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REGULATORY AND LEGAL SUPPORT FOR POLICY OF COMBATING GENDER-BASED VIOLENCE IN UKRAINE

Abstract. The problem of gender-based violence is currently recognized as one of the most pressing in the modern world and relevant for most countries, in particular, for Ukraine. Combating gender-based violence is a relatively new area for Ukraine. However, in recent years, a number of crucial measures have been taken towards the establishment of the basic principles and the legal framework for the policy of combating gender-based violence.

The article systematizes the regulatory and legal framework for the policy of combating gender-based violence in Ukraine; international instruments regulating certain issues of the policy of counteraction and prevention of gender-based violence are characterized.

It was found that the Ukrainian legislation lacks definition of combating gender-based violence. It is proposed to define the concept of 'combating gender-based violence' as a coordinated activity of public authorities, local governments, civil society institutions and other actors (medical institutions, law enforcement agencies, etc.) to prevent, reduce manifestations and minimize the negative consequences of domestic violence, violence on the grounds of sex, violence in society as manifestation of gender discrimination, domination of one sex over another with participation or the acquiescence of the state. It is also proposed to apply a multisectoral approach (involving various actors to provide assistance to victims) to protection of the fundamental human rights and freedoms, and to form intolerant attitude of society to the said manifestations of violence.

The issue of identifying cases of gender-based violence remains relevant due to the lack of definition of violence and its signs.

Ukraine has created a minimal legal framework for the policy of combating and preventing gender-based violence. However, it needs further improvement in terms of formulating definitions of 'gender-based violence', 'combating gender-based violence', and mechanisms of interaction between the counteraction actors.

Keywords: domestic violence, violence on the grounds of sex, gender-based violence, combating gender-based violence

НОРМАТИВНО-ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ ПОЛІТИКИ ПРОТИДІЇ ГЕНДЕРНО-ЗУМОВЛЕНОМУ НАСИЛЬСТВУ В УКРАЇНІ

Анотація. Висвітлено проблему гендерно-зумовленого насильства, що на сьогодні визнана однією з найбільш нагальних у сучасному світі. Вона є актуальною для більшості країн, зокрема, для України. Протидія гендерно-зумовленому насильству — відносно новий напрям для України. Проте за останні роки було здійснено надзвичайно важливі та вагомі кроки на шляху становлення засад, законодавчої бази політики протидії гендерно-зумовленому насильству.

Систематизовано нормативно-правове забезпечення політики протидії гендерно-зумовленому насильству в Україні; схарактеризовано міжнародні документи, якими регулюються окремі питання політики протидії та попередження гендерно-зумовленого насильства.

З'ясовано, що в українському законодавстві відсутнє визначення протидії гендерно-зумовленому насильству. Запропоновано визначення поняття "протидія гендерно-зумовленому насильству" як скоординована діяльність органів державного управління, місцевого самоврядування, інститутів громадянського суспільства та інших суб'єктів (медичних закладів, правоохоронних органів тощо) із запобігання, зменшення виявів та мінімізації негативних наслідків вчинення домашнього насильства, насильства за ознакою статі, насильства у суспільстві як вияву гендерної дискримінації, домінування однієї статі над іншою зі сторони чи потуранні держави. А також застосування міжсекторального підходу (залучення різних суб'єктів задля надання допомоги постраждалим особам) до захисту основних прав і свобод людини;

формування у суспільстві нетолерантного ставлення до зазначених виявів насильства.

Актуальним залишається питання ідентифікації випадків гендерно-зумовленого насильства через відсутність його визначення та ознак.

В Україні створено мінімальну нормативно-правову базу політики протидії та попередження гендерно-зумовленого насильства. Водночас вона потребує подальшого удосконалення в частині формулювання визначення понять "гендерно-зумовлене насильство", "протидія гендерно-зумовленому насильству", механізмів взаємодії суб'єктів відповідної протидії.

Ключові слова: домашнє насильство, насильство за ознакою статі, гендерно-зумовлене насильство, протидія гендерно-зумовленому насильству.

