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Roman Mironyuk[©]
Doctor of Law, Professor
(Dnipropetrovsk
State University
of Internal Affairs, Ukraine)



Taştan Coşkun[©]
Doctor of Law
(National Police Academy
of the Turkish Republic,
Turkey)



Mykola Repan[©]
Lecturer
(Dnipropetrovsk
State University
of Internal Affairs, Ukraine)

COERCIVE MEASURES OF INFLUENCE APPLIED TO PERSONS WHO HAVE COMMITTED DOMESTIC VIOLENCE FOR THE LEGISLATION OF UKRAINE AND TURKEY: A COMPARATIVE ANALYSIS

Миронюк Р.В., Джошкун Т., Репан М.І. Примусові заходи впливу, що застосовуються до осіб, які вчинили насильство в сім'ї за законодавством України та Туреччини: порівняльний аналіз. У статті визначено систему примусових заходів впливу, що застосовуються до осіб, які вчинили насильство в сім'ї за законодавством України та інших зарубіжних країн (зокрема, на прикладі Туреччини) та зроблено авторські судження щодо їх ефективності та запропоновано окремі шляхи удосконалення правової основи та практики їх застосування в Україні. З'ясовано стан законодавчого регулювання системи заходів впливу до осіб, які вчиняють насильство в сім'ї та захисту жертв такого насильства в Україні та зарубіжних країнах (на прикладі Турецької Республіки), ефективності їх застосування та виокремлення раціональних форм та способів їх застосування.

В результаті порівняльного аналізу системи примусових заходів впливу, що застосовуються до осіб, які вчинили насильство в сім'ї за законодавством України та інших зарубіжних країн (зокрема, на прикладі Туреччини), запропоновано до впровадження в національну правову та організаційну доктрину протидії насильству в сім'ї таких апробованих міжнародною спільнотою заходів: здійснення класифікації кривдників з облікових баз даних поліції на підставі ступеня їх агресивності та створення потенційної загрози жертві насильства не за рішенням суду, а на підставі вивчення фактичних обставин вчинення ними насильства на розсуд уповноваженого працівника поліції; відповідно розширення можливості поліцейських застосовувати обмежувальні заходи до кривдників без рішення суду, виключення можливості оскарження рішення поліцейського щодо винесення термінового заборонного припису стосовно кривдника (тобто надання більшої автономії поліцейським у прийнятті рішень щодо застосування заходів впливу на кривдників); запровадження використання електронного браслету з метою виконання рішення суду щодо обмеження наближення його жертви насильства за рішенням суду; унормування процедури прослуховування поліцією та запису телефонних розмов кривдника з жертвою з метою недопущення насильства та зібрання доказової бази.

Ключові слова: насильство в сім'ї, примусові заходи впливу, заходи захисту жертв насильства, міжнародні стандарти, законодавство України та Туреччини.

The relevance of the article. Considering the Convention for the protection of human rights and fundamental freedoms, domestic violence considered by the European court of human rights as a violation of the right to life (article 2); right to be free from inhuman or degrading treatment or punishment (article 3); right to respect for private and family life (article 8); right to an effective remedy (article 13); right to be free from discrimination, particularly on

© Mironiuk R.V., 2019
ORCID iD: <https://orcid.org/0000-0002-9620-5451>
mironyk1977@ukr.net
© Coşkun T., 2019
© Repan M., 2019
k_app@dduvs.in.ua

grounds of sex and age [1]. On the international level considering a cases of domestic violence, and so such cases 8 were considered by the European court of human rights at the end of 2018, the state (including Ukraine, which ratified the Convention for the protection of human rights and fundamental freedoms (further, European Convention) 17.07.1997 [2], (thus taking commitment to respect and strictly comply with the provisions of this international legal agreement) found guilty for allowing the violations of fundamental human rights from individuals, for inability to perform their positive obligations to ensure these rights and inability to act with the due diligence to persons which are under her jurisdiction with a view to prevention domestic violence. Thus, today at the international level, problem of domestic violence has been recognized as a rough violation of human rights, and states need to create effective mechanisms to counteract this shameful phenomenon and to assist victims of such violence. Among these countries is Ukraine, which is currently only implementing an effective system for combating against domestic violence, protecting and assisting victims of domestic violence, which should be undertaken with a view to studying and implementing the best (that is to say most effective) foreign judicial practice of such activity and reviewing international jurisprudence about the application of effective measures of influence against perpetrators of domestic violence and protection of victims of such violence.

