

Sources of Criminal Law on Domestic Violence Prevention

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Abstract

The civilised society, which is constantly developing on the principles of democracy and equality, has no place for domestic violence, but this problem is present and quite common. The work aims to determine criminal law sources and their core provisions on the regulatory framework for preventing and countering offences related to domestic violence, as well as to detect ways to optimise their regulatory framework. The study used the legalistic method, comparative law method, logical and legal method. The study results characterised the sources of criminal law on the prevention of domestic violence in Ukraine, which certifies the presence of a wide mechanism of its prevention. Inconsistency of probation supervision, particularly within the context of its perception by society, was noted. International regulatory acts on domestic violence prevention were analysed. The advantages of using different types of restraining orders in the world practice were revealed. The study results may be useful for state actors for further legislation improvement in domestic violence prevention.

Keywords: Domestic violence, sources of criminal law, gender bias, restrictive measures, civil law order

Introduction

Unfortunately, domestic violence has been a common and, at the same time, slurred problem for a long time. Recently, domestic violence countering and prevention has become one of the priority activities of state policies (Dumchikov et al., 2022). Significant changes have occurred in the legislation regulating the prevention of this phenomenon in recent years. The changes also have occurred in

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the sources of criminal law, which contains regulations on offences related to domestic violence (such a term is used in the Criminal Code of Ukraine for the notion of domestic violence). Ukrainian society underwent a significant crisis because of the pandemic due to the coronavirus disease, which caused almost all citizens to be locked in their homes for a long time. At that time, the surge in domestic violence took place. Nowadays, at the time of large-scale armed aggression of Russia against Ukraine, Ukrainian society is in stressful condition again. It is important to note that the sources of criminal law play a key role in the issue of domestic violence countering and prevention.

It is worth noting that domestic violence can lead to very grave consequences, provoking serious crimes. For example, when a newborn is placed in jeopardy by the mother (Shablystiy & Liudvik, 2023). At the same time, a favourable family environment contributes to the socialisation of the child and prevents the child's involvement in crimes, in particular, related to domestic violence. The family is the closest environment, which forms a child's moral values and skills, ensuring a personality's connection with social, economic, and demographic processes in the society (Khomiachenko, 2022).

The work aims to determine criminal law sources and their core provisions on regulatory support for preventing and countering offences related to domestic violence and detect ways to optimise their regulatory framework.

Research questions:

- What is the essence of the concept of “source of criminal law” and their classification?
- What sources of criminal law are aimed at preventing and combating domestic violence in Ukraine?
- What useful lessons can be learned from international experience in preventing and combating domestic violence?

Research objectives:

- to reveal the classification of the criminal law sources;
- to characterise the sources of criminal law on domestic violence prevention in Ukraine;
- to analyse the international experience of domestic violence prevention.

Methodology

Study procedure

In the first stage of the study, the sources of criminal law on domestic violence prevention in Ukraine were characterised. The second stage reveals

international regulatory acts on domestic violence prevention of a recommendatory nature and those that are compulsory form a legally binding. The mechanism of restraining order as an effective method of domestic violence countering was considered, and its types were presented in the third stage.

Sampling

The study was conducted based on Ukraine's legislative framework. The country experiences the rise of domestic violence not only due to the lock-down restrictions but also due to the legal regime of martial law. This causes significant psychological pressure, as it is related to the restriction of several citizens' constitutional rights and freedoms and high-level stress in general. Separate legislative acts on domestic violence countering of countries like Australia, Sweden, South African Republic (Law on Domestic Violence No. 116 of 1998), Japan (Act on the Prevention of Spousal Violence and the Protection of Victims of 01 April 2001), Malaysia, USA (Three Violence Against Women Acts, etc) were also studied. Some international legislative acts containing provisions on domestic violence countering were noted.

Methods

The study used the legalistic method to define the key concepts and categories as 'domestic violence', 'domestic violence prevention', 'domestic violence countering', 'restraining order', etc., as well as to determine and classify the studied phenomena and their features. The comparative law method was used to compare the provisions on the definition of domestic violence and categories related to it in regulatory acts of different countries and organisations. The logical and legal method was used for the explanation of certain provisions of regulatory acts, as well as the analysis of the appropriateness and substantiation of their adoption.