НОРМАТИВНО-ПРАВОВОЕ ОБЕСПЕЧЕНИЕ ПОЛИТИКИ ПРОТИВОДЕЙСТВИЯ ГЕНДЕРНО-ОБУСЛОВЛЕННОМУ НАСИЛИЮ В УКРАИНЕ

Аннотация. Освещено проблему гендерно-обусловленного насилия, которая на сегодня признана одной из самых насущных в современном мире. Актуальной она является для большинства стран, в частности, для Украины. Противодействие гендерно-обусловленному насилию — относительно новое направление для Украины. Однако за последние годы были осуществлены очень важные шаги на пути становления основ, законодательной базы политики противодействия гендерно-обусловленному насилию.

Систематизировано нормативно-правовое обеспечение политики противодействия гендерно-обусловленному насилию в Украине; охарактеризованы международные документы, которыми регулируются отдельные вопросы политики противодействия и предупреждения гендерно-обусловленного насилия.

Установлено, что в украинском законодательстве отсутствует определение противодействия гендерно-обусловленному насилию. Предложено определение понятия "противодействие гендерно-обусловленному насилию" как противодействие гендерно-обусловленному насилию — это скоординированная деятельность органов государственного управления, местного самоуправления, институтов гражданского общества и других субъектов (медицинских учреждений, правоохранительных органов) по предотвращению, уменьшению проявлений и минимизации негативных последствий совершения домашнего насилия, насилия по признаку пола, насилия в обществе как проявления гендерной дискриминации, доминирование одного пола над другим со стороны или попустительстве государства. А также применение межсекторального подхода (привлечение различных субъектов для оказания помощи пострадавшим лицам) к защите основных прав и свобод человека; формирование в обществе нетолерантного отношения к указанным проявлениям насилия.

Актуальным остается вопрос идентификации случаев гендерно-обусловленного насилия из-за отсутствия его определения и признаков.

В Украине создана минимальная нормативно-правовая база политики противодействия и предупреждения гендерно-обусловленного насилия. Вместе с тем она требует дальнейшего усовершенствования в части формулировки определения понятий “гендерно-обусловленное насилие”, “противодействие гендерно-обусловленному насилию”, механизмов взаимодействия субъектов соответствующего противодействия.

Ключевые слова: домашнее насилие, насилие по признаку пола, гендерно-обусловленное насилие, противодействие гендерно-обусловленному насилию.

Formulation of the problem. Due to forced migration of internally displaced persons (since 2014), in the context of the deteriorating economic situation in Ukraine during the COVID-19 pandemic quarantine, the number of cases of violence against women, domestic violence, including gender-based, has increased. Issues of preventing and combating gender-based violence are becoming one of the priority areas of gender policy. This is evidenced by the approval of the National Action Plan for the implementation of the UN Security Council Resolution 1325 “Women, Peace and Security” for the period up to 2020 (February 2016), and adoption of the Law of Ukraine “On Preventing and Combating Domestic Violence” (December 2017). The petition to the President of Ukraine (February 2020) demanding the introduction of a draft bill on ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) received over 25,000 signatures. The response of the President of Ukraine (June 2020) with the undertaken obligation to submit the relevant bill to the Verkhovna Rada of Ukraine confirms the need to further improve the legal framework for combating gender-based violence. Particularly since the existing legal framework lacks the very concept of ‘gender-based violence’; instead, the terms ‘violence on the grounds of sex’ and ‘domestic violence’ are used. The above proves the relevance of the chosen topic of the article.

Analysis of recent research and publications. The areas of gender policy, including its legislative support, were studied by such Ukrainian scientists as O. Andreieva, O. Boiko, V. Goshovska, N. Hrytsak, L. Honiukova, G. Khrystova, O. Venger, and L. Voronko. The problem of combating gender-based violence is explored in research works of V. Korolchuk, K. Levchenko, T. Myroniuk, L. Nalyvaiko, L. Shaposhnyk, V. Sychova, A. Tushchenko and other scholars. However, the regulatory and legal support for the policy of combating gender-based violence in Ukraine has not become the subject of systematic studies yet, which determines the scientific relevance of the research topic.

