

COMBATING OFFENCES: ADMINISTRATIVE-LEGAL, CRIMINAL-LEGAL AND CRIMINOLOGICAL ASPECTS

UDC 343.9

DOI 10.31733/2078-3566-2023-5-123-128



Kateryna BURIAK[©]
Ph.D. (Law)
(Ukrainian State University
of Chemical Technology,
Dnipro, Ukraine)

FOREIGN EXPERIENCE OF CRIME PREVENTION IN THE FAMILY SPHERE

Катерина Буряк. ЗАРУБІЖНИЙ ДОСВІД ЗАПОБІГАННЯ ЗЛОЧИННОСТІ У СІМЕЙНІЙ СФЕРІ. У статті зазначено, що у різних країнах наслідками злочинності у сімейній сфері можуть бути психічні, фізичні, економічні та сексуальні травми, які можуть стати загрозою для життя і здоров'я не тільки подружжя, а також і їх дітей. Тому злочинність у сімейній сфері - це не тільки вітчизняна проблема, це також і міжнародна проблема. Визначено, що початком попередження злочинності у сімейній сфері в зарубіжних країнах варто вважати результати активності жіночого руху на міжнародному рівні відобразилися у хронології конференцій, у текстах декларацій і конвенцій Організації Об'єднаних Націй (ООН), резолюцій регіональних міжнародних організацій, інших міжнародних документів останніх десятиріч, серед яких, насамперед, слід виділити Конвенцію ООН про ліквідацію усіх форм дискримінації стосовно жінок. Варто також наголосити, що проведене нами вивчення зарубіжного досвіду попередження злочинності у сімейній сфері засвідчило, що у Європі завдяки активним діям міжнародних правозахисних організацій істотно розширилися уявлення про дотримання прав людини, зокрема, змінилося розуміння відповідальності держави за вчинення особою – кривдником або кривдницею кримінального правопорушення. У статті досліджується досвід попередження злочинності у сімейній сфері у США, Швеції, Німеччині, Ізраїлі, Греції, Франції, Великобританії. Подальша інтеграція України до ЄС та Євроатлантичного безпекового простору відкрив перед нашою державою чимало інструментів для попередження злочинності у сім'ї. Проте вже зараз в Україні на основі зарубіжного досвіду можна впроваджувати кампанії з підвищення обізнаності про домашнє насильство, надавати юридичну підтримку, забезпечувати безпечне середовище та усунення шкоди від насильства, проводити дипломні програми з гендерного насильства. Отже, осмислення світового досвіду попередження злочинності у сімейній сфері дасть змогу прискорити успішне вирішення цієї проблеми спільними зусиллями державних та не державних інституцій громадянського суспільства.

Ключові слова: запобігання злочинності, сімейна сфера, кривдник, насильство.

Relevance of the study. The problem of crime prevention in the family sphere is universal, Ukraine, as a socially legal state, is not an exception, and therefore its social orientation should be expressed in the appropriate service of civil society, the creation of necessary and sufficient conditions to prevent the perpetrator from committing criminal offenses in the family by implementing economic, social and cultural human rights, guaranteeing his social protection and social security, based on the principles of justice, proportionality and a harmonious combination (balance) of the interests of society and the family.

Crime in the family and domestic sphere essentially coincided with the recognition of the principle of equality between women and men and its comprehensive consolidation in numerous international legal acts. By the way, the analysis of international legal acts conducted

© Buriak K., 2023

ORCID iD: <https://orcid.org/0000-0001-6265-9706>

industry_econom@udhtu.edu.ua

by us in the study confirms the equality of the rights of women and men, the recognition of everyone's right to life, liberty and bodily integrity, the prohibition of torture or cruel, inhuman or degrading treatment and punishment.

Recent publications review. Such scientists as L. Barbarosh, A. Blaga, I. Bogatyrov, A. Zakalyuk, M. Kelman, M. Kostitsky, O. Kulik, O. Litvinov, S. Luchko, M. Panov, P. Rabinovich, G. Fedotova and others paid attention in their works to certain problems of prevention in the family sphere.

The research paper's objective. The urgent issues of violence in the family, sexual, mental, financial freedom, which have become especially acute under the conditions of martial law in Ukraine, determine the need to study foreign experience in this area.

Discussion. The EU and its Member States work together to prevent and combat violence against women and girls, protect victims and punish perpetrators. After all, violence against women and girls is one of the most systematic and widespread violations of human rights throughout the world. EU countries are no exception. Unfortunately, every third woman has experienced physical or sexual violence, mostly by intimate partners.

