



UDC 343.6:343.85(477)

DOI: 10.31548/law2022.03.010

Features of the “Blue Cards” System as an Effective Mechanism for Preventing Domestic Violence in Ukraine (Based on the Experience of the Republic of Poland)

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Article's History:

Received: 29.04.022
Revised: 12.07.2022
Accepted: 11.08.2022

Abstract

The relevance of the subject is due to the Draft Law of Ukraine “On Amendments to the Law of Ukraine ‘On Prevention and Counteraction to Domestic Violence’ on Improving the Mechanism of Prevention and Counteraction to Domestic Violence” submitted to the Verkhovna Rada of Ukraine in September 2021, which provides for the introduction of a “blue cards” system in Ukraine similar to that in the Republic of Poland. The purpose of the study is to review promising opportunities for introducing foreign experience in preventing domestic violence into Ukrainian legislation. The research methods were: comparative legal, system, analysis, and synthesis. The results of the study determined that criminal liability for committing domestic violence in Ukraine and the Republic of Poland is characterised by the same degree of punishment, namely, it provides for imprisonment for a certain period of time. It is argued that Ukraine has been actively working in recent years to adopt positive foreign experience in preventing and countering domestic violence. It was identified that the draft Law of Ukraine “On Prevention and Counteraction to Domestic Violence” on improving the mechanism for preventing and countering domestic violence” confirms Ukraine’s focus on effectively countering any manifestations of domestic violence. It is concluded that the adoption of the draft law is important and relevant in the current conditions, but simultaneously the need for changes is justified, including regarding the powers of subjects of countering domestic violence – representatives of the National Police of Ukraine. The practical value of the study lies in the fact that its results can serve as recommendations for improving the current legislation in terms of preventing domestic violence

Keywords: domestic violence, gender inequality, preventive measures, crimes against the family

Suggested Citation:

Yara, O.S. (2022). Features of the “blue cards” system as an effective mechanism for preventing domestic violence in Ukraine (based on the experience of the Republic of Poland). *Law. Human. Environment*, 13(3), 78-83.



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Introduction

Domestic violence, in any form radically affects the growth of society in general. This problem is global in all societies, regardless of class, culture, economy, geography, religion, ethnic, or social origin, etc. Not only does it make headlines, but it is also deeply rooted in the psyche of both the victims and the perpetrators themselves, and has a serious impact on the health and mental state of the victim and others in the family. Domestic violence is one of the most acute subjects for discussion [1, p. 3].

The issue of domestic violence has recently become even more relevant, especially after the signing in Istanbul of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (hereinafter referred to as the Istanbul Convention) [2], which is open for signature and ratification by other states. Ukraine is also one of the signatories of the Istanbul Convention, although as of mid-2022 it has not yet ratified it.

Until 2017, the Ukrainian Criminal Code of Ukraine (hereinafter referred to as the CC of Ukraine) did not contain norms that provided for criminal liability for committing domestic violence [3]. Only after adoption in 2017, the Law of Ukraine "On Amendments to the Criminal 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" [4] domestic violence was criminalised in the new Art. 128-1, which supplemented the CC of Ukraine [3].

Considering such legislative innovations, the issues of preventing and countering domestic violence are becoming more relevant every year and require separate investigations.

Ukraine, as a state seeking to become a full-fledged member of the European Union, should use the positive foreign experience to improve its legislation. Investigation of possible mechanisms for preventing and countering domestic violence is no exception. Therefore, given that in 2021 the Verkhovna Rada of Ukraine registered a draft law [5], which provides for the introduction of a new mechanism for preventing domestic violence based on the experience of the Republic of Poland, there is an objective need for such an analysis.

The purpose of the study is a comprehensive analysis of mechanisms for preventing and countering domestic violence in the Republic of Poland, and prospects for applying the positive experience to Ukrainian legislation.

The analysis of recent studies and papers indicates the relevance of scientific consideration of issues related to mechanisms for preventing domestic violence. In particular, the paper by S. Palit, & I. Sarangi, which analysed individual indicators of domestic violence, and the gender distribution for identified crimes related to domestic violence are notable [1]. The study by A. Zurnetti, & N. Mulyati reviewed, how the usual

criminal law policy of Minangkabau can help prevent and resolve domestic violence through a restorative justice approach [6].

Andi Muhammad Aswin Anas, Andi Suci Wahyuni, Wiwie Heryani, Mutiah Wenda Junior, and Arini Nur Anissa highlight the impact of the COVID-19 pandemic on the increase in cases of domestic violence and also suggested paying attention to other forms of violence in families [7].

