

**Combating Domestic Violence:
Ukrainian and International Experience**

Західноукраїнський центр “Жіночі перспективи”
Делегація Європейської Комісії в Україні
Фонд Генріха Бьолля

Г. Федькович, І. Трохим, М. Чумало

**Подолання насильства в сім’ї:
український та міжнародний досвід**

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H. Fedkovych, I. Trokhym, M. Chumalo

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Г. Федькович та ін.

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This publication summarizes basic achievements and results of study and research on victims' experience in contacts with law enforcement and governmental institutions, media monitoring, research on prevalence of domestic violence, as well as legislative analysis, conducted in a frame of the project “Study and Incorporation of International Human Rights Standards for Solving Domestic Violence Problems in Ukraine” supported by the European Commission. Development and publishing of this publication is supported by the Heinrich Böll Foundation.

The West Ukrainian Centre “Women’s Perspectives” is a regional women’s NGO that during its ten years of existence has become one of the leading third sector organizations in Lviv and the Western Ukraine.

The organization’s mission: ensuring gender equality in all spheres of societal life, women’s rights protection and education; drawing the public’s attention to women’s issues and joining efforts in women’s problems resolution.

Head of organization – Luba Maksymovych, MBA

36 Chervonoj Kalyny Blvd., 3th floor business center
Lviv, 79070

Tel/fax: +380 32 295 50 60, Hotline: +380 32 2 962 962

e-mail: women@women.lviv.ua

www.women.lviv.ua

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TABLE OF CONTENTS

FOREWORD	6
I. PROBLEM OF VIOLENCE IN A FAMILY	8
II. THE PREVALENCE OF DOMESTIC VIOLENCE IN LVIV OBLAST – YOUTH RESPONSE	17
III. DEVELOPMENT OF INTERNATIONAL AND NATIONAL LEGISLATION ON COMBATING AND PREVENTION OF DOMESTIC VIOLENCE	30
IV. EXPERIENCE OF EUROPEAN COUNTRIES IN COMBATING DOMESTIC VIOLENCE	35
V. THE PROTECTION OF RIGHTS OF DOMESTIC VIOLENCE VICTIMS BY INTERNATIONAL TREATIES RATIFIED BY UKRAINE	50
VI. UKRAINIAN DOMESTIC VIOLENCE LEGISLATION AND PROBLEMS OF ITS APPLICATION	56
Special measures to prevent domestic violence	57
Provocative behavior: violence prevention or violation of human rights?.....	60
Assistance to victims of domestic violence	63
VII. RESPONSIBILITY FOR COMMITTING DOMESTIC VIOLENCE.....	69
VIII. CRIMINAL RESPONSIBILITY FOR DOMESTIC VIOLENCE.....	72
IX. DIVORCE AS A MEANS OF PROTECTION FROM DOMESTIC VIOLENCE.....	82
X. THE PROBLEM OF DOMESTIC VIOLENCE: HOUSING ASPECT	85
XI. MONITORING OF THE PRESS: THE PROBLEM OF DOMESTIC VIOLENCE IN THE MASS MEDIA	89
RECOMMENDATIONS	96
ANNEX LAW OF UKRAINE “On the Prevention of Violence in a Family”.....	98
BIBLIOGRAPHY.....	111

FOREWORD

Although domestic violence has been recognized by the legislation in Ukraine since 2002, there are serious problems and obstacles regarding protection of human rights of women and children who are victims of domestic violence including implementation of International mechanisms provisions that are part of Ukrainian legislation, faced by victims themselves and women's and Human Rights NGOs that provide assistance for victims and advocate for improving legislation.

Even after many years of raising awareness and educational work conducted by NGOs, after five years of implementation of domestic violence legislation and great positive changes in people's minds and law enforcement response, there still exists serious problems with society's perception and response to domestic violence. The strong belief it is a "family matter" and "nuances of normal family life", based on traditional stereotypes and religious dogmas among different groups in the society, causes many obstacles and problems for victims' rights protection and implementation of existing legislation appropriately. For example, such beliefs among the police cause their refuses to act according to the law in violation of victims' rights; wrong acting of police, personal stereotypes and unawareness of rights make victims' unwillingness to report to the police or ask for assistance at governmental institutions; personal stereotypes, unawareness of the problem, lack of practice and information in using human rights approach among judges make protection of victim's rights in court ineffective and create more obstacles for victims in access to justice; personal stereotypes and lack of knowledge among civil servants, especially in rural areas, make their work in the field of domestic violence that they are entitled to perform unhelpful for victims; journalists are unaware of the problem, full of traditional stereotypes and it does not help to change the people's perception of the problem and eliminate existing stereotypes.

Also five years of implementation of the Law of Ukraine "On Prevention Violence in a Family" shows imperfections of some provisions, problems and low effectiveness of its implementation. Women's and human

rights NGOs in Ukraine which work in the field of combating domestic violence lobby for changes and improvement of legislation and its implementation. But often there is not enough data, studies and research to prove to politicians and governmental officials existed problems and necessity of solving them.

That is why West Ukrainian Centre “Women’s Perspectives” initiated the project whose aim was to develop, test and disseminate the complex mechanism of ensuring Human Rights protection in the field of domestic violence through addressing three major groups of problems existing: Legislative, law implementation and assistance to victims and public response to the problem. The aim was achieved through providing assistance to victims, research on all problematic areas, awareness raising, advocacy, training and capacity building for NGO and governmental officials responsible for actions concerning domestic violence such as police and Departments of Family and Youth.

This publication summarizes basic achievements and results of the activities of the West Ukrainian Centre “Women’s Perspectives” in the field of combating violence in a family and protection of victims’ rights during 2006-2007. In particular, study and research on victims’ experience in contacts with law enforcement and governmental institutions, media monitoring, research on prevalence of domestic violence, as well as legislative analysis, conducted in a frame of the project “Study and Incorporation of International Human Rights Standards for Solving Domestic Violence Problems in Ukraine” supported by the European Commission.

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It is an invitation to a discussion between wide circles of specialists. In fact, combating violence in a family and providing effective assistance and rights protection for the victims requires maximum active participation from all sides, especially now when we have to improve existing legislation and its implementation to make it an effective mechanism. Only consequent and systematic steps in this direction will make our joint efforts noticeable and substantial.

I. PROBLEM OF VIOLENCE IN A FAMILY

Over the ten years that the West-Ukrainian Centre “Women’s Perspectives” has been working in the field of women’s rights protection and combating domestic violence, we have had only two men coming to us to complain that they were beaten by their wives. They came at different times and both of them were referred to us by police officers. They sought advice. In both cases their wives were physically strong and often abused alcohol. And in both cases the men told us that they had been raised so that they would never lift their hand against a woman.

Why do we write about this? The matter is that at every training program on domestic violence and at every roundtable discussion that we often initiate in rayon (regional) centres of Lviv oblast, or during other events, our staff members are asked this question: “Do men visit you?” Yes, they do and we remember both cases in detail. And how many women have visited us? Thousands. There are some women who have been visiting us for over six years and some visit us once in a few years, but in the majority of cases our female clients contact us every month and sometimes every week. Sometimes we hear our colleagues say during a consultation: “Yes, I do remember you, you have already been here. We have already worked with you, but please remind me about your situation.”

Some time ago, when we were only beginning to work, we remembered each woman who came to us for help, we knew where their children studied, what work schedule they had and what they liked doing in their spare time. When we were only beginning to work, every case of domestic violence appeared to us to be a horrible exception to the rules. Back then we had only one consultant lawyer who worked part-time, three days weekly. Now we have three lawyers, and unless our client is in a critical crisis and needs urgent assistance, she can book a consultation sometimes one to two weeks in advance.

The problem of domestic violence is an old and massive disease of society. According to various surveys, 50 to 70 per cent of women have encountered this problem in their families. Currently a total of 88,000 persons in Ukraine are registered by police departments for committing domestic

violence, including 2,500 people in Lviv oblast¹. The roots of violence originate from the patriarchal relations and stereotypes about the roles of husbands and wives. According to a stereotypical belief, the role of wives is to give birth to and raise children, and to look after the household and family. Since childhood, women are involved in doing household chores, even though they may be inclined to engage in other types of activities.

Men, on the other hand, are regarded exclusively as the ones who provide for their family and protect it. Quite often men do not take part in raising their children, which may lead to their losing the feeling of parenthood. It is often believed to be a normal thing when the husband beats his wife, parents beat their children and, years later, children beat their elderly parents. The acceptability of violence is reflected in a countless number of popular Ukrainian sayings: “If he beats [her/me], it means that he loves [her/me]”, “Not beating one’s wife is the same as not grinding one’s scythe”, “The violin wouldn’t play but for the bow, the husband wouldn’t beat his wife but for her tongue”, “A good son is a [frequently] beaten son [in childhood]”, and so on and so forth. We often hear these “pearls of folklore”, as well as many others, as an argument said in defense of the perpetrator: “What shall we, therefore, demand from him if the popular wisdom itself teaches us to act in this way? It is our Ukrainian tradition.” Studies in different countries show that 70 to 95 per cent of victims of domestic violence are women.

It is necessary to say that in many families even if relations between the spouses deteriorate, the men do not cross the line and do not resort to violence. However, some men do cross this line. Violence may occur when there is inequality and a significant gap in power – physical, psychological or economic. It is this difference in power that gives the stronger partner “an illusory possibility” to feel that they can control the actions, thoughts and life of the other person, have power over the other person and impose their will on them and “punish” them if they do not like some actions by the other person. The possible scenarios of the development of the situation may differ. Some women immediately stop their relationship with their husband for good. However, the violence suffered remains as a huge trauma for the woman for a

¹ According to the Department of Public Security of the Internal Affairs Ministry of Ukraine.

long time, sometime throughout her life. In another scenario, the victim asks her family, friends or colleagues for help. This may deter the violator to some extent and for some time, but later violence is committed again.

Unfortunately, the most common scenario is when the wife justifies the offender (“Even though he’s beaten me, I still love him”, “It’s all because of alcohol”, “It’s because of his jealousy”), forgives him and does not ask anyone for protection. Everything returns to the state of normalcy, the husband apologizes and becomes a wonderful partner – just like during their honeymoon. The wife develops an illusion that positive changes may occur in her life that her partner may change.

However, some time later psychological tension arises in the family again and the cycle of violence is repeated. With every new cycle, violence becomes more serious and the periods of reconciliation become shorter or may eventually disappear altogether. Experts call this process “a circle (or wheel) of violence”, because violence is repeated all the time and its intensity increases.

It is often very difficult to identify and predict the factors and the people that can break this circle, affecting the offender to the extent that he really decides to change his behavior. These may be law enforcement agencies, neighbors, friends, children’s teachers or doctors. Sometimes they are priests or colleagues, psychologists or social workers and sometimes even passers-by. It is very difficult to predict whose opinion the offender will accept and whose advice he will follow.

International studies show that women ask for help after the first instance of domestic violence very rarely. On average, by the time they turn to law enforcement officers for help, women have suffered from domestic violence 20 times. Study of the West Ukrainian Centre “Women’s Perspectives” shows the similar statistics: Almost 40% of women, whose cases were involved in the research, suffer domestic violence for more than 5 years¹.

¹ Research conducted by the West-Ukrainian Centre “Women’s Perspectives” in 2007, total number of clients of the organization - women-victims of domestic violence involved in the research – 164.

Table 1. How long women suffer from violence

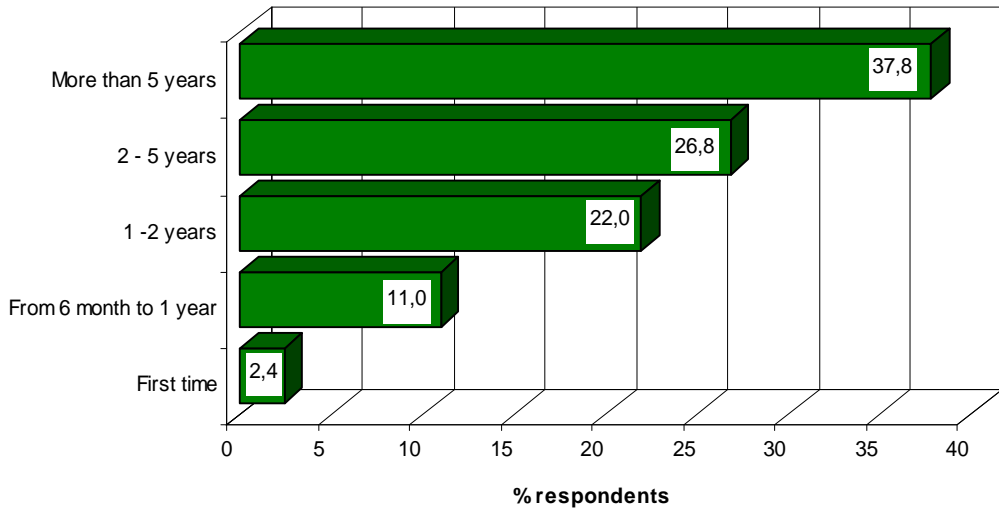
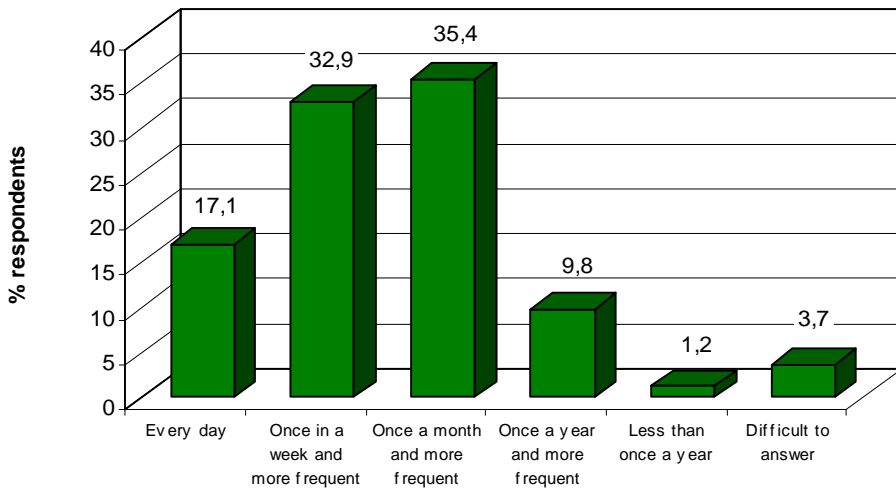


Table 2. Frequency of violent acts



Regarding the forms of domestic violence, as much as **97,6%** of women involved in research suffer from **psychological violence**, such as insult, threats, intimidations; **68,2%** - suffer from **physical violence** such as beatings, bodily injuries, etc.

To protect herself and children and to stop the violence **63,4%** of respondents turned for help **to police** and **47,6%** - **to court**.

80.8 % of them faced **problems** when talking to **local police inspectors** and in connection with their claims regarding domestic violence. Among these problems were:

73.8 % - Indifference showed by police officer;

35.7 % - Rude treatment at the police department;

16.7 % - Accusation in provoking violence

48.7 % of women faced problems in communication with **judges and court staff** in connection with their claims regarding domestic violence, such as:

52.6 % - Biased attitude

26.3% - Accusation in provoking violence

21.1% - Rude treatment

So, when women – victims of domestic violence face indifference, cruelty and rude treatment on the part of officials while asking for help, they often begin to think that violence against them is something treated as normal and attempts to protect themselves will yield no results.

The consequences of the existence of domestic violence in society are serious. Independent experts maintain that women die of domestic violence much more often than they do from violence inflicted by strangers or in car accidents. And the psyche of the children who live in families where violence occurs is affected, and not only when they are humiliated personally, but also when their loved ones (mostly mothers) suffer.

For teenage boys, watching domestic violence is one of the preliminary factors that lead them to commit an offence or become criminals in mature age. According to some estimates, 63 per cent of teenage offenders convicted of murder had previously murdered those who had been beating their mother.

The likelihood of the boys who witnessed violence against their mothers beating their partners in mature age is eleven times higher in comparison with boys from families where violence did not occur. Such children attempt committing suicide six times more often [than boys from families where violence did not occur]. The likelihood of such children using drugs and alcohol or committing rape increases by 50 per cent. Violence against their mothers is one of the reasons for their running away from home.

Domestic violence and violence in society will continue to occur until women and children are provided with proper protection and support and until there is a common mechanism of preventing domestic violence and supporting victims in place.

There should be a network of services established that would provide support to victims of domestic violence, including assistance provided through the system of justice and assistance in finding ways of eradicating the atmosphere of violence.

Hotlines providing women with information and support are of great importance in the sphere of consultation and prevention. The analysis of telephone calls helps establish the causes of crisis situations for women asking for help.

Setting up shelters for women is one more possibility to provide assistance to them because a shelter is a place where a woman can come with her children at any time when she or her children are faced with the possibility of violence. There a woman will feel secure and can count on being provided with meals, clothes, a room, emotional and psychological support. It is in such safe houses that women and their children will be able to receive a package of social services, individual consultations, psychotherapy and medical services. Feeling safe, a woman will be able to look at the problems in her family calmly and in a balanced way, and make a decision regarding what to do next. At present almost in every country in the world – esp. in developed European countries, particularly in Scandinavia, as well as in the U.S.A., there are a lot of shelters. There are approximately 20 such shelters in Ukraine, whereas in the U.S.A. every big city has sometimes more than 10 -20 shelters.

In this way the situation when only one in six women who suffered from domestic violence turns to law-enforcement agencies can be changed, because among the reasons why women do not want to inform the police about cases of violence in their family is a belief that it is “quite a normal thing” which is inherent in family life; a sense of their own guilt for what has happened; threats on the part of their partner; fear of retaliation; financial dependence; love of their partner; inability to adequately react to violence, which is due to their psychological or emotional trauma. In other words, it is their lack of knowledge about their own rights, inability to exercise or protect them, lack of information about the possibility to find assistance and support.

Another important aspect of overcoming domestic violence is working with offenders. Of course, in a shelter for victims and their children, women can calm down, start seeing a psychologist, a social worker or a lawyer. But the problem is that in a few months’ time the victims will have to go back to their homes, where they run the risk of being abused again.

It would be much more efficient “to evict” the offenders from the family where violence was committed so that their wife is not subjected to additional stress when she moves to the shelter.

Unfortunately, mechanisms of working with offenders are not well developed in Ukraine yet; there are no state programs or institutions engaged in this sphere; not enough work is done with offenders to change their violent behavior. But there is a great need to do this work. In our view, increasing work with offenders, especially by government institutions, will yield considerable effect in terms of overcoming domestic violence.

The problem of domestic violence in villages has its peculiarities. The matter is that there is a great gap between Lviv and villages in Lviv oblast in terms of access to information and possibility for a woman to protect her rights. Unfortunately, quite often one local police department covers four or five villages. Therefore objectively there is no possibility for law enforcement officers to interfere and besides, this intervention is often inefficient. Therefore the village mayor or the secretary of the village council is sometimes the only authority where a woman can go for help. Even if they want to help, village councillors as a rule do not know what information they should provide to the victim and where they can refer her. The problem is

worsened by the fact that stereotypes about the role of women in their family and about the possibility of using non-violent methods in resolving family problems are much stronger in villages than they are in cities. Besides, women living in villages know much less about the possibilities to have their rights legally protected than women living in cities.

Experts from the West-Ukrainian Centre “Women’s Perspectives” go to rural rayons (regions) to deliver trainings on “Establishing cooperation between all relevant authorities in preventing and overcoming domestic violence in rural places”. The trainings are delivered to village and small town mayors, local police inspectors, their public assistants and social workers. During such events trainees identify the departments, services, organizations and people that can come for help if domestic violence occurs. Besides the law enforcement bodies, they are bodies of local self-administration, departments for family and youth, the church, school authorities, doctors’ offices, departments for minors, relatives, parents, neighbours, colleagues and friends. Any of these “authorities” may prove to be a decisive factor in breaking the circle of violence.

