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ARTÍCULO DE INVESTIGACIÓN

Aspectos legales de la protección de los derechos de las mujeres frente a la violencia doméstica según la legislación de Hungría y Ucrania **/DOI: 10.5281/zenodo.10435968**

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Resumen

El propósito del artículo es revelar la experiencia de Hungría y Ucrania en la regulación legal de la protección de las mujeres contra la violencia doméstica, identificar experiencias positivas que se han probado en la práctica y, por lo tanto, vale la pena seguirlas en otros estados. Para lograr este propósito, se utilizaron métodos de investigación científica generales y especiales, en particular métodos jurídicos dialécticos, sistemáticos y comparados. El artículo está dedicado al análisis de las características de la protección legal de las víctimas de violencia doméstica en dos estados de Europa del Este (Hungría y Ucrania). Se llevó a cabo un análisis de la formación de la regulación legal de la lucha contra la violencia doméstica en Ucrania y Hungría, con especial énfasis en la protección de los derechos de las mujeres. Se llevó a cabo un análisis comparativo de la legislación de Ucrania y Hungría en el campo de la lucha contra la violencia doméstica y se identificaron las fortalezas y debilidades de esta regulación. En ambos países se reveló una paulatina mejora de la regulación legal en esta materia, pero también se encontraron problemas en la implementación de la legislación.

Palabras clave: violencia doméstica, protección contra la violencia doméstica, protección judicial, derechos de la mujer.

Abstract

Legal aspects of protection of women's rights from domestic violence under the legislation of Hungary and Ukraine

The purpose of the article is to reveal the experience of Hungary and Ukraine in the legal regulation of protection of women from domestic violence, identify positive experience that has proven itself in practice and is therefore worth following in other states. To achieve this purpose, general and special scientific research methods were used, in particular dialectical, systematic and comparative legal methods. The article is devoted to the analysis of the features of legal protection of victims of domestic violence in two Eastern European states (Hungary and Ukraine). An analysis of the formation of legal regulation of combating domestic violence in Ukraine and Hungary was carried out, with

a special emphasis on the protection of women's rights. A comparative analysis of the legislation of Ukraine and Hungary in the field of combating domestic violence was carried out and the strengths and weaknesses of this regulation were identified. A gradual improvement of legal regulation in this area was revealed in both countries, but also problems in the implementation of legislation were found.

Keywords: domestic violence, protection from domestic violence, judicial protection, women's rights.

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1.- Introduction

Protection of women's rights from domestic violence is a topic that is being actively discussed in the 21st century, both at the national and international level. According to a study by the World Health Organization, one in three women worldwide has experienced violence, and one in four women between the ages of 15 and 24 has experienced partner violence. This data was collected even before the COVID-19 pandemic, as a result of which the number of people subjected to some form of violence has only increased. World Health Organization calls for combating domestic violence given the constant increase in cases of domestic violence, especially against women (World Health Organization, 2021).

Domestic violence, especially the protection of women from domestic violence, is a topic that is actively discussed in the 21st century, both at the national and international levels. Domestic violence against women has long transcended national boundaries, as well as socio-economic, cultural and racial differences, as it seriously affects the physical and mental health and well-being of women. The statistics of many countries show that the problem of domestic violence against women is present in all countries without exception, with the only difference that some of states are actively fighting to overcome this negative phenomenon.

Domestic violence against women is currently one of the most negative phenomena in both Hungary and Ukraine, which necessitates its study, development of ways to effectively prevention, combating and protection

2.- The aim of the study, Materials and methods

The purpose of this study is a comparative analysis of the regulation of the protection of women's rights from domestic violence under the laws of Hungary and Ukraine with the goal to find positive experience worth following in other states.

To achieve the goals and solve the tasks set in this scientific work, general scientific and special research methods were used. The comparative legal method was used to compare the legal regulation of protection of women from domestic violence in Hungary and Ukraine. During the writing of the article, a comparative analysis of Ukrainian and Hungarian legislation was carried out. Dialectical method was used to determine the conceptual and categorical apparatus, definition of the concept of the protection of women from domestic violence. System method was used to systematize and generalize the source base of research.