Tongrak Jitbantao, Jamaree Prasunin investigated the causal factors of domestic violence against children and youth in the Thai province of Chiang Rai [8]. T. Stoianova, L. Ostrovska, & G. Tripulskyir considered a specific mechanism for preventing domestic violence. They noted that such a mechanism for preventing violence at the level of interaction should be implemented at the level of the state, public organisations, and direct special means, and also proposed solutions, from amendments to legislation to the redistribution of state and public forces to solve the problem of domestic violence [9].

Materials and Methods

The study was conducted in three consecutive stages

In the first stage, an analysis of the generalising understanding of the essence of domestic violence and the violence in families in Ukraine and the Republic of Poland was conducted. It was identified that the degree of criminal liability for committing domestic violence in Ukraine and the Republic of Poland is almost the same and provides for imprisonment for a certain period.

In the second stage, the essence of the "blue cards" system in the Republic of Poland was characterised, and the analysis of the submitted Draft Law "On Amendments to the Law of Ukraine 'On prevention and Counteraction to Domestic Violence' on Improving the Mechanism of Prevention and Counteraction to Domestic Violence" [5] in September 2021 was conducted for its compliance with the main purpose of adoption – prevention and counteraction to domestic violence.

In the third stage, comprehensive conclusions were drawn about the need to adopt the Law of Ukraine "On Prevention and Counteraction to Domestic Violence" to improve the mechanism for preventing and countering domestic violence [5] with the need to amend the Law of Ukraine "On the National Police" [10].

In the process of investigating the mechanism of preventing and countering domestic violence in the analysed states, a set of general scientific and special methods was used. In particular, the concept of domestic violence was analysed using general scientific methods of analysis and synthesis. The comparative legal method established similar and distinctive features of preventing domestic violence in Ukraine and the Republic of Poland. A draft law submitted to the Verkhovna Rada of Ukraine that considers the positive experience of the Republic of Poland was investigated using a special legal method.

In the course of the analysis of mechanisms for preventing and countering domestic violence, a number of normative regulations of Ukrainian and Polish legislation were used, in particular: the CC of Ukraine [3], The Law of Ukraine "On Prevention and Counteraction to Domestic Violence" [11], the Law of Ukraine "On Amendments to the Criminal 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" [4], The Law of Ukraine "On the National Police" [10], the Criminal Code of the Republic of Poland [12], Law of the Republic of Poland on countering crimes in the family [13].

Results and Discussion

First, it is necessary to consider the general criminal and legal counteraction to domestic violence in the Republic of Poland and Ukraine.

Criminality of domestic violence in the Republic of Poland was initiated in 1997. Thus, Art. 207 of the Criminal Code of the Republic of Poland provides that a person who causes physical or psychological harm to their close person, or a person with whom they are in a close or related relationship can be punished. The penalty can be in the form of imprisonment for a period of three months to five years. In cases where such a crime is committed with particular cruelty, the offender may be punished by restriction of liberty for up to ten years, and if the victim as a result of such acts tried to commit suicide, the guilty person may be imprisoned for a period of 2 to 12 years [12].

In addition to the Criminal Code in the Republic of Poland, a special Law on Countering Crimes in the Family was adopted in June 2010 [13]. As for the main provisions of this regulatory document, it first introduced a special system of interaction of bodies with a common goal of preventing domestic violence. Thus, in each administrative-territorial unit of the Republic of Poland (gmina), an interdisciplinary group was created to prevent and detect all cases of domestic violence. This group must include representatives of the municipal commission (persons involved in solving problems related to alcohol and narcotic drugs) and representatives of social protection of the population in communities. The importance of such interdisciplinary groups lies in the fact that they take measures to organise joint assistance for two parties to domestic violence. It should also be noted that this law defines special measures aimed at further preventing the continuation of domestic violence. Thus, the main measure is the possibility of eviction of a person who commits violence from the premises in which the victim is located. An important condition here is that the interdisciplinary group must have really good reasons to believe that the perpetrator may commit violence again. Such a decision must be made jointly with law enforcement officers and relevant medical professionals. In addition, this legislative

act defines separate educational programmes for further work both with persons who commit domestic violence and with persons who have suffered from such acts [14, p. 102].

As for Ukrainian legislation and criminal law counteraction to domestic violence, similar to Polish criminal science, Ukraine has also established, although relatively recently, criminal punishment for committing domestic violence. Therewith, the Ukrainian legislator rather broadly interprets domestic violence, which is defined as a criminal offence, according to Art. 126-1 of the CC of Ukraine. In particular, Ukrainian legislation stipulates that cases of economic violence will also fall under domestic violence, which is different from the legislation of the state under study. Therewith, if the Polish legislator has a rather substantial limit on imprisonment – 12 years for the guilty person, then Ukrainian legislation defines the highest limit – as 5 years of imprisonment [3].

