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POLITYKA PUBLICZNA ŚRODKÓW ZAPOBIEGAWCZYCH W ZAKRESIE PRZEMOCY DOMOWEJ NA UKRAINIE: REALIZACJA I PERSPEKTYWY

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Adnotacja. Dziś przemoc domowa ma różne przejawy, zarówno jako wykroczenie administracyjne, jak i wykroczenie karne związane z przemocą domową. Po uznaniu przemocy domowej za przestępstwo pojawiło się pytanie o zapobieganie temu niebezpiecznemu społecznie czynowi, który jest niezwykle ważnym, znaczącym społecznie i istotnym zadaniem, którego rozwiązanie ma charakter interdyscyplinarny. Dlatego celem naszych badań jest stworzenie istniejącego systemu profilaktycznych działań rządowych na Ukrainie i zaleceń dotyczących poprawy. Zadaniem jest zbadanie istniejących kroków państwa w kształtowaniu polityki zapobiegania przemocy domowej i scharakteryzowanie stanu realizacji polityki publicznej w badanej kwestii. W wyniku badania, za pomocą komparatystycznej metody badawczej, powstały problemy realizacji ustalonej polityki publicznej na Ukrainie i zaproponowano rozwiązania.

Słowa kluczowe: przemoc domowa; zapobieganie przemocy domowej; specjalne środki przeciwdziałania przemocy domowej; typowy program dla sprawców przemocy domowej; profilaktyczna ewidencja sprawców przemocy domowej.

STATE POLICY OF PREVENTIVE MEASURES FOR DOMESTIC VIOLENCE IN UKRAINE: IMPLEMENTATION AND PROSPECTS

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Abstract. Nowadays domestic violence has various manifestations, both administrative and criminal offenses related to domestic violence. After the recognition of domestic violence as a crime, the question of prevention of this socially dangerous act arose, being an extremely important, socially significant and urgent task, the solution of which is interdisciplinary. Therefore, the purpose of our study is to form the existing system of preventive state measures in Ukraine and to provide recommendations for improvement. The task is to study the existing steps of the state in the formation of policy for the prevention of domestic violence and to characterize the state of implementation of public policy on the research issue. As a result of the research, with the help of the comparative method of research the problems of realization of the formed state policy in Ukraine are created and the ways of the solution are offered.

Key words: domestic violence, prevention of domestic violence, special measures to combat domestic violence, a typical program for perpetrators of domestic violence, preventive registration of persons who have committed domestic violence.

ДЕРЖАВНА ПОЛІТИКА ПРОФІЛАКТИЧНИХ ЗАХОДІВ ЩОДО ДОМАШНЬОГО НАСИЛЬСТВА В УКРАЇНІ: РЕАЛІЗАЦІЯ ТА ПЕРСПЕКТИВИ

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Анотація. Сьогодні домашнє насильство має різні прояви – як адміністративне правопорушення, так і кримінальне правопорушення, пов'язане з домашнім насильством. Після визнання домашнього насильства злочином постало питання профілактики цього суспільно небезпечного діяння, яке є надзвичайно важливим, соціально значущим та актуальним завданням, вирішення якого має міждисциплінарний характер. Тому метою дослідження є формування чинної системи профілактичних державних заходів в Україні та надання рекомендацій щодо вдосконалення. Завданням є вивчення наявних кроків держави у формуванні політики щодо профілактики домашнього насильства й охарактеризувати стан реалізації державної політики з досліджуваного питання. Як результат дослідження, за допомогою компаративістському методу дослідження сформовано проблеми реалізації сформованої державної політики в Україні та запропоновано шляхи вирішення.

Ключові слова: домашнє насильство, профілактика домашнього насильства, спеціальні заходи щодо протидії домашньому насильству, типова програма для кривдників, що вчинили домашнє насильство, профілактичний облік осіб, що вчинили домашнє насильство.