The historical method was used to analyze the formation of legal regulation of protection of women from domestic violence in Ukraine since the period of independence. An analysis of the development of Hungarian legislation in this area was also carried out. Using a predictive method proposition to improve the legislation of Ukraine in the field of prevention and countermeasures against domestic violence against women and legal protection of victims of domestic violence were made. The analysis of the development of legal regulation in this area indicates a significant improvement in the legal protection of victims of domestic violence. A significant positive in this area is the criminalization of domestic violence and the introduction of restrictive measures against persons who commit domestic violence.

3.Results and Discussion

The directions for the prevention of domestic violence in Hungary were first identified by the National Strategy on Community Crime Prevention (2003), responding to the current challenges of crime. The strategy had a separate section on the prevention of domestic violence. According to the Strategy's approach, there are three effective means of preventing domestic violence: early detection of abuse and neglect through an effective early warning system, special training for cooperating professionals, and the functioning of the institutional protection system. These goals have been achieved in Hungary through the following measures.

Crisis intervention centers have been operating in the country since 2005 to help people seeking asylum due to domestic violence. Victims can stay here safely and secretly for 30 + 30 days, they are provided with financial, psychological, social, legal support and assistance in planning daily life for the future. Crisis intervention centers are open 24 hours a day, and the National Crisis Telephone Information Service organizes a reception as soon as possible.

Since 2006, Hungary has had a state-funded Victim Support Service, which consists of a Victim Support Department of the Department of Justice and local Victim Support Services in districts (across the country). The service can provide financial, legal, psychological and practical support not only to victims of domestic violence, but also to victims of any other type of crime.

Since 2006, the charity organization Sorsunk es Jovonk (Our Destiny and the Future) has run a shelter for victims of violence.

In 2008, the Ministry of Social Affairs and Labor launched a model reintegration project for victims of domestic violence. As a result, halfway houses appear in the country, where women who have been abused can start a new life.

Changes have also taken place in the relevant legislation of Hungary: since 2006 it has been possible to issue a protection order during criminal proceedings; from 2009, temporary precautionary and precautionary protection orders can be issued before or instead of criminal proceedings; and finally, on July 1, 2013, a new provision of the law was introduced into the Hungarian Criminal Code: "Domestic violence" (which had not previously been recognized as a crime) (UCPN, 2022).

Ukraine's experience in combating domestic violence against women began after the country gained independence. As in many developed countries, the legal regulation of the system of protection of women's rights from domestic violence in Ukraine is subject to the Constitution, where in Art. 3. It is determined that:

A person, his/her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and direction of the state's activities. The establishment and maintenance of human rights and freedoms is the main duty of the state (Constitution of Ukraine, 1996).

The main list of rights and freedoms guaranteed by the state to every person is given in Section II "Rights, freedoms and responsibilities of man and citizen." It consists of 48 articles, two of which deal to some extent with the protection of women's rights from domestic violence - Articles 24, 28. These articles define the absence of privileges or restrictions on the grounds of sex, equality of rights of women and men, and the fact that no one may be subjected to torture, cruel, inhuman or degrading treatment or punishment.

In 2001, Ukraine became the first post-Soviet state which recognized the problem of domestic violence at the highest level, as a result of which the law "On the Prevention of Domestic Violence" was adopted, which established the legal and organizational framework for the prevention of domestic violence and the bodies and institutions entrusted with the implementation of measures to prevent domestic violence (Law of Ukraine, 2001).

From June 7, 2003, committing domestic violence was recognized as an administrative offense and a penalty in the form of a fine and correctional labor was envisaged. In the future, the sanction of the article has repeatedly changed and currently provides for the imposition of a penalty on the offender in the form of a fine from ten to twenty tax-free minimum incomes of citizens or public works for a period of thirty to forty hours, or an administrative arrest for up to ten days.