Literature Review

Studying the sources of law on domestic violence prevention foresees a profound understanding of the approaches to interpreting the notion of the 'source of the law'. The interpretation in the formal legal aspect is used within the context study. It provides the state with certain means and legal forms through which prohibition on certain types of socially dangerous acts is set (Petrenko et al., 2019). Panov (2017) writes that in formal legal meaning, the source of criminal law should be defined as a regulatory legal act, and Sokhikian_(2020) shares such an idea. Kuzembaev (2017), besides regulatory legal aspects, includes legal precedents, customs, and legal consciousness, etc.

Abdullah et al. (2022) aim to find out why women become the victims of domestic violence most often. The researchers conclude that domestic violence is a part of gender-based violence, which develops because of the imbalance in power relations between women and men and is further justified by legislation and religion. The work is based on the definition of violence against women presented in the Declaration on the Elimination of Violence Against Women (United Nations, 1993). It also refers to the law on the Elimination of Domestic Violence (Presiden Republik Indonesia, 2004).

Several works are dedicated to the issue of determining whether domestic violence phenomena is a 'personal business' of the family or is subject to regulation and in what form. Katz (2019) notes that due to historical preconditions, criminal regulation of the behaviour of married individuals is perceived as difficult changes introduced recently. Myhill and Kelly (2021) indicate the limitation of 'traditional' criminal codes due to insufficient coverage of different types of abuses women are subjected to because of domestic violence. Chin and Cunningham (2019) study the influence of unauthorised arrests for domestic violence on intimate partner homicides. The scientists underline that the problem is caused by long-term consideration of domestic violence as a personal business, and only due to the activity of women's movements changes in the system of criminal justice took place. Day and Gill (2020) study the possibilities of an intersectoral approach that foresees partnerships between women's organisations in the criminal justice system. Cordier et al. (2021) noted that 'civil law protection orders (POs) have been the primary legal response to domestic violence internationally for some decades'. Mills et al. (2019) study the possibilities of restorative justice-informed treatment for domestic violence crimes.

Some studies raise the issue of the surge of domestic violence due to the COVID-19 pandemic and changes in criminal law related to it. Nix and Richards (2021) reveal the influence of COVID-19 and restraining orders on the number of appeals regarding domestic violence in 6 states of the US. The researchers have found an immediate significant rise in the number of appeals regarding domestic violence in 5 of 6 studied regions. Tsygani et al. (2022) also found the adverse influence of lock-down restrictions on societal processes.

Dragiewicz et al. (2019) consider the relationship between domestic violence and digital technologies. The scientist studies the interrelation between domestic violence and telecommunication technologies. The researcher notes that criminals can intervene in victims' personal lives using such technologies, particularly unauthorised access to devices and accounts, unwanted contacts, etc.

Some works are dedicated to the peculiarities of police activity in the sphere of domestic violence prevention. In their work, Muchow and Amuedo-Dorantes (2020) note the lack of the desire of people to interact with police, which is expressed in the refusal to report crimes, in particular, domestic violence. Yalley and Olutayo (2020) study the influence of masculine police culture in countries like Nigeria and Ghana on law enforcement authorities' interventions in events related to domestic violence. By the analysis results, the scientists have found that such culture manifests in operative, structural, and personal views, reducing the efficiency of police interventions.

The conducted literature analysis allows us to determine a number of problems that remain unsolved in the sphere of domestic violence prevention. At the same time, the problem is pressing, as impunity poses a threat to the lives and health of numerous victims of domestic criminals, especially women and children.

Results

The sources of criminal law on domestic violence prevention in Ukraine

The Law of Ukraine 'On Preventing and Countering Domestic Violence' defines the term 'preventing domestic violence' (Verkhovna Rada of Ukraine, 2017). The Criminal Code of Ukraine provides regulations on the issue of prevention and repeated offences commitment related to domestic violence. It also defines domestic violence. Its characteristic features are systematicity and consequences in physical and psychological suffering, including deterioration of the quality of life, emotional dependency, etc. (Verkhovna Rada of Ukraine, 2001). The mentioned article of the Criminal Code of Ukraine lists the following types of systematic violence: physical, psychological and economic.

We consider it appropriate to emphasise the prohibition of harassment and correspondence in social networks and, therefore, to supplement Clause 4 of Part 1 of Article 91-1 on the prohibition of contacts through means of communication or electronic communications with clause 4-1' prohibition of harassment, commenting and writing on a social network page of a victim of domestic violence from personal or fake social network pages.