For example, during the COVID-19 pandemic, there has been a significant increase in physical and emotional violence against women. Reports suggest that calls to domestic violence helplines have increased fivefold in some countries.

Online violence is also on the rise, targeting in particular young women and women in public life, such as journalists and politicians. Women also experience violence at work: around a third of women in the EU who have experienced sexual harassment have experienced it at work.

The EU and its Member States are working on different fronts to end gender-based violence, protect the victims of this horrific crime and punish the perpetrators.

There is currently no specific legislation on violence against women and domestic violence in the EU. However, this issue is covered by some EU directives and regulations, in particular in the areas of judicial cooperation in criminal matters, equality between women and men and asylum policy.

For example, the EU directive establishing minimum standards for the rights, support and protection of all victims of any crime ensures that the rights of victims of gender-based violence are ensured at all stages of the criminal process.

On March 8, 2022, the European Commission proposed a new directive to combat violence against women and domestic violence. The proposal is aimed at ensuring a minimum level of protection in the EU against such violence.

The new rules criminalize a range of offences, including female genital mutilation and cyberbullying.

Cyberbullying includes the non-consensual exchange of intimate images, cyberstalking, and cyberincitement to violence or hatred.

The directive will also ensure that victims of violence have: access to justice; the right to claim compensation; access to toll-free telephone help lines and rape crisis centers.

On 9 June 2023, the European Council (hereinafter referred to as the Council) agreed its position on the proposed Directive on preventing and combating violence against women and domestic violence.

The already mentioned Istanbul Convention of 2014 was signed by the EU on June 13, 2017. In February 2023, the Council requested the consent of the European Parliament to adopt a decision on the conclusion of the convention by the EU. On June 1, 2023, the Council adopts a decision on the accession of the EU to the Convention.

A woman's right to live free from violence is also supported by international agreements such as the Convention on the Elimination of All Forms of Discrimination against Women (1979) and the United Nations Declaration on the Elimination of Violence against Women (1993).

In 2020, the European Commission adopted a gender equality strategy for the period 2020-2025. The strategy envisages an ambitious set of measures to end violence against women and domestic violence. With this strategy, the EU confirmed its commitment to: preventing and combating gender-based violence; support and protection of victims; bringing the culprits to justice [1].

In particular, it was under public pressure that state subsidization of crisis centers for family crime victims began in most European countries. Since the previous laws did not take into account the specifics and complexity of crime in the family and household sphere, the

legislator began to make various changes and additions to civil, administrative, and criminal legislation in order to prevent it, and most states began to develop special laws, the purpose of which was to create a legal basis to implement a comprehensive approach to solving the problems of crime prevention in the family and household sphere. Such laws are now in force in most European Union states.

For example, the Federal Republic of Germany, where the problem of crime in the family sphere is more relevant than ever. That is why the federal government calls the effective fight against violence against women, assistance to victims and consistent punishment of criminals among its most important tasks. The main preventive work in this direction is entrusted to the Federal Ministry for the Family, the Elderly, Women and Youth of Germany (Bundesministerium für Familie, Senioren, Frauen und Jugend).

The most widespread measures of police influence on crime in the family sphere include: removal from the apartment (house) of the person from whom the danger emanates (Wohnungsverweisung); prohibition of the person who poses a danger to enter the apartment (house) (Rückkehrverbot); removal from a certain place of the person from whom the danger emanates (Platzverweis); prohibition of stay (appearance) in a specified place for a person who poses a danger (Aufenthaltsverbot); prohibition of entering into contact (verbal contact on the street, by telephone, by e-mail, etc.) with the person from whom the danger emanates (Kontaktverbot); in particularly serious cases, the person from whom the danger emanates is taken into custody (Ingewahrsamnahme).

Among the measures taken by the state to prevent crime in the family sphere in Germany is concern for future generations. The German scientist K. Seitt [2, p.249-254] writes that if children saw their parents being openly abused by each other, their psyche suffers greatly. In most cases, they perceive violence as the basis of family relations, and are subject to exploitation and violence by their parents in the future.

Another European country, Great Britain, attaches great importance to the prevention of crime in the family sphere. According to the 2004 law, domestic violence is any incident of threats, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been roommates or against family members, regardless of gender, sexual orientation [3].

It is worth noting that the problem of crime in the family sphere forces Great Britain to look for optimal ways to prevent it. The main body for the prevention of such crime is the police, its main task is to ensure that the participants in the family conflict do not exceed the legal prohibition.

