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Problematic issues of preventing and countering domestic violence by the prosecutor's office

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In modern realities, the issue of combating and preventing domestic violence is crucial, since many women and children become victims of such violence, and there are cases of domestic violence against men as well. Proceeding from the relevance of this paper, its subject lies in determining the role of the prosecutor's office in preventing and countering domestic violence, which involves an analysis of the content of its duties and powers in this area of activity. During the study, the method of analysis and synthesis, the empirical method, and the comparison method were applied. This paper considered the issue of the role of prosecutor's offices in preventing and countering domestic violence. The problems of legislative regulation of prosecutor's activities in the system of preventing and countering domestic violence were also investigated. This is a common issue primarily because the norms of the current legislation do not clearly

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regulate what actions prosecutors can prevent or counteract domestic violence, because their powers include the direct procedural support of such criminal cases, i.e., after such violence has already occurred. In conclusion, it was noted that for the prosecutor's office to effectively prevent and counteract domestic violence, it is necessary to amend Article 131-1 of the Constitution of Ukraine, which defines the functions of the prosecutor's office in general, and the prosecutor in particular. It is advisable to supplement this Article with a part that would grant the prosecutor's office the right to take measures to prevent and counteract domestic violence. The study conducted in this paper can form the basis of legislative activity upon adopting amendments to legislative acts governing legal relations in the field of preventing and countering domestic violence

Keywords: prosecutor's office, prosecutor, domestic violence, violence against women, violence against children, prevention of violence, combating violence

Introduction

Given the harm that domestic violence causes to society as a whole, this subject is quite relevant in modern realities, since currently the functions of the prosecutor's office as a body that should prevent and counteract domestic violence are not regulated by the current legislation.

The authors of this study believe, this is primarily because the main functions of the prosecutor's office are to maintain a public accusation in court and procedural management of inquiry and investigation bodies.

However, this area of work is still relevant, since the most vulnerable categories are women and children. Individuals with disabilities, the elderly, internally displaced people, and women from rural areas also have an increased risk.

That is why, on December 7, 2017, for the implementation of national policy in the field of combating domestic violence, the Law of Ukraine No. 2229-VIII "On Prevention and Combating Domestic Violence" was adopted, which defines the organizational and legal principles of prevention and combating

domestic violence, the main vectors of the implementation of national policy on prevention and countermeasures against domestic violence, aimed at protecting the rights and interests of victims of such violence.

This Law was adopted as an effective mechanism for combating all forms of domestic violence and ensuring gender equality. According to this regulation, the prosecutor's office is one of the entities that implement measures to prevent and counteract domestic violence.

Therefore, it is important to clarify the role of the prosecutor's office in preventing and countering domestic violence, as well as to determine its duties and powers in this area of activity. In connection with the criminalization of domestic violence and the adoption of the law on preventing and countering it, there was a need for scientific research on some aspects of this problem.

Domestic violence was the subject of scientific research by such scientists as A. Baida, A. Halai, V. Halai, L. Holovko, M. Yevsiukova, V. Muranova, M. Roshka,

O. Starchuk, Ya. Torchylo, H. Khrystova,
O. Shapovalova, D. Yaitska, E. Yahiazade.

Results and Discussion

There is no excuse for violence, much less domestic violence. This is not a family matter, not a way of education, not a specific manifestation of love. This is a crime; it should be reported until it may be too late. The statistics are staggering – every third family in Ukraine encounters violence. Between 1 and 3 million children witness or are victims of it every year. The consequences of this, apart from physical ones, are deep mental injuries that will never heal. The situation aggravated due to the quarantine when the abusers and victims were forced to find themselves in a closed space. Over the past year, the number of complaints about violence has increased by more than half. Of these, 86% came from women, 12% from men, and 2% from children [1].

To comply with guarantees for the protection of the rights and interests of persons affected by domestic violence, as well as to ensure proper response to cases of such violence, providing support to affected people, creating conditions for each child to exercise the right to grow up in a safe family environment, on September 21, 2020, the Decree of the President of Ukraine “On Urgent Measures to Prevent and Counteract Domestic Violence, Gender-Based Violence, and Protect the Rights of Persons Affected by Such Violence” was adopted [2].

As for the legislative regulation of the issue of domestic violence, the principal law is the Law of Ukraine “On Preventing and Countering Domestic Violence” adopted on December 7, 2017 [3].