Within the study context, it is important to consider future amendments to the Criminal Code of Ukraine, which relate to the introduction of probation supervision (Government portal, 2023). The draft of the corresponding law was signed by the president of Ukraine. The mentioned regulatory document supplements the applicable Criminal Code with article 59-1 'Probation supervision'. Probation supervision lies in certain restrictions imposed on the accused by the law or determined by the court judgements, but a person is not isolated from society under it. Probation supervision provides social, educational

and supervisory measures concerning the accused, which are expected to prevent crime repetition. More than 140 articles for which such time of punishment may be ordered include the article as mentioned above of the Criminal Code of Ukraine' 126-1' 'Domestic violence'.

Passing the above-mentioned law draft caused a certain resonance in society. Its initiators were convinced that its passing would help to optimise detention centres, which, among others, is necessary for maintaining prisoners of war and that adopting such a law will help reduce expenses. On the other hand, a part of society was outraged by the passing of this law. The petition for this law withdrawal was published on the official website of the Cabinet of Ministers of Ukraine (2023). However, by the time of the study's conduction, it did not have even 500 votes (25,000 are needed). The petition substantiates the necessity of reviewing the decision on the mentioned law because criminals continue to be in a society threatened by the repetition of criminal acts. This is especially relevant in the case of domestic violence. In the author's opinion, the decision on law adoption should be revised.

International law in domestic violence prevention

International law knows some regulatory legal acts containing domestic violence prohibition. The main ones are

- Convention on the Elimination of all Forms of Discrimination Against Women of 03 September 1981;
- Model legislation on domestic violence, adopted by the Resolution of the UN General Assembly of 02 February 1996;
- Declaration of the UN on the Elimination of Violence Against Women of 20 December 1993;
- Beijing Declaration of 15 September 1995;
- Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women of 06 October 1999;
- General Comment No. 16 of the UN Committee on Economic, Social and Cultural Rights of 11 August 2005 etc.

The drawback of the mentioned documents is their not compulsory performance from the legal perspective, as they contain recommendations that should be followed or strategic objectives directed at their solution. Herewith, some documents should be implemented by the countries that have ratified them legally.

The use of the restraining order as an effective means of domestic violence countering in the world practice

Besides international regulatory legal acts, the mechanism of restraining orders concerning penetrators has become very common in world practice. The Law of Ukraine ‘On Preventing and Countering Domestic Violence’ contains a mechanism similar to that described in previous sections.

Similar mechanisms exist in Australia (‘restraining order’, ‘intervention order’), Sweden (where such orders are divided into types: ordinary, for joint residence, extended and especially extended), South African Republic (regulated by the Law on Domestic Violence No. 116 of 1998), Japan (regulated by the Act on the Prevention of Spousal Violence and the Protection of Victims of 01 April, 2001), Malaysia (regulated by the Law on Domestic Violence (with supplements) No. A1538 of 15 September, 2017, and other states. The experience of the US deserves special attention, as passing laws in the sphere of domestic violence countering contributed to mortality reduction as a result of such violence almost twice (Benedyk et al., 2019). The laws aimed at overcoming violence against women are in force in the country, in particular, the Three Violence Against Women Acts – VAWA, as well as the Family Violence Prevention and Services Act of 1984, Restrictions on the Possession of Firearms by Individuals Convicted of a Misdemeanor Crime of Domestic Violence of 1996. Types of restraining orders acting in the US are generalized in Figure 1.

Type 1	Type 2	Type 3	Type 4 - emergency
<ul style="list-style-type: none"> comprises protection of persons, who are family members or have a common household 	<ul style="list-style-type: none"> protection from family violence (does not covers formal relations between persons) 	<ul style="list-style-type: none"> protection from harassment and stalking (does not covers formal relations between persons, but requires police confirmation on the offence commitment) 	<ul style="list-style-type: none"> applied in necessity of emergent actions due to the firearms use

Figure 1. Main types of restraining orders in the US (developed by the author according to Benedyk et al. (2019))

The author believes that experience of the use of the mentioned types of restraining orders may be very useful for countries aiming to eliminate or at least reduce the frequency and severity of domestic violence crimes. Furthermore, it is important to emphasise that victims of domestic violence often slur violent acts against them, are unaware of types of domestic violence and perceive it as normal. Therefore, intensive work should be conducted to increase social awareness of their rights and eliminate stereotypes concerning women's and men's duties.

Discussion

The sources of criminal law on domestic violence prevention in Ukraine are described in the work. Controversy over the introduction of the new type of punishment - probation supervision was noted. International regulatory acts on domestic violence prevention were presented. The advantages of the use of different types of restraining orders were shown.