This form of work of the British police is also relevant for the National Police of Ukraine, because when going to a family conflict, employees can prevent the commission of a criminal offense by their actions, and can, on the contrary, provoke it after drawing up a protocol or a verbal warning.

This is very important to understand, because when going to family conflicts, police officers must be ready to solve any problem. First, it is worth clarifying the current legislation, and then deciding whether to apply the norms of administrative or criminal impact on the offender.

The experience of the Anglo-Saxon countries in the prevention of crime in the family sphere shows that this problem is constantly under the control of the state, and therefore it is the state that provides adequate funding for specialists of local support services and national hotlines, which respond to all types of criminal offenses committed in family sphere, while it is worth emphasizing that it is the state that is interested in providing all kinds of help and support to victims of criminal offenses committed in the family.

Interesting for our research is the experience of prevention of domestic crime in Sweden, in particular, due to the creation of a wide demand for the principles of gender equality and the preparation of the foundations for public policy aimed at ensuring equal opportunities for women and men in the formation of society and their own lives, the Swedish Government initiated four specific goals: equal distribution of power and influence on the decision-making process; economic equality and equal access to education; equal distribution of unpaid services and housework; ending men's violence against women[4].

Thus, the first serious step at the level of legislation was the introduction of a restrictive prescription, which was introduced by the relevant Law in 1988. The purpose of the Act was to prevent crimes against persons who are subject to persecution and harassment, as well as to create a sense of security for them. The law was designed to be gender-neutral, but

based on its rationale, it is clear that the law was intended to apply in situations where a woman has experienced violence or threats while in a relationship, or where a man stalks and harasses a woman in an intimate relationship that has already ended[5].

In 1998, a new crime was introduced in the Criminal Code of the Kingdom of Sweden - gross violation of a woman's integrity. By the way, a new definition was also introduced: "Sexual harassment", which means unwanted behavior based on sex or unwanted behavior of a sexual nature that violates the integrity of the employee at work [6].

Interesting from the point of view of the problem of crime in the family sphere that we are researching is the experience of Israel, where corporal punishment in the family is excluded. Any physical violence humiliates a person, and the threat of violence is considered psychological violence and is considered a crime. According to Israel's Law "On the Prevention of Domestic Violence", adopted back in 1991 (with further revision in 2001), not only the husband has the right to apply to the court for a protection order in order to obtain a ban on living in the apartment (home) of a family member who shows violence. The law provides a broad definition of a family member who has the right to file a lawsuit for a protection order: a divorced spouse, a grandparent, brothers or sisters, a child of a spouse, siblings of a spouse, uncles and aunts, nephews, common-law spouse , as well as a same-sex couple [7].

In the course of our research, we also paid attention to the experience of crime prevention in the domestic sphere in Greece, in particular, the Law "On Combating Domestic Violence", primarily aimed at protecting the basic rights of women and children, combating physical and sexual violence, as well as providing support and assistance to victims of domestic violence. According to its provisions, causing harm to health (causing bodily harm, beatings, etc.) in the family is considered an aggravating circumstance (as well as assaulting a woman who is known to the perpetrator to be pregnant), criminalized sexual violence against a spouse, intimate partner and corporal punishment of children, implemented protection measures (both legal and physical) for victims of domestic violence, a restraining order (according to which the offender is excluded from access to the place of residence / stay of the victim and (or) her close relatives, education of children, etc.) and a program psychological correction for offenders [8, p. 12].

The experience of France became interesting for our research. In particular, its statistical data revealed one of the types of criminal offenses, domestic violence. It was this type of criminal offense that forced the state leadership to take drastic steps to eradicate such negative trends. So, every year in France, active work is carried out to study the intensity of domestic violence. By the way, the monitoring of the situation of domestic violence in France was started quite a long time ago and currently from 200 thousand to 2 million women in France are victims of domestic crime, 400 die annually from beatings inflicted by a man in the family, that is, more than one woman daily[9].

In the United States of America (USA), the prevention of crime in the family sphere prevails in importance over other areas of crime fighting. The American experience in combating domestic violence is characterized by the presence of special norms in the criminal legislation, detailed regulation of the law enforcement activities of the police, prosecutor's office, courts, and the existence of a powerful social structure for the protection of victims of such violence [10].