Introduction. Today in Ukraine for domestic violence there is both administrative (Article 173-2 of the Code of Administrative Offenses of Ukraine) and criminal liability. The latter, in turn, is a group of criminal offenses, combining crimes and misdemeanors related to domestic violence, which can be divided into the following groups: 1) direct domestic violence (Article 126-1 of the Criminal Code of Ukraine); 2) acts provided for in the Special Part of the Criminal Code and containing a circumstance specified in the Law as aggravating criminal liability – an act against a spouse or former spouse or another person with whom the perpetrator is (was) in a family or close relationship (for example, part 2 of Article 153 of the Criminal Code of Ukraine); 3) acts provided for in the Special Part of the Criminal Code of Ukraine, in the determination of which the disposition of a particular article (or part of the article) of the Criminal Code does not contain instructions for their commission against spouses or former spouses or other persons with whom the perpetrator is (was) relations, however, which are actually committed in these circumstances, and therefore, given the provisions of paragraph 6-1 of Part 1 of Art. 67 of the Criminal Code of Ukraine, are the circumstances that aggravate the punishment for committing these acts (Oliinychenko, 2020: 117–123). That testifies to the comprehensive nature of the struggle and the possibility of applying special criminal law measures to combat domestic violence, such as restrictive measures applied to persons who have committed domestic violence (Article 91-1 of the Criminal Code of Ukraine). After the recognition of domestic violence as a crime, the question of prevention of this socially dangerous act arose, which is an extremely important, socially significant and urgent task, the solution of which is interdisciplinary.

Main part. It is widely known that law enforcement officials, members of the social and pedagogical communities, as well as medical and psychological services should be involved in ending domestic violence. However, most often efforts to create an effective system for preventing and ending domestic violence, providing assistance to victims of domestic violence are broken down by obstacles such as: departmental limitations and interdepartmental disunity, subjectivity in the choice of NGOs for cooperation, lack of common methodical and systemic approaches in the organization of preventive work; ignoring the preventive focus in working with the family; lack of legislation and law enforcement practices to protect and rehabilitate victims, exacerbated by legal nihilism and public distrust of law enforcement, low material wealth, which does not allow to seek qualified legal assistance; lack of communication skills with pedagogical, police, social and medical workers to communicate with the victim, that leads to hiding or defaulting the facts of domestic violence, especially in the absence of personal interest of the adult in punishing the offender and rehabilitation of the victim of domestic violence; lack of an effective and well-organized rehabilitation system (Methodical recommendations on prevention and counteraction to violence: Letter, Methodical recommendations dated 18.05.2018 № 1/11-5480).

Violence is one of the most common forms of human rights violations. Women, children and the elderly usually suffer the most from violence. The most common and the most difficult to counter is domestic violence. Family or domestic violence is common in many countries, despite their positive legislative, political and practical achievements.

According to the statistics released during the vote on the Law of Ukraine “On Prevention and Counteraction to Domestic Violence”, more than 3 million children in Ukraine annually observe acts of domestic violence or are their forced participants, and almost 70% of women are subjected to various forms of abuse and humiliation. About 1.500 women die each year, and this trend has increased over the past three years, at the hands of their own husbands. Children who have witnessed domestic violence are 6 times more likely to commit suicide and are 50% more likely to abuse drugs. Almost 100% of mothers who have experienced violence have given birth to sick children – mostly with neurosis, stuttering, enuresis, cerebral palsy, mental disorders (Guidelines for preventing and combating violence: Letter, Guidelines from 18.05.2018 № 1/11-5480).

Domestic violence in Ukraine is the reason for 100 thousand days of hospitalization, 30 thousand appeals to trauma departments, 40 thousand calls to doctors. At the same time, only 10% of victims seek help. After all, to this day many people consider such relations “normal”.

Calculations conducted by the Institute of Demography and Social Research for the United Nations Population Fund show that 1.1 million Ukrainian women face physical and sexual aggression in the family each year, and most of them are silent.

According to statistics from the World Health Organization, 38% of murders of women in the world are the work of their partners. In some countries, this figure is close to 70%. One in four women on earth suffers from sexual

violence throughout their lives (Methodical recommendations on prevention and counteraction to violence: Letter, Methodical recommendations dated 18.05.2018 № 1/11-5480).

Thus, the **purpose** of our research is to study the existing steps of the state in the formation of policy for the prevention of domestic violence, to characterize the state of implementation of public policy on the research issue and to provide recommendations for improvement. The research on the prevention of domestic violence became relevant after the entry into force of new legislation to prevent and combat domestic violence. Although the research question is quite new, it has already attracted the attention of both experienced representatives of the doctrine of criminal and criminal procedural law, criminologists, scientists in other fields of law, and young scholars. Among the latter we should single out the work of M.I. Khavroniuk, O.O. Dudorov, A.M. Yashchenko, D.Ye. Kryklyvets, I.V. Zhuk, T.O. Pavlova, I.I. Brus, K.A. Novikova, O.V. Haltsova, O.V. Kharitonova, M.M. Legenka, A.B. Blaha, and others.