Very often an offender feels strong only when dealing with his victims and even simple interference on the part of neighbours or passers-by who happen to witness domestic violence may stop it. Therefore of great importance is work in local communities towards ensuring non-acceptance of violence, so that people witnessing it offer help to the woman rather than pass by.

Participants of the trainings often arrive at a conclusion that officials can shape public opinion themselves by demonstrating respect for women’s rights, condemning violation of these rights and taking every step necessary to eliminate violence against women, as well as providing adequate assistance to victims of domestic violence.

The main goal of the West-Ukrainian Centre “Women’s Perspectives” is to develop, in cooperation with state bodies and law enforcement agencies, mechanisms of efficient cooperation between local police inspectors and social services as well as other governmental and non-governmental organizations towards providing comprehensive and efficient assistance to victims of domestic violence and protection their rights.

It is very important to create in society an atmosphere of non-acceptance and condemnation of violent behaviour. Especially important is this non-acceptance on the part of law enforcement officers and other state bodies and agencies. It is extremely important to make sure that the slogan "Violence is not to be tolerated or accepted!" becomes a slogan daily used by those who encounter the problem of domestic violence in their work and public in general.

II. THE PREVALENCE OF DOMESTIC VIOLENCE IN LVIV OBLAST – YOUTH RESPONSE

In 2007, the West-Ukrainian “Women’s Perspectives” Centre ran 34 training programs for students of secondary schools, vocational schools and colleges on prevention violence in a family. In the course of training the students learnt about the forms of domestic violence (psychological, economic, physical and sexual), post-traumatic condition of violence victims, ways of preventing family violence and receiving assistance by the victims of domestic violence. At the conclusion of the program the students were asked to fill in a questionnaire. From it we were able to learn whether there had been violence committed in their families, of what kind and how often. The anonymous questionnaire was later analyzed by independent experts.

The detailed information on domestic violence presented to our students in the course of their training allowed them to show true understanding of the problem and give cohesive and informed answers.

The group polled included 58.8% of girls and 41.2% of boys. The age groups included 0.8% of respondents in the below 12 age group, 32.1% in the 13-14 age group, 48.8% in the 15-16 age group, 14.5% in the 17-18 age group, and 3.8% in the 19-20 age group (See Table 1).

Table 1. Distribution of respondents by age

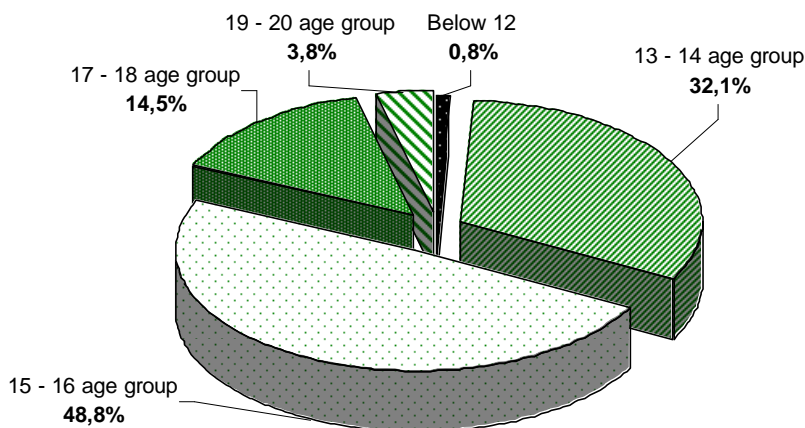
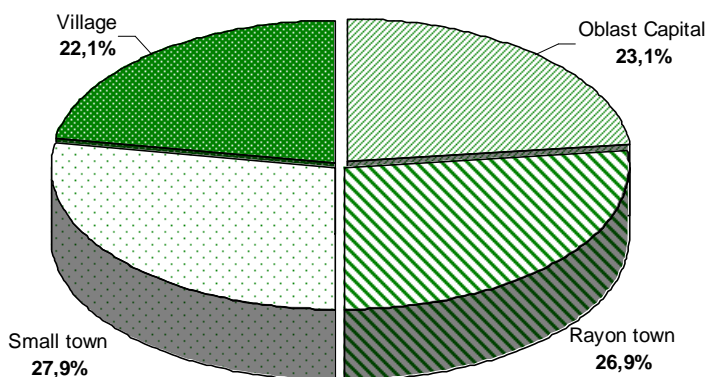


Table 2. Distribution of respondents by place of residence

The respondents included 23.1% of residents of Lviv, 26.9% residents of rayon towns, 27.9% residents of small towns and 22.1% residents of villages (see Table 2).

82.6% of the polled were the students of secondary schools and 17.4% studied in vocational schools, colleges, boarding schools and universities.

74.4% of respondents lived in two-parent families, 16.9% in mother-only families and 1.5% in father-only families. 6.5% of the polled lived in families with two grandparents. 0.7% of respondents lived in dormitories while 2.2% cited other residence (see Table 3).

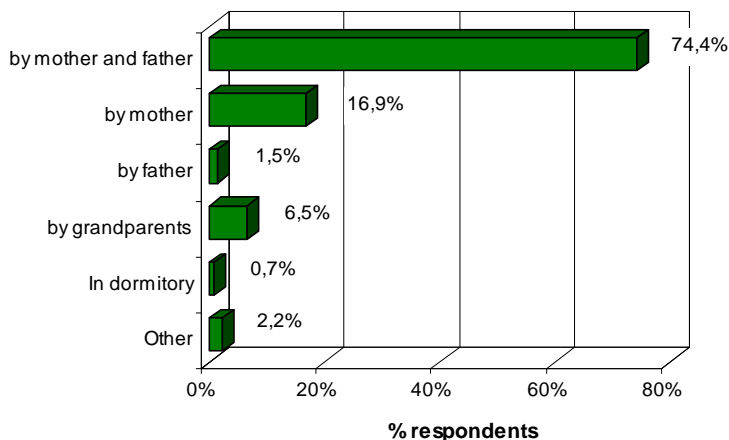
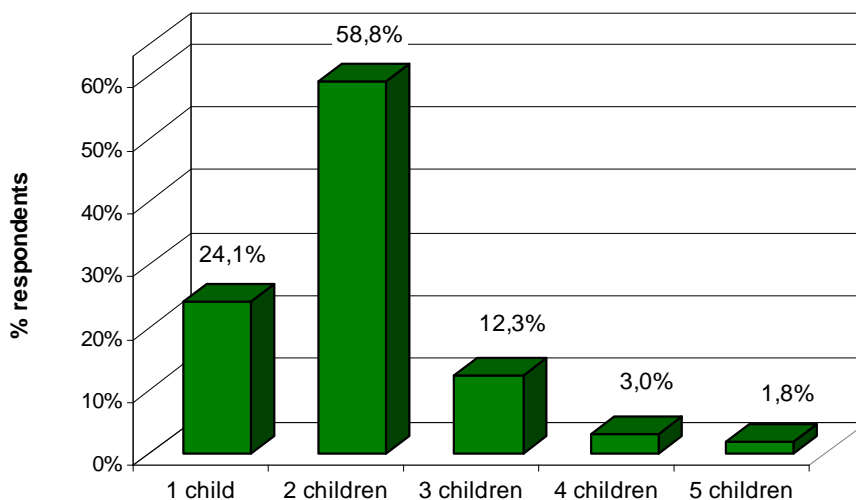
Table 3. Distribution of respondents by the types of families

Table 4. Distribution of respondents by the number of children in their families



58.8% of respondents' families consisted of 2 children, the respondent including, and 24.1% lived in one-child families. 12.3% of the polled lived in three-children families, 3% in four-children families and 1.8% in five-children families.

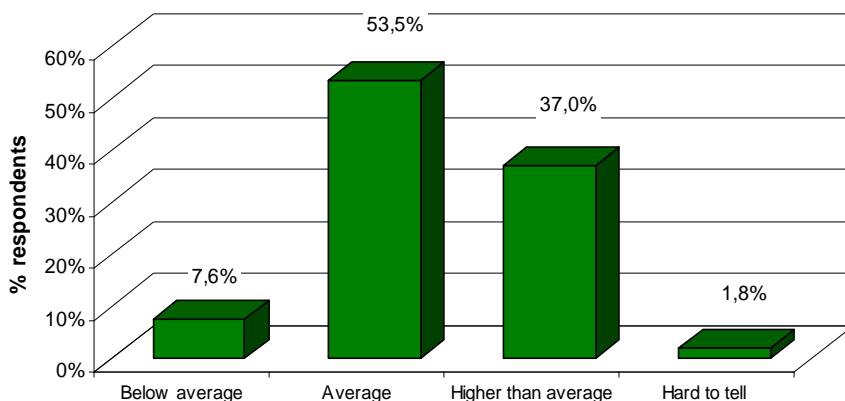
The average number of children in a family was two.

Further, we analyzed the students with regard to their living standard, dividing them into three groups: lower than average, middle and higher than average income families.

Almost half of the polled, or 53.5%, put their incomes as middle, 37.0% as higher than average and 7.6% as lower than average (see Table 5).

1.8% of the polled could not answer the question.

Table 5. Distribution of respondents by the living standards of their families



42.3% of the polled students answered that they had suffered from family violence: 44.6% of girls and 40.3% of boys. Of these, 70.2% admitted violence at home and psychological violence. 42.2% suffered as a result of physical violence, 15.9% of economic and 1.6% of sexual violence.

There is a certain disparity in evaluating the degree of physical injuries suffered by the girls and the boys. The girls cited psychological injuries more often than the boys (62% against 52%), while the boys more readily reported light physical injuries than the girls (29.0% against 19.0%).

	Gender	
	Female	Male
Psychological injuries	62,0%	52,0%
Light injuries (bruises)	19,0%	29,0%
Medium injuries	0,0%	1,0%
Heavy injuries	0,6%	0,0%
Hard to tell	15,8%	24,0%
Refused to tell	9,5%	4,0%

It should be noted that twice as many students in the 13-14 and 15-16 age groups failed to assess the degree of their injuries due to domestic violence and refused to answer the question than in the 17-18 age group. Thus, 30.4% in the 13-14 age group, 31.4% in the 15-16 age group and 12.2% in the 17-18 age group did not answer the question. Trainers involved in our programs put it to the common difficulty of assessing the degree of injuries as well as the realization that the injuries were inflicted by family members.

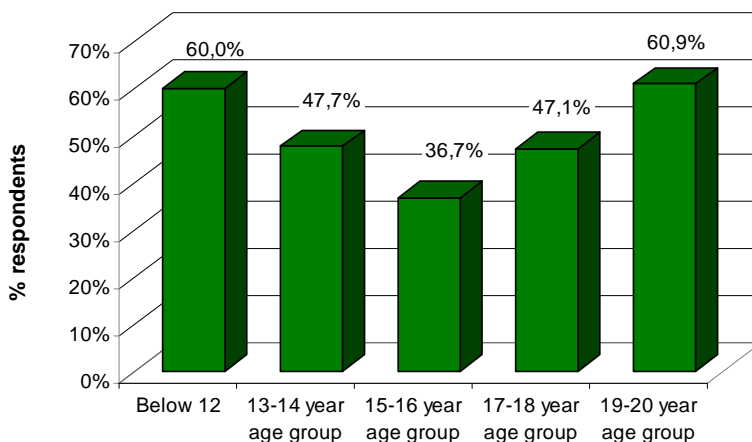
While 65.0% of the girls in the 19-20 age group admitted domestic violence, only 33.3% of the boys did so. Girls in the 15-16 age group were more often the victims of domestic violence than boys (38.9% against 34.1%), with 50.0% of girls against 43.6% of boys in the 17-18 age group. In the 13-14 age group the boys admitted violence more often than the girls (50.0% against 46.2%).

There is no considerable gender-related difference in domestic violence rate among residents of rayon towns and small towns. There is an insignificant difference among the respondents living in the oblast capital Lviv, with 49.3% of the girls and 45.6% of the boys admitting domestic violence. However, there is a significant difference in domestic violence rate among the residents of small towns and villages, with 55.6% of the girls admitting domestic violence against a much lower rate among the boys (41.9%).

We observed that the violence rate was higher in the lower income group. Thus, 37.2% of respondents in the higher than average income group admitted domestic violence, with 44.7% in the average and 63.0% in the lower than average income groups.

The highest rates of domestic violence were observed among the residents of villages (51.1%) and Lviv (47.5%), while lower rates were typical for small town residents (39.9%) and rayon towns residents (35.2%).

As regards the distribution of domestic violence victims by age, the table looks as follows:

Table 6. Distribution of domestic violence victims by age

Most frequently, the victims of domestic violence were in the below 12 age group, 60.0%, and the 19-20 age group, 60.9%. In the 13-14 age group, 47.7% of the students admitted domestic violence, with 47.1% in the 17-18 age group. The 15-16 age group showed the lowest rate at 36.7%.

We have also established that with the growth of the number of children in a family the number of domestic violence victims grows too. A third of single-parent families' victims, 33.8%, fell victims to domestic violence. 43.8% of the victims lived in the families with two and more children, with 45.9% for the families with four children and 72.7% for the families with five children.

The number of reported cases of light injuries received due to domestic violence also depended on the number of children in a family: 12.2% for single-child families, 21.9% for two-children families, and 35.3% for three-children families.

The rate of psychological injuries received due to domestic violence was the same for all the groups regardless of the number of children: 57.1% for

single-child families, 58.7% for two-children families and 55.9% for three-children families.

The number of reported cases of light injuries due to domestic violence depended on the living standards of respondents: 41.4% in the lower than average income group, 22.9% in the average income group and 14.5% in the higher than average income group.

Based on the results of the study, we can say that the rate of domestic violence committed by a father grew with the growth in the number of children in respondents' families. Thus, the rate was 57.6% for single-child families, 73.0% for two-children families, and 88.0% for three-children families. The trend continued in four and five-children families, but the number of such families was statistically too small for analysis.

The answers to the question “Who has ever used any of the mentioned forms of violence against you?” were these:

Father	51,6%
Mother	42,2%
Other family members	15,1%
Hard to tell	13,2%
Refuse to tell	8,5%

It should be noted that the question was put only to the victims of domestic violence. The total is over 100% since there were several variants of answers.

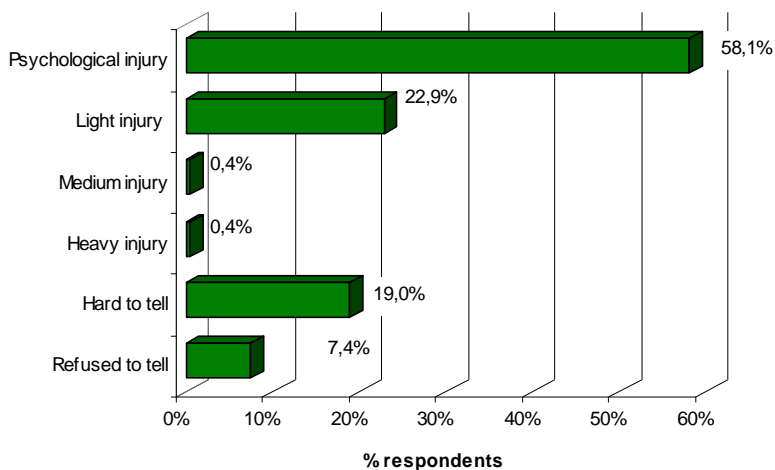
The answers to the question “How often were you subjected to domestic violence?” were as follows:

	% of respondents	% cumulative
Less than once a year	27,5%	77,5%
Once in a year and more often (but not more than once a month)	20,2%	50,0%
Once in a month and oftener (but not more than once a week)	14,7%	29,8%
Once a week (but not more than once a day)	11,2%	15,1%
Every day	3,9%	3,9%
Hard to tell		
Refuse to tell		7,0%

The cumulative percentage indicates that, of those who admitted domestic violence, 15.1% suffered from violence once a week and more often, with 29.8% once a month and more often and 50.0% once a year and more often.

The respondents who suffered from domestic violence evaluated the afflicted injuries in the following way:

Table 7. Distribution of injuries from domestic violence



In this case, respondents had several options for answers. 58.1% evaluated their injuries as psychological injuries, which means that every fourth young man or woman aged 12-20 needs the advice of psychologists and social pedagogues.

26.7% of respondents admitted violence on the part of their father against their mother. Most frequently, it was psychological violence, 63.4%, physical violence, 51.6%, and economic violence, 13.0%. These statistics are in line with the statistics in Europe where every fourth woman is a victim of violence.

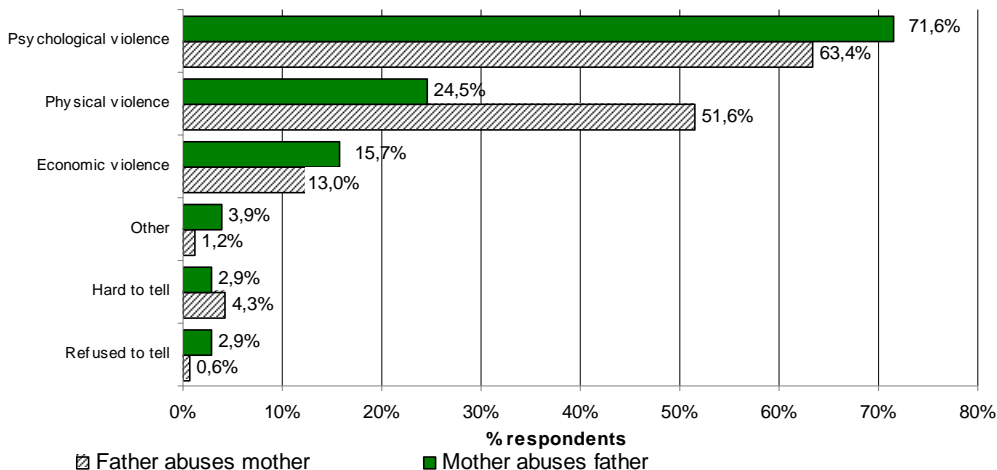
Only those respondents who admitted domestic violence by their fathers against their mothers gave answers to this question: “How often did your father use any form of violence against your mother?” Everyday violence was admitted by 1.2% of respondents, with 8.1% admitting violence once a week and more often (but not more often than once a day), 18.6% once a month and more often (but not more often than once a week), 19.9% once a year and more often (but not more often than once a month) and 29.2% less than once a year.

Analyzing this data we can see 9.3% of respondents admitted father-against-mother domestic violence once a week and more often, 27.9% once a month and more often, and 47.8% once a year and more often, with 20.5% unable to answer this question and 2.5% reluctant to answer it.

Analyzing the cumulative percentage, we can see that mother-against-father violence was reported by 16.9% of respondents. Of these, 71.6% admitted psychological violence, 24.5% physical violence and 15.7% economical violence. Other forms of domestic mother-against-father violence were reported by 3.9% of respondents.

As regards mother-against-father violence, it has about the same rate as father-against-mother violence. 1% of respondents admitted daily mother-against-father violence, with 7.8% admitting violence once a week and more often (but not more often than once a day), 14.7% once a month and more often (but not more often than once a week), 22.5% once a year and more often (but not more often than once a month), and 30.4% less than once a year. To remind you, that this question was put only to those respondents who admitted mother-against-father violence.

Table 8. Comparison of father-against-mother and mother-against-father violence



Analyzing the cumulative percentage, we can see that 8.8% of respondents reported mother-against-father violence once a week and more often, 23.5% once a month and more often, and 46.0% once a year and more often.

22.8% of respondents admitted domestic violence against other family members. Of these, 26.8% were girls and 16.9% were boys. In most cases it was psychological violence, 68.6%, physical violence, 42.3%, economic violence, 11.7% and sexual violence, 0.7%.

The higher the income group, the lower violence-against-other members was. This kind of violence was reported by 39.1% in the lower than average income group, 23.6% in the average income group and 18.8% in the higher than average income group.

5.1% of the polled reported daily violence against other family members, with 7.3% reporting violence once a week and more often (but not more often than once a day), 16.8% once a month and more often (but not more often than once a week), 21.9% once a year and more often (but not more often than once a month) and 27.0% less than once a year.