Abdullah et al. (2022) note that the development of equitable relationships in the family is part of both humanitarian and religious duties. The important problem in domestic violence is its justification in legislation, supported by gender-biased interpretation of religious texts Yalley and Olutayo (2020) found that the masculine culture of police officers in the professional sphere reduces the efficiency of their interventions in domestic violence. Muchow and Amuedo-Dorantes (2020) note the issue of the lack of public desire to interact with police on the fact of domestic violence, which especially relates to women with low socio-economic status. The mentioned studies are united by the issue of low awareness of women of the protection of their rights and types of domestic violence, which is relevant for Ukraine as well.

Myhill and Kelly (2021) emphasise the issue of crime understanding as an intentional act harming a victim. Such physical acts belong to the category of violence, psychological traumas, fear, and emotional injury and are difficult to find out. The scientists offer to introduce the conception of coercive control. Mills et al. (2019) underline the efficiency of combining intervention programs and clinical elements concerning penetrators. Referring to the use of coercive control over offenders, Cordier et al. (2021) reveal the efficiency of civil law protection orders as a means of domestic violence prevention. Civil law protection orders are the most effective when combined with the arrest. The efficiency of the use of coercive control, in particular, with the use of restraining orders, is noted in the author's work. However, it does not study efficiency changes related to arrest. The efficiency of restraining orders and arrests at the discretion of law enforcement agents is described in some works. Chin and Cunningham (2019) study the influence of unauthorised arrests on intimate partner homicide. The scientists

found evidence that legal acts that provide the possibility of arrest at police discretion led to a reduction in the number of homicides.

Several works study the possibility of criminal law application together with other laws. Katz (2019), among others, studies how family and criminal laws should interact with the aim of control of such behaviour as domestic violence in the family. Day and Gill (2020) found advantages in partnerships between women organisations of the criminal justice system. The authors believe that such types of cooperation can be effective, as the use of legal measures in domestic violence countering exclusively is not always effective. It is also worth enhancing awareness of the victims of domestic violence concerning their rights, for which informational campaigns in cooperation with mass media should be organised.

Separate works indicate the necessity of further criminal law transformation with the purpose of domestic violence prevention. This theme becomes especially relevant after the beginning of the COVID-19 pandemic. Because of the rise in the number of appeals on domestic violence after the travel ban related to COVID-19, Nix, and Richards (2021) emphasise the necessity of studying the influence of the pandemic on the criminal justice issue. Tsygani et al. (2022) underline that the COVID-19 pandemic influences criminal justice transformation because of the increasing number of domestic violence events. The scientists emphasise improving rule-making and unifying criminal and legal politics in the EU and Ukraine. However, controversies found in the author's article and related to probation supervision introduction in Ukraine indicate the necessity of revising the defined methods of criminal justice transformation soon.

Studying the issue of offender's intervention in the life of their victims using telecommunication technologies, Dragiewicz et al. (2019) conclude with the necessity of enhancing awareness of victims, as such crimes are possible due to the wrong (insecure) use of devices and digital services. Herewith, digital technologies are important for domestic violence victims for access to information and help. Within this context, the author offered to supplement the Criminal Code of Ukraine with a provision on restricting electronic communications of the offender with a victim.

Conclusion

The issue of domestic violence continues to exist even in highly developed countries, while its scale is larger in developing countries. The low socio-economic status of women, gender-biased interpretation of religious tasks, traditions, and customs based on discriminatory explanations of men's and women's duties, and historical factors related to unequal power distribution between representatives of two genders present the main causes of the problem. It

is necessary to improve both the regulatory framework and supplementary means by enhancing public awareness and strengthening women's movements.

The work has characterised the sources of criminal law on domestic violence prevention in Ukraine. Therefore, the study analysed international regulatory acts for countering domestic violence. Furthermore, the work reveals the advantages of the application of different types of restraining orders, the use of which may contribute to the improved protection of domestic violence victims. Further studies can relate to the formation of the proposal on legislative framework improvement, in particular, the introduction of supplementary measures within the mechanism of restraining order and some aspects in the sphere of probation supervision.

In the context of the research topic, the following recommendations can be offered:

- legislate the prohibition of stalking and correspondence in social networks;
- to harmonise national legislation with international norms;
- to consider the possibilities of adapting the US experience regarding different types of restraining orders for domestic abusers;
- conduct educational campaigns, in particular, regarding gender equality and issues of preventing violence in family relationships;
- conduct education and training for police officers regarding the importance of the problem and ways of its prevention and countermeasures;
- ensure appropriate punishment for criminals.

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