An important step in the state policy of Ukraine was January 7, 2018, when the Law of Ukraine No. 2229-VIII “On Prevention and Counteraction to Domestic Violence” entered into force (hereinafter – the Law). The law defines the organizational and legal framework for preventing and combating domestic violence, the main directions of state policy in the field of preventing and combating domestic violence, aimed at protecting the rights and interests of victims of such violence. But it also outlines a framework for preventive work with perpetrators of domestic violence and provides for programs for victims. Of course, these measures, as well as the Law and other regulations in general, were adopted to implement the provisions of the Convention of the Council of Europe on Preventing Violence against Women and Domestic Violence and Combating these Phenomena dated 11 May 2011 (hereinafter referred to as the Istanbul Convention), which was signed by Ukraine, but has not yet been ratified, testify to the effectiveness and interest of the state in overcoming this shameful phenomenon – domestic violence more than in establishing an international partnership. After all, most of the provisions of this document have already been implemented in Ukraine without ratification.

Article 16 of the Istanbul Convention is based on the intention to respond to the actions of men who use physical, psychological or sexual violence against women, and obliges Member States to develop or support two different types of programs: for perpetrators of domestic violence (paragraph 1 of Article 16 of the Istanbul Convention), and for perpetrators of sexual offenses (paragraph 2 of Article 16 of the Istanbul Convention). More specifically, Article 16 stipulates that the safety and support of victims must be given priority during the implementation of these programs, and that specialized victim support services, such as shelters for women or crisis centers for victims of rape, should be involved in this area (M. Hester, S.-D. Lilly: 2014.). Currently, Ukraine is actively implementing a project to build a network of specialized support services for victims of domestic violence through a subvention to local budgets, that indicates a significant step by the state to implement the norm of the international document.

The explanatory report to the Istanbul Convention also argues that domestic violence intervention programs should be based on best practices and research results on the most effective ways to deal with perpetrators. Programs should hold perpetrators accountable for their actions and research their attitudes and beliefs about women. Such intervention requires qualified and trained coaches. In addition to knowledge of the psychology and nature of domestic violence, they need knowledge of the culture of language in order to work with different men who participate in these programs (M. Hester, S.-D. Lilly: 2014).

Moreover, such programs should not be established in isolation, but in close cooperation, if necessary, with women's support services, law enforcement, judiciary, probation, child protection or care authorities. The participation in such programs may be court-ordered or voluntary. In both cases, such involvement may influence the victim's decision to leave the offender or stay with him or her, or to give the victim a false sense of security. As a result, the needs and safety of victims, in particular their human rights, should be considered first.

Various types of perpetrator programs are currently being implemented in Europe, including the following:

- treatment programs in places of imprisonment (both for sexually aggressive men and for perpetrators of domestic violence);
- probation change programs for convicts (they are intended for perpetrators of domestic violence and are run by volunteer associations);
- community behavior and behavior change programs run by NGOs and other non-judicial actors (especially for perpetrators of domestic violence) (M. Hester, S.-D. Lilly, 2014).

Ukraine drew attention to the international standard and, among other special measures to combat domestic violence, provided for such preventive state measures to combat and prevent domestic violence as: - registration of the perpetrator and conducting preventive work with him/her; - referral of the perpetrator to the program for perpetrators.

Also, by analogy with the Istanbul Convention, Ukraine has coined the term “perpetrator”, which is used to refer to men who knowingly engage in violent and aggressive behavior to control their current or former partners, regardless of whether they have been charged or prosecuted. or convicted (M. Hester, S.-D. Lilly, 2014).

With regard to preventive accounting, in accordance with Art. 27 of the Law, it is provided that from the moment of detection of the fact of domestic violence the authorized police department takes on the preventive registration of the perpetrator for the term established by the legislation and carries out preventive work, the Child – the perpetrator (till 18 years who committed domestic violence in any form) is taken into preventive registration by employees of juvenile prevention units in accordance with the Instruction on the organization of work of juvenile prevention units of the National Police of Ukraine (Instruction on the organization of work of juvenile prevention units of the National Police of Ukraine: approved by the Order of the Ministry of Internal Affairs of Ukraine dated 19.12.2017 № 1044).