Thus, the purpose of this scientific article is state clarification of legislative regulation of the measures of influence system against persons who commit domestic violence and victim's protection in Ukraine and foreign countries (on the example of the Turkish Republic), the effectiveness of their application and separation of rational forms and ways to use them.

To complete the task, within the article the following *tasks* will be solved: the definition of coercive measures system of influence, applied to persons who have committed domestic violence for the legislation of Ukraine and other foreign countries (in particular, on the example of Turkey) and the comparative analysis of victim's protection measures; have been made and proposed author's judgments about their effectiveness and some ways of improving the legal basis and practice of their application in Ukraine.

Personal contribution of authors. The scientific ideas and achievements in this article belong to the co-authors equally, their authors' contribution were distributed as follows: Roman Mironyuk and Mykola Reban summarized the Ukrainian legislation and practice of combating against domestic violence; Tashtan Koshkun summarized and provided materials about the legislative features and organizational support in direction of combating against domestic violence in the Turkish Republic.

The main content. Before conducting the scientific coercive measures of influence analysis, applied to perpetrators of domestic violence and victim's protection activities in the current national legal doctrine, should pay attention on the historical prerequisites of their legal fixation in the national law. For the first time, the possibility of applying these measures was defined in the Law of Ukraine "About Prevention of Domestic Violence" from November 15, 2001, which was taken first in the post-Soviet countries [3]. In addition to the legal and organizational basis of domestic violence prevention, this Law defines the system of bodies and institutions that are responsible for the implementation of domestic violence preventing measures, and specifies special measures of preventing domestic violence and corrective programs for perpetrators of domestic violence. It should be noted, that this law was characterized by a high level of coercive measures of influence using loyalty violence and blur of victim's protective measures. About the ineffectiveness of domestic violence preventing measures was evidenced even by the legislative definition of the nature and content of some of them, for example: an official warning of domestic violence inadmissibility; taking on prophylactic record.

Probation of the first law aimed at counteracting domestic violence, practice result of counteracting organs, first of all police, as well as internal and international monitoring of these processes in Ukraine have launched a process of rebooting national legislation in direction of counteracting domestic violence, which was embodied in the Law of Ukraine "About Prevention and Countering Domestic Violence" adopted on December 7, 2017 [4]. This law identifies two groups of measure in direction of preventing and combating against domestic violence. If the first group of measures includes the system of measures carried out by executive authorities, local self-government bodies, enterprises, institutions and organizations aimed to increasing public awareness of the forms, causes and consequences of domestic violence, measures to combat domestic violence, include measures aimed to: 1. domestic violence cessation; 2) providing assistance and protection of injured person, compensation for

given harm; 3) taking appropriate measures to investigate cases of domestic violence; 4) measures aimed at bringing the perpetrators to justice and changing their behavior. Exactly in the system of counteracting against domestic violence to highlight coercive measures of influence are applied to persons who have perpetrated domestic violence, including:

- 1) making urgent restraining orders against offenders;
- 2) application of a restrictive injunction to offender;
- 3) taking on the preventive account of offenders and carrying out preventive work with them;
- 4) sending perpetrator to the offender's program.

Another measure is used as an additional coercive measure - the revocation of permits for the right to purchase, store, carry weapons and ammunition to their owners in case of committing domestic violence, as well weapons and ammunition removal in accordance with the procedure, prescribed by law.

We propose to analyze the data of coercive measures in a comparative legal context, taking into account international practices of counteracting such a phenomenon.