As regards the cumulative percentage, we can see that 12.4% reported violence against other family members once a week and more often, 29.2% once a month and more often, 51.1% once a year and more often, with 17.5% unable to answer this question and 4.4% refusing to answer it.

Realizing that people are more readily prepared to talk about others than about themselves, we included the question “Do you know about domestic violence against your friends?” in the poll. However, the number of respondents reporting violence against their friends (43%) was almost the same as the number of the victims of domestic violence (42.9%). As regards the forms of violence, the numbers differ slightly, with the rate of psychological violence against the friends reported by a much fewer respondents, 58.3%, while the rate of friends suffering from physical violence, 51.4%, is almost 10% higher than the similar rate of respondents. The number of friends suffering from economic violence is 18.9%, from sexual violence 6.2% or four times as high as the respondents’ own rate.

In contrast to the boys (34.3%), a larger number of girls (49.2%) reported domestic violence against their friends. As for the place of residence, over 52.6% of respondents living in villages reported violence against their friends, with 43.2% blowing the whistle in Lviv, 40.1% in rayon towns and 38.1% in small towns.

Cases of violence against friends increased in low-income families, with 60.9% of respondents from lower than average income families saying their friends suffered from domestic violence, against 41.6% of respondents from average income families and 42.6% from higher than average income families.

The dependence of family income on the mother-inflicted violence rate indicated that the latter grows with the growth of income. Thus, 47.4% of respondents from lower than average income group, 53.3% from the average income group and 72.9% from the higher than average group reported violence inflicted by the mother.

A reverse trend was observed regarding violence inflicted by the father. Thus, depending on the size in family incomes, domestic violence by the father was reported by 84.2% in the lower than average income group, 73.8% in the average and 64.4% in the higher than average income group.

If the father resorted to violence against the respondent more often than the mother, respondents from higher than average income groups report more violence inflicted by the mother.

Use violence	Family income size		
	Lower than average	Average	Higher than average
Father	84,2%	73,8%	64,4%
Mother	47,4%	53,3%	72,9%
	131,6%	127,1%	137,3%

As can be seen, the higher the income of families, the lower the rate of violence against other family members is. Thus, 39.1% of respondents from lower than average income group, 23.6% from the average and 18.8% from higher than average income group reported violence against family members.

The number of respondents who suffered domestic violence themselves and reported mother-against-father and father-against-mother violence is higher than the number of respondents who were not victimized.

47.7% of victims of domestic violence and 11.0% of those who did not suffer from violence reported violence against the mother used by the father.

29.5% of victims of domestic violence and 7.6% of those who did not suffer from violence reported mother-against-father violence.

The comparison of the number respondents who suffered and who did not suffer from domestic violence shows that the number of respondents reporting father-against-mother psychological violence is higher among the victims of violence, 66.7% against 52.6%. The same correlation for reported physical violence is 53.7% for the victims of violence and 44.7% for non-victims, with economic violence reported by the same number of respondents in both groups, 13.0%.

Simultaneously, the victims of home violence report twice as high mother-against-father psychological violence compared with those who did not suffer violence, or 82.9% against 38.5%.

Our data confirm that there is an outbreak of domestic violence in Ukraine. Every fourth woman and almost every other child suffer from domestic violence, with every fourth child receiving a psychological injury due to domestic violence. The pollsters say that some 15-20% of the polled reported violence in the course of the training programs. However, this information was not reflected in the final poll results. Such tight lipped behaviour of respondents is typical of the young people at the initial stages of forming civil society. Their reluctant and reserved behaviour brought down the number of home violence victims at least by 15%. Another observation made by the pollsters is about the marked unwillingness of boys to admit violence frankly.

III. DEVELOPMENT OF INTERNATIONAL AND NATIONAL LEGISLATION ON COMBATING AND PREVENTION OF DOMESTIC VIOLENCE

Domestic violence is the most common type of violence and the most difficult one to combat. Domestic violence occurs in many countries regardless of their positive achievements in the legislative, political or practical spheres. Women suffer from domestic violence the most.

The world community has been paying attention to the problem of overcoming violence against women since the 1990s. Over this time the United Nations Declaration on Elimination of Violence against Women has been passed (1993), as well as the UN Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), the Beijing Declaration and Platform for Action, which were approved during the 4th World Conference on Women (Beijing, 1995), and the resolution on new measures and initiatives aiming to implement the Declaration and the Beijing Platform for Action, which was adopted by the UN General Assembly during the extraordinary session (New York, June 5–9, 2000).

The Council of Europe has been making considerable efforts in combating violence against women too. This is manifested by the fact that the Committee of Ministers has adopted a number of recommendations to Council of Europe member states: Recommendation No. R (85) 4 on violence in the family, Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution, as well as trafficking in children and teenagers, Recommendation No. R (93) 2 on medical and social aspects of mistreatment of children, Recommendation No. R (2000) 11 on combating trafficking in persons with the purpose of sexual exploitation.

In recent years the European community's counteraction to violence has reached a new level. On April 30, 2002, the Committee of Ministers adopted Recommendation No. R (2002) 5 on the protection of women against violence.

It is aimed to mobilize efforts by Council Europe member states to combat violence against women. This Recommendation gives an interpretation of the term *“violence against women” as any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life. This includes, but is not limited to, the violence occurring in the family or domestic unit, including, inter alia, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants, crimes committed in the name of honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages.*

By adopting Resolution 1512 (2006), in May 2006, on joint efforts by parliaments to combat domestic violence against women, the Parliamentary Assembly of the Council of Europe initiated a pan-European campaign of the Council of Europe to combat violence against women at the level of the national parliaments of member states. The parliamentary dimension of the campaign started in November 2006 and will last till March 2008. Ukraine joined the campaign in November 2006.

To fulfill its international commitments, Ukraine has been taking measures aiming to combat violence against women. The past decade has seen some achievements in the development of the legislative basis and institutional mechanism in this sphere. For instance, on July 12, 1995, the Supreme Council (parliament) of Ukraine adopted a regulation “On recommendations by participants in parliamentary hearings regarding the implementation in Ukraine of the UN Convention ‘On the Elimination of All Forms of Discrimination against Women’, which clearly states that it is necessary to establish state-run institutions that would provide qualified counselling to women who have suffered from domestic violence and disregard in their families. This regulation caused Ukraine to take action so as to comply with the UN Convention ‘On the Elimination of All Forms of Discrimination against Women’. The national action plan for 1997-2000 to improve the

position of women and enhance their role in society, as well as the national action plan for 2001-2005 to improve the position of women and facilitate the implementation of gender equality in society provided for a considerable number of measures aiming to combat domestic violence. On March 5, 1999, the Supreme Council of Ukraine adopted a regulation “On the Declaration on the general principles of Ukraine’s state policy with regard to family and women“ and on March 14, 2001, the Cabinet of Ministers of Ukraine adopted a program called “Ukrainian Family”. These documents aimed to strengthen the institute of family, form partnership relations in families and make sure that the duties of both spouses are distributed equally.

Unfortunately, implementation of these policy documents had been mostly formal, especially due to the strong stereotypes regarding role of women in society and family among politicians, governmental officials and public in general, as well as due to the constant lack of funding for its implementation in the National and regional budgets.

The adoption in 2001 of the Law of Ukraine “On the Prevention of Violence in a Family” proved to be a landmark event as it for the first time introduced in Ukrainian legislation definition of domestic violence, its forms, as well as measures that should be taken to protect victims and prevent repeated violence in a future.

The adoption by the Supreme Council of Ukraine and the relevant ministries of regulatory legal acts aimed to ensure the implementation of the Law “On the Prevention of Violence in a Family” was an important step towards developing mechanisms and system of protection from domestic violence. These legal acts are the Law of Ukraine, “On making changes to the Code of Ukraine on administrative offences with regard to responsibility for committing domestic violence or failing to comply with a protective order,” (article 173² of the Code of Ukraine on administrative offences); “The Instructions on the procedures of cooperation between departments (sub-departments) for family and youth, departments for minors, centres of social services for youth and internal affairs bodies concerning measures being taken

to prevent domestic violence”, which was approved by the order of the Ministry of Ukraine for Family, Children and Youth, the Ministry of Internal Affairs on March 9, 2004; the regulation N 3/235 – “The Order of considering claims and reports about domestic violence committed or a real threat of violence”, which was adopted in by the Cabinet of Ministers of Ukraine on April 26, 2003 (N 616).

However, despite acknowledging the existence of the problem of domestic violence by the state and at the legislative level, and even despite acknowledging the fact that in the overwhelming majority of cases the victims of domestic violence are women, *there are no clauses in the Ukrainian legislation aimed to combat violence against women; furthermore, there is no definition of the term “violence against women” in the legislation.*

The National Programme of ensuring gender equality in Ukrainian society for the period until 2010 was adopted in a regulation by the Cabinet of Ministers of Ukraine on December 27, 2006 (N 1834). The goal of the programme is to secure equal rights between men and women and equal opportunities for their realization as the main right of a person.

Combating violence against women or gender-based violence is not included in the tasks or expected results of the programme. At the same time the Action Plan to ensure gender equality in Ukrainian society for the period until 2010 (supplement to the state programme) does provide for measures aiming to overcome violence.

For instance, the term “violence against women and men” is used in the Action Plan. However, it does not give definition of this term, despite the fact that this term is not used in the Ukrainian legislation. Therefore it is not clear what the fulfillment of the planned measures concerning “violence against women and men” will be based on. Judging from the list of measures concerning “violence against women and men”, it would appear that the authors of the programme must have used this term instead of the term “domestic violence”, despite the fact that these are two absolutely different terms. In the Action Plan “domestic violence” is mentioned only in measures connected with changes made to the Law on Ukraine “On the Prevention of Violence in a Family” and with improvements in the methodology of

investigating crimes connected with domestic violence as well as methodology of training staff of the law enforcement bodies.

Thus, while declaring the acknowledgement of the problem of violence against women in a family and readiness to fulfil relevant international commitments, the state is demonstrating a consistent tendency towards undermining its importance for society and gender neutralization of the problem of domestic violence.

IV. EXPERIENCE OF EUROPEAN COUNTRIES IN COMBATING DOMESTIC VIOLENCE

Austria

In November 1996 the Austrian National Assembly passed the Act on Protection against Domestic Violence, which came into force as from 1st of May 1997; amendments became effective on January 1, 2000 and January 1, 2004. The Protection against Domestic Violence Act is not a single law; its provisions are laid down in the Civil Code, the Enforcement Code and the Security Police Act. The law provides the victim's right to protection from an offender in his/her living environment and social surroundings by entitling the police to impose eviction and barring orders on perpetrators. The barring order can be extended if the person at risk applies to the Family Court for an interim injunction. Furthermore so-called "intervention centres" offering free counselling and support to victims of domestic violence were established.

If a perpetrator threatens or injures a person living in the same household, the police have to evict the perpetrator from the common home and its immediate surroundings and to bar him from re-entering it – even if he is the owner of the house or apartment. Such an order has to be imposed if a dangerous attack on life, health or freedom is imminent. The victim cannot influence the imposition of a barring order.

A barring order is valid for ten days (before the amendment in 2000, it was valid for only seven days) and it is controlled by the police during the first three days. The perpetrator has to hand over his keys to the police; if he wants to pick up some belongings, he has to inform the victim of his visit. When the perpetrator is found at home during the validity of the barring order, he is fined for this offence under the Administrative Criminal Law and can even be arrested if he refuses to leave (if the victim has allowed the offender to come back home, she can be fined, too).

In each of the nine Austrian provinces a so-called intervention centre has been established. These are non-governmental organisations, funded by the Federal Ministries of the Interior and of Social Affairs. Their main tasks are to

take care of people subject to violence and to network with all the institutions involved in violence protection. The police have to notify the intervention centre without delay of every eviction and barring order providing also the victim's personal data. The centre contacts the victims and offers support to them (development of crisis plans, safety programmes etc.).

After a barring order has been imposed, the victim can apply for an interim injunction at the Civil Court (Family Court) within ten days. If such an application is submitted, the barring order is automatically prolonged to 20 days. The Court who requires evidence of acts of violence is supposed to come to a decision within this period. Although after barring orders a high number of interim injunctions are allowed, there is no "guarantee" for the allowance.

An interim injunction can be issued against a (former) close relative after physical abuse, or after threats, or in case of psychological terror if this seriously impairs the victim's mental health and whenever these attacks make life with the violent person intolerable. In the Act's first version an injunction was only possible if victim and offender were or had been living in the same household within the last three months; since 2004 there is no time limit anymore.

The temporary injunction is valid for a maximum of three months, only if the victim has filed for a divorce (and in a few other special cases) it can be prolonged up to the divorce. The offender can not only be forbidden re-entry to his house, but he can also be banned from the immediate vicinity and from other defined areas (e.g. the route to the victim's workplace, the workplace, the children's school). Contact in any form can also be forbidden. If the offender violates the order forbidding contact or enters a protected area, the victim can apply for a fine for contempt of court.

It is one of the key characteristics of the Protection against Domestic Violence Act that in case of violence the police has to react without considering the victim's interests. Only in a second step, with regard to the interim injunction, the victim decides autonomously. This twophase approach makes clear that the state feels responsible for safety in private lives and that it

is aware of the problematic situation of victims who are involved in a violent relationship and who are put under pressure by the offender¹.

Bulgaria

In 2005 the National Assembly of the Republic of Bulgaria adopted the Protection against Domestic Violence Act.

Protection against Domestic Violence Act shall regulate the rights of individuals, victims of domestic violence, the measures for protection and the procedures for enforcement thereof. Responsibility sought after under this Act does not bar the any civil or penal responsibility of the perpetrator.

Domestic violence denotes any act of physical, psychic or sexual violence, as well as attempts of such violence, coercive restriction of personal liberty and privacy committed against individuals, who are or who have been in a family relationship or kinship, in a de-facto conjugal co-habitation or who reside in one and the same dwelling.

Protection under this Act may be sought by any person, who has become victim of domestic violence, perpetrated by spouse of former spouse; person, with whom he/she is or has been in a de-facto conjugal co-habitation; person, who has fathered her child; ascendant; descendant; brother or sister; relative by marriage up to the second degree; guardian, custodian or foster parent.

In case of domestic violence the victim shall be entitled to turn to court for protection. In cases when there is data indicating of direct and immediate threat for the victim's life or health, it may submit a request to police bodies for enforcement of urgent measures. The bodies of the Ministry of Interior shall forward such request to the court together with the explanation of the perpetrator (if any) and the protocol of the measures imposed, outlining the circumstances for immediate court protection.

Under this Act, protection against domestic violence is ensued by obligating the perpetrator to refrain from committing domestic violence;

¹ Birgitt Haller, The Austrian Legislation against Domestic Violence, http://www.ikf.ac.at/english/austrian_legislation_against_domestic_violence.pdf

removing the perpetrator from the jointly occupied dwelling for a term, specified by court; prohibiting the perpetrator to enter the dwelling, place of work and the locations of social contacts and recreation of the victim under conditions and for a term, specified by the court; provisional designation of the place of residence of the child with the victim parent or the parent, who did not perpetrate violence, under conditions and for a term, specified by the court if this would not be against the child's interests; obligating the perpetrator of violence to attend specialized programs; directing the victims into rehabilitation programs. The aforementioned measures are to be imposed for a period between one month and one year. In all cases the court in its verdict must also impose a fine in the amount of 200 to 1000 leva (100 do 500 Euro) to the perpetrator.

The competence to impose a protection measure belongs to the regional court, serving the area of the current address of the victim or, in some cases, to the regional court, serving the area of the police precinct, on the territory of which protection was sought.

Proceedings on issuance of the order may be initiated on petition of the victim; request of the Director of Social Assistance Directorate; petition of a brother or sister or of an individual, who is directly of kin to the victim without limitation - in the event of immediate court protection. The petition or request shall be in writing and contain names, addresses and the Personal Numbers of the petitioner or of the person submitting the request if the victim is not able or does not wish to reveal his/her address, a court address should suffice; names and the current address of the perpetrator or another address, at which he/she can be subpoenaed, including telephone and fax numbers; data on the family, kin or de-facto relationship between the victim and the perpetrator; description of the facts and circumstances, when domestic violence was committed; signature.

The petition or the request must be submitted up to one month after the act of domestic violence. The petition or the request is then entered in a special register and sorted according to the day of acceptance. There is no stamp tax due for submitting a request. When issuing the order, the court orders that the

stamp tax and expenses of the case are paid by the perpetrator of domestic violence. In the event of rejection to issue an order or reversal of an order, the stamp duty and the expenses of the case are to be paid by the petitioner or the by the Social Assistance Agency.

On the day of receiving the petition or the request the court must schedule an open court session not later than a term of 30 days. The means of evidence under the Code of Civil Procedure shall be admissible in the proceedings for issuance of a protective order. Where no other evidence is available, the court may issue a protective order only on the grounds of the declaration attached.

The court delivers its verdict at an open session and when upholding the request or petition, it issues a protection order. With this order the court imposes one or more protection measures.

The ruling is subject to appeal before the district court within 7 days of handing it in. The petition must be submitted through the court, having delivered the ruling, with a copy to the other party. New evidence may also be attached to the petition. Any appeals do not suspend the enforcement of the order. The district court reviews the appeal in a 14 day period at an open session with summoning the parties and delivers a ruling on the merits of the case, whereby it leaves in effect, repeals or amends the ruling appealed. If the ruling is amended, the court issues a new order. The ruling of the district court is final.

Where the petition or the request contains data on a direct and immediate threat for the victim's life or health, the district court issues, at a closed session without summoning the parties, an order for immediate protection within 24 hours of receiving the petition or the request. The order for immediate protection is valid until the issuance of a protective order or of the rejection by court to do so.

The protection order is subject to immediate implementation. The police bodies monitor the implementation of the order. In the event of failure to comply with the court order the police body, which has established the

violation, must detain the perpetrator and advise forthwith the services of the prosecutor's office¹.

France

The Act of 4 April 2006 introduces in the Criminal Code a general definition of an aggravating circumstance for all offences committed by spouses and partners. For certain offences, this aggravating circumstance already applied to spouses or cohabiting partners. The law now extends it to partners living with a victim under a Civil Solidarity Pact and to former spouses, cohabiting partners or partners under a PACS, provided that the offence, perpetrated either while the couple are still together or after their separation, is committed as a result of the relationship between the offender and the victim.

The relevant offences are first and foremost acts of violence - torture and brutality, violence having unintentionally caused death, violence resulting in a mutilation or permanent impairment and violence having caused total unfitness for work lasting more than eight days, total unfitness for work lasting less than eight days or without resulting in any unfitness for work.

The aggravating circumstance generally applicable by law to cases of intimate partner violence is extended to cases of rape, sexual assault other than rape and murder. The law has thus confirmed legal precedent established by the Court of Cassation recognising marital rape.

Sentences for these offences range from three years' imprisonment and a fine of € 45,000 to life imprisonment.

Furthermore, pre- and post-sentencing measures enable the offender to be removed from the home.

Before trial, court supervision of the offender makes it possible to put an end to cohabitation and prohibit any contact with the victim (Article 138-9° of the Code of Criminal Procedure). An offender who fails to comply with these

¹ Legislation in The Member States Of The Council Of Europe In The Field Of Violence against Women, Directorate General of Human Rights, Council of Europe, Strasbourg, January 2007, <http://www.coe.int/equality>

measures can be placed in pre-trial detention. It should also be noted that, in the event of a serious or repeat offence, pre-trial detention may be applied for and granted ex officio.

The courts may ban offenders from their victim's home at any stage in criminal proceedings. This measure may be ordered as soon as the offence is reported and may be accompanied by a medical, social or psychological treatment obligation.

In the event of a conviction, the main or supplementary sentence may be a suspended sentence with probation accompanied by other measures, in particular a restraining order banning the offender from the family home.

Lastly, the new legislation defines an offence of theft within marriage, concerning particularly important personal objects or documents. The list laid down by law is not restrictive. For unmarried couples, the ordinary offence of theft (Articles 311-1 to 311-16 of the Criminal Code) normally applies.