Furthermore, in 2017, the Criminal Code of Ukraine was supplemented by Article 126-1 “Domestic violence”, according to which domestic violence is a deliberate systematic commission of physical, psychological, or economic violence against a spouse or ex-spouse or another person with whom the perpetrator is (was) in a family or close relationship, which leads to physical or psychological suffering, health disorders, loss of working capacity, emotional dependence, or deterioration of the victim’s quality of life [4].

Thus, with the supplementation of the Criminal Code of Ukraine with this article, abusers are subject to criminal liability, and not just administrative liability, as prescribed in Article 173-2 of the Code of Ukraine on Administrative Offences.

In total, 778 people were convicted under Article 126-1 of the Criminal Code of Ukraine last year.

In 2020, the Prosecutor’s Office introduced closer cooperation between prosecutors and public organizations that handle issues of countering gender inequality and domestic violence [1].

Criminal liability for domestic violence is a relatively new norm in Ukrainian legislation. This provision of criminal legislation brings Ukraine closer to ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence [1].

Article 1.1.1 of the Law defines the concept of domestic violence, namely acts (actions or inactions) of physical, sexual, psychological, or economic violence committed in the family or within the limits of the place of residence or between relatives,

or between former or current spouses, or between other individuals who live (lived) together as one family, but are not (were not) in a family relationship or married to each other, regardless of whether the individual who committed domestic violence lives (lived) in the same place as the victim, as well as threats to commit such acts.

According to Article 1.5 of the Law of Ukraine "On Prevention and Combating Domestic Violence" dated December 7, 2017, prevention of domestic violence is a system of measures implemented by executive authorities, local self-government bodies, enterprises, institutions, and organizations, as well as citizens of Ukraine, foreigners and stateless individuals, who are in Ukraine on legal grounds, and are aimed at increasing the level of public awareness of the forms, causes, and consequences of domestic violence, the formation of an intolerant attitude towards a violent pattern of behaviour in private relationships, an indifferent attitude towards the victims, primarily towards the affected children, and the eradication of discriminatory ideas about the social roles and responsibilities of women and men, as well as any customs and traditions based on them. Counteraction to domestic violence is defined in Item 12 of this Article as follows: a system of measures taken by executive authorities, local self-government bodies, enterprises, institutions, and organizations, as well as by citizens of Ukraine, foreigners, and stateless individuals who are in Ukraine on legal grounds, and are aimed at stopping domestic violence, providing support and protection to the victim, compensating for the damage caused to them, as well as properly investigating cases of

domestic violence, bringing perpetrators to justice and changing their behaviour [5].

The main principles of activities aimed at preventing and combating domestic violence are defined in Article 4 of the Law, which include:

1) guaranteeing the victims' safety and fundamental rights and freedoms of a person and a citizen, namely the right to life, liberty, and personal integrity, to respect for private and family life, to a fair trial, to legal aid, considering the practice of the European Court of Human Rights;

2) due attention to each fact of domestic violence in the implementation of measures in the field of preventing and countering domestic violence;

3) considering the disproportionate impact of domestic violence on women and men, children and adults, observing the principle of ensuring equal rights and opportunities for women and men in the implementation of measures in the field of preventing and countering domestic violence;

4) recognition of the public danger of domestic violence and ensuring an intolerant attitude towards any manifestations of domestic violence;

5) respect and unbiased and unconcerned attitude towards the victims on the part of subjects implementing measures in the field of prevention and counteraction of domestic violence, ensuring the priority of the rights, legitimate interests, and safety of the victims during the implementation of measures in the field of prevention and counteraction of domestic violence;

6) confidentiality of information about victims and individuals who have reported the commission of domestic violence;

7) voluntariness of receiving support by victims, except for children and disabled people;

8) consideration of the special needs and interests of victims, specifically people with disabilities, pregnant women, children, incapacitated people, the elderly;

9) effective interaction of entities implementing measures in the field of preventing and countering domestic violence with public associations, non-governmental organizations, media, and other stakeholders.

The national policy in the field of preventing and countering domestic violence is aimed at ensuring a comprehensive integrated approach to overcoming domestic violence, providing comprehensive support to affected persons and establishing the non-violent nature of private relations (Article 5 of the Law) [6].