Similar to the Polish Law on Countering Crimes in the family in Ukraine, a specialised special legislative act was adopted in 2017 – the Law of Ukraine "On Prevention and Counteraction to Domestic Violence". This legislative act defined new approaches to organising the activities of special bodies to counteract identified cases of domestic violence. In particular, a rather expanded definition of the concept of domestic violence was again given, which is similar to that given in the CC of Ukraine [11].

Thus, it is possible to note a certain similarity in the legislation of Ukraine and the Republic of Poland regarding the regulation of activities to prevent and counteract domestic violence, because they determine the punishability of an act in accordance with their criminal codified acts, and also have special specialised legislative acts that describe in detail the system of preventing and countering domestic violence.

The Ukrainian legislator constantly analyses the positive foreign experience, which can be used to improve the current legislation. One such example is the Draft Law of Ukraine No. 6074 of 09/20/2021 [5]. This legislative act concerns the introduction of a "blue cards" mechanism, which shows positive results in the application of criminal and legal counteraction to domestic violence in the Republic of Poland.

As noted earlier, domestic violence was criminalised in the Republic of Poland in 1997. A year later, the so-called system of preventing and countering domestic violence was introduced – the "blue cards" system. Such a system has identified new mechanisms for the possibility of intervention of individual bodies in family relations, where domestic violence has been identified. According to this procedure, a police officer, in case of detection of domestic violence, begins the "blue cards" procedure by filling out form "A", in which they note the circumstances of the case. In addition, the police officer who conducts the proceedings or another local police officer explains to the victim possible further actions

and provides them with information for victims of domestic violence (the “Blue Card – B” form). There are also “Blue Card – C” and “Blue Card – D” forms. Such cards are filled in by members of the previously mentioned interdisciplinary commission on the victim and abuser. Thus, accordingly, the “Blue Card – C” form is filled out in relation to a potential victim of domestic violence, and also describes a special individual plan to help such a person. The “Blue Card – D” form concerns the suspect and contains information about the situation and relationships in the family that provoke the commission of domestic violence. In addition, it warns about responsibility for a person who has committed domestic violence and justifies the importance of taking part in special training programmes [15, p. 48].

Analysing such a system of preventing domestic violence in the Republic of Poland, it is necessary to highlight several key aspects, namely: first, such a system allows monitoring families in which cases of domestic violence have been detected without a court decision; secondly, there are quite a large number of cases when the blue cards system is a stimulating factor for establishing relations in the family; thirdly, the number of specialists working to resolve the situation in the family allows assessing this situation from different sides [16, p. 302].

It should also be noted that such a procedure is completed in two cases, if the measures provided for in the individual assistance plan have been completely exhausted and this has resulted from reconciliation in the family and the cessation of violence, or if the members of the commission are convinced that it is inappropriate to continue taking such measures. This decision is made by an interdisciplinary team or working group that directly monitors the family with the signs of domestic violence. If domestic violence has not stopped, then “blue cards” are transferred to the prosecutor’s office to bring the offender to criminal responsibility [17].

Analysing the Ukrainian Draft Law on “blue cards”, the National Bar Association of Ukraine after its registration in the Verkhovna Rada of Ukraine considers it appropriate to return the Draft Law for revision. Therewith, the Bar Association generally sees prospects in the need for a more detailed examination of the positive foreign experiences to prevent and counteract cases of domestic violence [18].

Analysing the provisions of the draft Law of Ukraine No. 6074 [5], by making appropriate changes to the Law of Ukraine “On Prevention and Counteraction to Domestic Violence” [11] in the form of a new Art. 28-1, which will concern the procedure of “blue cards”, it is necessary to make changes to the Law of Ukraine “On the National Police” [10]. This is explained by the fact that, according to the proposed wording of the article, *“the ‘blue cards’ procedure is conducted by authorised units of the National Police of Ukraine in the family, where the fact of domestic violence is identified for the purpose of prevention aimed at eliminating violence in a particular*

family and is not related to criminal proceedings”. Therefore, it is necessary to amend the Law of Ukraine “On the National Police” [10], which will contribute to a systematic approach to determining the legal basis for the organisation and activities of police officers, their powers in this area.

T. Narok, analysing this relevant Draft Law of Ukraine, rightly notes that the “blue cards” procedure differs from the one currently in force in Poland. The “blue cards” procedure proposed by the bill is aimed at collecting information about families where domestic violence is committed, and filling out forms with recommendations for helping the abuser (Form “C” is filled out in relation to a person suspected of committing domestic violence, and contains an individual plan of measures to help them). In addition, the adoption of this bill can be regarded as a “step back”, since it actually allows the state to avoid the obligation to bring those responsible for committing domestic violence to justice by conducting so-called work to prevent the violence that has already been committed [17].