The grounds for placing the perpetrator on preventive registration are:

- the administrative report on the administrative offense provided by Art. 173-2 of the Code of Ukraine on Administrative Offenses;
- an urgent injunction against the perpetrator issued by an employee of an authorized police unit;
- receipt by the authorized police unit in the manner prescribed by law of information on the issuance by the court of a restraining order to the perpetrator (paragraph 6 of Article 26 of the Law and Article 350-8 of the Civil Procedure Code);
- court decision on the imposition of an administrative penalty for an administrative offense under Art. 173-2 of the Code of Administrative Offenses (Committing domestic violence, gender-based violence, failure to comply with an urgent injunction or failure to notify the place of his temporary stay);
- initiation of criminal proceedings against the perpetrator in connection with the commission of domestic or gender-based violence;
- notification of the penitentiary institution on release from serving a sentence of an perpetrator of domestic violence or gender-based violence (Procedure for registration, preventive work and deregistration of the perpetrator by an authorized unit of the National Police of Ukraine: approved by 25.02.2019 № 124).

Preventive registration of children is a set of measures for registration, filling and maintaining up-to-date databases included in the unified information system of the Ministry of Internal Affairs, in relation to children for whom preventive work is carried out. Preventive registration of children with the establishment of a record and preventive case lasts for a period of one year from the date of registration, unless otherwise provided by a court judgment that has entered into force (K.B. Levchenko, K.V. Pavlichenko, V.V. Cherniei, 2020: 316–317).

Terms of conducting preventive registration of the perpetrator are set:

- in accordance with the terms of application of measures of temporary restriction of the rights of the perpetrator or imposition on him of the obligations provided by the restrictive instruction concerning the perpetrator, and in case of continuation of the instruction - for the term established by court;
- within one year from the date of detection of the last fact of committing domestic violence in the case when the restrictive order against the perpetrator was not issued by the court;
- within one year from the date of imposition by the court of an administrative penalty for committing domestic violence or gender-based violence;
- before the entry into force of a court judgment in criminal proceedings instituted against the perpetrator in connection with the commission of domestic violence or gender-based violence;
- before cancellation or removal of a criminal record for a criminal offense related to the commission of domestic violence (Procedure for registration, preventive work and deregistration of the perpetrator by an authorized unit of the National Police of Ukraine: approved by the Order of the Ministry of Internal Affairs of Ukraine 25.02.2019 № 124).

Preventive work of the authorized police unit is aimed at implementing measures to prevent and combat domestic violence, control the behavior of the perpetrator at the place of residence/stay and conduct preventive work with him in order to prevent the recurrence of domestic violence; monitoring compliance with the requirements of measures temporarily restricting the rights of the perpetrator or imposing obligations on him by weekly communication with the perpetrator, and if necessary with the victim at the place of residence/stay, study and/or place of work, other places often visited by these persons .

Removal of the perpetrator from prophylactic registration and the procedure for registration and prophylactic registration of the perpetrator is carried out by the National Police of Ukraine according to the Instruction approved by the Ministry of Internal Affairs of Ukraine (K.B. Levchenko, K.V. Pavlichenko, V.V. Cherniei, 2020: 316–317).

With regard to the referral of a perpetrator to a program for perpetrators, Article 28 of the Law states that the entities responsible for the implementation of programs for perpetrators are local state administrations and local governments. 2. The entity responsible for the implementation of programs for perpetrators shall organize and ensure the passage of such programs by perpetrators. 3. Implementation of programs for perpetrators in relation to children-perpetrators is carried out taking into account the age and psychological characteristics of children. 4. In order to prevent the recurrence of domestic violence and to ensure the implementation of the program for the perpetrator, the child-perpetrator may be temporarily placed with relatives, foster parents or an institution for children, regardless of ownership and subordination, in which appropriate living, education, training and rehabilitation conditions are created for the child in accordance with his needs. 5. Execution of programs for perpetrators is provided by specialists who have undergone appropriate training. 6. The perpetrator may be sent by the court to undergo a program for perpetrators for a period of three months to one year in cases provided by law. 7. The perpetrator should be able to attend the perpetrator program on his own initiative on a voluntary basis. 8. In case of non-appearance of the perpetrator for the program for perpetrators or evasion of the program without good reason, the entities responsible for the implementation of programs for perpetrators shall submit within three working days a written notice to the authorized unit of the National Police of Ukraine. 9. Bringing a perpetrator to justice for failing to pass a program for perpetrators does not release him from the obligation to pass such a program. 10. If the perpetrator, in particular the child-perpetrator, is prosecuted, the court may impose a probation program on him in accordance with paragraph 4 of part two of Article 76 of the Criminal Code of Ukraine (Criminal Code of Ukraine: Law of Ukraine of 05.04. 2001. № 2341-III. Information of the Verkhovna Rada of Ukraine, 2001). Such a thorough provision includes all the conditions for the implementation of the program for perpetrators of domestic violence, but needs to be clarified regarding the implementation in special criminal executive legislation.