Analysis of Article 6 of the Law suggests what place the prosecutor's office occupies in the system of entities that take measures to prevent and counteract domestic violence. Thus, Part 1 of the said Article identifies the following categories of subjects that take measures in the field of preventing and countering domestic violence:

1) specially authorized bodies in the field of preventing and countering domestic violence;

2) other bodies and institutions that are assigned the functions of implementing measures in the field of preventing and countering domestic violence;

3) general and specialized support services for victims;

4) citizens of Ukraine, foreigners, and stateless individuals who are in Ukraine legally. According to Article 6.3.7 of the Law,

the prosecutor's office, along with the service for children, authorized divisions of the National Police of Ukraine, education management bodies, educational institutions, establishments, and organizations of the education system, healthcare authorities, establishments, and institutions, centres for providing free secondary legal aid, by the courts, authorized by the approbation bodies belongs to other bodies and institutions entrusted with the functions of implementing measures in the field of prevention and countermeasures against domestic violence.

Analysing the above, it can be concluded that the Law does not make provision for special rights and powers of the prosecutor's office in carrying out official activities related to the prevention and counteraction of domestic violence.

Therefore, the activity of the prosecutor's office in the field of prevention and counteraction of violence can be carried out during the prosecutors' performance of the main functions of their activities, which according to Article 131-1 of the Constitution of Ukraine relate to supporting a public accusation in court; organization and procedural management of pre-trial investigations, resolution of other issues according to the law during criminal proceedings, supervision of covert and other investigative and search actions of law enforcement agencies; representation of the state's interests in court in exceptional cases and pursuant to the law.

Thus, considering the requirements of Article 131-1 of the Constitution of Ukraine and the provisions of the Law of Ukraine "On Preventing and Countering Domestic Violence", the role of the prosecutor's office in preventing and countering domestic

violence should be determined considering these norms, as well as measures to prevent domestic violence prescribed in Article 19.1 of the Law, and special measures to counteract domestic violence specified in Article 24 of the Law.

However, the authors of this paper believe that such legal uncertainty concerning the role of the prosecutor's office in countering and preventing domestic violence deprives this body of proper functioning in this area.

To ensure the proper organization of the activities of the prosecutor's office for the protection of children's interests and countering violence, guided by Article 9 of the Law of Ukraine "On the Prosecutor's Office", Prosecutor General I. Venedyktova adopted an order of November 4, 2020 [7]

This order defines the following methods of activity of the prosecutor's office in the field of prevention of domestic violence: comprehensive use of the functions of the prosecutor's office regarding the organization and procedural management of pre-trial investigations, solving other issues in criminal proceedings pursuant to the requirements of the law, supervision of covert and other investigative and search actions of law enforcement agencies, maintaining public prosecution in court, representing the interests of the state in court pursuant to the legislatively prescribed procedure, supervision of compliance with laws in the execution of court decisions in criminal cases, when applying other coercive measures related to the restriction of personal freedom of children, according to the requirements of the Prosecutor General's orders, considering the specific features defined by this order.

Consequently, the prosecutor's office can implement measures to prevent and counteract domestic violence with its local regulations.

Thus, according to Article 19 of the Law, to perform tasks to prevent domestic violence, the subjects implementing the relevant measures ensure as follows:

1) the situation is investigated and statistical data on facts of domestic violence is collected, grouped by article;

2) organization and conduct of sectoral and intersectoral studies of the state, causes, and prerequisites for the spread of domestic violence, the effectiveness of legislation on preventing and countering domestic violence and the practice of its application.

3) organization and conduct of information campaigns among the population, including children and youth, to prevent and counteract domestic violence, explain its forms, manifestations and consequences;

4) development and implementation of educational programs in educational institutions on preventing and countering domestic violence, including against children;

5) involvement of media in educational campaigns aimed at completing the tasks of preventing domestic violence, specifically the development of a caring attitude towards victims, primarily affected children, awareness of the need to immediately report cases of domestic violence, namely to the call centre for preventing and countering domestic violence, gender-based violence and violence against children;

6) organization and conduct of joint and specialized trainings and seminars for specialists working in the field of preventing and countering domestic violence, as well as for law enforcement officers and judges.

Given the definition of the term “counteraction to domestic violence” provided in Article 1.12 of the Law, the measures that make up the specified type of activity are as follows: termination of domestic violence; providing support and protection to the victim; compensation for the damage caused to the victim; proper investigation of cases of domestic violence; prosecution of offenders; changing the behaviour of offenders.