In order to eliminate existing inconsistencies in the legislation and ensure effective fight against domestic violence, on January 7, 2018 the new Law of Ukraine "On Prevention and Counteraction to Domestic Violence" of December 7, 2017 was introduced, which provides new definitions of domestic violence and its forms (economic, psychological, sexual, physical) and introduces new concepts, such as:

- Risk assessment, offender, program for the offender and others;
- Extends its effect to a significant number of persons, and the fact of cohabitation for the qualification of domestic violence is not decisive (for comparison: according to the Law of Ukraine "On Prevention of Domestic Violence" a mandatory condition for determining "family members" was fact of cohabitation);
- Clearly defines the bodies, institutions and their powers in the field of prevention and counteraction to domestic violence;
- Provides for the interaction of actors implementing measures in the field of preventing and combating domestic violence;
- Introduces the maintenance of a single state register of cases of domestic violence and gender-based violence; provides assistance and protection to victims; determines the rights of victims, including children;
- Establishes special measures in the field of prevention of domestic violence;
- Also provides for the maintenance of preventive accounting of offenders and conducting preventive work with them, the implementation of programs for offenders; etc (Law of Ukraine, 2018).

An important step in the fight against domestic violence is the adoption on December 6, 2017 of the Law of Ukraine "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine to implement the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence", which entered into force on January 11, 2019 (On Prevention and Counteraction to Domestic Violence, 2017). As a result, a number of novelties have been introduced into criminal law, in particular:

- Restrictive measures applied to persons who have committed domestic violence (Article 911 of the Criminal Code of Ukraine);
- Criminal liability for committing domestic violence (Article 1261 of the Criminal Code of Ukraine), coercion into marriage (Article 151-2 of the Criminal Code of Ukraine), failure to comply with restrictive measures, restrictive prescriptions or failure to pass the program for the offender (Article 390-1 of the Criminal Code of Ukraine);

- Several current provisions of the Criminal Code of Ukraine were also supplemented and amended (Article 134 "Illegal abortion or sterilization", Article 152 "Rape", Article 153 "Sexual violence").

The adoption of the Law of Ukraine "On Prevention and Counteraction to Domestic Violence" took place in order to implement the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter - the Istanbul Convention). As it is known, the Istanbul Convention is one of the most significant international acts against domestic violence. The Istanbul Convention has been signed by 47 countries, of which 35 have already ratified.

According to Article 3 of this Convention, "domestic violence" means all acts of physical, sexual, psychological or economic violence that occur within the family or within the place of residence or between former or current spouses or partners, regardless of whether the offender lived in the same place as the victim or not. Analyzing the preamble, we see that the member states of the Council of Europe recognize that women and girls are at greater risk of gender-based violence than men; domestic violence affects women disproportionately, although men can also be victims of domestic violence; children are victims of domestic violence, including as witnesses of domestic violence. That is why the signatories to the Convention seek to create a Europe free from violence against women and domestic violence.

The significance and uniqueness of the Convention lies in the fact that it recognizes violence against women as both a violation of human rights and a form of discrimination. The Istanbul Convention not only adapted the 3-P approach - Prevention, Protection, Prosecution - by establishing that the parties to the Convention undertake to prevent gender-based violence, protect against gender-based violence, and prosecute gender-based violence. Its success and undoubted advantage was that, accepting the need for a more productive response, the developers have included another "P" in the framework of the Istanbul Convention, obliging countries to implement policy integration. This means that overcoming violence against women is possible not only through criminal law and criminal procedure mechanisms, but also through integrated policies aimed at introducing substantive equality between women and men (Kharitonova, 2018).

Ukraine participated in the preparation of the Istanbul Convention as a member of the Council of Europe, which it later signed in 2011, but has not yet ratified, although there have been such attempts.

On November 14, 2016, the President of Ukraine introduced the draft Law of Ukraine "On Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence" (On Ratification, 2016). The ratification of the Istanbul Convention was provided for with the only proviso that, in accordance with paragraph 2 of Art. 78 of this international document, Ukraine reserves

the right not to apply the provisions of paragraph 2 of Art. 30 of the Convention. This regulation provides for the award of state compensation to victims of grievous bodily harm or health impairment so that harm is not compensated from other sources.

The Main Scientific and Expert Office noted in its Opinion that ratification of this Convention would contribute, in particular, to combating discrimination on the grounds of gender, ensuring an integrated approach to the prevention of all forms of gender-based violence; introduction of mechanisms to combat all forms of gender-based provision of additional guarantees for the protection of the right to equality between men and women, elimination of legal provisions that cause discrimination, etc.