Making an urgent restraining order against the offender. This measure is applied on the grounds and in accordance with the procedure established by Art. 25 of the Law and Procedure of issuing by the authorized units of bodies of the National Police of Ukraine an urgent restraining order against the offender, approved by the order of the Ministry of Internal Affairs of Ukraine dated 01.08.2018 No. 654 [5].

The basis of application of this measure are: 1) statement of the victim; or 2) the initiative of an officer of the authorized police unit based on the risks assessment of violence to the life and health of real and potential victims of violence. **The lead** is the existence of an immediate threat to the victim's life or health in order to immediately cessation of domestic violence, prevent it from continuing or re-committing. The application of a temporary restraining order may take following forms (including those taken in total): 1) an obligation to leave the victim's place of residence (standing); 2) prohibition on entry and stay at the victim's place of residence (standing); 3) prohibition of any contact with the victim in any way.

Note: the prohibition applies regardless of the form of ownership of the dwelling in which victim person is located (joint property, victim's property or his / her offender, property of an outside natural or legal entity). The procedural features of the application of this measure are such: 1) made in writing form with delivery of a copy to the perpetrator ; 2) applied for up to 10 days; 3) applied by police officer's judgement with motivation to use; 4) with notifying about offender's temporary standing; 5) during the execution of this measure, in accordance with the procedure established by the current legislation of Ukraine, police officers may apply coercive measures to evict the offender to leave the place of residence (standing) of the victim and the offender refuses to leave it voluntarily; 6) the decision on the issue an urgent restraining order may be appealed to the administrative court by the offender.

Similar in content, but different in terms and procedure of application is such a measure as a restrictive *injunction against the offender*, which is applies in accordance with the procedure established by Art. 26 of the Law and Chapter 13, Section IV of the Civil Procedure Code of Ukraine. The restraining order is issued by the court on the basis of petition of interested persons, namely: 1) victim or his representative; 2) in the case of domestic violence against a child - parents or other legal representatives of a child, relatives (grandmother, grandfather, adult brother, sister), stepmother or stepfather , as well as the body of guardianship authority; 3) in the case of domestic violence against the incapable person - guardian or guardianship authority .

Measures that can be applied to offender on the basis of the restrictive provisions are: 1) prohibition to stay in the joint home (standing) with the victim; 2) elimination of obstacles of property using an object of right for joint ownership or private property of the victim; 3) restriction of communication with abused child; 4) prohibition to approach a certain distance to the place of residence (standing), study, work, and other places of frequent visits; 5) prohibition personally and through third parties to wanted the victim, to pursue in any way to communicate with the victim; 6) the prohibition of correspondence and telephone conversations with the victim or to contact with other means of communication personally and through third parties.

Note. It is worth noting that a restrictive order may provide for the application of several of these activities. Restrictive injunction may not contain measures restricting the right of

residence or standing of underage offender in the place of permanent residence (standing). A restrictive requirement is imposed for a period from one to six months.

Procedural peculiarities of this measure are: 1) issue restrictive order is carried out by a decision of the court in a separate procedure, which for the purposes of section IV of the Code of civil procedure was supplemented by a new Chapter 13; 2) a statement of the results of the restrictive provisions submitted to the court at the place of residence (stay) the person who suffered from domestic violence or gender violence and if the person is in the institution, which refers to General or specialized services support the victims - at the location of the institution; 3) circumstances that is indicating about necessity of court issuing restrictive regulations are the facts of Commission by the offender of one of the types of violence provided Article 1 of the Law; 4) evidence to support these circumstances may be material confirming the existence of a criminal or administrative offense against a person who committed domestic violence, an urgent restraining order, information on entering information in the Unified State Register of Domestic Violence Cases, press releases, copies of the statement to the police, etc .; 5) the case for issuing a restraining order is considered by the court with the participation of the applicant and interested persons; 6) the court's decision to issue a restraining order is immediately enforceable and its appeal does not suspend its enforcement; 7) the court notifies authorized divisions of the bodies of the National Police of Ukraine at the place of residence (standing) of the applicant for the taking of the person for whom the restrictive order was issued or extended for preventive registration, as well as the district court no later than the next day from the day of making the decision, district administrations in the cities of Kyiv and Sevastopol, the state administrations and executive bodies of village, settlement, city, district and city councils at the applicant's place of residence (standing). It should be noted that the practice of domestic courts testifies to the creation of judicial precedents for using of a restraining order against the offender, in particular, Mostyskiy district court of Lviv region ruled in case No. 448/613/19 of 05.06.2019 on the issuance of a restraining order to a person committing domestic violence and forbade perpetrator to approach the victim's home and their children closer than 300 meters for 3 months [6].