The objective of the article is to systematize the regulatory and legal framework for the policy of combating gender-based violence.

Presenting main material. The problem of gender-based violence is recognized as one of the most pressing in today's world. It is urgent for most countries, including Ukraine. Combating gender-based violence is seen as a priority of gender policy both internationally and at the national states level. For Ukraine, this sphere is relatively new. And yet, in recent years, a number of significant measures have been taken to establish the foundations of Ukraine's gender policy and policy to combat gender-based violence.

Gender-based violence can be defined as discriminatory attitudes or gross violation of human rights and freedoms, which are dangerous acts committed against the will of the individual based on gender differences. Gender-based violence is aggressive behavior, demonstration of superiority, use of force based on difference in sex. M.O. Kachynska considers gender-based violence as a type of offense which is characterized by committing illegal actions against a person for the only reason that he or she belongs to a certain sex [1, p. 15].

A feature of gender-based violence is that mostly it is done not in the public, but in private life. In addition, as noted by N. Anishchuk, there is the widespread perception of the "acceptability" of such offenses in the family [2, p. 20].

The UN Declaration on the Elimination of Violence against Women defines gender-based violence as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life [3].

A number of researchers equate the concepts of 'gender-based violence', 'violence against women' and 'domestic violence'. Indeed, among the cases of gender-based violence, the absolute majority refer to violence against women. Of those cases, the vast majority relate to domestic violence. Domestic violence is not the same as gender-based violence, but sometimes is a form of it. Combating domestic violence and violence against women can be considered in the context of combating gender-based violence.

There are the following types of gender-based violence: physical, sexual, psychological, emotional, economic. Gender-based violence can occur both in public space (at work, in public institutions and places) and at home. It can apply to any social or age group. According to a study by the UN Population Fund, almost one in four women aged 15 to 49 in Ukraine was a victim of physical or sexual violence at least once [4]. Moreover, the reliability of this data cannot be guaranteed, and the number of victims of gender-based violence can be much higher.

The difficulty in identifying cases of gender-based violence is that a significant part of them are not registered due to lack of public trust in law enforcement agencies, and fear of public condemnation. Besides, such types of violence as psychological, emotional, economic are not even regarded by the victims as gender violence, but are perceived as an aspect of a normal relationship.

Ukraine has committed to implement the international instruments

governing the prevention and combating of gender-based violence, including the UN Declaration on the Elimination of Violence against Women, the Beijing Declaration, the UN Convention on the Elimination of All Forms of Discrimination against Women, the Gender Equality Strategy 2022 approved by the Council of Europe, and the UN Sustainable Development Goals by 2030.

The UN Declaration on the Elimination of Violence against Women (1993) became the first international document to enshrine the principles of combating gender-based violence. In 1995, the Beijing Platform for Action significantly expanded the definition of violence against women to address discrimination based on age, race, ethnicity, and wealth. The UN Security Council Resolution 1325 on Women, Peace and Security calls for protection of women from gender-based violence and for improvement of violence prevention strategies, including the strengthening of safeguards for women's rights within national law.

One of the most important international regulations in the field of combating gender-based violence is the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). According to the Convention, violence against women is a manifestation of the historically formed unequal balance of power between men and women and a social mechanism, the use of which forces women to have a subordinate position [5]. Ukraine signed the Istanbul Convention as early as in 2011; however, it has not been ratified yet. The Council of Churches and Religious Organizations warns against its adoption due to the use of the term 'gender identity' in its text: the document interpretes the term 'gender' as dependent on a person's self-identification, rather than on their natural sex characteristics [6]. In addition, the number of votes of the people's deputies of the Verkhovna Rada of Ukraine of both the previous and current legislature is not enough to ratify the Convention.