A number of recent Acts (15 June 2000, 15 November 2001 and 9 September 2002) have improved victims' rights with respect to the provision of information and the way victims are received and dealt with in police stations and during legal proceedings.

In the context of divorce, since an Act of 26 May 2004 the Family Affairs Judge has been empowered to give an urgent ruling on occupancy of the family home and issue a restraining order banning a violent spouse from the home upon commission of the very first acts of violence and before divorce proceedings are instituted, provided that the divorce application is made within the next four months.

Whether divorce proceedings are instituted or not, Article 220-1 of the Civil Code provides that, where "one of the spouses seriously neglects his or her duties in such a way as to threaten the interests of the family", the Family Affairs Judge may order any emergency measure¹.

¹ Legislation in The Member States Of The Council Of Europe In The Field Of Violence against Women, Directorate General of Human Rights, Council of Europe, Strasbourg, January 2007, <http://www.coe.int/equality>

Germany

Violence against women is covered by general provisions of criminal law e.g. homicide, bodily harm, deprivation of liberty (e.g. by a state official) and coercion.

These laws have broad application and provide protection from matrimonial and domestic violence.

As part of the objective of ensuring that cases of domestic violence are not treated as “private” matters and dismissed by the police and the public prosecution office, the “Guidelines for Criminal Proceedings” contain provision to ensure that the public authorities deal with domestic violence, i.e. that the police and the public prosecution office institute legal proceedings when they become aware of ill treatment. In 2002 the Guidelines were amended. In addition to the Protection against violent act a public interest in prosecuting bodily harm is assumed in those cases where the victim cannot be expected to make an application for prosecution because of the personal relationship between victim and offender”.

The first German shelter for women, opened in Berlin in 1976, was a project of the Federal ministry for Family Affairs, Senior Citizens, Women and Youth. There are today more than 400 women’s shelters in Germany, including 120 in the new Federal Lander, where the Federal Government contributed towards the establishment of the first women's shelters by granting DM 1.2 million for the framework of a special programme.

In 1995, the “Berlin Intervention Project Against Domestic Violence” was initiated. It is intended to improve the protection of women subjected to domestic violence during the police and court proceeding of the offender. This project is modelled on the Duluth, Minnesota, “Domestic Violence Intervention Project” and is aimed to coordinate measures by all institutions and projects to facilitate better protection for maltreated women and prosecution of perpetrators.

The national and local governments are concerned to encourage the police and the public prosecutor's offices to adopt a sensitive approach to the

treatment of victims of violence. The aim is to spare women from degrading treatment and shame when reporting a criminal offence and in the proceedings against the offender.

In July 1995, a ‘course concept’ for police officers concerning “Male violence against women” was published. This concept is to be incorporated into the continuing education of police officers.¹

Greece

On the 10th of October 2006 the Greek Parliament adopted the Law «On combating domestic violence and other provisions». The Law addresses the relevant Recommendations of the U.N. CEDAW Committee, the U.N. Human Rights Committee, the U.N. Committee Against Torture, the U.N. Committee on Economic, Cultural and Social Rights, as well as those by the Council of Europe.

The new Law on combating domestic violence introduces crucial reforms:

1. The Law provides for stricter penalties for actions that are already characterized as punishable by the Penal Code, when these are performed in the context of domestic violence. Especially, it provides for strict penalties for actions of domestic violence that are performed in the presence of a minor, against a pregnant woman and against persons unable to defend themselves (e.g. disabled persons, senior citizens et.c.)

2. The provisions of the law extend to non-marital partnerships between men and women.

3. The institution of mediation in criminal cases is established, bringing into effect the EU Council Framework Decision of March 2001, in reference to domestic violence offences.

¹ Legislation in The Member States Of The Council Of Europe In The Field Of Violence against Women, Directorate General of Human Rights, Council of Europe, Strasbourg, January 2007, <http://www.coe.int/equality>

4. Rape within marriage, that is, coercion into sexual intercourse without the consent of both spouses, is regarded as a criminal offence, in accordance to statutory regulations in other Member States of the E.U.

5. Physical violence against minors as a disciplinary measure in the context of their upbringing is explicitly forbidden. Hence the country complies with the Recommendations of the Council of Europe and the Committee on the Rights of the Child.¹

Norway

In order to further strengthen the protection of, in particular, women and children, a revised provision relating to domestic violence entered into force 1 January 2006. Section 219 of the Penal Code reads (translation):

“§ 219. Any person who by threats, duress, deprivation of liberty, violence or any other wrong grossly or repeatedly maltreats

- a) his or her former or present spouse,
- b) his or her former or present spouse’s kin in direct line of descent,
- c) his or her kin in direct line of ascent,
- d) any person in his or her household, or
- e) any person in his or her care

shall be liable to imprisonment for a term not exceeding three years.

If the maltreatment is gross or the aggrieved person dies or sustains considerable harm to body or health as a result of the treatment, the penalty shall be imprisonment for a term not exceeding six years. In deciding whether the maltreatment is gross, particular importance shall be attached to whether it has endured for a long time and whether such circumstances as are referred to in section 232 are present.

¹ Legislation in The Member States Of The Council Of Europe In The Field Of Violence against Women, Directorate General of Human Rights, Council of Europe, Strasbourg, January 2007, <http://www.coe.int/equality>

Any person who aids and abets such an offence shall be liable to the same penalty.”

As early as 1988, unconditional prosecution was introduced in cases of domestic violence. A criminal case may be brought before the court, even if the woman withdraws the formal report.

Victims of sex crimes and domestic violence are according to chapter 9a of the Criminal Procedure Act, entitled to the assistance of a lawyer. The lawyer shall be remunerated by the state, and is responsible for taking care of the interest of the victim in connection with the investigation and the main hearing of the case.¹

Poland

Under the Polish Penal Code of the 6th June 1997, domestic violence falls into the category of “offences against family and custody”. Definition of domestic violence covers both physical and psychological violence:

Article 207 § 1 of the Penal Code:

“Anyone who inflicts ill-treatment of a physical or psychological nature on a member of his/her family, a person permanently or temporarily in his/ her care or a minor or vulnerable person is liable to imprisonment for between three months and five years”

The custodial sentence is extended to ten years if the perpetrator acted with extreme cruelty (§ 2) and for a minimum of two and a maximum of twelve years if the victim attempts suicide in a consequence of perpetrator’s acts. (§ 3).

Domestic violence can be reported by anyone with grounds for suspicion and automatically leads to investigation. Although the victim doesn’t need to instigate proceedings by her or himself, in practice cases of domestic violence are often treated not enough seriously both by law enforcement officers and

¹ Legislation in The Member States Of The Council Of Europe In The Field Of Violence against Women, Directorate General of Human Rights, Council of Europe, Strasbourg, January 2007, <http://www.coe.int/equality>

prosecutors. However, according to police statistic data, there were about 86 500 of police interventions in the situation of domestic violence (while the total figure of police interventions was about 480 000) in each of the last three years. Women are also often required to deliver well-documented complaints which include e.g. medical certificates and list of witnesses of the violent acts.

Poland has no behaviour modification or rehabilitation programs for abusive men, which could constitute a surrogate punishment, exclude repetition of the crime, and ensure safety to victims. The recidivism rate for domestic violence crimes is about 72.4%.

The authorities have taken some measures to address domestic violence. In 1999, a Victim's Rights Charter was elaborated by the Ministry of Justice. It aims at promoting the rights of victims and perpetrators in judicial proceedings.

A "blue cards" system (exemplary forms of domestic incident reports) was introduced in 1998 by the national police authorities in the whole territory of Poland. It was aimed at simplifying and standardizing the procedure of police intervention in situations of domestic violence. The cards were designed for the best use by police officers during their interventions. One of the "blue cards" provides a victim with the information on his or her rights and includes telephone numbers of institutions that can assist the victims of violence. Another card contains guidelines for gathering and documenting the evidence at the crime scene.

A leading role in combating domestic violence is performed by local government bodies – i.e. county family assistance centres and social assistance centres, which function under the Social Assistance Act of 29 November 1990. Government response to domestic violence is coordinated by the State Agency for Prevention of Alcohol Related Problems. It shows that domestic violence remains in interaction with alcoholism. However NGOs state that alcoholism may contribute to but does not cause domestic violence.¹

¹ Legislation in The Member States Of The Council Of Europe In The Field Of Violence against Women, Directorate General of Human Rights, Council of Europe, Strasbourg, January 2007, <http://www.coe.int/equality>

Portugal

Domestic violence is an offence under criminal law; it is classified as “(physical or psychological) ill-treatment of a spouse, minor or disabled person” and carries a prison sentence of between one and five years. The amendment on 1 October 1995 of the legal provisions in this field means that they now also apply to “persons living together as husband and wife”. Law No. 7/2000 of 27 May 2000 made public the crime of ill-treatment of the spouse or partner, which means that not only the victims but also anyone who knows about such cases of violence can lodge a complaint and/or institute proceedings. Police authorities are obliged to inform the prosecuting authorities if they know of such crimes.

Anyone who subjects his or her spouse or partner or relative of the first degree to physical or psychological ill-treatment is guilty of this offence.

Prohibition of contact with the victim, including the aggressor’s removal from the home for a maximum of two years, may be ordered as an additional measure. Since 2006, in order to render more effective the implementation of this measure, the electronic bracelet can be used on aggressors convicted to be removed from the family home.

The physical or psychological ill-treatment of women in the home may be reported to the competent authorities and punished by law though, in some circumstances, the victim may request suspension of the proceedings. Such ill-treatment also constitutes grounds for divorce.

Women who are subjected to domestic violence in Portugal can apply to the courts for compensation, payable by the assailant. In cases where the ill-treatment of a spouse or persons living together as husband and wife is considered a violent crime, Act 129/99 of 20 August 1999, approving the system whereby the State may advance the compensation due to victims, stipulates that if the assailant fails to pay compensation the State may do so on his behalf. This scheme applies to women who have been victims of the offence provided for under Article 152, paragraph 2, of the Criminal Code (ill-treatment), either in Portuguese territory or abroad, provided, in the latter case, that the victim possesses Portuguese nationality, is liable to be in serious

financial difficulty as a result of the commission of the offence and has no right to compensation from the State in which the offence was committed.

The new Criminal Code, which came into force in 2006, pays particular attention to the crime of domestic violence, altering the nature of the offence. The code now includes ill-treatment involving former spouses, people (of the same or opposite sex) having lived in spouse-like situations and people in spouse-like relationships who do not live together. It also deems there to have been an offence following the occurrence of a single serious act of ill-treatment, whereas the previous legislation only did so following repeated ill-treatment.¹

Sweden

In 1998 a new offence, gross violation of a woman's integrity, was introduced into the Penal Code. It deals with repeated punishable acts directed by men against women who have or have had a close relationship with the perpetrator. "Gross violation of a woman's integrity" means that if a man commits certain criminal acts (assault, unlawful threat or coercion, sexual or other molestation, sexual exploitation, et cetera) against a woman to whom he is or has been married or with whom he is or has been cohabiting, he shall be sentenced for gross violation of the woman's integrity, instead of for each single offence he has committed. A necessary condition for sentencing for the offence is that the acts were part of a repeated violation of the woman's integrity and were intended to damage seriously her self-confidence. The crime makes it possible for the courts to increase the penal value of these offences in situations where they are part of a process that constitutes a violation of integrity, which is often the case in domestic violence. It will thus also be possible to take the entire situation of the abused woman into account. The penalty is imprisonment for at least six months and at most six years. The new crime does not exclude the possibility of the perpetrator simultaneously

¹ Legislation in The Member States Of The Council Of Europe In The Field Of Violence against Women, Directorate General of Human Rights, Council of Europe, Strasbourg, January 2007, <http://www.coe.int/equality>

being indicted for, for instance, aggravated assault or rape. Since the entry into force of the new provision, a number of judgments have been pronounced on the basis of the provision.

In 1988, the Restraining Orders Act came into force, to provide protection for women who are threatened, persecuted or harassed. Orders prohibit men from contacting or visiting women when there is a risk of persecution, harassment or other criminal action. The penalty for violation of the order is a fine or 1 year of imprisonment.¹

¹ Legislation in The Member States Of The Council Of Europe In The Field Of Violence against Women, Directorate General of Human Rights, Council of Europe, Strasbourg, January 2007, <http://www.coe.int/equality>

V. THE PROTECTION OF RIGHTS OF DOMESTIC VIOLENCE VICTIMS BY INTERNATIONAL TREATIES RATIFIED BY UKRAINE

Domestic violence is a violation of fundamental human rights and freedoms guaranteed by international human rights instruments. Ukraine has ratified and assumed obligations to secure the protection of citizens' rights by the following documents:

The Universal Declaration of Human Rights (1948);

The International Covenant of Economic, Social and Cultural Rights (1966);

The International Covenant of Civil and Political Rights (1966) and its First Optional Protocol;

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (date of ratification by Ukraine: 19 December 1980, date of coming into force in Ukraine: 3 September 1981) and its Optional Protocol (date of signature: 7 September 2000, date of ratification by Ukraine: 26 September 2003);

The Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) (date of signature by Ukraine: 04 November 1950, date of ratification by Ukraine: 17 July 1997 (the text was ratified with reservations), date of coming into force in Ukraine: 11 September 1997).

As a rule domestic violence is accompanied by violation of rights guaranteed by the following documents:

- **The right to life** (Article 3 The Universal Declaration of Human Rights, Article 6 p.1 The International Covenant of Civil and Political Rights, Article 2 European Convention),

- **right to psychological and psychical integrity** (Article 5 The Universal Declaration of Human Rights, Article 7 The International Covenant of Civil and Political Rights, Article 3 European Convention),

• **the right for the highest possible standard of physical and psychological health** (Article 25 The Universal Declaration of Human Rights, Article 12 The International Covenant of Economic, Social and Cultural Rights, Article 12 The International Covenant of Civil and Political Rights, Article 12 CEDAW)

• **the right to personal freedom and security** (Article 3 The Universal Declaration of Human Rights, Article 9 The International Covenant of Civil and Political Rights)

• **the right for respect for private and family life** (Article 8 European Convention)

• **the right to equality in the family** (Article 16 The Universal Declaration of Human Rights, Article 3 and 10 The International Covenant of Economic, Social and Cultural Rights, Article 23 The International Covenant of Civil and Political Rights, Article 12 European Convention and Article 5, Protocol No 7 the European Convention, Article 16 CEDAW)

• **the right to equal protection by the law** (Articles 1,2,7 The Universal Declaration of Human Rights, Articles 2(2), 3 The International Covenant of Economic, Social and Cultural Rights, Articles 2(1), 3, 14, 26 International Covenant of Civil and Political Rights, Article 14 European Convention, Articles 3,4,12,15 CEDAW)

According to Article 9 of the Constitution of Ukraine, effective international treaties approved by the Supreme Council of Ukraine constitute an integral part of Ukrainian legislation.

Every person has a right, having used all national means of legal protection, to turn for protection of his/her rights and freedoms to relevant international courts or to relevant bodies of international organizations, a member or participant of which Ukraine is.¹

Therefore, the failure to effectively protect rights and freedoms by relevant state authorities constitutes violation of international treaties and in particular it gives the ground for citizens whose rights were violated to turn to

¹Article 55 of the Constitution of Ukraine

the Committee on the Elimination of Discrimination against Women or the European Court on human rights.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a basic international UN document on women rights protection.

The Convention is applied to violence done by state authorities. However, as the General Recommendation No 19 of the Committee on the Elimination of Discrimination against Women points out, discrimination by definition of the Convention is not limited solely to the action by the state or on behalf of a state. In particular, Article 2 (e) of the Convention calls on all member states to apply all relevant measures for the elimination of discrimination against women by any person. In accordance with general international law and special human rights pacts, *member states can bear responsibility for actions of individuals if they fail to prevent the violation of rights or to conduct investigation and impose punishment for violation committed and secure compensation.*¹

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, which stipulates the possibility of turning to the Committee on the Elimination of Discrimination against Women for persons whose rights according to the Women Convention were violated was signed by Ukraine on 7 September 2000 and ratified on 5 June 2003. Thus, we received one more mechanism for protection of rights, in particular for those people who suffered domestic violence in cases when state authorities did not secure proper protection of guaranteed rights.

In its in their resolution of 26 January 2005 on the individual claim of Ms A.T. v Hungary, the Committee for Elimination of All Forms of Discrimination against Women points out that due to inactivity of law enforcement bodies and failure to secure the protection of the victim's rights from domestic violence throughout a prolonged period of time, the member state did not fulfil its obligations and thus violated the rights guaranteed by

¹ General Recommendation No 19 (Eleventh Session of the Committee of the Convention on the Elimination of all Forms of Discrimination against Women, 1992). Violence against women. See Appendix.

Article 2 (a), (b), (e) and Article 5 (a) as well as Article 16 of the Convention on the Elimination of Discrimination against Women. In the above-mentioned resolution the Committee recommends the member state to do the following:

«i. take immediate and effective measures to guarantee the physical and mental integrity of A.T. and her family; and

ii. ensure that A.T. is given a safe home in which to live with her children, receives appropriate child support and legal assistance and that she receives reparation proportionate to the physical and mental harm undergone and to the gravity of the violations of her rights.»¹

The Committee's general recommendation to the state in this case reflects its attitude to the problem of domestic violence:

«i. respect, protect, promote and fulfill women's human rights, including their right to be free from all forms of domestic violence, including intimidation and threats of violence;

ii assure victims of domestic violence the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women;

iii take all necessary measures to ensure that the national strategy for the prevention and effective treatment of violence within the family is promptly implemented and evaluated;

iv take all necessary measures to provide regular training on the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto to judges, lawyers and law enforcement officials;

v implement expeditiously and without delay the Committee's concluding comments of August 2002 on the combined fourth and fifth periodic report of Hungary in respect of violence against women and girls, in particular the Committee's recommendation that a specific law be introduced prohibiting

¹ Resolution of the Committee on the Elimination of Discrimination against Women of 26 January 2005 on the individual claims of Ms A.T. against Hungary. Individual claim No 2/2003, Ms A.T. against Hungary. The resolution was adopted 26 January 2005 at the thirty second session.

domestic violence against women, which would provide for protection and exclusion orders as well as support services, including shelters;

vi investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and bring the offenders to justice in accordance with international standards;

vii provide victims of domestic violence with safe and prompt access to justice, including free legal aid where necessary, to ensure them available, effective and sufficient remedies and rehabilitation; and

viii. provide offenders with rehabilitation programmes and programmes on non-violent conflict resolution methods.»¹

The Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention) is an important international instrument for the protection of human rights and is best known for Ukrainian citizens.

As a rule domestic violence is accompanied by the violation of rights guaranteed by the European Convention.

According to Article 2 of the Convention, Ukraine is obliged to protect the life of its citizens, to secure legal protection and to conduct proper investigation of cases. As the European Court on Human Rights elucidates, obligations of the state exceed the basic duty to secure the right to life through adoption of efficient regulations of criminal law. They should also under certain conditions include positive obligations *to take preventative measures for protection of persons whose life is endangered due to illegal actions of other persons.*

According to Article 3 of the Convention, Ukraine is obliged to protect its citizens from inhuman and humiliating treatment *by means of taking measures to prevent such treatments of persons, including inhuman and humiliating treatment by other persons* (not representatives of the state). Such measures should secure *efficient protection and include measures for*

¹ Resolution of the Committee on the Elimination of Discrimination against Women of 26 January 2005 on the individual claims of Ms A.T. against Hungary. Individual claim No 2/2003, Ms A.T. against Hungary. The resolution was adopted 26 January 2005 at the thirty second session.

prevention of inhuman and humiliating treatment about which authorities were or had to be informed.

According to Article 8 of the Convention of the European Court on Human Rights, the state has *positive obligations to take measures to secure effective protection of this right, not only* negative obligations not to interfere in its realization. *Such obligations should involve taking measures*, aimed at securing respect for private life, *even if this right is violated by other persons* (not representatives of the state).

