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Legal Basis for Countering Gender-Based Violence During the Armed Conflict in the East of Ukraine

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Abstract

The purpose of the study is to conduct a comprehensive analysis of the socio-legal aspects of gender-based violence in the context of the armed conflict in the East of Ukraine, develop theoretical and practical foundations for the use of means of countering this violence, prepare scientifically based proposals for improving legislation, law enforcement, and practice. In the course of conducting the research, philosophical, general scientific, and specific sociological methods were used. The work was based on the laws of unity and struggle of opposites, the negation of negation, and the transition of quantitative changes to qualitative ones. The empirical material was obtained by using the methods of questionnaires, interviews, content analysis, observation, and expert assessments. The study highlights the results of comprehensive criminal and administrative investigation in the field of countering gender-based violence during the armed conflict in the East of Ukraine. The author outlined the features of this type of violence, the factors that cause criminal domestic violence, and also conducted a comparative analysis of the legislation of Ukraine and the Russian Federation, the "legislation" of the DPR and LPR in this area. Ways to improve the activities of subjects of prevention of gender-based violence are identified. Since the "legislation" of the self-proclaimed republics is declarative in nature, changes of a legal and social nature are proposed, which can be implemented on the territory of Ukraine to protect citizens living in uncontrolled territories from gender-based violence

Keywords:

gender-based violence; gender; gender stereotypes; violent crimes; gender equality

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Introduction

Recently, gender-based violence has been the focus of studies and social discussions in Ukraine. Social movements focus on sexual and domestic violence, gender discrimination in the media and politics, and discriminatory attitudes in Ukrainian society. International non-governmental organisations encourage Ukraine to introduce effective monitoring of compliance with obligations in the field of combating gender-based violence. However, despite the adoption of new laws, measures to combat gender-based violence, increased media attention and discussions on social networks, violence against women is still widespread in Ukraine. The media reports the most audacious cases, but the daily experiences of sexual, physical, economic, and psychological violence experienced by many women are mostly ignored or silenced. Victims are often left without assistance in institutions created to protect them and prosecute those responsible.

Gender restrictions have had a major impact on women's lives, narrowing their opportunities and violating inalienable rights and freedoms. According to a 2020 study, over 1 million Ukrainian women experience physical, sexual, or emotional abuse at home every year (about 23 million adult women live in Ukraine). For those of them who live in the conflict-affected Donetsk and Luhansk regions, this type of gender-based violence is particularly dangerous. Currently, 2.7 million people affected by the armed conflict that began in 2014 live within a 20 km radius on both sides of the so-called "contact line", which is over 420 km long and separates the controlled and uncontrolled areas of Donetsk and Luhansk regions of Ukraine. Most of these people, namely 2 million, are women, children, and elderly people.

In these areas, women are at an increased risk of various forms of gender-based violence, which is often hidden due to factors such as the presence of the army, low security, the absence or destruction of the rule of law, and the widespread impunity of perpetrators. The prevalence of this phenomenon is due to the economic crisis, the destruction of traditional family values, the weakening of territorial communities, the lack of a system for the reintegration of veterans in society, social vulnerability due to forced relocation, permanent psychological pressure, and the lack of infrastructure, including social services. Amnesty International's studies show that the military conflict in the Donetsk and Luhansk regions of Ukraine has seriously affected the establishment and development of domestic violence, and the effectiveness of law enforcement in the Donetsk and Luhansk regions.

The purpose of the study is to conduct a comprehensive analysis of the socio-legal aspects of gender-based violence in the context of the armed conflict in the East of Ukraine, develop theoretical and

applied bases for the use of means of countering this violence, prepare scientifically based proposals for improving legislation, law enforcement, and practice. This involves performing the following tasks:

- theoretically substantiate and formulate the concept of gender-based violence;
- describe in detail the persons who have committed gender-based violence;
- identify the causal complex of factors of domestic violence;
- identify ways to improve the regulatory support for preventive impact on gender-based violent manifestations.