The Law "On Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence" was considered in plenary session, but the majority of deputies stressed that this document contains certain norms that are unacceptable for Ukrainian society and Ukrainian spirituality.

For example, a quote from the speech of deputy of the Parliament M. Papiev:

In order to understand what we are now legitimizing, I will give you only one quote from Article 3 of this Convention, which says that gender means socially fixed roles, behavior, activities and characteristics that a particular society considers appropriate for women and men. That is, after the ratification of this Convention, the main ... will no longer be the physiological characteristics of a man or woman, but the main ones will become social characteristics: whether this person identifies himself/herself as a man or a woman. And a priori, if there is a physiological man in front of you, you cannot turn to him until he identifies himself by gender, to whom he belongs. That is, dear ones, such a controversial position is quite enough, and I think that it is too early for us, without a broad discussion, including in public organizations, in religious confessions, to ratify this Convention in such a hurry" (Meeting of the Verkhovna Rada, 2016).

The All-Ukrainian Council of Churches and Religious Organizations opposed the ratification of the convention, stating that the Istanbul Convention does not provide for the possibility of reservations regarding some of its provisions concerning the concept of "gender" as understood as male and female, "which carries unacceptable threats to the institution of the family and spouses in Ukraine" (Ukraine Crisis Media Center, 2016).

Thus, the draft Law on Ratification of the Istanbul Convention was sent for revision, and on May 20, 2019 it was withdrawn altogether. On May 14, 2020, the petition for ratification of the Istanbul Convention received more than 25,000 votes on the website of the President of Ukraine, after which the President of Ukraine Volodymyr Zelensky promised to submit to the Verkhovna Rada a bill on ratification of the Istanbul Convention. Prosecutor General Iryna Venediktova stressed the need to ratify the Istanbul Convention, commenting on the situation around information on social networks

about the facts of child abuse. The Istanbul Convention was ratified in Ukraine on June 20, 2022.

A rather similar situation regarding the approval of the Istanbul Convention took place in Hungary. Thus, in May 2020, the Hungarian Parliament adopted a political declaration initiated by the Christian Democrats to reject the Istanbul Convention.

Politicians in Hungary argue that the convention promotes "gender ideology", a term used to argue that gender equality undermines "traditional family values" and encourages homosexuality. They also argue that the Convention's protection of migrant and refugee women runs counter to Hungary's efforts to suppress illegal immigration (Margolis, 2020).

Hungarian Justice Minister Judit Varga said that a year before the Istanbul Convention, the Hungarian government had recognized domestic violence as a criminal offense and that all necessary legislation had been transposed into the Hungarian legal system. Moreover, according to the Minister, in this respect, Hungarian legislation provides women with stricter and more visible protection than EU practice in general. She added that "according to statistics, this form of violence is much lower than the European average". Varga also stressed on several occasions that the Ministry and the institutional system would take decisive action against domestic and intimate partner violence and effectively protect victims through women's human rights groups, activists and hotlines, more support centers and awareness campaigns. However, recently at an international online press conference of the Friends of Hungary Foundation, she admitted that due to the coronavirus epidemic, these steps, unfortunately, were suspended (Kaszas, 2020).

So, does the Istanbul Convention really carry the risks that are of concern in both Ukraine and Hungary? Let's try to deal with this issue, taking into account the current legislation of Ukraine.

Firstly, gender is the social existence of sex, the expectations that society places on people of one sex or another; understanding how gender roles are assigned to a person in the process of socialization and how social stereotypes are constructed, makes it possible to make the social environment more convenient and comfortable for everyone (Kharlamova and Inozemtsev, 2021).

The use of this term in the Istanbul Convention does not replace either the biological definition of "sex" or the terms "women" and "men", it only emphasizes how inequality, stereotypes and, accordingly, violence do not come from biological differences, but rather a social structure, namely from attitudes and ideas about what women and men should be in society (Istanbul Convention, 2011).

The concepts of "gender" and "gender equality" are not new or incompatible with Ukrainian legislation. The Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men", adopted in Ukraine in 2005 and remains in force, defines the concept of "gender equality" as equal legal status for women and men and equal opportunities for its implementation, which allows people of both sexes take an equal part in all spheres of social life (On Ensuring Equal Rights and Opportunities, 2005).