Since the effective legislation of Ukraine does not secure complete and effective protection of rights of domestic violence victims, it would be appropriate to apply in legal practice the standards of international conventions that have been ratified by Ukraine.

However, according to a survey of judges, only **6,9 % of judges** gave a positive answer to the following question: *Have you applied standards of international legislation (The European Convention, the Convention on the Elimination of All Forms of Discrimination against Women) to cases on domestic violence?*¹

Thus, it is necessary to take measures to ensure training for judges on application international human rights mechanisms in domestic violence cases.

¹ The survey was conducted by Western Ukrainian Center “Women’s Perspectives” in cooperation with the Academy of Judges of Ukraine in 2007, total number of respondents - 58 judges of local courts in Lviv, Zakarpattya, Ternopil, Volyn regions.

VI. UKRAINIAN DOMESTIC VIOLENCE LEGISLATION AND PROBLEMS OF ITS APPLICATION

With the adoption of the Law of Ukraine "On the Prevention of Violence in a Family" in 2001, the state recognized the problem of domestic violence at the legislative level for the first time.

This Law defines the notion of domestic violence and its forms:

" violence in a family – any deliberate acts of physical, sexual, psychological or economic nature by one family member against another family member, where such acts violate the constitutional rights and freedoms of such a family member as a person and a citizen and cause moral damage or harm the physical or mental health of this family member;

physical violence in a family – deliberate infliction of bodily injuries, battery by one family member of another, which may result or has resulted in the death of the victim, is damaging to the victim's physical or mental health or humiliating to the victim's honor and dignity;

sexual violence in a family – sexual assault by one family member against another or acts of sexual nature against an underage family member;

psychological violence in a family – violence associated with acts by one family member affecting the psyche of another family member by way of verbal insults or threats, persecution or intimidation, which deliberately cause emotional insecurity and inability to protect oneself and may be damaging to the victim's mental health;

economic violence in a family – deliberate acts by one family member depriving another family member of housing, food, clothing or other property or funds to which the victim is entitled under law, which may result in the victim's death or be damaging to the victim's physical or mental health"¹

The Law also provides for mechanisms and measures of domestic violence prevention and assistance to domestic violence victims, as well as powers of the authorities tasked with enforcing the Law. The Ukrainian

¹ Article 1 of the Law of Ukraine "On domestic violence prevention" dated November 15, 2001, No. 2789-III

Ministry for Family, Youth and Sports is a specially authorized executive body on matters of domestic violence prevention. In addition to this Ministry, the Law authorizes precinct police inspectors, the juvenile crime police, and custodian and guardianship authorities to enforce the Law. The Law also confers certain powers on specialized institutions for domestic violence victims, namely: crisis centers for domestic violence victims and family members facing a real threat of domestic violence, and medical and social rehabilitation centers for domestic violence victims.¹

Special measures to prevent domestic violence

The Law provides for the following domestic violence prevention measures:

- An official warning about the inadmissibility of domestic violence;
- Placing domestic violence perpetrators on a preventive watch list;
- Restraining order².

An official warning about the inadmissibility of domestic violence is made by precinct police inspectors to a domestic violence perpetrator, where the acts of this family member do not contain elements of a crime. If this person commits domestic violence again after receiving an official warning, a restraining order may be imposed on such a person.³ An official warning is the most widespread measure to which law enforcement services resort in the event of domestic violence.

A restraining order may be imposed on the perpetrator who commits domestic violence after previously receiving an official warning about the inadmissibility of domestic violence. A restraining order is issued by the precinct police inspector with the approval of the chief of the police authority

¹ Article 3 of the Law of Ukraine "On domestic violence prevention" dated November 15, 2001, No. 2789-III

² In the Law in Ukrainian called "Protecting order"

³ Article 10 of the Law of Ukraine "On domestic violence prevention" dated November 15, 2001, No. 2789-III

and the prosecutor¹. A restraining order against a perpetrator may prohibit this person from performing certain acts with respect to the domestic violence victim, namely:

- *commit acts of domestic violence;*
- *try to obtain information about the whereabouts of the domestic violence victim;*
- *try to find the domestic violence victim if the victim has chosen to remain in a place unknown to the perpetrator of domestic violence;*
- *visit the domestic violence victim if the victim is temporarily staying at a place other than the family's common residence;*
- *have telephone conversations with the domestic violence victim.*²

A restraining order may be imposed for up to 30 days.

A restraining order is a special measure primarily designed to protect the victim and rule out the possibility of repeated violence. That is, its function is similar to that of restraining orders that are issued in many countries of Europe and the world. However, the restraining order stipulated in the Law of Ukraine "On domestic violence prevention" does not prohibit the perpetrator from being present in the same dwelling with the victim. Therefore, when the perpetrator and the victim live together, the restraining order prohibits the perpetrator from *committing acts of domestic violence*, that is, committing illegal acts that are outlawed by many norms of Ukrainian legislation. Because of this, in conditions where the victim and the perpetrator continue to share the same residence (which happens in the overwhelming majority of cases, for example 65,9% clients of the WUC "Women's Perspectives"³), the restraining order does not change the situation and may not be considered an effective

¹ Article 13 of the Law of Ukraine "On domestic violence prevention" dated November 15, 2001, No. 2789-III

² Article 13 of the Law of Ukraine "On domestic violence prevention" dated November 15, 2001, No. 2789-III

³ Research conducted by the West-Ukrainian Centre "Women's Perspectives" in 2007, total number of clients of the organization - women-victims of domestic violence involved in the research – 164.

means of protecting victims from domestic violence and preventing repeated violence.

In this respect the Ukrainian restraining order differs from restraining orders in other countries, which prohibit the perpetrator from visiting the residence of the victim and their children even if it is their common residence. Removing the perpetrator from the family even for a short period, such as 10-12 days, is essential to ensuring the protection of the victim's rights and interests and preventing repeated violence. A not less important measure, which works effectively in many countries, is criminal liability for the violation of the restraining order, that is not a case for Ukraine.

After issuing an official warning about the inadmissibility of domestic violence, the perpetrator may be placed on a preventive watch list at the local police precinct. Work must be carried out with such perpetrators to prevent repeated violence. However, the law does not clarify the essence of such work and, as such, does not impose any obligations on the law enforcement services to carry out such work. It is therefore hard to consider the preventive watch list an effective means of preventing repeated violence, because there are numerous cases when perpetrators remain on such watch lists for years. This means that the perpetrator commits repeated domestic violence, because a person is removed from the watch list if there are no incidents of domestic violence in the space of one year.

As a consequence, the special measures of domestic violence prevention, which are currently effective in Ukraine, require substantial changes. In particular, to improve the system of victim protection and ensure effective prevention of repeated violence it is necessary to introduce legal norms that would prohibit the perpetrator from being at the same place with the victim and the family, as well as criminal liability for the violation of this order. Additionally, it is necessary to conduct corrective work with domestic violence perpetrators. The objective of such work would be to change the perpetrator's pattern of behaviour toward a nonviolent model. The latter is envisioned in the Bill "On amendments to certain legislative acts of Ukraine (improvements to Ukrainian legislation on domestic violence prevention)".

Provocative behaviour: violence prevention or violation of human rights?

Despite its positive impact on the development of Ukrainian legislation on the prevention of violence against women, the Law "On domestic violence prevention" has certain shortcomings that are due to the public stereotypes about domestic violence.

For instance, the Law contains a notion of *"provocative (victim) behaviour with regard to domestic violence"* which the Law explains as *"the behaviour of a potential domestic violence victim, which provokes domestic violence"*. Article 11 of the Law provides for an official warning about the inadmissibility of provocative (victim) behaviour as regards domestic violence, which can be issued *in the event of systematic (three or more instances) provocative (victim) behaviour of a family member, which results in a situation that may lead to domestic violence*. Besides, an official warning about the inadmissibility of provocative (victim) behaviour made against the victim is an obstacle for imposing a restraining order on the perpetrator ¹.

As such, the Law makes it possible to shift the blame for domestic violence from the perpetrator to the victim, thus depriving the victim of the right to protection from violence. Besides, an official warning about the inadmissibility of provocative (victim) behaviour in fact rules out the likelihood of a court ruling to punish the perpetrator for inflicting bodily injuries on the victim, or the perpetrator's eviction under Article 116 of the Housing Code of Ukraine for a violation of the rules of sharing a dwelling.

The perpetrator views such a warning against the victim as evidence of his impunity. Obviously, such a "violence prevention measure" in fact encourages illegal acts and repetition of violence by the perpetrator in the future.

¹ Para 39 Instruction on the Procedure for Cooperation between Departments of Family and Youth, Services for Minors, Centers of Social Services for Family, Children, and Youth and the Police concerning Prevention of Domestic Violence, Order of Ministry on family, children and youth No. 3/235 of March 9, 2004

Victim behaviour is actual behaviour of a person, which has contributed to this person's becoming a victim of violence. In various circumstances different types of behaviour of the victim may provoke violence on the part of different perpetrators: late from work, not enough salt in the soup, fear or tears, a reproach for alcohol abuse, etc. Blaming and holding the victim liable for such actions is an inadmissible violation of human rights.

In view of the presence of this norm in the Law, methodical recommendations concerning the application of this norm by the law enforcement services have been developed. It is worth noting an important observation to the effect that *"provocation of domestic violence is conscious and deliberate behaviour on the part of the domestic violence victim, which may result or results in an act of domestic violence whose consequences the victim uses to her own benefit"*¹. These recommendations include a questionnaire developed by the Ukrainian Scientific Research Institute for Social and Judicial Psychiatry and Narcology, its aim being to identify a person's proneness to actively provocative victim behaviour. Based on the results of the questionnaire (over 70% of positive answers), a police officer can refer the victim to a psychologist at a specialized institution who will issue a competent opinion about the person's proneness to actively provocative victim behaviour. According to the recommendations, only when such an opinion has been issued can the authorities make an official warning about the inadmissibility of provocative (victim) behaviour as regards domestic violence. This recommendation does not take into account, however, that such an opinion does not prove that in a given case the victim consciously provoked violence against herself in order to benefit from the consequences.

Practical application of the norms on the official warning about the inadmissibility of provocative (victim) behaviour as regards domestic violence shows the following peculiarities and trends:

¹ Yu.V. Onyshko, T.R. Morozova, O.V. Osypova, V.E. Senetsul, "Organization of the work of the law enforcement services for the prevention of crimes committed in a family setting. Psychological aspects of a police officer's actions in the event of domestic violence", Kyiv, 2002.

- in some cases an official warning is issued exclusively on the basis of the perpetrator's explanation to the effect that the victim allegedly provoked violence;

- in some cases police officers do not understand the essence of the notion and norm about victim behaviour, which is why they issue such official warnings for both the victim and the perpetrator, considering it a means of influencing the perpetrator¹;

- sometimes the abovementioned recommendations are applied as follows: a police officer polls the victim using the recommended questionnaire and based on the results of the questionnaire independently makes the decision to issue an official warning without the psychologist's opinion ²;

- as a result of their lack of understanding of the essence and nature of domestic violence, existing stereotypes about the women's guilt, and low professional level, individual police officers issue official warnings in order to discourage the victim from requesting police assistance in the future;

- recent years have seen a positive trend manifested in the reduction in the number of cases when police officers issue official warnings about the inadmissibility of victim behavior with regard to domestic violence. In many ways this trend is due to the educational efforts of women's civic organizations that cooperate with the law enforcement services in domestic violence prevention and protection of victims from violence.

Besides, some experts believe that *in many cases such actions of the victim as verbal insults, humiliation, maltreatment, threats, which ultimately result in physical violence, are viewed as victim behaviour. However, such actions of the victims match the definition of psychological violence contained in the Law "On domestic violence prevention", which is why it would be true to the letter and spirit of the law to issue a warning about the inadmissibility of psychological violence instead of a warning about the inadmissibility of*

¹ Decision on refusing to start criminal proceeding, issued by police officer in domestic violence case, Lviv, 2006

² Answer of a precinct inspector in one of the Lviv region districts at a training for law enforcement services and local government agencies in September 2007.

victim behaviour.¹ However, while eliminating the problem of application of the provocative (victim) behaviour norm, such practice would at the same time create the risk of the spread of the negative practice of mass application of special measures against both the perpetrator and the victim. In turn, this would yet again deprive the victim of access to judicial protection of rights that were violated.

Therefore, the legislative norms on the victim behaviour and liability for such behaviour violate human rights of domestic violence victims and are discriminatory against women in conditions when the overwhelming majority of domestic violence victims are women. For this reason they must be excluded from the Law. Relevant changes are envisioned in the Bill "On amendments to certain legislative acts of Ukraine (improvements to Ukrainian legislation on the prevention of domestic violence)".

Assistance to victims of domestic violence

Under the Law, in the event of domestic violence, the victim may request assistance from:

- A local police precinct
- A family and youth affairs department/office
- A regional center of social services for family, children and youth
- The Service for the Affairs of Minors.

These agencies and institutions must take measures needed to:

- protect the victim from illegal encroachments
- prosecute the perpetrator(s)
- prevent acts of violence in the future

Where a person reports a case of domestic violence to the police, police officers or juvenile crime police officers (where the perpetrator or the victim is a minor) must:

¹ P.O. Vlasov, A.V. Zaporozhtsev, V.O. Bryzhyk "Domestic violence and efforts of the law enforcement services to curb it", Dnipropetrovsk, 2006

- *Start criminal proceedings when the perpetrator's acts contain elements of a crime (medium bodily injuries, severe bodily injuries, battery or torture committed by a group of persons (for instance, the husband and a son), rape, etc);*

- *Issue an official warning about the inadmissibility of domestic violence against the perpetrator;*

- *Put the perpetrator of domestic violence on the preventive watch list;*

- *Impose a restraining order on the person who commits domestic violence repeatedly after receiving an official warning;*

- *Visit the family affected by domestic violence in order to conduct explanatory and educational work with the perpetrator and inform family members about their rights and measures and services available to them.*

Where a person reports a case of domestic violence to the department for family and youth, the center of social services for family, children and youth, or the service for the affairs of minors, they must:

1. *Forward the statement about a case of domestic violence to the territorial police precinct in order for it to take measures within the competence of the police, and keep a copy of the statement in order to take measures within their competence;*

1. *Visit the family affected by domestic violence in order to find out the causes of violence and determine the types of assistance that affected family members require;*

2. *Conduct educational and explanatory work with the members of the family affected by domestic violence and inform them about their rights, measures and services available to them;*

3. *Organize the provision of psychological, informational, legal, social, pedagogical, and other services to violence victims;*

4. *Refer violence victims to specialized institutions for domestic violence victims (crisis centres, shelters, medical and social rehabilitation centres), if necessary.*

The statement must be reviewed within three days. If it becomes necessary to verify the facts provided in the statement and ascertain additional circumstances, the statement must be reviewed within seven consecutive days at the most.

Therefore, under the Law, after requesting assistance from the abovementioned institutions, the victim must receive information about her rights and the legal, psychological, and other services she needs. If necessary, the victim must be referred to a crisis centre, a shelter, or a medical and social rehabilitation centre and the perpetrator must be brought to account for committing domestic violence in addition to explanatory work that must be carried out with the perpetrator.

However, the five years during which the Law has been effective have shown that the basic measures stipulated in the Law are carried out by precinct police inspectors. In the overwhelming majority of cases, these measures involve bringing the perpetrator to responsibility. Meanwhile, the services to domestic violence victims, which must be provided by the Ministry for Family, Youth and Sports and its local agencies, in particular shelter and legal and psychological assistance, are not provided to a sufficient standard. Besides, precinct police inspectors, to whom most victims turn for assistance, are not performing their functions properly as regards informing victims about their rights and the services available to them.

According to the research results, the question "Did the precinct police inspector inform you about your rights and the measures and services available to you in connection with domestic violence?" was answered **positive** only by **40% of the women** who turned to the police for assistance.

At the same time, when asked the question "What rights, measures and services did the precinct inspector inform you about?",

66.7% of the respondents answered *"the right to take legal action at court (without specifying the rights that need protection in court)"*,

23.8% – *"the right to file a complain with the court in private prosecution proceeding "*,

9.5% – *"the right to request assistance from a non-governmental organization"*,

4.8% – *"the right to take legal action to evict the perpetrator"*,

4.8% – *"the right to demand a forensic medical examination"*,

4.8% – *"the right to take legal action to protect property rights"*.

When asked the question *"To whom did the precinct police inspector refer you?"*, – **40.5%** of the respondents answered *"did not refer me to anybody"*, **50% were referred to court**, 23.8 % were referred to the Western-Ukrainian Center Women's Perspectives.¹

A major obstacle that prevents victims from accessing the services is the low level of the population's awareness about the functions of the abovementioned agencies as regards preventing domestic violence and assisting victims, and the population's distrust of governmental institutions.

The research results show that nearly one half of all women knew about the Law "On domestic violence prevention". Only 56.8% of the respondents were not aware about this Law. However, despite the relatively high level of awareness about the Law, the level of awareness about the agencies from which assistance is available is much lower. The majority of women consider the police and courts to be the only agencies to which they can turn for protection in the event of domestic violence.

The research results show that 78% of the respondents turned to other persons and agencies for assistance in resolving the problem of domestic violence. Of them, 81.3% turned to the police and 56.3% to court. Only 9.4% of the women turned to custodian and guardianship authorities, 1.6% to the Service for the Affairs of Minors, 1.6% to the juvenile crime police. None of the victims turned for assistance to the Department/Office for Family and Youth or to the Center of Social Services for Family, Children, and Youth.

¹ The percentages add up to more than 100% because there were cases when victims were referred both to court and the Western-Ukrainian Center Women's Perspectives.

Majority of women who did not turn for assistance to governmental agencies did not do it because they did not know that besides police and court any agencies had authority to deal with domestic violence issues. **66.7% of women** who did not turn to the police for assistance, did it because they "*Did not believe that the police would respond appropriately to their statement*", and **50%** of the respondents did not turn **to court for the same reason**.

In view of this and the insufficiency of services (often of inadequate quality) available to domestic violence victims from governmental agencies, civic organizations remain the main, and often the only, recourse for women suffering from domestic violence, who require legal, psychological and social assistance or shelter. Especially pressing is the problem of access to information and services in rural areas.

Another obstacle that domestic violence victims face in accessing services and justice is the inappropriate response from medical institutions. Given such a low level of public awareness about governmental agencies that provide assistance to domestic violence victims, in many cases the medical institution is the only place to which the victim turns for help.

According to the "Procedure for recording cases of citizens with bodily injuries of criminal nature turning to medical institutions and local police precincts"¹, heads of medical institutions must ensure "*the police are informed about all cases of persons with shot and knife wounds and other bodily injuries turning for medical assistance, if there are reasons to believe that they have been sustained as a result of a crime*". In practice, however, not all medical workers who attend to domestic violence victims observe this legislative requirement.

Oksana, 42 y.o., turned for help to the West Ukrainian Center Women's Perspectives. She has suffered domestic violence for more than 10 years. She was repeatedly beaten by her husband under the effect of alcohol. She turned to the organization because the last time her husband beat up not only her, but also her 14-year-old

¹ Adopted by Order of the Ministry of Internal Affairs of Ukraine and the Health Ministry of Ukraine No. 307/105 dated May 10, 1993.

daughter. When asked by a consultant whether she turned for help to anybody, Oksana replied that she only went to hospital when she was beaten up severely twice in the space of the last 3 years. Each time she spent more than a week in hospital. However, not once was a forensic and medical examination of the bodily injuries inflicted on her conducted. When asked the question "Did the doctor inform the law enforcement services?", she answered: "The doctor asked me whether I wanted to go to all the trouble of dealing with the police, or simply write that I fell and hurt myself".

In this way, medical workers' violation of legislative requirements often deprives the victim of the possibility to protect her rights, receive the relevant services, and have the perpetrator brought to account.