Ratification of the Istanbul Convention would not only allow the experts of the Council of Europe to monitor implementation of the commitments undertaken by Ukraine, but would also give the country the right to require increased penalties for offenders of the Ukrainian female citizens abroad, as well as for the Ukrainian offenders who are hiding in foreign lands.

The first national document providing the legislative support of the policy of combating violence against women was the Law of Ukraine "On Prevention of Domestic Violence" (2001). The areas of combating gender-based violence have been further specified in the Law "On Ensuring Equal Rights and Opportunities for Women and Men" (2005); "On the Principles of Prevention of Trafficking in Human Beings" (2011), "On the Principles of Preventing and Combating Discrimination in Ukraine" (2012); in amendments to the Criminal Code of Ukraine.

In 2007, regulations were developed for the National Coordinating Council for the Prevention of Domestic Violence, Gender Equality and Combating Trafficking in Human Beings under the Ministry of Social Policy of Ukraine and the relevant coordinating

councils under local authorities. Their main tasks included ensuring coordination of actions of the agencies, institutions and organizations that are to combat and prevent gender-based violence. The coordination councils' activity ensures the accomplishment of the function of public control over the observance of laws on combating gender-based violence and the interaction of the authorities and the public.

The Sustainable Development Goals by 2030, approved by the UN Summit, emphasize the importance of actions aimed to combat gender-based violence [7]. Accordingly, the National Report "Sustainable Development Goals: Ukraine" identified the elimination of all forms of discrimination against women, reducing the level of gender-based and domestic violence as the country's crucial tasks.

At the end of 2017, the Law of Ukraine "On Prevention and Counteraction to Domestic Violence" was adopted. It enshrined the basic principles of the Istanbul Convention and other international instruments, including those to counteract gender-based and domestic violence. According to the law, domestic violence is defined as acts of physical, sexual, psychological or economic nature committed in the family or in the place of residence, leading to physical or psychological suffering, health disorders, disability, emotional dependence or deterioration of the life quality of the victim [6]. Threats to commit these acts are also considered violence. A new important feature of this law is an expanded list of administrative penalties for acts that are classified as domestic violence. However, it lacks a definition of 'gender-based violence'; instead, the term 'violence on the grounds of sex' is used, which does not fully reveal the content of the gender-based violence concept.

The law established the list of entities that are to carry out measures to prevent and combat domestic violence. These include the agiencies that ensure the shaping and implementing of the key policies to combat gender-based violence: the Verkhovna Rada of Ukraine, which creates the legislative framework of the policy; the Cabinet of Ministers of Ukraine, which forms an appropriate regulatory environment and the focal points of the policy, coordinates and implements the policy, in particular, through the Government Commissioner for Gender Policy; the Ministry of Social Policy of Ukraine. Under the Ukrainian law, the list of actors of the policy of combating gender-based violence includes: child-care services; the National Police units; educational institutions and organizations; public health authorities; centers for legal aid; judiciary; the prosecutor's office.

Among the general and specialized services providing support to victims, the above-mentioned law determines the following bodies: centers of social services for families, children and youth; shelters; social and psychological rehabilitation centers; territorial social services centers.

According to the law, not only Ukrainian organizations of any form of ownership, public associations, and individuals, but also foreign NGOs can be involved in the implementation of the policy of combating domestic violence.

In accordance with the Law of Ukraine "On Amendments to the Cri-

minal and Criminal Procedure Codes of Ukraine in order to implement the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and fight against these phenomena", the range of subjects to whom the law is applied was expanded to include: spouse/ex-spouse or other persons with whom the offender is/was in a family/intimate relationship. Additional measures aimed at establishing precautionary mechanisms to combat violence on the grounds of sex were also listed [8].

In October 2018, the Order of the Cabinet of Ministers of Ukraine approved the Concept of the State Social Program for Prevention and Response to Domestic Violence and Gender-Based Violence till 2023. Among the main expected results of the Program is an increase in the level of public trust in the entities implementing anti-violence measures.