A particular attention should be paid to the study of the implementation of the program for perpetrators, the implementation and referral of which is provided by law, as well as by administrative, criminal procedure and criminal law. Such possibility is provided within the framework of court proceedings in criminal cases in the case of committing crimes related to domestic violence, as well as cases of imposition of an administrative penalty under Art. 173-2 of the Code of Ukraine on Administrative Offenses. Bringing a perpetrator to criminal liability for failure to pass a program for perpetrators provided by the amendments to the Criminal Code of Ukraine [8] does not release him from the obligation to pass such a program.

We should agree with the team of authors of the new commentary on the Law of Ukraine “On Prevention and Counteraction to Domestic Violence” (Levchenko, Pavlichenko, Cherniei, 2020: 316–317), among whom in addition to scientists from higher education institutions of the Ministry of Internal Affairs of Ukraine, representatives of authorities and experts of authoritative international organizations are also involved. Noting that the program for perpetrators – is a duty to take a set of measures formed on the basis of risk assessment and aimed at changing the violent behavior of the perpetrator, forming a new, non-aggressive psychological model of behavior in private relationships, responsible attitude to their actions and their consequences, including the upbringing of children, on the eradication of discriminatory notions about the social roles and responsibilities of women and men (Levchenko, Pavlichenko, Cherniei, 2020: 316–317).

The development, organization and implementation of the Standard Program for perpetrators, its passage by perpetrators are provided by local state administrations and local governments, and if necessary may involve enterprises, institutions, organizations, public associations, natural persons – entrepreneurs, as well as individuals who provide social services (with their consent), in accordance with the law.

The Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city state administrations are responsible for providing training to specialists in charge of issues and prevention of combating domestic violence, including specialists implementing the program. Specialists implementing the program may be a practical psychologist, psychotherapist, psychiatrist who has undergone special training, retraining or advanced training courses and represent the actors implementing measures in the field of prevention and combating domestic violence (Typical program for perpetrators: approved by the Order of the Ministry of Social Policy of Ukraine, 2018).

It should also be noted that Article 16 of the Istanbul Convention contains obligations to establish or support treatment programs for perpetrators of sexual offenses, including rape, which have not yet been introduced or implemented in Ukraine. Such programs are directly designed to treat criminals who have been punished for sexual offenses, in prisons or outside them, in order to minimize recidivism. The Istanbul Convention provides the parties with some flexibility in how to implement these programs, but their ultimate goal should be to prevent recurrence and return perpetrator s to normal life in society.

Conclusions. Thus, in Ukraine, as in some Member States that have ratified and/or signed the Istanbul Convention, the following programs are available to men who have not been charged and who have not been convicted. Such as: 1) passing programs for perpetrators as an administrative measure; 2) passing programs for perpetrators as a measure of civil procedure and 3) passing programs for perpetrators as a measure of criminal law. It is believed that this can be an important prevention strategy, as most men who commit domestic violence against women are never prosecuted. However, it should be noted that although such program has been introduced at the legislative level, it has problems in implementation. Such as: 1) an extensive system of subjects of appointment of programs for perpetrators; 2) an extensive system of persons responsible for the implementation of programs for perpetrators; 3) an extensive system of responsible executors of these programs; 4) lack of legally regulated qualification of specialists (psychologists/sociologists) who should conduct programs for perpetrators; 5) the absence of state standards for the implementation of these correctional programs, in contrast to the current legislation governing the Standard Program for perpetrators; 6) the lack of legally regulated control over the implementation of programs for perpetrators, in contrast to the fact that non-implementation of programs for perpetrators is criminally liable (Article 390-1 of the Criminal Code of Ukraine).

We believe that the solution to this situation can be: 1) a step-by-step solution of the issue of interaction of entities implementing measures to combat domestic violence not only at the state level but also at the level of territorial communities; 2) regulation and delimitation of levels of application of programs for perpetrators with a clear delimitation of preconditions, grounds, subjects of application; 3) reforming the criminal-executive legislation, in which to envisage the possibility of conducting such programs in penitentiary institutions in case of conviction of a person. Such step will ensure the achievement of the goal of criminal punishment – correction of convicts, change of their behavior, even psychological correction, which in our opinion can be an effective mechanism for preventing domestic violence in Ukraine, that requires study within a separate research.

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