Not only victims and women's non-governmental organizations but also politicians recognize the existing problems with the enforcement of domestic violence legislation and the provision of services to victims in particular. Specifically, these problems were acknowledged by the participants of parliamentary hearings in December 2006: *"A substantial number of Ukraine's regions do not have institutions for domestic violence victims, such as crisis centres and medical and social rehabilitation centres for domestic violence victims. The level of social advertising in the sphere of domestic violence prevention is low. Improvements need to be made to the informational, educational, and explanatory efforts. Interdepartmental coordination in matters of domestic violence prevention is insufficient. Statistical reporting in this sphere is not available. There are cases when the competent authorities refuse to accept statements from domestic violence victims".*¹

¹ RECOMMENDATIONS of parliamentary hearings entitled "Current condition and immediate tasks in the sphere of gender violence prevention", APPROVED by Resolution of Ukrainian Parliament No. 817-V dated March 22, 2007.

VII. RESPONSIBILITY FOR COMMITTING DOMESTIC VIOLENCE

Under the Law, “family members who committed domestic violence are liable according to criminal, administrative or civil legislation”¹.

Administrative responsibility

After the Law of Ukraine on prevention of Domestic Violence was passed, changes were made to the Code of Ukraine on Administrative Offences which provides for administrative liability for committing domestic violence and failing to comply with the protection order. Domestic violence as an administrative offence is defined as “any intentional actions of physical, sexual, psychological or economic nature (physical violence which did not inflict physical pain or bodily harm, threats, insult or pursuit, depriving someone of habitation, meal, clothes and other property or funds, for which a victim has a legal right, etc.) that can cause and causes harm to the victim’s physical or psychical health”². According to the Code, committing domestic violence or failing to comply with the protection injunction will be punishable by a fine worth one to three untaxed minimums of citizens’ incomes or up to one month of corrective labour with twenty percent of their pay to be deducted.³ If administrative liability for committing domestic violence is imposed on a person repeatedly within a year, his/her liability will be a fine worth three to seven untaxed minimums of citizens’ incomes or one to two months of corrective labour with twenty percent of their pay to be deducted; if, given the circumstances of the case and the identity of the violator, these measures are found to be insufficient, the punishment will be an arrest for a period of up to fifteen days.⁴

¹ Article 15 of the law of Ukraine On Prevention of Domestic Violence, of 15 November 2001, N 2789-III

² Article 173-2

³ Ibid

⁴ Ibid

So in cases when *no physical pain or bodily harm* was inflicted on the victim as a result of domestic violence, the perpetrator's punishment will be administrative liability. According to clause 173-2 of the Code of Ukraine on administrative offences, the offender will be punished by a fine or corrective labour and only in exclusive cases will administrative arrest be used. In practice the most common type of punishment is a fine. For instance, 100% judges said that they impose a fine in cases on administrative liability for domestic violence, and only 31% said that they impose administrative arrest in some cases¹. In Lviv oblast, of the 15 court decisions in cases on offences punishable by article 173-2 that were entered in the Common State Register of Court Decisions in November 2007, in 14 cases a fine was imposed on the offender and in one case one month of corrective labour with 20 per cent of the pay to be deducted². Moreover, the amounts of fines imposed on offenders were UAH 17, UAH 25, UAH 30 and UAH 51. According to data of the Ministry of Internal Affairs in about 87% of cases courts impose a fine as punishment for committing domestic violence.

According to victims and law-enforcement agencies, imposing fines is not an effective way of punishing offenders for committing domestic violence. Such an insignificant amount of fine as UAH 17 or UAH 51 cannot deter an offender from committing domestic violence again in the future. Besides, in many cases these fines are paid from the family budget, i.e. often from what was earned by the wife. In this way the wife, who has suffered from domestic violence, is, in addition to this, deprived of her own financial resources that are essential for herself, her children and other family members. Not only does this way of punishing the offender not prevent domestic violence from occurring in the future, in many cases it keeps the wife from seeking protection from the law-enforcement agencies if domestic violence is repeated.

¹ The survey was conducted by Western Ukrainian Center "Women's Perspectives" in cooperation with the Academy of Judges of Ukraine in 2007, total number of respondents - 58 judges of local courts in Lviv, Zakarpattya, Ternopil, Volyn regions..

² Common State Register of Court Rulings,
<http://www.reyestr.court.gov.ua/pls/apex/f?p=200:1:7490414259016149>

Maria, 38 years old: “I don’t want to go to the police anymore. Last time he brought me a bill to pay a fine of 51 hryvnias and said: ‘You wanted [to go to] the police, so now you pay, if you are such clever clogs’. I don’t want to pay anymore – I haven’t got enough money to feed my kids.”¹

Therefore it is a positive thing that a fine as administrative punishment were removed from article 173-2 of the Code of Ukraine on Administrative Offences in the draft Law “On changes to some legislative acts of Ukraine (regarding improvement of Ukrainian legislation on combating domestic violence)”².

¹ Interview with a victim, West-Ukrainian Centre “Women’s Perspectives”, March 2007.

² Draft Law passed 1st hearing at the Parliament, is expected to be adopted after the 2nd hearing

VIII. CRIMINAL RESPONSIBILITY FOR DOMESTIC VIOLENCE

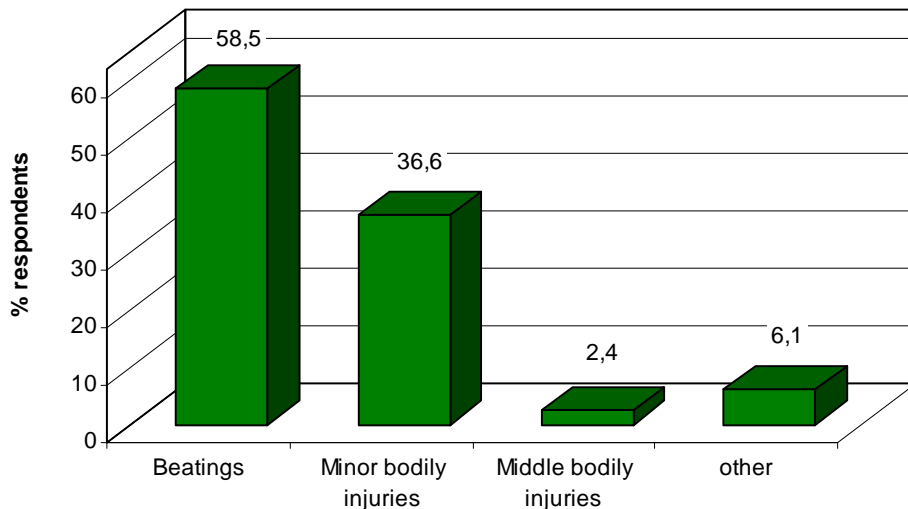
Despite the myth widespread among common people as well as professionals that domestic violence is not a crime but a scandal, a family affair which should not be interfered into, too often domestic violence exceeds the limits of administrative offence, and its danger characterizes it as a crime punishable by criminal law.

Even though Criminal Code does not contain an article which stipulates responsibility for domestic violence, there is a responsibility for certain forms of violence with signs of a crime: bodily injuries of different gravity, battery, torture, rape, etc.

Domestic violence – cases of private prosecution

In the majority of cases victims of domestic violence suffer from physical violence which consists of infliction of minor bodily injuries and beatings.

Table 1. Forms of physical violence women suffer in a family¹



¹ Research conducted by the West-Ukrainian Centre “Women’s Perspectives” in 2007, total number of clients of the organization - women-victims of domestic violence involved in the research – 164.

According to Criminal Law of Ukraine, these crimes entail the following punishment:

Article 125 “Intentional minor bodily injuries”

1. *Intentional minor bodily injuries is punishable by fine of up to 50 times the untaxed minimum income or social work up to 200 hours or correctional work for up to one year.*

2. *Intentional minor bodily injuries that entailed a brief disorder of health or insignificant loss of capacity, is punishable by social work from 150 to 240 hours, or correctional work up to one year, or arrest for six months or probation for two years.*

Article 126 “Beatings and blows not causing injuries”

1. *The intentional act of blows, beatings, or commission of other violent actions which inflict physical pain but do not entail bodily harm, is punishable by a fine of up to 50 times the untaxed minimum income, or social work for 200 hours, or correctional work for one year.*

2. *The same actions, that have the characteristics of beating, accomplished by a group of persons, or with the purpose of intimidation of a victim or his kin, is punishable by probation or imprisonment for five years.*

In contrast to many countries, in Ukraine law enforcement authorities do not institute legal proceedings on the above-mentioned crimes – these are cases of so called private prosecution. Cases of private prosecution are instituted not by an authority of investigation or inquest but directly by court following a complaint filed by a victim. Victims carry the function of prosecution. Cases of private prosecution are tried by court without having a pretrial investigation conducted by relevant state authorities.

Besides, a public prosecutor, an investigator or a judge must accept complaints about committed crimes, including cases which are not under their direct jurisdiction (including cases of private prosecution). After receiving a complaint about a crime committed, a public prosecutor, an investigator or a judge must perform the following within three days: to institute legal

proceedings, to refuse to institute legal proceedings *or to refer the complaint to a relevant agency*.¹

This means that complaints filed by victims of domestic violence in cases of private prosecution (on minor bodily injuries, beating) must be accepted not only by a court but by any law enforcement authority too – the police, prosecutor’s office, the Security Service of Ukraine (SBU), etc. Such complaints are to be referred to the body authorized to consider cases of private prosecution, i.e. to court. In any event, the law enforcement authority which has received a complaint about a committed crime filed by a victim of domestic violence has no right to pass a resolution on rejection of legal proceedings on the grounds that the complaint belongs to the category of private charges. On the contrary, law enforcement authorities *are obliged to refer this complaint to the proper authority and to provide explanations to the victim regarding her rights*.

In reality law enforcement officers often disregard this duty, even refusing to accept the complaint from a victim, thus violating her legal right to be protected from violence. Moreover, such officials define the severity of inflicted bodily injuries “with a rough examination”, without appointing a proper examination.

Therefore, in order to bring the offender to criminal responsibility such person must appeal to court on her own. Due to the low level of legal culture in Ukraine, lack of legal knowledge, lack of finance to cover legal services and insufficient amount of free legal assistance, the majority of women who have suffered from beating do not even consider appealing to court as an option. Accordingly, the majority of perpetrators is not punished and continue to commit violence.

However, the victim who has dared to appeal to court in order to bring the offender to criminal responsibility can face considerable difficulties.

According to existing legislation, in this case a person should file a complaint with the court. Only if the complaint is accepted, the court will commence and investigate the criminal case based on the claim of the victim.

¹ Article 97 CRIMINAL PROCEDURAL CODE of Ukraine.

However, the law sets forth such requirements to the form and content of a complaint that not only common people but professionals in law have difficulties in satisfying them, thereby depriving victims of a chance to appeal to court for the protection of their rights and interests in the form of private charge.

For instance, the complaint filed by a victim must meet the requirements established by the Criminal Procedural Code of Ukraine set for a bill of indictment¹. If the complaint does not meet these requirements, a judge dismisses the complaint and returns it to the person who filed it².

The Criminal Procedural Code of Ukraine states:

“After finishing the investigation and fulfilling requirements of Articles 217 — 222 of this Code, the investigator shall write a bill of indictment.

The bill of indictment shall consist of the descriptive part and the resolution. The descriptive part mentions the circumstances of the case which were established during the pretrial investigation, place, time, ways, motives and consequences of the crime committed by each defendant as well as evidence gathered in the case and information about the victim; evidence provided by each defendant with regard to accusations brought against him/her, proofs put forth for his/her defense and results of their verification; the availability of circumstances which will aggravate or mitigate his/her punishment.

If references to evidence are mentioned, the pages of the case must be indicated.

The resolution part provides information about each defendant, briefly states the essence of indictment with the reference to the article of the Criminal Code under which the given crime is punishable.

The bill of indictment is signed by the investigator mentioning the place and date of drawing it up.

If the bill of indictment is written in the language which is not understood by the defendant, it must be translated into the native language of

¹ Articles 223 and 224 of CRIMINAL PROCEDURAL CODE of Ukraine.

² Part 1; clause 1, part 2, article 251 of CRIMINAL PROCEDURAL CODE of Ukraine.

the defendant or any other language he/she knows. The translation of the bill of indictment is attached to the case¹”.

Besides, the law requires that the following documents be added to the bill of indictment:

1) a list of persons that are to be brought to a court hearing, containing their addresses and the pages of the case where their testimony or conclusions are stated;

2) a statement on the progress of the case and on the application of preventative measures with indicating the time and place of detention of every defendant if they are arrested;

3) a statement of material evidence, of a civil claim, of measures taken to support the civil claim and the possible confiscation of property;

4) a statement of court expenses related to the case during the pretrial investigation with references to proper pages of the case.

With a view to ensuring that no information is disclosed about the individuals with regard to whom, according to Articles 52-1 and Articles 52-3 of this Code, safety precautions are taken, the list of persons that are to be brought to a court hearing must contain their pseudonyms instead of their real names, and the name and address of the authority providing security instead of the person’s real address²”.

The content of the mentioned articles clearly demonstrates that no complaint filed to institute a criminal case of private charge can possibly meet the above-mentioned requirements.

This means that the judge can disregard and return any complaint to the victim. Moreover, he/she will act in accordance with the law.

In particular, some reasons for dismissing the claim were the absence of the following:

“...the testimony of the defendant with regard to the accusations brought against him, the proofs presented by him for his defense and the

¹ Article 223 of CRIMINAL PROCEDURAL CODE of Ukraine.

² Article 224 of CRIMINAL PROCEDURAL CODE of Ukraine.

results of their verification, the availability of circumstances which will aggravate or mitigate his punishment»¹;

“the testimony of the defendant, the proofs presented for his defense»²;

“the information about the defendant (Article 145 of Criminal Procedural Code of Ukraine), in particular his nationality, place of work, type of work done or position, a list of persons to be brought to court hearing with indication of their addresses”³;

“witnesses whose testimony is require at the trial, a statement of material evidence, of civil claim, etc”⁴.

The resolution on dismissing a complaint may contain the judge’s explanation that *“the complaint must meet the requirements set by the Criminal Procedural Code of Ukraine regarding a bill of indictment”⁵, without providing the person with any concrete comments on the complaints submitted.*

It is necessary to point out that in practice not all judges stick to the literal meaning of the aforesaid requirements of the Criminal Procedural Code of Ukraine. For the most part they consider the reasons for instituting proceedings and proofs mentioned therein and the request to institute proceedings against a certain person to be sufficient for acceptance of the complaint.

However, when judges demand that the victim who files a complaint should indicate the information on the defendant, which is provided by the investigator in a bill of indictment, and when such requirements are not met and the judge dismisses the complaint, the victim loses any chance to protect her rights and interests in court.

By applying the same requirements both to a bill of indictments and a complaint, criminal-procedural law imposes improper and heavy duties on an

¹ Resolution of district court, Lviv 2006.

² Resolution of district town court of 29.10.2007.

³ Resolution of Stryiskyi district city court of 17.09.2007.

⁴ Resolution of Zaliznychnyi district court of Lviv of 09.07.2007.

⁵ Resolution of Zaliznychnyi district court of Lviv of 25.10.2007.

individual, putting the equation mark between the investigator who is backed by the whole system of specialized state bodies and the victim who turns to court on her own.

The point is not only that the victim has no possibility to gather such evidence without any assistance. She is deprived of the right to do it since it is “*forbidden to gather, store, use and spread any confidential information about a person without his/her consent with the exception of cases stipulated by law and in the interests of national security, material well-being and rights of the person*”¹.

Thus, on the one hand, a complaint from a victim of domestic violence cannot meet the requirements of the existing CRIMINAL PROCEDURAL CODE of Ukraine without stating all the information required by the law, so a court is not allowed to institute proceedings without it. On the other hand, all the necessary information can be gathered in the order defined by criminal proceedings. Given the circumstances, there is no need to emphasize the limited access of a victim of domestic violence to criminal proceedings.

Moreover, in practice judges use as the grounds for dismissing a complaint not only a failure to meet the requirements set for a bill of indictment, but also a failure to meet the requirements set with regard to ***a protocol of the defendant’s interrogation***, which, in particular, must contain “...*the surname, name and patronymic of the defendant, the year, month, and place of his birth; the citizenship, nationality, education, family status, place of work, type of work done or position, place of residence, previous conviction if any and other data about him/her which may appear necessary under the circumstances of the case*”². The other data which judges require that it should be indicated in the complaint are such things as “the ***health condition, party membership, participation in military combat and state awards***”³. Thus, some judges consider any party membership or merits before the fatherland to be of such great importance for establishment of guilt and administration of

¹ Part 1 of Article 32 of the Constitution of Ukraine.

² Article 145, a protocol of investigation of the accused, CRIMINAL PROCEDURAL CODE of Ukraine.

³ Resolution of district court, Lviv 2007

punishment for domestic violence that in order to find out about them one can go beyond the limits established by the criminal-procedural law.

Thus, not only does the criminal legislation of Ukraine not ensure proper response to the problem of domestic violence and bringing the offender to responsibility, which is a direct duty of the state in accordance with the obligations defined by international agreements, but it also *significantly restricts the rights and interests of the persons who suffered from criminal offences as well as their possibility to protect themselves via administering justice in criminal cases*, which creates additional obstacles for victims in access to justice, violating the rights of victims of domestic violence and their right for effective means of protection in court.

Therefore certain amendments need to be introduced into legislation which would define infliction of minor bodily injuries, beating and torture in cases of domestic violence as crimes of public charge, when all the measures to bring the offender to justice are taken by the state – by the law enforcement authorities. At least the law should provide a person who files a complaint on private charge with a sufficient range of powers to protect his/her rights and interests and prove their case in court.

Domestic violence - cases of public prosecution

Criminal prosecution for the committing of domestic violence which is more dangerous for the victim's life and physical health – inflicting bodily injuries of medium gravity, grave bodily injuries or battering and torture, or if committed by two or more persons – is conducted by law enforcement agencies. In such cases the police must start a criminal case.

Article 122 “Intentional medium bodily injuries”

(1) Intentional medium bodily injuries includes intentional damage, which is not dangerous to life and did not result in the consequences foreseen in Article 121 of this Code, but such that resulted in the protracted disorder of health or considerable proof of loss of capacity of less than one third, and is punishable by correctional works within two years or probation for three years or imprisonment for three years.

(2) *The same actions accomplished with the purpose of intimidation of a victim or his relatives or compulsion to certain actions, are punishable by imprisonment from three to five years.*

Article 121 “Intentional severe bodily injuries”

(1) *Intentional severe bodily injuries is intentional bodily harm that is dangerous to the life of the victim when inflicted, or, such harm that entails the loss of an organ or its functions, psychological illness, or other disorder of health, connected with proof of the loss of capacity of no less than one third, or harming of a pregnancy, and is punishable by imprisonment from five to eight years.*

(2) *Intentional severe bodily injuries accomplished by a method that is considered to inflict special torment, either committed by a group of persons, and also with the purpose of intimidation of a victim, or other persons either committed on the other or which resulted in the death of a victim, is punishable by imprisonment from seven to ten years.*

Women often suffer from violence that has signs of a crime punishable by Article 126 of the Criminal Code of Ukraine – *beatings and blows not causing injuries*. In many cases this kind of violence is committed by two persons, for instance, the husband and an adult son. However, in reality there are almost no criminal cases started for beatings committed by two or more persons against other members of the family. According to some law enforcement officers, this provision of the Criminal Code is impossible to apply in cases of domestic violence; it can only be applied when battery and torture were committed by law enforcement officers or officers working in correctional facilities against detainees or convicts.

The situation with psychological violence in family is even more critical. Given the absence of the relevant provision in the Criminal Code, an offender can be brought to account only for threatening to kill the victim.

Article 129 “Threat of murder”

(1) *Threat of murder, if there are solid grounds to fear the realization of the threat, is punishable by arrest for six months or probation for two years.*

(2) *The same action committed by a member of an organized group, is punishable by imprisonment from three to five years.*

However, in most cases law enforcement agencies do not take victims' claims seriously, when victims seek protection and ask them to bring the offender to account for threatening to kill, even in cases when women have every reason to treat the threats as realistic, considering the cruel treatment and long-term physical violence in the past, which resulted in bodily injuries inflicted.

