

## **РОЗДІЛ 3**

# **КРИМІНАЛЬНЕ ПРАВО, КРИМІНАЛЬНИЙ ПРОЦЕС, КРИМІНАЛІСТИКА ТА КРИМІНОЛОГІЯ**

UDC 34:159.9:364.3-027.553-058.6(043.2)

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### **DOMESTIC VIOLENCE DURING WARTIME**

The provisions of the national legislation indicate that the state policy in the field of prevention and counteraction of domestic violence is one of the priorities of the state and legal policy of Ukraine, because by taking care of the family, the nation takes care of its future. Therefore, the study of this problem, taking into account all the peculiarities of today, determined the relevance of the chosen topic.

Legal regulation of state policy in the field of prevention and counteraction to domestic violence is a set of legislative and other normative legal acts that regulate the activities of authorized state authorities, local self-government bodies, non-state institutions, and organizations, as well as the public, in the field of prevention, detection, and termination of domestic violence, bringing the perpetrators to justice as prescribed by law.

At the same time, it was found that a number of domestic legal acts in the field of prevention and counteraction of domestic violence contain numerous shortcomings and conflicts, which makes it difficult, and sometimes even impossible, to prosecute those guilty of violence.

According to the collected data, the perpetrators are usually men (98%), and women in only 2% of cases. Victims of domestic violence are women in 96% and men in 4% of all analyzed cases.

Also, as evidenced by practice, mostly men commit domestic violence against women (94%), and women against men in only 1% of the analyzed cases. At the same time, men against men and women against women commit domestic violence in 3% and 2% of the analyzed cases, respectively.

There is a hypothesis that, due to the state of war, one of the vulnerable categories that can suffer from domestic violence are internally displaced persons (IDPs). At the same time, during the monitoring of court practice, we did not find any cases where the victim was separately identified as an IDP.

Separate attention should be paid to cases in which the accused was sentenced to restriction or deprivation of liberty. Despite the fact that in 20% (43 cases) of the analyzed cases, a prison sentence was imposed, in most of

them - 58% (25 cases) - the accused is released from serving the sentence with probation.

As a result, it can lead to the fact that the punishment will be formal, and the offender will be at liberty, in particular, will continue to live with the victim. Accordingly, the risk of repeated acts of violence in the absence of punishment for previous acts will increase.

The Supreme Court explained that the guilty person, in order to facilitate the commission of a criminal offense, uses the most unfavorable time for society, difficult circumstances and conditions in which society found itself, which indicates the increased degree of social danger of crimes committed under martial law. That is why the punishment for persons found guilty of criminal offenses during the period of martial law should be imposed by the court taking into account this aggravating circumstance, i.e. the type and size of the imposed punishment will be close to the maximum limit provided by the Criminal Code of Ukraine.

Therefore, in the case of domestic violence, provided for in Art. 126-1 of the Criminal Code of Ukraine, using the conditions of martial law (as an aggravating circumstance), the court has the right to impose the maximum punishment in the form of deprivation of liberty. At the same time, according to the monitoring of court decisions, the courts have never taken this aggravating circumstance into account when imposing a punishment for the commission of a criminal offense provided for in Art. 126-1 of the Criminal Code of Ukraine.

Thus, along with the imposition of a non-custodial sentence or exemption from criminal liability or punishment, the court may impose one or more restrictive measures on the person who committed domestic violence (for example, a ban on being in the same place of residence with a person, who suffered from domestic violence; prohibition to approach a certain distance to the place where a person who suffered from domestic violence may live permanently or temporarily, and others). The court may, on its own initiative or at the request of the victim, apply the mentioned restrictive measures. The law also provides for the possibility of sending offenders to undergo a probation program.

In practice, the restrictive measures provided for in Art. 91-1 of the Criminal Code of Ukraine, were applied in 7% of the analyzed cases. In 6% of cases, offenders were sent to undergo a probation program.

Such low indicators are related to the fact that the application of restrictive measures to the offender for committing domestic violence is a right of the court, and not an obligation. Therefore, in practice, the court applies restrictive measures only when it considers that there are grounds for them. The same applies to sending the offender to undergo a probation program.

For the completeness of the analysis of judicial practice, we also paid attention to the application by judges of the practice of the European Court of Human Rights in their decisions, because according to the Law of Ukraine "On

the Implementation of Decisions and Application of the Practice of the European Court of Human Rights", the practice of the ECtHR is one of the sources of law in Ukraine. The European Court of Human Rights has repeatedly considered cases related to domestic violence, so its decisions can serve as a guide for courts when solving this category of cases.

Of the analyzed cases, only 8% (17 cases) were applied to the practice of the ECHR. Therefore, courts mostly do not use the practice of the ECtHR when deciding the issue of bringing criminal responsibility for committing domestic violence. Decision-making without orientation to the practice of the ECtHR can lead to the resolution of such cases without taking into account the entire global problem of domestic violence.

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УДК 343.9(477)(043.2)

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## **ЗАПОБІГАННЯ ЗЛОЧИННОСТІ СЕРЕД ВІЙСЬКОВОСЛУЖБОВЦІВ ЯК ВАЖЛИВИЙ ЕЛЕМЕНТ ВЕТЕРАНСЬКОЇ ПОЛІТИКИ ДЕРЖАВИ**

В суспільстві в різні часи одночасно співіснують багато різних соціальних груп і між ними постійно відбувається взаємодія. Одним з наслідків воєнних дій, які тривають в Україні під час повномасштабної збройної агресії, є значне кількісне збільшення в країні такої соціальної групи як військовослужбовці. Офіційні дані щодо кількості військовослужбовців наразі не оприлюднюються, але за оцінками експертів вона складає понад мільйон. Зараз військові здебільшого знаходяться далеко від великих міст. Але прийде час, коли після