

PROTECTION OF CHILDREN'S RIGHTS FROM DOMESTIC VIOLENCE: MAIN STRATEGIES OF UKRAINE AND FOREIGN STATES

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Abstract. *The article examines the issue of protecting the rights of minors who have suffered from domestic violence. It is noted that violence against children in the sphere of family relations remains one of the most pressing problems, and preventing this socially negative phenomenon is a priority for the state. In public consciousness and the media, the problem of violence often appears in a highly distorted form as "horrors of an isolated case." This leads to numerous myths about domestic violence, such as the belief that violence occurs only in socially disadvantaged families or that victims of violence have a specific appearance or social status. In reality, violence exists in all social groups, regardless of income, education, social status, cultural, religious, or socio-economic aspects. It is emphasized that domestic violence violates a range of internationally recognized human rights, including the right to equal protection under the law and protection against discrimination based on gender, the right not to be subjected to cruel treatment, the right to life and physical integrity, and the highest standards of physical and mental health. It is highlighted that children are the primary victims of violence. Child abuse includes any form of slavery or slavery-like practices, including the sale and trafficking of children, debt bondage, forced or compulsory labor, including forced recruitment of children for use in armed conflicts; the use, recruitment, or offering of a child for prostitution, the production of works, images, film and video productions, computer programs, or other pornographic materials; work that, due to its nature or conditions, may harm the physical or mental health of the child; the use of children for begging or their involvement in criminal activities, alcohol or drug consumption; actions that led to circumstances where a child became a witness to a crime against life, health, freedom, honor, dignity, sexual freedom, or sexual integrity; sexual intercourse and depraved acts towards a child using coercion, threats, force, trust, authority, or influence over the child, particularly vulnerable situations for the child, including intellectual or sensory disabilities or a dependent environment, including within the family. Therefore, it is proposed to introduce a separate provision in the Criminal Code of Ukraine: "Crimes related to domestic violence against minors." Additionally, the need for rehabilitation measures for victims of domestic violence is emphasized, aimed at illustrating a family life free of violence, beatings, and abuse, showing that a child can and should be surrounded by love and care.*

Key words: *children's rights, minors, violence, domestic violence, suicide, violence prevention, combating violence, violent crimes, child abuse.*

Today, society recognizes domestic violence as a serious, but, unfortunately, far from the most urgent problem. The provisions of the current legislation on domestic violence are not specified and are not addressed to violence in general, the use of the term "domestic violence" in science causes certain difficulties. The problem of domestic violence has long been a taboo topic, after all, society's resistance to addressing it is still visible: domestic violence is perceived as a purely personal, intra-family matter, which is studied only by specialists within the framework of their professional activities. In public consciousness and the media, the problem of violence often appears in a highly transformed form of "horrors of an individual case". For this reason, there are many myths about the problem of domestic violence, for example: violence occurs only in disadvantaged (marginal) families, citizens who experience violence are characterized by a certain appearance and social status, etc. In fact, violence exists

in literally all social groups, regardless of income level, education, social status, cultural, religious, socio-economic aspects, etc. This problem is especially acute in the field of violence against children. It should be noted that the main areas of activity of state and non-state organizations in ensuring the rights of the child to upbringing and development in a family environment are: ensuring the comprehensive development of children, the well-being of their families, social justice and participation in the life of society; overcoming family adversity, stabilizing and restoring family functions, preventing the removal of a child from the family, social and legal protection of the child; developing family forms of placement of orphans and children deprived of parental care; reforming boarding schools for orphans and children deprived of parental care; social support for young orphans, etc. [1, p. 43]. According to Art. 1 of the Law of Ukraine "On Prevention and Combating Domestic Violence" domestic violence is defined as acts (actions or inactions) of physical, sexual,

psychological or economic violence committed within the family or within the place of residence or between relatives, or between former or current spouses, or between other persons who live (lived) together as one family, but are not (were not) in family relations or married to each other, regardless of whether the person who committed domestic violence lives (lived) in the same place as the victim, as well as threats to commit such acts [2]. Domestic violence violates a number of internationally recognized human rights - the right to equal protection before the law and protection from discrimination on the basis of sex; the right not to be subjected to cruel treatment; the right to life and physical integrity; the highest standards of physical and mental health [3]. The World Health Organization defines violence as the intentional use of physical force or power, whether threatened or actual, against oneself, another person, group of persons or community, that either results in bodily harm, death, psychological trauma, maldevelopment or harm [4, p. 5]. This definition combines intentionality and the actual commission of an act of violence, regardless of its outcome. The Law of Ukraine "On Prevention and Combating Domestic Violence" of 07.12.2017 defines four forms of domestic violence: physical, sexual, psychological and economic violence (Art. 1) [2]. At the same time, Art. 126-1 [5] of the Criminal Code of Ukraine (hereinafter referred to as the CCU) contains only three of the above types, except for sexual violence, which, however, is distinguished as an independent crime in a separate article (Article 153). Of course, children suffer the most from violence. Thus, according to paragraph 3 of the Procedure for Interaction of State Authorities, Local Self-Government Bodies, Institutions and Organizations in Ensuring Social Protection of Children in Difficult Life Circumstances, Including Those That May Threaten Their Life and Health, child abuse is:

- any form of slavery or a practice similar to slavery, in particular the sale and trafficking of children, debt bondage, forced or compulsory labor, including the forced or compulsory recruitment of children for use in armed conflicts;
- using, recruiting or offering a child for prostitution, production of works, images, film and video productions, computer programs, other objects of a pornographic nature;
- work that, by its nature or conditions of performance, may cause harm to the physical or mental health of a child;
- using a child in begging, involving him in begging (systematic begging for money, things, other material values from third parties);
- involvement in criminal activity, involvement in the use of alcohol, narcotic drugs, psychotropic substances;
- actions that led to the emergence of circumstances in which the child became a witness to a crime against life, health, will, honor, dignity, sexual freedom, sexual integrity of a person;
- sexual intercourse and depraved acts against a child using coercion, threats, force, trust, authority, influence on a child, a particularly vulnerable situation for the child, in particular his mental or physical incapacity, age-related,

physical, mental, intellectual or sensory disorders or a dependent environment, including in the family [6]. In this aspect, it is worth noting that the problem of social isolation has worsened during the COVID-19 pandemic, the number of suicides has also increased. It is interesting that in a number of countries, in particular in the UK since 2018 and Japan since February 2021, the position of Minister for Loneliness has even been created, whose task is precisely to help people experiencing loneliness or isolation. 24-hour hotlines have also been set up to provide advice to such people. These countries also take every possible step to combat suicide, including suicides committed by children [7]. It is also worth noting that in various countries there are public institutions that provide legal, psychological, and social assistance to children and adolescents at the local level, thus implementing the norms of international law regarding the provision of safe and necessary conditions for children's lives. For example, in Sweden there is a wide range of public organizations whose main task is to support and provide assistance to children. For example, one of them, "Children's Rights in Society," offers such forms of support as a hotline and an electronic helpline; the public organization "Friends" sees its task as combating those who, having chosen a victim, try to systematically humiliate her [8]. It is worth noting that Ukraine has now begun to implement gatekeeping (from the English gatekeeping - gate control) - a mechanism for protecting and ensuring children's rights, which determines the principles of decision-making regarding children at the highest level of professional competence. This concept of a mechanism for protecting and ensuring children's rights will allow us to raise not only social work, but also state policy regarding children to a qualitatively new level. Thus, today, coordination councils for the protection of children's rights have been created and are operating, other advisory bodies that determine the strategy and policy of supporting families with children at the local level; guardianship councils, whose work is based on an interagency approach to decision-making regarding each individual child, etc. [1, p. 68]. In addition, the trends in the development of gatekeeping in the world are the development of standards for social services and the activities of institutions that provide them; the development of a system for collecting, moving, and using information about vulnerable children and their families; the creation of specialized services, the activities of which are based on an integrated approach. In particular, the EU project "Development of Integrated Social Services for Vulnerable Families and Children" focused on such important elements of gatekeeping as the creation of integrated social services to provide targeted comprehensive services to clients [9]. First of all, we would like to emphasize that the protection of children's rights is provided for at the constitutional level. Thus, the Constitution of Ukraine guarantees every citizen state support for family, motherhood, fatherhood and childhood [10]. In Ukraine, a system of social services is being developed, state pensions, benefits and other guarantees of social protection are being established. For example, the Constitution of France also assigns the state

the task of protecting socially vulnerable segments of the population. The preamble to the 1946 French Constitution states that the nation “guarantees to everyone, in particular children, mothers and the elderly, health care, material security, rest and leisure. It should be noted that on almost all issues considered within the framework of the protection of citizens’ rights, including children, the Constitution of Ukraine differs from the Constitution of the French Republic in clearer and more detailed formulations. By analogy with the Constitution of Ukraine, the Basic Law of Germany enshrines general provisions on the protection of social rights (Articles 7, 20, 28); these provisions are disclosed in more detail in the constitutions of individual German states, in the decisions of the Federal Constitutional Court of Germany, and in the norms of international law. Like the Constitution of Ukraine, the Constitution of Germany places the care of children and their upbringing on parents, emphasizing that this is their natural right and primary duty, the implementation of which must be monitored by the state community. As we can see, here we can note a similarity in the regulation of the issue of constitutional protection of children’s rights in Ukraine and Germany, which can be explained by the fact that its development became possible after the change in the existing socio-political system. Both in Ukraine and in Germany, the norms of the constitution, having direct effect, are the basis for the protection of minors.