Purposeful measures to counteract domestic violence according to Article 24 of the Law include:

1) an urgent injunction against the abuser. According to Article 25.1 of the Law, an urgent injunction is issued to the offender in case of an immediate threat to the life or health of the victim to immediately terminate domestic violence, prevent its continuation or re-commission. This action is performed by authorized units of the National Police of Ukraine;

2) a restraining order against the offender. According to Article 26 of the Law, a restraining order is issued by the court for a period of one to six months upon application for a restraining order against the offender.

During the past 2020, about 3 thousand such offences were registered in the Unified State Register of Pre-Trial Investigations, almost 2,000 of them were sent to court with indictments. Last year, crimes related to domestic violence were committed against 199 children.

In 2020, nine shelters were created – these are shelters for victims of domestic violence. This year, UAH 275 million is provided to expand the network of victim support services. These funds will be used to maintain existing shelters and day centres, create

new ones, and increase the number of mobile social and psychological aid teams [1].

Thus, the prosecutor’s office, understanding the complexity of the situation in this area, contributes to the prevention and combating of domestic violence.

Having analysed the norms of the current legislation, it can be concluded that the scope of powers granted to the prosecutor’s office to prevent and counteract domestic violence outside the sphere of criminal justice is insufficient and does not allow effective performance of official activities in this area. Based on the study of legislative acts, conclusions were made about the levelling of the role of the prosecutor in preventing and countering domestic violence outside the sphere of criminal justice, which undoubtedly leads to the need to expand the powers of the prosecutor’s office, the need to develop and empower the prosecutor’s office at the legislative level with powers that are not formally, but factually directed for inclusion in activities related to the prevention and counteraction of domestic violence not only in the area of criminal justice, but also outside this area, which must be prescribed in the Law of Ukraine [3]. The task of prosecutors is to effectively represent public prosecution in courts in such cases.

Conclusions

In modern conditions, the role of the prosecutor in preventing and countering domestic violence outside the sphere of criminal justice is not significant, which is completely inconsistent with international practices and the needs of society. The presence of a greater scope of powers outside the sphere

of criminal justice, an effective mechanism of interaction with other subjects to prevent and counter domestic violence would give the prosecutor the opportunity to respond to socially dangerous acts, prevent and counter them more effectively. Proceeding from this circumstance, it is considered necessary to develop and provide the pow-

ers of the prosecutor's office legislatively, not formally, but really aimed at inclusion in activities related to the prevention and counteraction of domestic violence not only in the area of criminal justice, but also outside this area, prescribing them in the Law of Ukraine "On Prevention and Combating Domestic Violence".

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Проблемні питання запобігання та протидії домашньому насильству органами прокуратури

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Анотація

У реаліях сьогодення питання протидії та запобігання домашньому насильству має вкрай важливе значення, оскільки велика кількість жінок та дітей стають жертвами такого насильства, хоча трапляються випадки домашнього насильства і щодо чоловіків. Виходячи з актуальності статті, тема полягає у визначенні ролі прокуратури в запобіганні та протидії домашньому насильству, що передбачає аналіз змісту її обов'язків і повноважень на цьому напрямі діяльності. В ході роботи було застосовано метод аналізу та синтезу, емпіричний метод та метод порівняння. У даній статті було розглянуто питання щодо проблематики ролі органів прокуратури в запобіганні та протидії домашньому насильству. Також досліджено проблеми законодавчого врегулювання прокурорської діяльності в системі запобігання та протидії домашньому насильству. Це поширена проблема у першу чергу через те, що нормами діючого законодавства чітко не врегульовано якими ж діями прокурори можуть запобігати чи протидіяти домашньому насильству, адже в їх повноваження входить безпосередньо процесуальний супровід таких кримінальних справ, тобто після того, як таке насильство вже відбулось. У висновку було зазначено, щоб органи прокуратури могли ефективно запобігати та протидіяти домашньому насильству, необхідно внести зміни у статтю 131-1 Конституції України, яка визначає функції прокуратури в цілому, та прокурора зокрема. Доцільним вбачається доповнити цю статтю частиною, яка б надавала право органам прокуратури здійснювати превентивні заходи щодо запобігання та протидії домашньому насильству. Дослідження, проведені в даній роботі, можуть лягти в основу законотворчої діяльності при прийнятті змін до законодавчих актів, які регулюють правовідносини в сфері запобігання та протидії домашньому насильству

Ключові слова: орган прокуратури, прокурор, прокуратура, домашнє насильство, насильство проти жінок, насильство проти дітей, запобігання насильству, протидія насильству