An analysis of foreign legislation shows that in most developed countries in Europe, perpetrator's removal is an effective coercive measure to influence the perpetrator of domestic violence. Thus, the Law of Germany from January 1, 2002 "About Protection against Domestic Violence", by a person who committed domestic violence by a decision of an authorized police officer, temporarily evicts (expelled) his family for 10 days [7, with. 45], at the same time, this measure is temporary and only by court order it is possible to apply such special measures as entry barring to house (apartment), the inability to stay near it is closer to the distance determined by the court; restricting contact with children, women, or other victims of domestic violence; ban on communication, correspondence with victims for a certain period. The Law of France from 4 April 2006 "About Prevention Strengthening and Punishment of Domestic Violence against underage person" stipulates that specialized courts operating in the system of courts of general jurisdiction may make rulings that ensure the safety of victims of domestic violence (temporary elimination of the abuser, placement of the victim of violence in specialized institutions - boarding houses, clinics where they are provided with medical and psychological care, etc.) [8, p.45]. According to the Law of Poland "About Combating Family Crimes" from 2010, aggressor's expulsion from the place of cohabitation with the victim is provided if there is a danger to the victim [9, p.213; 10, p. 115].

The experience of the Turkish Republic, one of the first countries in the European space that were update and bring into force the domestic violence legislation in line with the Convention on Human Rights, is a positive and requiring implementation of the national legal doctrine of preventing and combating domestic violence. , and it is no accident, for it was on May 11, 2011, that the Council of Europe Convention on the Prevention and Combat of Violence against Women and Domestic Violence was signed in Istanbul, and on March 12, 2012, Turkey became the first 46 countries and the European Union (including Ukraine) have acceded to the country that has ratified the Convention to date [11]. In order to implement this Convention, a Domestic Violence Law was adopted in Turkey in 2012, which stipulates that, similarly to the law of Ukraine, a perpetrator may be banned from approaching the victim and his / her place of residence (stay) for one months with the possibility of extending this period for a longer period at the request of the victim (family member) or at the request of the police. The peculiarity of this measure is that the court of the offender is obliged to wear a bracelet with a built-in GPS a navigator who shows the location of the person at the same time the victim of the violence is given a

transmitter programmed to receive a GPS signal from the offender's bracelet. In the event that the offender approaches the actual or potential victim of violence (such as approaching the father who witnessed the beating of his mother) within the acceptable distance, which is determined by the court's decision, an alarm signal is received by the hotline operator and an operational outfit. In such a case, a violation of a court order against a person is applied for a first violation (non-compliance with individual court injunctions) - a fine from 500 Euro, for a second violation - arrest up to 2 months. The using of a wristband, navigation and GPS alarms is carried out by police units. In addition, in Turkey, at the request of the victim or in the case of security, when the likelihood of aggression against her is sufficiently high, she is given a police alarm button equipped with a navigational observation channel which, when approached by the abuser, can trigger a police outfit which during 3-5 minutes arrive with GPS using Google Maps content [7, p. 58-60]. Recently, Turkey, like most developed countries, is introducing more and more IT resources, making it easier to operate. This is how IT professionals have developed a mobile application called "Stop Violence" that helps victims of domestic violence without calling from a mobile phone to notify the "police hotline" of information about the form, method of violence, abuser behavior, potential threats to life and health. Yes, this is done by ticking off options offered by the program about the circumstances of the threat of violence, such as the potential victim of violence being with a potential abuser and not being able to dial a police hotline that only provokes aggression by opening a mobile application from the appearance of logging in. informs the police about: type of violence (physical, psychological), violence, the possibility of police access to the premises, the behavior of the abuser, the availability of weapons and other harms to health, the presence of children and other family members, etc. Upon receiving such information, the police force is aware of the degree of threat, possibility and rapid penetration of the dwelling or other premises, the presence or absence of weapons, which constitutes an operational preliminary picture of the event and enables the police to act effectively on the use of coercive measures against the offender and the victim's protection measures. This app is developed and used in Romania, Poland, China, Singapore, Japan and the US. A similar mobile application called "SILSILA" was developed by Russian Federation, potential victim should just press a button on the main screen of the application and it will automatically send an alarm with the coordinates location to close persons, whose telephone numbers are listed as trustees, in addition the application will tell the addresses of nearby police departments and crisis centers where you can get help and even stay for a few days [12].