Results and Discussion

Every third woman and every fourth man surveyed who was held captive in the conflict zone in the Donetsk region suffered or witnessed gender-based violence. These are the results of a study conducted by the public organisation "East Ukrainian centre for public initiatives", and its results are presented in the analytical report "War without rules: gender-based violence associated with the armed conflict in the East of Ukraine" [1].

According to Art. 3 of the Constitution of Ukraine, "a person, their life and health, honour and dignity, inviolability and security" is the greatest social value. Other articles on gender equality include Art. 21 (all people are free, equal in rights and obligations; human rights and freedoms are inalienable and inviolable), Art. 24 (citizens have equal constitutional rights and freedoms, and everyone is equal before the law; in relation to race, skin colour, politics, religion, and other beliefs, gender, race, and social origin, property status, place of residence, language, or other characteristics), Art. 51 (marriage is based on the free consent of a woman and a man; members of spouses have equal rights and obligations in the family and marriage) [2].

Since Ukraine has not taken part in any armed conflict (international or local) since its declaration of independence, the issue of gender-based violence is considered in the legislation mainly as domestic violence. This understanding is very narrow and cannot reproduce the essence of the phenomenon. For example, the Istanbul Convention [3] defines gender-based violence as violence against a woman because she is a woman (forced abortion, female genital mutilation). Therewith, women experience violence more often than men: sexual violence, rape, harassment, sexual harassment, domestic violence, forced marriage, forced sterilisation.

The Verkhovna Rada of Ukraine (hereinafter referred to as the VRU) adopted the Law of Ukraine "On prevention of domestic violence" in 2001, according to which domestic violence refers to intentional physical, sexual, psychological, or economic

actions of a family member against another family member if these actions violate the constitutional rights and freedoms of a family member as a person and citizen and cause them moral harm, harm to their physical or mental health [4-5].

The Law defines certain types of violence (physical, sexual, psychological, and economic) and characterises them. The Law also defines the system of state authorities responsible for implementing measures to prevent domestic violence, in particular authorised units of the National Police of Ukraine, guardianship authorities, specialised institutions for perpetrators of domestic violence and its victims. These include crisis centres for family members who have experienced domestic violence or a real threat of domestic violence and medical and social rehabilitation centres for victims of domestic violence. The law defines special measures to prevent domestic violence:

- an official written warning that the person has not committed domestic violence (provided that there are no signs of a crime in their behaviour), and sending them to a crisis centre for a correctional programme (in case of the continuation of unlawful behaviour after receiving the warning);

- preventive accounting of persons who have committed domestic violence;

- issuing a protective order against a person (prohibition to perform certain actions) to a victim of violence;

- recovery by a court decision from persons who have committed gender-based violence, funds for reimbursement of expenses for helping victims of domestic violence and keeping them in specialised institutions for victims of domestic violence [4]. Thus, in 2005, the VRU adopted the Law of Ukraine "On ensuring equal rights and opportunities for women and men" [6], which entered into force on January 1, 2006. Unlike the Law of Ukraine "On prevention of domestic violence", this law does not directly provide for countering gender-based violence. However, this is only one of many regulatory documents, the implementation of the instructions of which can prevent domestic violence.

Where men and women have unequal rights and opportunities, gender-based violence is almost always present [7-12].

For a long time, there was not a single document on this issue that could determine the status of women in society and provide for punishment for sexual violence. There was no such thing in unauthorised republics and their state authorities. This led to the fact that the views and beliefs of field commanders shaped the actual policy of the self-proclaimed republic in this region and determined the status and role of women in local society. An idea of the role of women assigned to them by the separatist leaders in the temporarily occupied territories is taken from their public statements. For example, the armed es-

tablishments of O. Mozgovoy – one of the most influential field commanders, controlled several cities in the occupied regions (Alchevsk, Sievierodonetsk, Lysychansk, Pervomaisk) from 2014 to 2020. During the session of the "people's court", which took place in Alchevsk, proclaimed: "A woman must be the guardian of the home, a mother. If you want to stay honest and loyal to your man, stay at home and embroider with a cross. Sit at home, bake pies, celebrate March 8. You must remember that you are Russian! Time to remember your spirituality!"