Secondly, according to experts E. Kuzmenko and N. Golub, the regulation of family life or family structure is not the purpose of the convention. The Convention does not contain a definition of "family" and does not establish any specific type of family relationship and does not promote this type. The aim of the Istanbul Convention is to end violence against women and domestic violence. It is not intended to define or regulate any type of family, traditional or not. It is not aimed at destroying the traditional Ukrainian family. It aims to end the silence on domestic violence that has caused suffering to victims, including children. Violence itself is a real threat to families, not measures to protect and support victims (Kuzmenko, 2020).

Thirdly, with regard to the contradictions of the Istanbul Convention with the religious traditions of Ukraine, it should be noted that the Convention does not regulate religious norms or beliefs. However, it emphasizes that culture, customs, religion, traditions or so-called "honor" should not be seen as an excuse for any act of violence. The Istanbul Convention has been ratified by a number of countries with strong religious traditions, including Serbia, Greece, Cyprus, Montenegro, Georgia, Spain, San Marino, Italy and Poland.

Fourthly, in our opinion, it is also a myth that the Istanbul Convention introduces same-sex marriage into Ukrainian law, as well as the concepts of "sexual orientation" and "gender identity", as the last two terms were included in Ukrainian law in 2015. In particular, the Labor Code of Ukraine contains Article 2-1 "Equality of labor rights of citizens of Ukraine", which provides for the prohibition of any discrimination in the field of labor, including violation of the principle of equality of rights and opportunities, direct or indirect restriction of workers' rights. "Sexual orientation" and "gender identity" (On Amendments to the Labor Code of Ukraine, 2015). The Istanbul Convention's approach to this issue is the same: sexual orientation and gender identity cannot be used as justifications for violence. In this regard, the experience of Croatia, which has ratified the Istanbul Convention, is interesting for following. At the same time, to reassure opponents, the government has issued a separate ratification statement stating that the Convention will not change the legal definition of marriage (marriage between a man and a woman) in the country.

In our opinion, Ukraine's ratification of the Istanbul Convention is necessary to improve the fight against domestic violence. With the adoption of the convention, prevention and combating domestic violence will become a legal obligation of the country under international law, not just a matter of political will in government. In addition, the

Istanbul Convention clearly states that violence against women and domestic violence can no longer be considered a private matter, and that the state must take a firm stand and take measures to prevent violence, protect victims and punish perpetrators. Ratification of the Convention will also lead to the exchange of information between countries on practices and approaches to combating domestic violence. External experts will monitor the implementation of the Istanbul Convention and can provide advice and recommendations that lead to better prevention of violence, protection of victims and criminal prosecution of perpetrators.

As noted above, domestic violence is prohibited in Hungary, as is rape. Hungary's criminal code punishes acts of violence that do not reach the level of physical violence, but seriously harm human dignity or cause economic violence. To commit a crime, in addition to belonging to a special group of victims (parents of a child, family member, ex-spouse, domestic partner, guardian or person under guardianship), the Criminal Code requires cohabitation or former cohabitation due to insecurity and vulnerability of people, which is the result of living together. However, cohabitation is not required if the person concerned has a child. An additional condition for such reasons is that violence must take place on a regular basis (Hungary, 2018).

A professor at Lafayette College in Easton, Pennsylvania, whose research interests include women's movements in Hungary, gender equality and the role of women's organizations in post-communist countries, also said that "despite legal changes since 2013, domestic violence has not improved", emphasizing that the crime of "violence in a relationship", as provided for in the Hungarian Criminal Code, excludes "partners who do not live together" and that the intervention requires "repeated violence" (Hungary, 2018).

Regarding the criminal law regulation of domestic violence in Ukraine, it should be noted that Article 126-1 of the Criminal Code of Ukraine qualifies this act as intentional systematic commission of physical, psychological or economic violence against a spouse or ex-spouse or another person with whom the perpetrator is (was) in a family or close relationship, leading to physical or psychological suffering, health problems, disability, emotional dependence or deterioration of the victim's quality of life (Criminal Code of Ukraine, 2001). For committing this act, the guilty person may be punished by community service for a term of one hundred and fifty to two hundred and forty hours, or arrest for up to six months, or restriction of liberty for up to five years, or imprisonment for up to two years.

