміють умисне систематичне вчинення фізичного, психологічного або економічного насильства щодо подружжя чи колишнього подружжя або іншої особи, з якою винний перебуває (перебував) у сімейних або близьких відносинах, що призводить до фізичних або психологічних страждань, розладів здоров’я, втрати працездатності, емоційної залежності або погіршення якості життя потерпілої особи. Відзначено, що законодавство України у сфері протидії домашньому насильству закріплює чотири форми насильства: фізичне, сексуальне, психологічне та економічне.

Відповідно до чинного законодавства для осіб, які вчинили домашнє насильство, передбачено кримінальну, адміністративну чи цивільно-правову відповідальність. Кримінальну відповідальність передбачено ст. 126-1 КК України “домашнє насильство”, проте, проаналізувавши норми кримінального законодавства, ми дійшли висновку, що у КК України також передбачено кримінальну відповідальність за кримінальні правопорушення, пов’язані із домашнім насильством, іншими статтями. Важливим кроком до запобігання домашньому насильству стало доповнення КК України розділом XIII-1 “Обмежувальні заходи”, який передбачає можливість застосування певних заходів у інтересах потерпілого від кримінального правопорушення, пов’язаного із домашнім насильством. Зроблено висновок, що внесення змін до КК України із запровадженням кримінальної відповідальності за домашнє насильство стало значним кроком щодо подолання проблеми домашнього насильства в країні, а ратифікація Стамбульської конвенції сприяє посиленню правового захисту постраждалих від насильства і забезпечить їм доступ до правосуддя.

Ключові слова: кримінальна відповідальність; домашнє насильство; дискримінація; гендерна рівність.