Men and boys in the DPR and LPR must also perform their planned "roles". Therewith as the introduction of the gender policy of separatist power institutions that regulate the social roles of men and women, information became widespread about systemic cases of gender-based violence by armed groups: abduction of women, rape of minors, violence against older women. The mass media indicate that cases of sexual violence are not properly investigated – "law enforcement officers of the republics" hide them. These actions on the part of the military are also reported by international organisations. This is evidenced by the results of interviews with direct victims and witnesses of violence conducted as part of the study, who were illegally detained on the territory of the self-proclaimed republics.

Given that human rights organisations cannot enter a territory that calls itself an independent republic, it is impossible to comprehensively and objectively assess the level of gender-based violence in various forms in the temporarily occupied territories. From the testimony of the victims, it can be seen that these persons knew about the existence of places of non-freedom and conditions of stay there and were aware that violence was used against people who were there. Facts of gender-based violence were also recorded among the Ukrainian military and volunteer battalions. The most famous case was the case of soldiers of the "Tornado" battalion: three people were brought to criminal responsibility. However, there are much fewer such facts, because the system in the controlled territories differs substantially [13].

The spread of gender-based violence in the territory of armed conflict contradicts numerous international documents, for example, the Geneva Convention and the Rome Statute of the International Criminal Court [14-16].

Given the legal position, any normative act of the self-proclaimed republics is illegal, but de facto persons living there cannot ignore these norms. Their relevant legal provisions should be analysed to examine the specific features of legal responsibility for committing gender-based violence in the occupied territory.

The "constitutions" of the self-proclaimed republics contain general instructions prohibiting

torture, cruel, inhuman, or degrading treatment or punishment (Art. 14 of the Constitution) [17-18] and fully comply with the provisions of the Constitution of Ukraine (Art. 28) and Russia (Art. 28) [19].

Criminal offences against sexual freedom and inviolability are subject to liability under the criminal codes of the two self-proclaimed republics. In the criminal legislation of Ukraine, Russia, and the LPR, these crimes have the same composition. The liability provided for by the criminal legislation corresponds to the provisions of the criminal legislation of the Russian Federation, but sometimes exceeds the sanctions provided for in the relevant articles of the Criminal Code of Ukraine for domestic violence, that is, intentional actions of a physical, economic, or psychological nature. These include: physical violence that causes physical pain but does not cause

serious bodily harm threats, harassment, seizure of property, housing, food, valuables, or funds that are the property of the affected person. The maximum penalty for this crime is 15 days of administrative arrest. However, in the DPR, gender-based violence is an administrative offence and administrative responsibility for it is identical to Ukrainian legislation.

The laws of the Russian Federation do not contain such a concept as “gender-based violence” or “domestic violence”, but the composition of this offence corresponds to Art. 6.1 of the Code of Administrative Offences. The penalty for committing an offence is 15 days of administrative arrest. The same maximum sanction is established by Art. 173-2 of the Code of administrative offences of Ukraine, which provides for administrative liability for committing domestic violence (Table 1).

Table 1. Comparative analysis of sanctions for crimes based on gender-based violence

Comparative analysis of sanctions for crimes based on gender-based violence Crime	Ukraine	Russian Federation	LPR	DPR
Rape	15 years of imprisonment	20 years of imprisonment	20 years of imprisonment	20 years of imprisonment
Violent satisfaction of sexual passion in an unnatural way	15 years of imprisonment	20 years of imprisonment	20 years of imprisonment	20 years of imprisonment
Forced sexual intercourse	3 years of imprisonment	5 years of imprisonment	5 years of imprisonment	5 years of imprisonment
Sexual intercourse with a person who has not reached puberty	8 years of imprisonment	20 years of imprisonment	20 years of imprisonment	20 years of imprisonment
Molestation of minors	8 years of imprisonment	15 years of imprisonment	15 years of imprisonment	15 years of imprisonment

Source: developed by author

Thus, the comparative analysis shows that the legislation of the self-proclaimed republics on gender crimes duplicates the provisions of the legislation of the Russian Federation on the qualification and extent of sanctions. The punishment for gender-based violence in the republics of the DPR, Russia, and Ukraine is identical and provides for a maximum sanction of 15 days of administrative arrest. However, the lack of a proper judicial and law enforcement system in the self-proclaimed republics reduces the effectiveness of legislation to a minimum [20-21].