Conclusions. The study of foreign experience of crime in the family sphere shows that its problem is relevant for all countries of the world, and therefore the introduction of the best foreign practices into domestic legislation will help Ukraine to solve a number of problems that arise today in our country in the work of law enforcement agencies in the prevention of crime in the family sphere.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

References

1. EU measures to end violence against women. URL: <https://www.consilium.europa.eu/en/policies/eu-measures-end-violence-against-women/> (дата звернення: 26.10.2023).
2. Seith C. Kinder und häusliche Gewalt. Herausforderungen an Behörden und Fachstel len. *Soziale Sicherheit CHSS*. 2009. № 5. pp. 249–254.

3. Domestic violence and abuse: help from DWP. Department for Work and Pensions and Home Office. *Gov.uk* : URL: <https://www.gov.uk/government/publications/domestic-violence-and-abuse-help-from-dwp> (дата звернення: 25.07.2023).
4. Erturk Y. Implementation of general assembly resolution 60/251 of 15 march 2006 entitled «Human rights council». *Report of the Special Rapporteur on violence against women, its causes and consequences*. URL: <http://evawglobal-database.unwomen.org/-/media/files/un%20women/vaw/country%20> (дата звернення: 2.08.2023).
5. Restraining orders in Sweden An evaluation of the law, the new regulations, their implementations and effects: summary. URL: <http://kunskapsbanken.nck.uu.se/nckkb/nck/publik/fil/visa/31/br%C3%A5%20rapport%202007%202%20english%20summary%20restraining%20orders%20in%20sweden.pdf> (дата звернення: 02.08.2023).
6. Act on Violence against Women (Government Bill 1997/98 55). *Global Database on Violence against Women*. URL: <http://evaw-global-database.unwomen.org/en/countries/europe/sweden/1998/act-on-violence-against-women--governmentbill-1997-98-55> (дата звернення: 02.08.2023).
7. המשפטים הדרדמ URL: <https://www.justice.gov.il/Ru/Units/LegalAid/LegalAssistanceDomains/Pages/FamilyViolence.aspx> (дата звернення: 02.08.2023).
8. Акімов М. Правове регулювання запобігання та протидії домашньому насильству в деяких державах Європи. *Новели законодавства про запобігання та протидію домашньому насильству* : матер. міжнар. круглого столу (Київ, 27 верес. 2019 р.). Київ: Національна академія прокуратури України, 2019. 184 с.
9. At least 2.000.000 women are victims of domestic violence in France. *Sos femmes accueil* URL: http://www.sosfemmes.com/english_domestic_violence/violence_statistics.html (дата звернення: 02.08.2023).
10. State and Federal Domestic Violence Laws in the United States. *Stop Violence Against Women*. URL: <http://hrlibrary.umn.edu/svaw/domestic/link/healtheffects.html> (дата звернення: 02.08.2023).

Submitted 12.12.2023

1. EU measures to end violence against women. URL: <https://www.consilium.europa.eu/en/policies/eu-measures-end-violence-against-women/> [in Eng.]
2. Seith C. (2009) Kinder und häusliche Gewalt. Herausforderungen an Behörden und Fachstellen. *Soziale Sicherheit CHSS*. № 5. pp. 249–254. [in Germany]
3. Domestic violence and abuse: help from DWP. Department for Work and Pensions and Home Office. *Gov.uk* : URL: <https://www.gov.uk/government/publications/domestic-violence-and-abuse-help-from-dwp> [in Eng.]
4. Erturk Y. Implementation of general assembly resolution 60/251 of 15 march 2006 entitled «Human rights council». *Report of the Special Rapporteur on violence against women, its causes and consequences*. URL: <http://evawglobal-database.unwomen.org/-/media/files/un%20women/vaw/country%20> [in Eng.]
5. Restraining orders in Sweden An evaluation of the law, the new regulations, their implementations and effects: summary. URL: <http://kunskapsbanken.nck.uu.se/nckkb/nck/publik/fil/visa/31/br%C3%A5%20rapport%202007%202%20english%20summary%20restraining%20orders%20in%20sweden.pdf> [in Eng.]
6. Act on Violence against Women (Government Bill 1997/98 55). *Global Database on Violence against Women*. URL: <http://evaw-global-database.unwomen.org/en/countries/europe/sweden/1998/act-on-violence-against-women--governmentbill-1997-98-55> [in Eng.]
7. המשפטים URL: <https://www.justice.gov.il/Ru/Units/LegalAid/LegalAssistanceDomains/Pages/FamilyViolence.aspx> [in Hebrew]
8. Akimov M. Pravove regulyuvania zapobigania ta protydii domashniomu nasyilstvu v deyakyh derzavah Evropy [Legal regulation of prevention and counteraction to domestic violence in some European states]. Amendments to the legislation on preventing and combating domestic violence: mater. international round table (Kyiv, September 27, 2019). Kyiv: National Academy of the Prosecutor's Office of Ukraine, 2019. 184 p. [in Ukr.].
9. At least 2.000.000 women are victims of domestic violence in France. *Sos femmes accueil* URL: http://www.sosfemmes.com/english_domestic_violence/violence_statistics.html [in Eng.]
10. State and Federal Domestic Violence Laws in the United States. *Stop Violence Against Women*. URL: <http://hrlibrary.umn.edu/svaw/domestic/link/healtheffects.html> [in Eng.]