We propose to consider in more detail the forms of domestic violence provided for in Article 126-1 of the Criminal Code of Ukraine.

One of the most common types of violence is physical violence, which can manifest itself in striking, beating, wounds, as well as in the impact on the outer covering of the human body through the use of physical force, weapons or other objects, liquids,

as well as in the impact on the internal organs of a person without damaging external tissues, limiting the realization of physical needs (food and sleep), limiting freedom of movement, refusing to help in case of illness or injury. The extreme form of physical violence is torture, infliction of grievous bodily harm, infliction of injuries incompatible with life (Gaukhman, 1974).

According to Art. 173-2 of the Code of Ukraine on Administrative Offenses, administrative liability arises only for such acts of a physical nature that did not cause physical pain and did not cause bodily harm (Code of Ukraine on Administrative Offenses, 1984).

Manifestations of psychological violence are the following actions: ignoring the feelings of the person; insulting beliefs that have value for a person, his religion, nationality, race or origin; social status; harassment, intimidation; coercion; humiliation of personality; constant criticism and ridicule, etc. (Methodical recommendations, 2016). Psychological violence often causes depression, nervous disorders, exacerbation of chronic diseases, and even leads to suicide. Psychological violence in the family often accompanies all other types of violence.

Economic violence manifests itself in such signs as: deprivation of resources for proper physical and psychological well-being; accountability for money spent and / or withdrawal of all earned money; prohibition of work of a family member, despite his wishes and ability to work; other signs. One of the most common manifestations of economic violence in Ukraine is expulsion from the house (apartment), which is mostly applied to women and children (Methodical recommendations, 2016).

It should be noted that sexual violence also cannot constitute an administrative offense under Art. 173-2 Code of Ukraine on Administrative Offenses. The scientific community has repeatedly stressed that sexual violence in the family can manifest itself not only in the form of crimes, but also in sexual behavior, which does not contradict the Criminal Code of Ukraine, but violates the sexual integrity and sexual freedom of women or men, which is a manifestation of domestic violence in the sense of the Law of Ukraine "On Prevention and Counteraction to Domestic Violence". According to the literature, these can be actions that have the character of intrusive sexual intimacy: constant imposition of sexual intimacy when a woman or man is in a state of alcohol or drug intoxication; imposing sexual intimacy when a woman or man does not want it but is afraid to refuse; imposing special types of sexual contact on a woman or a man against his / her will; imposing physical contact with erogenous zones, other parts of their body without the consent of a woman or a man, etc. (Zaporozhtsev, 2012).

In 2020, the European Court of Human Rights for the first time in the case of *Buturuga v. Romania* considered the phenomenon of cyberbullying as a form of violence against women. In this context, the ECtHR recalled that domestic violence should not only be perceived as physical violence, it could include, among other forms, psychological violence or intimidation. In addition, cyberbullying is now recognized as a

form of violence against women and can take a variety of forms, including cyber privacy, computer intrusion and seizure, dissemination and manipulation of data or images, including privacy. In the context of domestic violence, cyberbullying was often carried out by the person's close partner.

The court agreed that actions such as unlawful monitoring, access or retention of correspondence of one of the partners could be taken into account by the authorities when investigating cases of domestic violence. The court also stressed the need for a comprehensive consideration of the phenomena / cases of domestic violence in all its manifestations, which is especially important in this case. In considering the applicant's allegation of cyberbullying and the request to search the family computer, the domestic authorities were too formalistic in denying any connection with domestic violence, which the applicant had already reported. Therefore, she was forced to file a new complaint about the violation of the secrecy of her correspondence. Considering such a complaint separately, the authorities did not take into account that domestic violence can take many forms. In contrast, the ECtHR took a comprehensive approach, examining the allegation of physical violence and cyberbullying in general under Articles 3 and 8 of the Convention (Judgment, 2020).

Thus, when considering cases of domestic violence, courts should recognize the concept of cyberbullying as a form of psychological violence.

Since 2009, the Hungarian Code of Criminal Procedure has introduced the issuance of restrictive orders in the event of domestic violence. Police called to the scene of a domestic violence may issue a three-day restraining order, while courts may issue up to 60 days without the possibility of extension.