Rape is also a crime that is prosecuted by the law enforcement, but to institute legal proceeding victim's complaint is obligatory. Rape is defined as sexual intercourse with the use of physical violence, or threat of injuries (the will of the victim is suppressed), or by taking advantage of the helpless condition of a victim (her/his will is ignored).¹ Legislation does not contain the restriction that rape can occur only outside marriage, that is, rape can also occur between married people (victim and perpetrator may be in the registered or actual marriage). But in practice there are no marital rape cases investigated and prosecuted. Due to the existing stereotypes and attitudes regarding position of women in a family, non-awareness of their rights women do not bring complaints because of shame and because they are sure in negative biased response of the law enforcement representatives. On a question "Did you try cases on crimes against sexual liberty and sexual immunity committed in marriage?" 100% of respondents answered NO.²

Therefore, there is a pressing need to make changes to legislation that would ensure victims' protection from domestic violence and bring the offender to account, to enhance the professional level of law enforcement officers and courts, overcome stereotypes in their environment and educate citizens about these matters. Only then will the state be able to take measures to adequately protect the rights of victims of domestic violence and prove that it meets the international commitments it undertook.

¹ Article 152, Criminal Code of Ukraine

² The survey was conducted by Western Ukrainian Center "Women's Perspectives" in cooperation with the Academy of Judges of Ukraine in 2007, total number of respondents - 58 judges of local courts in Lviv, Zakarpattya, Ternopil, Volyn regions.

IX. DIVORCE AS A MEANS OF PROTECTION FROM DOMESTIC VIOLENCE

For the majority of women who suffer from domestic violence the first step made for the protection from and termination of violence is divorce. Many women believe that divorce can solve the problem of domestic violence and protect them and their children from violence in the future.

Despite the fact that the Law “On the Prevention of Violence in a Family” has been effective in Ukraine for as many as five years, the stereotypical perception of violence as an internal family problem into which no outsiders should interfere, including representatives of law enforcement authorities, is still widespread in society. If a victim turns to the police for protection, police officers usually ask: “*Why don’t you divorce?*”, considering divorce to be a means of protection from violence. Many clients of the Western Ukrainian Center “Women’s Perspectives” report that the reaction of the police to incidents of domestic violence often depends on whether the marriage is terminated or not and changes for better after the marriage is annulled or a claim for divorce is filed. Then the authorities will do preventative work with the offender with more diligence, apply special measures and bring him to account. Thus, law enforcement authorities treat more earnestly offences committed by outsiders than offences committed within the family.

It is important that despite the growing number of women who suffer from domestic violence and who turn to law enforcement authorities for help, a lot of women want to stop the violence rather than bring the offender to responsibility for the violence committed. They see the solution in divorce.

However, in many cases divorce does not solve the problem of domestic violence, particularly if a husband and a wife continue living in the same home. According to the survey, 25.6% of respondents suffer from violence committed by their ex-husbands, 44.8% of respondents point out that filing a claim for divorce did not help to solve the problem of domestic violence, 24.1% point out that it helped only partially, although in the majority of cases (88.2%) court rulings were in favor of a woman and the marriage was annulled.

In the majority of divorce cases, the court takes into account domestic violence as a serious consideration and reason for annulling of a marriage and satisfies the claims.

Nevertheless, there are cases when the offender, on the grounds of existing patriarchal stereotypes and perceptions of the role of the wife in the family, believes that his wife is his own property and that his marriage gives him a right to treat her as he wants, including exerting psychological pressure, humiliating her, coercing to sexual relations or committing other forms of violence. In such cases the husband uses every possible means to save the marriage. Unfortunately, judges do not always understand the nature and essence of domestic violence, taking into consideration the husband's desire to save the marriage while ignoring the wife's desire to break free from violent relations as well as the fact that according to law, marriage is a voluntary union and it must not be imposed on anybody.

*In one case, a judge dismissed a claim for divorce to Mrs N. (42 years old, married for thirteen years, with a twelve-year-old son) who pointed out that for many years she had suffered from the psychological and sexual violence on the part of her husband – Mr Yu. (40 years old), that their marital relations were actually stopped and for several months her husband had lived separately. The judge demonstrated an overtly biased attitude towards the woman in comparison to the attitude to her husband. Having ignored explanations of Mrs N., proofs of her appeals to an NGO for counseling and to the police for protection, the judge took into consideration explanations provided by Mr Yu., who declared that he wanted to save his family and return to the apartment of his wife and mother-in-law since he did not have any other home. According to the court ruling, the reason for dismissing the claim is that «the statement of the claimant that her husband resorted to psychological violence has not been proved in any way»¹. Moreover, the judge did not take into account the response about the husband by the police department that «prophylactic talk was conducted with the aim of prevention domestic violence in the future», referring to the fact that this response did not confirm that the husband had exerted any pressure on his wife, although according to the law on the prevention of domestic violence, preventative work shall be conducted by law enforcement authorities with **persons who have***

¹ The ruling by a local court in Lviv, 2007.

committed domestic violence, not with the whole population of Ukraine. The judge also did not take into consideration the fact that legislation does not require proving the facts of violence as an imperative precondition for dissolving a marriage. She also disregarded the fact that dissolving of this marriage was necessary for the violence to be stopped, and ignored the possible consequences of the court ruling for the woman.

After the court ruling which dismissed the claim of Mrs N., the behavior of Mr Yu. became more cynical and brutal. He continued insulting and humiliating his wife, exerted psychological pressure and demanded that they continue living together and in marriage. Mrs N. turned to the police for protection from psychological violence. The police officers filed a protocol on an administrative offence and submitted it to court. Mr Yu. was found guilty of psychological domestic violence and was fined 51 UAH. Meanwhile, Mrs N. appealed against the ruling by the local court. However, the Court of Appeal did not change the ruling having disregarded even the fact that before the hearing in the Court of Appeal Mr Yu. had been brought to administrative liability for domestic violence. Such ruling by the court of appeal reassured Mr Yu. in his innocence and brought about another outburst of violence – threats, insults, humiliation and coercion to living together. Mrs N. again turned to the police for protection. Mr Yu. was brought to administrative liability for domestic violence via an administrative arrest for five days. Afterwards Mrs N. filed a claim for divorce again. The marriage was annulled. Seven months had passed after the ruling dismissing the claim for divorce until the claim was satisfied. Seven months of fear, humiliation, insults, constant stress for the woman and her teenage son.

Thus, the plenary session of the Supreme Court of Ukraine should give an explanation as to the application of the legislation on the prevention of domestic violence when cases of termination of marriages are heard, and training for judges on domestic violence is needed as well.

X. THE PROBLEM OF DOMESTIC VIOLENCE: HOUSING ASPECT

At first glance, living separately from the perpetrator is the easiest solution to the problem of domestic violence. Yet this is a seemingly easy solution.

Unfortunately, a great number of women have to continue living together with the offender despite the fact that the legislation guarantees mechanisms to protect rights of a victim in this aspect.

Thus, **if a family resides in an apartment which is state or municipal property** (non- privatized apartment), and a member of the family commits violence against other members, the victim could bring in an action against the perpetrator in order to have him/her evicted without another accommodation being provided to the latter. This right is stipulated by Article 116 of Housing Code of Ukraine.

Article 116 of Housing Code of Ukraine – Eviction without provision of another accommodation to citizens, p. 1.

If a tenant, members of his/her family or other persons, who reside together with him/her, systematically ruin or damage residential property, or do not use it for specified purposes, or, through systematic violations of socialist cohabitation, make residing of other persons in the same apartment or house impossible, and public measures taken to prevent the misconduct have appeared to no avail, at the request of the owner of the accommodation or other interested persons the offender will be evicted without being provided with other accommodation.

In this case, the victim of domestic violence in his/her claim on eviction must prove that the perpetrator violates cohabitation rules and makes sharing accommodation impossible, and public measures to influence the offender did not yield expected results. Documents can be used as proof of domestic violence or other illegal actions against family members and ineffectiveness of measures taken by law enforcement bodies; these are official warnings about inadmissibility of domestic violence, documents imposing administrative or criminal liability, showing the offender's registration in the district police department as a person who committed domestic violence.

However, courts tend not to take into account official warnings, restraining orders, police registration of domestic violence and even imposition of administrative liability for domestic violence, considering that only repeated imposition of criminal liability can give the necessary and sufficient grounds for the perpetrator's eviction.

According to a survey of judges, only 34.5% of them have considered cases on eviction without provision of another housing when domestic violence occurred. All of them have reported that they have one to three cases a year. Only 30% respondents said that claims were satisfied. 30% of suits were dismissed. 10% of judges reported that different decisions were made depending on the case, and 30% said that no decision had been made yet or no response had been given¹.

Victims of domestic violence often face the biased attitude from the court, explicit or implicit accusations of trying to seize the apartment or house by evicting the husband (ex-husband).

A major question arises during trials: *Where is he going to live? How can one throw a person out onto the street?* The fact that the perpetrator's illegal actions cause great harm to the physical and mental health of a woman and children and often endanger their life is ignored. Thus, even now the court demonstrates the attitude of the state to the issue – when comparing the value of a woman's and children's life and health, and provision of the perpetrator with accommodation, the ruling is made in favor of the latter. Moreover, this tendency is observed in cases when a wife or an adult daughter has to leave an apartment because their life and health are endangered and rent another home, while an perpetrator continues to live there.

Occasionally family members who suffer violence are reluctant to evict a family member even if he or she commits violence. Besides eviction, the court can oblige the person who makes cohabitation impossible to exchange one place of residence for another one, which is indicated by the party interested in the exchange.

¹ The survey was conducted by Western Ukrainian Center "Women's Perspectives" in cooperation with the Academy of Judges of Ukraine in 2007, total number of respondents - 58 judges of local courts in Lviv, Zakarpattya, Ternopil, Volyn regions.

Article 116 of the Housing Code of Ukraine: Eviction without provision of citizens with another home, p. 2

Instead of being evicted, persons who are subject to eviction without provision of another housing due to impossibility of cohabitation with them may be obliged by the court to exchange one place of residence for another one, which is indicated by the party interested in the exchange.

This means that instead of the claim for eviction, the victim can file a claim for exchanging the place of residence, but he/she must provide the court with options of such an exchange. Choosing such an option is a most difficult task, since it is necessary to find two non-privatized apartments, residents of which will be willing to live in one apartment and who are satisfied with the victim's apartment. Now that most apartments have been privatized, this provision is extremely difficult to realize.

In order to solve this problem, amendments are to be introduced into legislation on housing, in particular to Article 116 of the Housing Code of Ukraine, which would take into account domestic violence and measures taken by law enforcement bodies and courts in accordance with Ukrainian legislation on the prevention of domestic violence as the grounds for eviction of a person without provision of another housing.

One more possibility of solving certain housing problems is to change a lease-holding agreement. Thus, according to a court ruling, a victim can sign a separate lease-holding agreement for an apartment or house which he/she uses and become its tenant. The court will also decide which part of the apartment or house the perpetrator will occupy and consequently use, and which part will be in common use. Definitely, this will not solve the problem of cohabitation, since the victim will continue residing with the offender, but this will establish the order of the use of housing and allow tenants to pay only their share of the utilities bill. The change to the lease-holding agreement may also become the first step to privatization of one's own share of the home and its subsequent sale, yet this will be possible only if the home can be technically divided and the family is able to cover all the expenses for documentation, which, unfortunately, is a rare case. Yet, despite existing legal and procedural complications and problems, there are occasional positive cases when women manage to protect their rights and solve housing problem in this way.

If a family resides in a private apartment or house, and perpetrator is a co-owner of the property and does not give a permission to sell or change it, it is very difficult for woman to solve the problem.

Such situation when perpetrator is a co-owner and refuses division of property is very common. Especially it is true in cases when perpetrator abuses alcohol or drugs – he is satisfied with comfort conditions at home, food and does not want any changes.

There are possibilities for division of property under the civil law. But proceedings are very complicated and costly, so majority of women-victims of domestic violence can not afford it.

XI. MONITORING OF THE PRESS: THE PROBLEM OF DOMESTIC VIOLENCE IN THE MASS MEDIA

Does our Ukrainian mass media pay attention to the problem of domestic violence in general? If so, what kind of attention is it? Do citizens receive messages via the most accessible sources of information condemning such a widespread phenomenon in our society as domestic violence? These were the questions we asked ourselves while seeking ways of rooting out domestic violence which has reached epidemic proportions in our society.

Considering the influence of the mass media on shaping public opinion, human values and public conscience in general, it would be difficult to overestimate the role that mass media can play in educating the public. In order to overcome the problem of domestic violence, or violence in families, first it is necessary to make sure that society realizes the shameful nature of this phenomenon which violates human rights and leads to numerous other problems in society. Therefore as an important tool in overcoming the problem of domestic family, some mass media became an object of our study of how they cover the issue of domestic violence on their pages.

The West-Ukrainian Centre “Women’s Perspectives” has conducted monitoring of the press for four months of 2006, the aim of which was to find out what importance the mass media attach to the problem of domestic violence, how widely this problem is covered in printed media, in what context the information is delivered and what educational work is done.

The monitoring processed selected ten social/political and information/advertising media for the period of *August 1 to November 30, 2006*. The study covered eight regional (oblast) mass media and two printed media published and circulated nationwide. Total number of newspaper issues monitored - **276**.

Among the media under monitoring were five social/political ones, three information/advertising ones and two specialized media – a newspaper issued by the Lviv Oblast Employment Centre and one by the Department of Ukraine’s Internal Affairs Ministry in Lviv oblast (region).

Seven printed media are coloured (including partly coloured). They are issued from once in three weeks to five times weekly with the number of their pages varying from eight to 160 and the format from A5 to A3.

The list of the printed media is as follows:

1. Vash Mahazyn (Your Shop)
2. Vysokyi Zamok (The High Castle)
3. Express
4. Za Vilnu Ukrayinu (For a Free Ukraine)
5. Correspondent
6. Lvivska Hazeta (Lviv Newspaper)
7. Lvivska Reklama (Lviv Advertising)
8. Lvivski Oholoshennia (Lviv Advertisements)
9. Militsejskyi Kuryer (The Police Courier)
10. Shans (Chance).

All the news reports and articles containing any information about domestic violence were studied in the printed media under monitoring.

The monitoring recorded which family member committed violence, what form of violence was used, against what family member violence was used, the family's social status, from what angle the information was delivered by the author of the article and whether violence itself was condemned in the article, etc. The number of characters in the article and the size of the article were recorded too.

Only **four** out of **ten** newspapers under monitoring contained articles and news reports about instances of domestic violence, while the others did not pay any attention to this topic in their issues over the four-month period.

	Article	Brief News Report
Lvivska Hazeta	1	
Vysokyi Zamok		1
Militsejskyi Kuryer	2	3
Express	9	2
Total	12	6

Among **276** issues monitored a total of **18** stories containing information about domestic violence were recorded in the of four afore-mentioned printed media over the period of monitoring. Eleven (**61%**) was the largest number of articles and brief news reports published in the Express newspaper.

There were 12 (**67%**) articles and six (**33%**) brief news reports among the material selected during the monitoring. Only one article contained illustrations, while all the others were unaccompanied by any graphic illustrations.

The longest article by size and number of characters (2,655 characters) and the smallest news report (132 characters) were published in the Militsejskyi Kuryer newspaper.

Of the 18 analyzed stories, two contained general information about the problem of domestic violence in society, punishment provided by legislation and general statistics on instances of domestic violence in Lviv oblast. Sixteen printed stories were about concrete instances of domestic violence that had occurred in Lviv oblast. Unfortunately, in all the stories, regardless of their size, the content was the sensational fact of violence, rather than preventative or educational information.

For instance, of the 18 new stories selected for an analysis, two stories were about the problem of domestic violence as a phenomenon in society. They contained no information about concrete instances of violence in a family. Therefore in the further analysis, statistical data will be given and compared with the total number of the stories published in the press under

monitoring that are about concrete instances of domestic violence, namely 16 (**100%**) stories.

The authors' attitude towards the crime of domestic violence that they described in their article is ambiguous. In 14 (**87,5%**) news stories the authors *state a crime* that occurred and in two stories the authors state *an event that took place*, i.e. the authors did not even identify domestic violence as a crime, although violence in the families described in the stories resulted in either death or serious bodily injuries inflicted!

All this shows that journalists are not very well aware of the problem of domestic violence itself, types of punishment provided by law and the dangers that this phenomenon presents for society in general.

In three (**19%**) cases of domestic violence covered by journalists, possible punishment for a concrete person that committed violence was mentioned. In ten stories information is provided about an investigation being conducted regarding the person charged with domestic violence. Three more articles point out that the violator was punished, with two of them mentioning the length of their punishment, while one story suggests in a very disguised way that the criminal was punished: "The Rivne city court has put an end to a criminal case ..." – without mentioning the very punishment. The author must have decided that it was not necessary to give this information, which is a pity, because this information might prevent other cases of violence.

In most news stories (nine or **56%**) one could see the author's *neutral attitude* towards the victim of domestic violence, while seven stories reflect the author's *sympathy* with the victim of violence.

As far as the authors' attitude towards the violator is concerned, in 11 cases or **68,8%** it is neutral and in five cases it is accusatory and condemning.

Only four (**25%**) news stories contain information about the family where violence was committed. In three cases those were families with both parents and in one case it was a single-parent family. In other stories it was impossible to find out whether the families concerned were full or single parent families as there was no information provided. Four (**25%**) news stories say that conflicts in those families have occurred time and again. Seven

(43,7%) stories mention deviants in the family and the deviation of five (31,5%) of them was due to the fact that a member of the family was addicted to alcohol, which was one of the causes of domestic violence. However, unfortunately, one cannot talk about any statistics on domestic violence in families with a long track record of conflicts in the past, or that deviance was the reason for such conflicts in those families, because in most stories such information was not provided. Or in other words, the authors thought it unnecessary to refer to this information or analyze the causes of domestic violence deeper.

In two (12,5%) stories the journalists pointed to jealousy as a cause of domestic violence and in two more stories the authors indicated that the family where domestic violence was committed was not well provided for. But this information can also be viewed as purely informative as the absence of such information in the other stories does not make it possible to say that domestic violence in such families was systematic or to determine the percentage of such families in the total number of families where domestic violence occurred.

In 11 (68,75%) out of the 16 news stories containing information about concrete instances of domestic violence, violators were men, while in five (31,25%) cases they were women. As far as the sex of the victim of domestic violence is concerned, in 11 cases they were women and in five cases men. In eight cases (50 %) violence was committed by husbands against their wives and in two (12,5%) cases by women against their male partners, while in seven (43,75%) cases violence was committed against other members of the family. Not always was violence committed against a person of the opposite sex: in one (6,26%) case a father committed violence against his son (by murdering him) and in one more case a daughter committed violence against her mother (also by murdering her).

Two news stories (12,5%) were about domestic violence of a sexual type, i.e. rape. Two other cases of domestic violence resulted in serious bodily injuries inflicted on the victim of violence. **In 12 cases victims of domestic violence were killed!!!** This constitutes 75% of incidents with a tragic outcome covered in mass media.

Of course, this, too, does not indicate that the death rate among victims of domestic violence in Ukraine is so high in general, but it does show the following: 1) Journalists cover only “hot” facts showing the extreme situations that domestic violence can lead to; 2) On the whole, printed media do not cover the problem of domestic violence sufficiently, nor do they provide sufficient information about each particular instance of domestic violence that would not only attract readers’ attention with the headlines and description of horrible facts. It would definitely contain information about the punishment for the violence committed, have the general public condemn such a crime and provide educational information on the prevention of domestic violence.

The experience of civilized countries where domestic violence is condemned at every level and by society in general, it shows that mass media plays an important role in achieving this. Their mass media in the instance where domestic violence is covered is not just as “an event” that has occurred but it as a **crime** in the first place, a crime that has to be dealt with properly, not only by the police and the court, but by general public too. Therefore as a rule, such “hot facts” are accompanied by a comment by a person highly respected by society: A politician, a lawyer, a teacher or just a civil servant, who will emphasize once again the illegal nature of such actions and punishment provided for them, condemn the violator, provide information about ways of preventing this phenomenon, inform victims of domestic violence where they can go for help, etc.