The study presents the results of a comprehensive scientific analysis in the field of countering gender-based violence during the armed conflict in the East of Ukraine. The author identified typical features of gender-based violence, specific factors that cause criminal domestic violence; and also conducted a comparative analysis of the legislation of Ukraine, the Russian Federation, the DPR, and the LPR in this area. The study identifies ways to im-

prove the activities of subjects of prevention of gender-based violence.

Conclusions

Since the legislation of the self-proclaimed republics is declarative in nature and a priori is not normative regulations, considering the theory of law and international standards, it is necessary to propose changes of a legal and social nature that can be implemented on the territory of Ukraine to protect citizens living in uncontrolled territories from gender-based violence. These include:

1. Enhancing the effectiveness of interdepartmental coordination of social and humanitarian response to manifestations of gender-based violence through the organisation of sub-clusters to overcome violence at the regional level, the development of specialised information systems for processing and analysing information about acts of gender-based violence, increasing the ability of social workers to

respond to the facts of gender-based violence in humanitarian missions.

2. Improving awareness of the phenomenon of gender-based violence among the population of the region, available services and algorithms for actions in cases of violence, distributing various printed information materials to vulnerable groups, raising awareness and social campaigns on gender-based violence, involving residents of pilot areas in national and regional media.

3. Improving the capacity of authorities and social services to provide assistance to victims of gender-based violence and their potential victims. This includes training district police inspectors to deal with cases of gender-based violence and establishing a mechanism for cooperation between law enforcement agencies and health care institutions; supporting organisations that provide assistance to women-victims of violence; establishing national

and regional hotlines, call centres that work with victims of violence and direct them to institutions and services that provide specialised assistance.

4. Providing high-quality primary health care in the field of protection of sexual and reproductive health in conditions of social crisis, in particular for victims of gender-based violence, and potentially socially vulnerable categories of the population, which consists in providing training for employees of medical institutions on working with cases of gender-based sexual violence (in particular, facts of rape) and sending persons affected by it to specialised social services; conducting trainings for medical workers on the use of the syndrome approach in the diagnosis and treatment of sexually transmitted infections; providing individual medical kits for gynaecological care, assistance in case of rape, and therapeutic drugs for the prevention of infections that sexually transmitted diseases.

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Правові засади протидії гендерно зумовленому насильству під час збройного конфлікту на Сході України

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Анотація

Мета статті полягає в здійсненні комплексного аналізу соціально-правових аспектів гендерно зумовленого насильства в контексті збройного конфлікту на Сході України, розробленні теоретичних і прикладних основ використання засобів протидії зазначеному насильству, підготовці науково обґрунтованих пропозицій з удосконалення законодавства, правозастосування та практики. Методологія. У процесі проведення дослідження використано філософські, загальнонаукові та конкретно-соціологічні методи. Виконання роботи ґрунтувалося на законах єдності та боротьби протилежностей, заперечення заперечення, переходу кількісних змін у якісні. Емпіричний матеріал було отримано шляхом використання методів анкетування, інтерв'ювання, контент-аналізу, спостереження, експертних оцінок. Наукова новизна. У статті висвітлено результати комплексного кримінально-правового й адміністративно-правового дослідження у сфері протидії гендерно зумовленому насильству під час збройного конфлікту на Сході України. Автор окреслив особливості такого виду насильства, фактори, що зумовлюють злочинне насильство в сім'ї, а також здійснив порівняльний аналіз законодавства України та Російської Федерації, «законодавства» ДНР та ЛНР в зазначеній сфері. Визначено шляхи вдосконалення діяльності суб'єктів профілактики гендерно зумовленого насильства. Висновки. Оскільки «законодавство» самопроголошених республік має декларативний характер, запропоновано зміни правового та соціального характеру, які можливо реалізувати на території України для захисту громадян, що проживають на непідконтрольних територіях від гендерно зумовленого насильства

Ключові слова:

гендерно зумовлене насильство; гендер; гендерні стереотипи; насильницькі злочини; гендерна рівність