In 2019, the Order of the Ministry of Internal Affairs of Ukraine established the procedure for preventive registration and carrying out preventive work with the offender aimed to prevent the recurrence of violence [9].

Before 2018, the interaction and coordination of actors combating domestic violence was carried out by the Instruction on the order of interaction of structural units responsible for the implementation of state policy on prevention of domestic violence (dating 07.09.2009) [10]. The algorithm of interdepartmental interaction and response to cases of violence on the grounds of sex was first proposed by the Coordinating Council for Family, Gender Equality, Demographic Development, Prevention of Domestic Violence, Gender-Based Violence, and Combating Trafficking in Human Beings in Kharkiv. In 2017, its working group developed and published the relevant guidelines [11]. The governmental order "On Approval of the Procedure for Interaction of Entities Carrying Out Measures in the Sphere of Prevention and Counteraction to Domestic Violence and Gender-Based Violence" was adopted only in 2018 [12]. It contained mechanisms for detecting and responding to violence, information exchange between local executive bodies, local governments, units of the National Police, educational and healthcare institutions, special services for affected persons. However, none of these documents gives definition of gender-based violence or its signs.

We suggest that combating gender-based violence should be regarded as a coordinated activity of public authorities, local self-government bodies, civil society institutions and other entities (medical institutions, law enforcement agencies, etc.), aimed to prevent, reduce manifestations and minimize the negative consequences of domestic violence, violence on the grounds of sex, violence in society as manifestation of gender discrimination, domination of one sex over another with participation or the acquiescence of the state. We propose the application of a multisectoral approach (involving various actors to provide assistance to victims) to combat domestic violence, violence on the grounds of sex; formation in society of intolerant attitude to these manifestations of violence.

Today in Ukraine, the policy of combating gender-based violence is

aimed at introduction of a preventive model of work and implementation of a comprehensive program to help the victims of violence.

According to the information published by the Ministry of Social Policy of Ukraine, in the first quarter of 2020, almost 47 thousand complaints regarding domestic violence were lodged, which is 48 % more than in the same period of 2019 (31.7 thousand complaints). Of the total number of complaints, 0.8 % were received from children; 85 % — from women; 13.6 % of complaints — from men [13]. On the one hand, this indicates the existence of negative trends of increasing number of cases of domestic violence. On the other hand, it is the result of a growing trust in law enforcement and social care services.

The statistics on domestic violence cases prove the imperfection of the legal framework for combating gender-based violence. For instance, in January 2019, 29 % of cases were closed, 35 % were sent for reconsideration. Judgements were passed only on 35 % of cases: in 89 % of cases — a fine, 9 % — compulsory community service, 2 % — administrative arrest [14]. That is to say, if this trend continues, 65 % of offenders will not be prosecuted at all.

Conclusions and prospects for further research. Combating gender-based violence is recognized as one of the priorities of gender policy both by the international community and in Ukraine. Ukrainian legislators have not yet ratified the Istanbul Convention — a fundamental international act that sets out the principles for combating and preventing gender-based violence. And yet, Ukraine has created a powerful toolkit for implementing policies in this area.

Over the past few years, the legal framework for combating gender-based violence has been significantly improved: a number of legislative acts, government decrees, state and regional programs regulating the relevant area have been adopted. At the same time, the legal framework does not contain a definition of 'gender-based violence', limiting the range of issues to the concept of 'violence on the grounds of sex'. The issue of identifying cases of gender-based violence remains relevant due to the lack of definition of the violence and its signs.

The regulatory and legal framework for the policy of prevention and counteraction to domestic violence and gender-based violence contains tools for control and monitoring of the activities of authorities responsible for this area, and determines the specific measures to implement the policy. However, the regulatory and legal support for the policy to combat gender-based violence needs improvement.

For further research, it is important to analyze the international experience of responding to and combating gender-based violence in order to adapt the best practices to the regulatory and legal support for combating gender-based violence in Ukraine.

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