Economically developed countries care about a healthy society and its future. They realize that fairly often domestic violence can be witnessed by the children who in the future may model the violator’s behaviour in their future family. Therefore prevention, as well as providing the necessary help to the victim of violence, is the state’s priority and task in such countries.

Two analyzed articles (**12,5%**) say that the domestic violence in a family that resulted in the victim’s death was witnessed by the children. But unfortunately, given the Ukrainian realities, one would not expect that the necessary assistance, at least counseling, has been provided to them. It would be difficult to imagine with what psychological trauma the children will be growing up after they witnessed domestic violence, especially if one of their parents murdered their loved one in their presence. Besides, one must not forget that quite often children are victims of domestic violence but they do

not know how they could protect themselves and where to go for help. Traumas received in childhood stay with children throughout their life and according to psychologists, working with them, i.e. rehabilitating a person who has experienced such traumas is the hardest task.

None of the articles or news reports gives information about a place where a victim of domestic violence can go to for help and what departments or organizations are supposed to help them in this case. There are numerous state organizations whose task is to provide assistance to such people. Among them are local police inspectors, social workers from state-run social departments for family, children and youth or departments for minors.

However, quite often our fellow citizens do not know about their rights of protection where they can go to the afore-mentioned departments and organizations, while the latter are obliged to provide them with any possible help. There are numerous non-governmental organizations working with victims of domestic violence. Besides, there are hotlines that give social support to people in a crisis (by providing information and consultation to them) and refer them to experts for proper assistance. However, quite often lack of information does not enable people to make use even of this assistance when they need it.

If journalists managed, in addition to covering “the sensational fact” of domestic violence, to interview an expert in this sphere who would be able to provide more practical information to people in similar situations, their impact would be much stronger.

RECOMMENDATIONS

To the Government and Parliament

1. To establish ministry and parliamentary committees on gender equality, as well as an Ombudsperson dealing specifically with gender equality issues.
2. To incorporate the concept of “violence against women” and “gender-based violence” and all its forms into legislation and policies.
3. To develop and adopt a national action plan on combating domestic violence.
4. To adopt amendments on the legislation, especially:

Legislation on prevention violence in a family:

- To exclude provisions on the “provocative behavior” of the victim;
- To include a provision on protective orders that provide procedure of eviction the perpetrator from the housing;
- To make the necessary related amendments in the Civil Code and Housing Code;

Criminal legislation:

- To adopt provisions on criminal responsibility for repeated violations of the order for protection for domestic violence, with a punishment of a fine and imprisonment;
- To adopt amendment to the Criminal Procedural Code of Ukraine to exclude intentional minor bodily injuries and beatings and blows not causing injuries caused in domestic violence cases from a list of private prosecution crimes;

National Budget:

- To ensure in the respective budget lines of the national budget the sub-lines for supporting the operation of the shelters, crisis centers, rehabilitation centers, and other special institutions for victims of violence in a family and for implementation actions concerning violence in a family; and support of NGOs for implementation of national programs and actions concerning violence in a family.

To the Ministry of Family, Youth and Sport

1. To improve the accessibility and quality of services provided by the Centers of Social Services for the Family, Children, and Youth and its other institutions for victims of domestic violence, in particular in rural areas.

2. To support present and establish new shelters, crisis centers, rehabilitation centers, and other specialized institutions for victims of domestic violence.

To the Ministry of Science and Education, the Ministry of Internal Affairs, and the Ministry of Health

To create educational programs on domestic violence and incorporate them into the curricula of secondary schools and higher education institutions, as well as into curricula for future and practicing professionals.

To the State Court Administration

To incorporate courses on different aspects of domestic violence, including human rights aspect, into the curricula for future and practicing judges.

To the State Department of Statistics

To adopt gender-disaggregated statistics on victims of domestic violence and violent crimes, including data on the relationship between the victim and offender and previous acts.

LAW OF UKRAINE

On Prevention of Domestic Violence

This Law determines legal and organizational frameworks of prevention of domestic violence; bodies and establishments, which are in charge of taking measures on prevention of domestic violence.

Section I

GENERAL PROVISIONS

Article 1. Definition of terms

For the aims of this Law the terms stated below are used with the following meaning:

domestic violence - any intentional actions of physical, sexual, psychological or economic nature committed by one family member in relation to another family member, if these actions violate constitutional rights and freedoms of a family member as a person and citizen and inflict moral harm on her/him, harm to her/his physical or psychological health;

physical domestic violence - intentional inflicting of beatings, bodily harm by one family member on another family member, which may lead or has led to the victim's death, violation of his/her physical or psychological health, causing harm to her/his honour and dignity;

sexual domestic violence - illegal encroachment of one family member on sexual inviolability of another family member, and also acts of a sexual nature by one family member in relation to a juvenile family member;

psychological domestic violence - violence related to influence of one family member on the psyche of another family member through verbal offence or threats, pursuit, intimidations which intentionally cause emotional uncertainty, inability to protect her/himself and can cause or causes harm to psychological health;

economic domestic violence - intentional deprivation by one family member of another family member of habitation, meal, clothes and other property or funds, for which a victim has a legal right, that can cause her/his death, harm to physical or psychical health;

victim of domestic violence - a family member who suffered from physical, sexual, psychological or economic violence on the part of another family member;

prevention of domestic violence - the system of social and special measures, aimed to eliminate causes and conditions which trigger domestic violence; putting an end to domestic violence which is being prepared or has already begun; bringing persons guilty of committing domestic violence to responsibility; and also medical and social rehabilitation of victims of domestic violence;

real threat of committing domestic violence - the threat of committing intentional actions foreseen by the second paragraph of this article by one family member in relation to another family member, if there are solid grounds to expect their implementation;

protective order - a special form of responding, by service of district inspectors of militia and criminal juvenile militia, aimed to protect a victim of domestic violence, which prohibits the person who committed domestic violence from accomplishing certain actions in relation to the victim of domestic violence;

provocative behaviour concerning domestic violence – behaviour of a potential victim of domestic violence that provokes domestic violence.

Article 2. Legislation about prevention of domestic violence

Legislation on the prevention of domestic violence consists of the Constitution of Ukraine, this Law, other normative legal acts which regulate relations in the sphere of prevention of domestic violence.

Article 3. Bodies and establishments in charge of taking measures on prevention of domestic violence

1. The following bodies are responsible for taking measures on prevention of domestic violence within the limits of the plenary powers given to them:

- 1) a specially empowered executive body on prevention of domestic violence;
- 2) service of district inspectors of militia and criminal juvenile militia at the Ministry of Internal Affairs;
- 3) bodies of guardianship and patronage;
- 4) specialized establishments for victims of domestic violence:

crisis centers for the victims of domestic violence and family members who face a real threat of domestic violence (hereafter referred to as crisis centers); centers of medical and social rehabilitation of victims of domestic violence.

2. Executive bodies, organs of local self-government, enterprises, establishments and organizations irrespective of the form of ownership, associations of citizens, and also individuals can assist in taking measures on prevention of domestic violence.

Article 4. Grounds for taking measures on prevention of domestic violence

1. The grounds for taking measures on prevention of domestic violence are the following:

a statement of request for assistance filed by a victim of domestic violence or a family member who faces a real threat of domestic violence;

the desire to take measures on prevention of domestic violence expressed by a victim of domestic violence or a family member who faces a real threat of domestic violence, if the report or statement were made not by her/him personally;

a report filed about domestic violence committed or a real threat of it committed against a juvenile or disabled family member.

2. The statement and report about commitment of domestic violence or real threat of it should be submitted to bodies mentioned in subparagraphs 1 and 2 of the first paragraph of Article 3 of this Law, located at the place of residence of a victim.

3. A body, which received the statement or report about commitment of domestic violence or real threat of it, should examine the statement or report and take measures on prevention of domestic violence foreseen by law within the limits of its plenary powers.

4. The procedure of consideration of statements and reports on commitment of domestic violence or real threat of it should be adopted by the Cabinet of Ministers of Ukraine.

Section II

ORGANS AND ESTABLISHMENTS, WHICH are in charge of taking measures on prevention of domestic violence

Article 5. Authority of the a specially empowered executive body on prevention of domestic violence

A specially empowered executive body on prevention of domestic violence should:

take part in elaboration and implement a state policy on prevention of domestic violence;

co-ordinate activity of service of district inspectors of militia, criminal juvenile militia, organs of guardianship and patronage on the issues of prevention of domestic violence;

make a needs assessment in regions as to creation of the specialized establishments for victims of domestic violence;

control organization and functioning of the specialized establishments for victims of domestic violence;

collect and summarize data on domestic violence in accordance with legislation;

organize and conduct sociological, psychological, pedagogical and criminological researches on domestic violence;

provide executive bodies and organs of local self-government, enterprises, establishments and organizations regardless of the form of ownership,

associations of citizens, individuals with methodical and practical assistance, consultations on the issues of prevention of domestic violence;

organize and conduct awareness raising and explanatory activities as to rights, measures and services which can be used, among family members, who face a real threat of domestic violence or who have experienced it;

address the central and local executive bodies, organs of local self-government with request to provide proper assistance to victims of domestic violence;

accept and examine statements and reports on commitment of domestic violence and real threat of it;

refer victims of domestic violence and family members, who face a real threat of it, to the specialized establishments for victims of domestic violence.

Article 6. Authority of service of district inspectors of militia and criminal juvenile militia as to prevention of domestic violence

1. Service of district inspectors of militia and criminal juvenile militia should:

discover reasons and conditions which trigger demonstration of domestic violence, take measures within the limits of their plenary powers as to their removal;

include into prophylactic registry persons inclined to commitment of domestic violence, and carry out preventive and educative activities among them;

visit families, the members of which are included into prophylactic registry, at the place of their residence and conduct prophylactic activities with them;

make official warnings to family members about impermissibility of committing domestic violence and about impermissibility of provocative behaviour;

accept and examine within the limits of the plenary powers, foreseen by law, statements and reports about domestic violence or about a real threat of it;

take proper measures as to discontinuing of domestic violence and also actions of family members, that are directed on implementation of a real threat of it;

inform the family members, where a real threat of domestic violence appears or where domestic violence has been committed, about rights, measures and services which they can use;

refer victims of domestic violence to the specialized establishments for victims of domestic violence;

make protective orders in cases foreseen by this Law;

control fulfillment of requirements of protective orders;

co-operate with a specially empowered executive body on prevention of domestic violence, with organs of guardianship and patronage and the specialized establishments for victims of domestic violence on the issues of prevention of domestic violence;

provide information on the issues of prevention of domestic violence upon request of the respective bodies;

carry out other plenary powers as to prevention of domestic violence foreseen by law.

2. Plenary powers of criminal juvenile militia spread on cases, when a victim of domestic violence or a person, which faces a real threat of it, and also a person, who commits domestic violence, has not reached the age of 18-years-old.

Article 7. Authority of organs of guardianship and patronage as to prevention of domestic violence

Organs of guardianship and patronage should:

provide assistance in getting remedy for the violated rights and in defending legal interests of juveniles, which have parents and live in families; children-orphan, which remained without patronage of parents and are raised in families of guardians (trustees), families which adopted them, houses for children of family type; and also family members, declared by court as incapable, in the cases when they experienced domestic violence or face a real threat of it;

act as court representatives of juveniles and incapable family members, who became victims of domestic violence;

fulfill other plenary powers as to prevention of domestic violence, foreseen by law.

Article 8. Crisis centers

1. Crisis centers are created by local state administrations upon submission of a specially empowered executive body on prevention of domestic violence in accordance with the social needs of a region.

2. Crisis centers can be also created by organs of local self-government, by enterprises, establishments, organizations, charity funds, associations of citizens and individuals upon approval of a specially empowered executive body on prevention of domestic violence and should be registered according to procedure prescribed by law.

3. Employees of crisis centers should:

consult family members which can become or have become victims of domestic violence;

organize providing of necessary psychological, pedagogical, medical, legal aid to family members which can become or have become victims of domestic violence;

based on the available conditions provide shelter for temporary residence of family members which can become or have become victims of domestic violence;

inform the family members, where a real threat of domestic violence appears or where domestic violence has been committed, about rights, measures and services which they can use;

inform service of district inspectors of militia or criminal juvenile militia about revealed facts of a real threat of committing domestic violence or about facts of committing such violence;

study and summarize reasons and conditions of concrete cases of domestic violence;

provide information on the issues of prevention of domestic violence upon request of the respective bodies;

co-operate with mass media, organizations of civil society in conducting awareness raising and educational work as to prevention of domestic violence.

4. Crisis centers are non-for-profit organizations, enjoy rights of a legal entity, own headed note-papers, and a seal with the image of National Emblem of Ukraine and their title.

Article 9. Centers of medical and social rehabilitation of victims of domestic violence

1. The centers of medical and social rehabilitation of victims of domestic violence should be created in accordance with the legislation, which regulates creation of health protection establishments. The centers of medical and social rehabilitation of victims of domestic violence can be created within the system of operating establishments of health protection.

2. Victims of domestic violence should be placed in the centers of medical and social rehabilitation of victims of domestic violence (upon their consent or request) on the basis of a decision of medical commission of the center. As to juvenile family members, consent of one of parents, a foster parent, guardian or trustee or organ of guardianship and patronage is required.

3. Victims of domestic violence should stay in centers of medical and social rehabilitation during a term necessary for their treatment and psychological and social rehabilitation. Upon their wish they can undergo a course of treatment and psychological and social rehabilitation in ambulatory.

4. Employees of centers of medical and social rehabilitation of victims of domestic violence should:

provide victims of domestic violence with initial medical, sanitary and psychological aid, with separate types of psychiatric aid on the grounds and according to procedure foreseen by the Law of Ukraine "On Psychiatric Aid", by other laws;

upon a need refer victims of domestic violence for the proper subsequent treatment;

organize providing of legal aid to victims of domestic violence;

inform about cases of domestic violence the service of district inspectors of militia or criminal juvenile militia;

provide information on the issues of prevention of domestic violence upon request of the respective bodies.

Section III

SPECIAL MEASURES ON PREVENTION OF DOMESTIC VIOLENCE

Article 10. Official warning about impermissibility of committing domestic violence

1. Service of district inspectors of militia or criminal juvenile militia should issue an official warning about impermissibility of committing domestic violence to a family member, which committed domestic violence, on condition that there is no *corpus delicti* in his/her actions, and inform him/her about it on a receipt.
2. An official warning about impermissibility of committing domestic violence can be issued in relation to a capable person, who at the moment of issuing it has reached an age of 16-years-old.
3. In the case of committing domestic violence by a person who has received an official warning about impermissibility of committing domestic violence, a protective order can be issued in relation to this person in cases and according to the procedure, foreseen by this Law.

Article 11. Official warning about impermissibility of provocative behaviour as to domestic violence

In case of systematic (three and more times) provocative behaviour of a family member, that can cause committing domestic violence, service of district inspectors of militia or criminal juvenile militia should issue an official warning about impermissibility of provocative behaviour as to domestic violence to this family member, and inform him/her about it on a receipt.

Article 12. Including family members who committed domestic violence into prophylactic registry and removing them from prophylactic registry

1. Family members, which were issued an official warning about impermissibility of committing domestic violence, should be included into prophylactic registry by service of district inspectors of militia or criminal juvenile militia.
2. Removal family members who committed domestic violence from the prophylactic registry is conducted by bodies which included a person into such registry, if a person has not committed domestic violence for a year after the last case of domestic violence was committed.
3. The procedure of inclusion of family members, which were issued an official warning about impermissibility of committing domestic violence, into prophylactic registry and removal from it should be established by the Ministry of Internal Affairs of Ukraine.

Article 13. Protective order

1. The person, which committed domestic violence after the receipt of the official warning about impermissibility of committing domestic violence, may be issued a protective order by a district inspector of militia or official of criminal juvenile service, approved by a chief of the respective body of internal affairs and public prosecutor.
2. The protective order does not require approval in case if there is a *corpus delicti* in actions of a person, which committed domestic violence.
3. The protective order can be issued in relation to a capable person, who at the moment of issuing it has reached an age of 16-years-old.
4. Based on a protective order the person, towards whom it was issued, may be prohibited to take some action (actions) in relation to the victim of domestic violence, namely:

to do concrete acts of domestic violence;

to get information about the place of stay of victim of domestic violence;

to look for the victim of domestic violence, if the victim of domestic violence upon her/his personal will stays in a place, which is unknown to the person who committed domestic violence;

to visit the victim of domestic violence, if she/he temporally stays not at the place of common residence of family members;

to conduct telephone negotiations with the victim of domestic violence.

5. The limitations foreseen in paragraph four of this article are set for the period of up to 30 days starting from the day of approval the protective order by a public prosecutor.

Article 14. Reimbursement of costs on maintenance of victims of domestic violence in the specialized establishments for victims of domestic violence

Decision about charging from persons who committed domestic violence the reimbursement of costs on maintenance of victims of domestic violence in the specialized establishments for victims of domestic violence, should be made by court according to legally established procedure based on a lawsuit of administration of the specialized establishments for victims of domestic violence.

Section IV

LIABILITY FOR COMMITTING DOMESTIC VIOLENCE

Article 15. Liability for committing domestic violence

Family members which committed domestic violence are liable according to criminal, administrative or civil legislation.

Section V

FINANCING OF ORGANS AND ESTABLISHMENTS, WHICH ARE IN CHARGE OF TAKING MEASURES ON PREVENTION OF DOMESTIC VIOLENCE

Article 16. Sources of financing of organs, which are in charge of taking measures on prevention of domestic violence, and specialized establishments for victims of domestic violence

1. Financing of organs and establishments as to prevention of domestic violence, which belong to the system of organs of executive power or organs of local self-government, is conducted from a budget of the proper level.
2. Financing of the specialized establishments for victims of domestic violence, created by enterprises, establishments, organizations, charity funds, associations of citizens or individuals, is conducted from their personal funds.
3. The specialized establishments for victims of domestic violence are entitled to recourse action on reimbursement of costs on maintenance of victims of domestic violence to the persons, which committed domestic violence.

Section VI

PROTECTION OF RIGHTS OF FAMILY MEMBERS DURING TAKING MEASURES ON PREVENTION OF DOMESTIC VIOLENCE

Article 17. Protection of rights for family members during taking measures on prevention of domestic violence

1. Family members, towards which measures on prevention of domestic violence are taken, are guaranteed by the state protection of their rights and legal interests.

2. Public officials and employees which take measures on prevention of domestic violence can not disclose data about personal and family life, which they learned in connection with performance of their official duties.

Section VII

FINAL PROVISIONS

1. This Law enters into force in three months from the day of its publishing.
2. The Cabinet of Ministers of Ukraine during a month from the day of entry in force by this Law should:

prepare and submit for consideration to Verkhovna Rada of Ukraine suggestions on bringing into conformity with this Law the other laws of Ukraine;

bring its normative-legal acts into conformity with this Law;

within its authority provide for adoption of normative-legal acts foreseen by this Law;

provide for revision and abolition by the central and local executive bodies of the normative-legal acts which contradict this Law.

President of Ukraine

L. Kuchma

Kyiv

November 15, 2001

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ДОВІДКОВЕ ВИДАННЯ

Галина Федькович
Ірина Трохим
Марта Чумало

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*Halyna Fedkovych – Senior Lawyer, Legal Expert of the West Ukrainian Centre
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*Iryna Trokhym – Economist, Research and Monitoring Expert
of the West Ukrainian Centre “Women’s Perspectives”, chapters II, XI.*

*Marta Chumalo – Vice-Director, Gender Equality and Training Expert
of the West Ukrainian Centre “Women’s Perspectives”, chapter I.*

Legal Consultant Roksolana Potsyurko

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*Комп’ютерне складання Галини Федькович
Комп’ютерне верстання Людмили Білашевич
Художник-дизайнер Уляна Келеман*

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