ABSTRACT

The article states that in various countries, the consequences of crime in the family sphere can be mental, physical, economic and sexual injuries, which can become a threat to the life and health of not only spouses, but also their children. Therefore, crime in the family sphere is not only a domestic problem, it is also an international problem. It was determined that the beginning of the prevention of crime in the family sphere in foreign countries should be considered the results of the activity of the

women's movement at the international level reflected in the chronology of conferences, in the texts of declarations and conventions of the United Nations (UN), resolutions of regional international organizations, and other international documents of the last decades, among which, first of all, the UN Convention on the Elimination of All Forms of Discrimination against Women should be singled out. It is also worth emphasizing that our study of foreign experience in the prevention of crime in the family sphere proved that in Europe, due to the active actions of international human rights organizations, the concept of observing human rights has significantly expanded, in particular, the understanding of the responsibility of the state for the commission of a criminal offense by a person - an offender - has changed. The article examines the experience of crime prevention in the family sphere in the USA, Sweden, Germany, Israel, Greece, France, Great Britain. Further integration of Ukraine into the EU and the Euro-Atlantic security space will open up to our state many tools for preventing crime in the family. However, already now in Ukraine, based on foreign experience, it is possible to implement campaigns to raise awareness about domestic violence, provide legal support, provide a safe environment and eliminate harm from violence, conduct diploma programs on gender violence. Therefore, understanding the global experience of crime prevention in the family sphere will make it possible to speed up the successful solution of this problem through joint efforts of state and non-state institutions of the public.

Key words: crime prevention, family sphere, offender, violence.

UDC 340

DOI 10.31733/2078-3566-2023-5-128-134



Valentyn LIUDVIK ©

Ph.D. (Law), Associate Professor
(Dnipropetrovsk State University
of Internal Affairs,
Dnipro, Ukraine)

CRIMINAL LIABILITY FOR VIOLATION OF THE LAWS AND CUSTOMS OF WAR

Валентин Людвік. КРИМІНАЛЬНА ВІДПОВІДАЛЬНІСТЬ ЗА ПОРУШЕННЯ ЗАКОНІВ ТА ЗВИЧАЇВ ВІЙНИ. У науковій статті досліджені проблемні питання статті 438 (Порушення законів та звичаїв війни) Кримінального кодексу України. Розкриті форми вчинення цього злочину, а саме: жорстоке поводження з військовополоненими або цивільним населенням, вигнання цивільного населення для примусових робіт, розграбування національних цінностей на окупованій території, застосування засобів ведення війни, заборонених міжнародним правом, інші порушення законів та звичаїв війни, що передбачені міжнародними договорами, згода на обов'язковість яких надана Верховною Радою України, віддання наказу про вчинення таких дій.

Ключові слова: війна, закони війни, звичаї війни, цивільне населення, військовополонені, національні цінності.

Relevance of the study. According to the official statistics of the Office of the Prosecutor General "On registered criminal offences and the results of their pre-trial investigation", 12 criminal offences were registered under Article 438 of the Criminal Code in 2019, 223 criminal offences in 2020, 172 criminal offences in

2021, 60387 criminal offences in 2022, and 22168 criminal offences in January-April 2023 [1]. That is, we see that since the full-scale invasion of Russia, the number of recorded criminal offences under Article 438 of the Criminal Code has increased hundreds of times.

Practitioners of pre-trial investigation and court have to interpret Article 438 of the Criminal Code, taking into account that this provision is of a blanket nature and to clarify its content it is necessary to refer to international legal acts ratified by Ukraine.

© Liudvik V., 2023

ORCID iD: <https://orcid.org/0000-0002-3385-6046>

lyudvikvd@i.ua