



ДЕСЯТЕ КВІТНЯ
громадська організація

THE TENTH OF APRIL
civic organization

VICTIM OF DOMESTIC AND GENDER –BASED VIOLENCE: HOW DOES THE NEW LEGISLATION PROTECT?

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Issues of protection of refugees and asylum seekers were always in the focus of the international community. Persons deprived of the protection of their countries are in the most vulnerable position and demand special protection from both the international community and countries of asylum.

Domestic and gender-based violence is one of the many challenges that refugees and asylum seekers have to face. This category of people is particularly vulnerable to mentioned above types of violence. Stressful experiences of leaving the country of origin coupled with cultural and religious differences make refugees particularly vulnerable to domestic and gender-based violence. This plight is complicated by ignorance of legal means for the protection. Concealed character of domestic and gender-based violence makes it extremely difficult to prevent or to stop.

The issue of protection of the rights of refugees and asylum seekers from domestic and gender-based violence is given considerable attention at international level. The UNHCR has developed strategies and training programs to prevent sexual-based and gender-based violence.

An important international legal instrument in this field is the Council of Europe Convention on preventing and combating violence against women and domestic violence of 2011 (the Istanbul Convention). The Convention establishes a number of obligations for the Parties in the sphere of protection of refugees and asylum seekers from domestic and gender-based violence. Article 60 of the Convention confers on the Parties an obligation to take the necessary legislative or other measures to ensure that gender-based violence against women may be recognized as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection. Article 60 of the Istanbul convention also prescribes that the Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection. In addition, Article 61 of the Istanbul Convention sets an important guarantee of non-refoulement of the victims of domestic and gender-based violence.

The problem of domestic and gender-based violence is not new for Ukraine. However, since 2013 Ukraine has tried to conduct legislative reform on combating gender and domestic based violence. Such reform was determined by the lack of coherence of domestic legal framework and inconsistency of Ukrainian legislation with international legal standards in this area. Ukraine managed to finish initiated reform only in the end of 2017.

On December 7, 2017, the Parliament of Ukraine adopted the Law N° 2229-VIII “On Prevention of Domestic Violence”. The day before the Parliament adopted the Law N° 2227-VIII “On Amendments to the Criminal and Criminal Procedural Codes of Ukraine to implement

the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence”.

Mentioned legislation intends to reform the national system on combating domestic and gender-based violence. It should also establish the basis for ratification of the Istanbul Convention. The major innovation of the new legislation is a comprehensive approach to preventing and combating domestic and gender-based violence by expanding the range of means and mechanisms for addressing these types of violence.

The new legislation defines domestic violence as any act of physical, sexual, psychological or economic violence committed in the family or within the place of residence or between relatives, or between the former or the present spouses, or between other persons who live in one family but who are not in family relationships or in marriage with each other, regardless of whether the person who committed domestic violence resides in the same place as the victim.

Article 1 of the Law “On Prevention of Domestic Violence” specifies the concept of the victim of domestic violence. One of the main innovation in this sphere is that a child may be recognized as a victim of domestic violence if he or she has become a witness of such violence. The law guarantees the higher level of protection of children from domestic violence.

The new laws determine the mechanism of cooperation between governmental agencies, municipal authorities and other stakeholders. Measures of cooperation include information sharing; coordination of responses; development and implementation of programs for offenders and programs for prevention and combating domestic violence; joint monitoring etc. The law also provides for the state register of domestic and gender-based violence. The register will accumulate data on domestic and gender-based violence.

New laws expand a system of means for combating domestic violence. The special means are the following:

- emergency restraining order;
- protection order;
- prophylactic registration of offenders and prevention work;
- programs for offenders.

Emergency restraining order and protection order are means that lead to limitation of rights of an offender. Emergency restraining order is imposed by the police and protection order is imposed by the court for a term up to 6 month. These means may be in the forms of obligation to leave the place of residence of a victim; prohibition to enter or to stay in the place of residence of a victim; prohibition to contact a victim in any way.

The draft law “On Prevention of Domestic Violence” was supposed to use the term “gender-based violence”. This term is consistent with terminology of the Istanbul Convention. The most principal rules on combating gender-based violence were to be included in the Law of Ukraine "On ensuring equal rights and opportunities for women and men". However, during the discussion in the Parliament of Ukraine the term “gender-based violence” was excluded from the draft. The adopted law uses the term “violence of the ground of sex”.

The rules on violence on the ground of sex were included in Section V-1 of the Law of Ukraine "On ensuring equal rights and opportunities for women and men." In general, means to combat such violence are identical to the means to combat domestic violence. However, emergency restraining order is not among the means to be used in case of gender-based violence.

The Law N° 2227-VIII “On Amendments to the Criminal and Criminal Procedural Codes of Ukraine to implement the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence” strengthens criminal liability for domestic and gender-based violence. The crimes related to domestic and gender-based violence were introduced in the Criminal Code of Ukraine. However, these rules will come into force only in January 2019.

Despite the new legislation was adopted, the system to combat domestic and gender-based violence depends heavily on by-laws and activity of governmental bodies. Ratification of the Istanbul Convention will probably identify gaps in the laws.

This publication has been produced with the assistance of the Office of the United Nations High Commissioner for Refugees (UNHCR). The contents of this publication are the sole responsibility of TENTH OF APRIL and can in no way be taken to reflect the views of UNHCR