A separate coercive measure of influence applied to the perpetrators of domestic violence, the procedure for which is provided for in Art. 27 of the Law is taking on preventive account of offenders and carrying out preventive work with them. The essence of such measure does not indicate the imposition of coercive measures of influence, so they are referred to by the law as special measures, namely their promotion of measures of organizational and informational support for combating domestic violence. Preventive accounting of the offender's is carried out by the authorized police units in the order determined by the relevant Order of the Ministry of Internal Affairs of Ukraine No. 124 of February 25, 2019 [13], analysis of which is not the purpose of our research, since there is obvious availability of regulatory support. More interesting will be the content analysis of foreign experience of conducting such preventive accounting. Thus, by Turkish law was introduced two forms of countering domestic violence: accounting for offenders and accounting for victims of violence. If the records of victims of violence are maintained by social services, which together with psychologists, medical centers and the public carry out rehabilitation work with the victim of violence, then the offenders are registered with the police by filling in electronic forms of databases, administered by the police. Thus, there are three registers of offenders, defined by color by degree and form of aggression: green - offenders who predominantly commit psychological violence without physical violence; yellow - perpetrator who have used physical violence (at least once); and Red - are inclined to physical violence, and have been subjected to it several times by the court that they were subject to special coercive measures - arrest, prohibition of approaching the victim, prohibition of residence at the victim's place of residence. It is this category that is the most supervised police force, subject to monthly review, initially twice a year, then once a year in correctional programs at specialized institutions. However, in Turkey, more attention is paid to victims of domestic violence, so that, in addition to psychological help, victims of domestic violence can receive from 3 to 6 month rehabilitation allowance for penalties paid by the offender.

Conclusion. Summarizing the comparative analysis of the system of coercive measures of influence, applicable to perpetrator's for legislation of Ukraine and other foreign countries

(in particular, on example of Turkey), it is advisable to propose the implementation of the task in the national legal and organizational doctrine counteracting domestic violence in the following internationally tested measures: classification of offenders from police records on the basis of their aggressiveness and the potential threat to the victim, not on a court order, but on the basis of actual circumstances of the violence being committed, at the discretion of the authorized police officer; accordingly empowering police officers to apply restrictive measures to offenders without a court order; introducing the using of an electronic wristband to enforce the court's decision to limit approaching to the victim of violence by the court order; normalization of the procedure of listening and recording the telephone conversations of the abuser with the victim in order to prevent violence and gather evidence.

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SUMMARY

Mironyuk R.V., Koshkun T., Repan M.I. Coercive measures of influence applied to persons who have committed domestic violence and victim's protection measures for the legislation of Ukraine and Turkey: a comparative analysis. The article identifies a system of coercive measures of influence applied to persons who have committed domestic violence for the legislation of Ukraine and other foreign countries (in particular, on the example of Turkey), and have made author's judgments about their effectiveness and proposed by some ways to improve the legal basis and practice of their application in Ukraine.

Keywords: *domestic violence, coercive measures of influence, victim's protection measures, international standards, legislation of Ukraine and Turkey.*