The shortcomings in the issuance of the restrictive orders in Hungary are pointed out in the judgment of the European Court of Human Rights of 24 April 2012 in the case of *Kalucza v. Hungary*. The peculiarity of the present case was that in it both the applicant and her former partner had repeatedly used violence against each other, as a result of which more than ten criminal proceedings had been registered. During these proceedings the applicant twice applied for a restraining order, but was refused, mainly because, in the national courts' view, despite the obvious risk of re-violence, the applicant could not be considered a victim because the violence was reciprocal.

In addition, even the decision on the first application for a refusal to issue a restraining order was issued only one and a half years after the applicant's application, as the court hearings in this case had been postponed several times. As a result of consideration of this case, the ECtHR found a violation of Art. 8 of the Convention. In particular, the ECtHR noted that the State had a positive obligation to protect the applicant, despite the fact that she had also used violence against her former partner. If restrictive prescriptions could not be issued in cases of mutual violence, this would seriously undermine the purpose of such measures, namely the effective protection of

victims. Moreover, in such cases, self-defense cannot be ruled out. Moreover, according to the ECtHR, when both parties use violence, restrictive instructions should be issued against both parties to prevent contact between them. The ECtHR was also struck by the length of time it took the national court to hear the first application for a restraining order.

Therefore, the ECtHR noted that even if a restrictive injunction is ultimately refused, a decision must be taken without delay, as the essence of the measure is to immediately or at least promptly protect the victim from violence. The ECtHR added that the problem in such cases is also the lack of statutory deadlines for appropriate decisions (Judgment, 2012).

The authorized units of the bodies of the National Police of Ukraine, in the event of an immediate threat to the life or health of the victim, with the aim of immediately stopping domestic violence, prevention of its prolongation or repeated commission, also have the right to issue an urgent restraining order to the offender. Such an order is issued at the request of the victim, as well as on his/her own initiative by an employee of an authorized unit of the National Police of Ukraine based on the results of a risk assessment.

An urgent restraining order, which is issued for up to 10 days, may contain the following measures: an obligation to leave the place of residence (location) of the victim; a ban on entry and stay at the place of residence (location) of the victim; prohibition in any way to contact the injured person (Law of Ukraine, 2017).

The victim, his / her representative, as well as the child's legal representatives, the guardianship authority (in case of domestic violence against the child or incapacitated person) have the right to apply to the court for a restraining order.

The restrictive order defines one or more of the following measures of temporary restriction of the rights of the offender or imposition of obligations on him: 1) prohibition to be in the place of joint residence (stay) with the injured person; 2) elimination of obstacles in the use of property that is the object of the right of joint ownership or personal private property of the injured person; 3) restriction of communication with the injured child; 4) prohibition to approach at a certain distance to the place of residence (stay), study, work, other places frequently visited by the victim; 5) prohibition to search for the injured person personally and through third parties, if he / she is at a place unknown to the offender, to persecute him / her and to communicate with him / her in any way; 6) a ban on correspondence, telephone conversations with the victim or contact with him through other means of communication in person and through third parties.

A restrictive order is issued for a period of one to six months and may be extended by a court for a period not exceeding six months after the expiration of the term established by such an order upon the application of persons entitled to apply for a

restrictive order (Civil Procedure Code of Ukraine, 2004). The decision to issue a restrictive order or to refuse to issue a restrictive order is made on the basis of a risk assessment.

4. Conclusions

After analyzing the legal regulation of protection of women from domestic violence in Hungary and Ukraine, it should be concluded that Ukrainian and Hungarian legislation equally condemns domestic violence, recognize it as a criminal offense and provide for the application of restrictive orders to the perpetrator. At the same time, the improvement of the consideration of cases on the issuance of restrictive orders in a shorter time and the improvement of the mechanism of judicial protection of women from domestic violence remain relevant issues for both countries. Hungary still faces the task of ratifying the Istanbul Convention. We join the position of those scholars who emphasize the need to include sexual violence in the administrative offense. This will help harmonize existing legislation on the definition of domestic violence and provide an opportunity to protect a person from such acts against him or her.

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