In contrast to the thesis mentioned above regarding a step back, it is possible to appeal by the fact that the proposed system in no way allows the state to avoid the obligation to involve the perpetrator because to resolve the further situation that has developed between the offender and the victim, a substantial number of competent authorities are involved, whose powers are an expression of state will. In addition, the end of the blue cards procedure has only two forms: either the measures applied helped to stop domestic violence and prevent such acts in the future, or the measures are ineffective and the person can be prosecuted.

Before directly forming conclusions, it should also be noted that, according to the recommendations of the United Nations, framed in the form of model legislation, there are three main goals that states should focus on when preparing and making appropriate changes to legislation that defines mechanisms for preventing and countering domestic violence, in particular, they should be aimed at: 1) protecting victims of violence; 2) preventing further violence; 3) punishing persons who commit domestic violence [19]. Therefore, each regulatory act concerning amendments to legislation that provides for the prevention and counteraction of domestic violence should primarily concern these three aspects.

Conclusions

Given the recent events in Ukraine, problems related to domestic violence will only spread. Ultimately, the increase in unemployed people, the lack of a sufficient number of jobs, remote and home-based work are the factors that provoke crisis and conflict situations in the family. In this regard, the legislator, state authorities, and other authorised entities should consider the positive foreign experience in the process of implementing reforms in the field of preventing domestic violence in Ukraine.

A positive aspect of the Ukrainian legislator's focus on the international positive experience can be recognised as the submission of the Draft Law of Ukraine "On Prevention and Counteraction to Domestic Violence" to improve the mechanism for preventing and countering domestic violence, which provides for the adoption of the experience of a neighbouring state that pursues an active policy to minimise cases of domestic violence. The blue cards system in the Republic of Poland is the crucial mechanism in preventing domestic violence and the subject of the Draft Law mentioned above.

In general, the Ukrainian legislator defined the basis for the introduction of the blue cards system in the legal regulation similar to the Polish one. As stipulated in Polish legislation, a blue card must contain four forms for a person who commits domestic violence. However, the Ukrainian legislator needs a comprehensive approach

to the adoption of each new draft law. In the course of the study, it was identified that the main subjects that will use the "blue cards" system will be representatives of the National Police of Ukraine. Therefore, when adopting such a bill, the legislator should simultaneously prepare a Draft Law of Ukraine on amendments to the Law of Ukraine "On the National Police", defining additional rights, duties and powers of national police officers in connection to using the blue cards system.

Therefore, it is necessary to emphasise the absolute importance of further investigation of the positive foreign experience in preventing and countering domestic violence. For the Ukrainian legislator, when further finalising the Draft Law of Ukraine No. 6074, it is necessary to consider the experience of the Republic of Poland in terms of the mandatory presence of two more forms.

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Особливості системи «блакитних карток» як ефективного механізму запобігання домашньому насильству в Україні (на основі досвіду Республіки Польща)

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Анотація

Актуальність теми зумовлено поданим до Верховної Ради України у вересні 2021 р. проектом Закону України «Про внесення змін до Закону України "Про запобігання та протидію домашньому насильству" щодо вдосконалення механізму запобігання та протидії домашньому насильству», що й передбачає запровадження системи «блакитних карток» в Україні подібно до такої системи в Республіці Польща. Метою дослідження є огляд перспективних можливостей впровадження в українське законодавство зарубіжного досвіду запобігання домашньому насильству. Методами дослідження стали: порівняльно-правовий, системний, аналізу та синтезу. Результатами дослідження встановлено, що кримінальна відповідальність за вчинення домашнього насильства в Україні та Республіці Польща характеризується однаковою мірою покарання, а саме передбачає позбавлення волі на певний строк. Аргументовано, що Україна останніми роками активно працює в напрямі перейняття позитивного зарубіжного досвіду запобігання та протидії домашньому насильству. З'ясовано, що проект Закону України «Про запобігання та протидію домашньому насильству» щодо вдосконалення механізму запобігання та протидії домашньому насильству» підтверджує орієнтованість України на ефективну протидію будь-яким проявам домашнього насильства. Зроблено висновки, що ухвалення законопроєкту є важливим та актуальним в умовах сьогодення, водночас обґрунтовано необхідність внесення змін, зокрема й щодо повноважень суб'єктів протидії домашньому насильству – представників Національної поліції України. Практична цінність дослідження полягає в тому, що його результати можуть слугувати рекомендаціями до вдосконалення чинного законодавства в частині запобігання домашньому насильству

Ключові слова: насильство в сім'ї, гендерна нерівність, превентивні заходи, злочини проти сім'ї