A kind of internal mechanism for protecting the rights of the child can be recognized as a state policy in creating favorable conditions for children with special needs. This category of children is most in need of care and ensuring their rights in order to eliminate their discrimination, and families raising such children - in additional material support from the state. It should be noted that this vector of state policy is the subject of close attention from the UN and other international organizations. The international community has already adopted a number of international legal acts aimed at protecting the rights of people with special needs, including educational ones, such as: the European Social Charter, the Declaration on the Rights of Persons with Disabilities, the World Programme of Action concerning Persons with Disabilities and others, which are dedicated to respecting the fundamental rights of families raising a child with special educational needs. It must be said that the methods and methods of state protection of children with special needs depend on the models of the state's social policy: social democratic (Sweden), conservative (Germany), liberal (USA) and Asian (China, Japan). In the social democratic model, a significant part of the costs for social needs is borne by the state. The state bears the main responsibility for the social well-being of its citizens and is the main producer of social services. The features of the conservative model are that the state, as a rule, is responsible only for issuing social assistance to recipients of social security, but does not organize social services. The liberal model (USA, Great Britain) is characterized by minimal state participation in the social sphere. The financial basis for the implementation of social programs is

formed by private savings and private insurance, and not by state budget funds [11]. Educational institutions could play a major role in identifying violence in the family, since at the first signs of a child’s deterioration, his/her failure and neglected appearance, class teachers and teachers could timely signal the situation to the police [12]. In this regard, the National School of Judges of Ukraine even developed a distance learning course for judges “Psychological Features of Communication with Minors/Juvenile Participants in the Trial”, and a final online session was held on January 19, 2022 [13]. Summarizing the above, we can say that today in the world there are many domestic mechanisms for ensuring the development of children, which are a continuation of the international legal protection of children's rights. Foreign experience in protecting children's rights demonstrates that states are searching for the most effective and efficient mechanisms to combat the violation of children's rights and freedoms in order to create a favorable atmosphere for the life of minors in accordance with international legal standards. However, it is worth noting that in most countries of the world, the criminalization of domestic violence has a number of difficulties, since society considers family violence to be a private matter and does not always see it as a criminal act. In turn, national mechanisms for the protection of children's rights have quite diverse manifestations and are expressed in the activities of state bodies, public organizations, and institutions. An important role in this process is played by such an internal human rights institution as the institution of the Commissioner for Children's Rights [14]. It is worth recalling that the first country to create this institution in 1981 in accordance with the Act "On the Ombudsman for Children's Affairs" was Norway. The Norwegian Ombudsman is an independent defender of the rights, freedoms, and legitimate interests of children. Currently, ombudsman institutions for the protection of children's rights have been created and are operating effectively in a number of countries in Europe, Latin America, Canada, and other states [15]. Therefore, it is the Ombudsman who must ensure the protection of children's rights, including in the area of domestic violence.

However, it is worth noting that domestic violence in the family involves some "side effect" in the future, meaning that the child, having become an adult, has a high chance of becoming a criminal. This conclusion was reached by American experts analyzing prisoners. As a result of a recent experiment, they found out that most prisoners were victims of domestic violence in childhood. They were bullied, beaten, humiliated, and even sexually abused. They all lived in dysfunctional, single-parent and poor families. They admitted that this trauma does not go away, and the crimes they committed are the result of this attitude in the family. So we can conclude that the problem of domestic violence creates even greater problems in the future, leading such children to a criminal path. Perhaps this is due to the psychological and social undermining of reality, where there is no line between good and bad deeds. The conducted psychological experiment largely helped the prisoners to realize that they are not alone with such a

problem, that practically each of them suffered from their family members, and this is largely the reason why they are serving a sentence in the form of imprisonment. So the family is not always the center of society, which ensures the protection and life of the child, unfortunately, it is often the very tool for undermining society, its humanism and democracy. So, taking into account the problems that arise in the process of domestic violence against minors, we consider it appropriate to conduct rehabilitation activities with victims of domestic violence, which reflect family life without violence, beatings and bullying, show that the child can and should be surrounded by love and care. So, violence against children in the sphere of family and domestic relations continues to be one of the most acute problems, and the prevention of this socially negative phenomenon is a priority task of

the state. However, the issue of regulating domestic violence, especially against children, is still being resolved. In this regard, in our opinion, it would be appropriate to introduce a separate norm into the Criminal Code of Ukraine: "Crimes related to domestic violence against a minor". Unfortunately, there are currently no specific clear procedural measures that would facilitate the investigation of domestic violence against minors. Since the number of such crimes is increasing, we consider it appropriate to study this problem in more detail in order to improve the process of investigation and prevention of domestic violence against children, its legislative consolidation, which will allow forming the practice of implementing measures to detect domestic violence and punish the guilty person. However, these issues may be the subject of a separate study.

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