

Problematic Issues of Prevention of Criminal Violence in the Sphere of Family and Domestic Relations

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Abstract

The purpose of the article is to identify modern problems of preventing violence in the domestic sphere. To achieve this goal in the article, using both general scientific and special methods (dialectical, historical, formal-logical, analysis, system-structural, logical-semantic, comparative-legal, formal-legal and prognostic), a number of tasks are solved, namely, a study is being made of the effectiveness of the existing norms provided for by the legislation of the Republic of Kazakhstan to prevent violence in the sphere of family and domestic relations, existing gaps in national legislation and problems of law enforcement practice are being identified, current trends affecting the problem of domestic violence are being considered, and foreign experience in this area. It is indicated that the insufficient level of prevention of criminal violence in the sphere of family and domestic relations is complex and is caused by a number of problems, the solution of which requires a systematic approach.

Keywords: Gender Violence; Child Abuse; Criminological Characteristics; Criminal Law; Human Rights.

Introduction

Despite all the achievements of mankind, domestic violence continues to be a widespread problem affecting the rights and legitimate interests of individuals and families around the world. The social danger of this phenomenon is not limited to moral and ethical aspects and violation of the rights of specific victims, but has a significant impact on the state of society as a whole. By destroying the institution of family and having a huge negative impact on the developing psyche of children, domestic violence leads to the risk of society losing the family as its foundation and the younger generation as the future of the nation. All this determines the relevance of a timely assessment of the effectiveness of legislative

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regulation of the prevention of domestic violence and the need to improve the legal framework in this area.

The current legislation of the Republic of Kazakhstan has basically already created a legal framework for the prevention of offences in the family and domestic sphere, however, the level of criminal violence in the family remains high. For example, last year, 93 women were killed as a result of domestic violence (Uysembekova & Aksabaev, 2022). In his message to the people of Kazakhstan in 2022, President K. K. Tokayev again drew attention to the problem of violence in the family sphere, noting the continued relevance of the issue of criminalization of violence in the family sphere and the timeliness of tightening punishment for it, despite the critical attitude towards this approach on the part of law enforcement agencies (President Kassym-Jomart Tokayev's state of... 2023). In April 2023, a discussion of problems related to domestic violence became the subject of a thematic meeting of the Chamber Committee on Social and Cultural Development of the Mazhilis. According to Mazhilis deputy N. Sarsengaliev, "49 thousand were received from victims of domestic violence in 2019, 179 thousand in 2020, and 155 thousand in 2021. In 2022, there were 115 thousand such applications, but in 60 percent of cases, human rights activists failed to take any action" (Measures to protect women and children from violence were... 2023).

Today, a number of studies by Kazakh legal scholars are devoted to the problem of preventing domestic violence. Thus, a comprehensive analysis of the formation of legislative regulation regarding illegal actions in the sphere of family and domestic relations was carried out by A.M. Kalguzhinova and S.S. Serikbayeva (2019). A detailed analysis of the consequences of domestic violence, especially violence against children, for the institution of the family and society as a whole, a comprehensive description of the concept of violence and domestic violence, as well as their types, are described in the work of S.M. Rakhmetov (2020). Suggestions for improving the definition of legally significant signs of domestic violence are contained in the study by K.K. Rakhimberdin and M.R. Geta (2021). It should also be noted the study by A.B. Kaizhakparova (2022), devoted to general issues of improving the effectiveness of crime prevention and analysis of the current legislation of the Republic of Kazakhstan in this area.

Thus, the problem of preventing domestic violence constantly remains in the focus of attention of the state authorities of the Republic of Kazakhstan, which made it possible not only to lay the foundations for solving the problem of preventing domestic violence at the national level, but also to demonstrate the desire to bring the legislation in line with international standards in the field of ensuring legal women's dignity, gender equality, family well-being, motherhood and childhood, and human rights in general (Botnarenko, 2022; Maksymenko,

2022). At the same time, the COVID-19 pandemic has exacerbated the problem of domestic violence again, causing an increase in crimes of this nature. Legislation has not yet had time to fully respond to the problems that have arisen, while new ones are already beginning to arise – the impact on the level of domestic violence and its prevention of modern technologies. The purpose of this study is to identify modern problems of preventing violence in the domestic sphere, for which a number of tasks were set: to analyse the current legislation of the Republic of Kazakhstan in the field of domestic violence and determine ways to improve it, to characterize the impact on the situation in the field of preventing domestic violence the COVID-19 pandemic and the latest technologies.

Materials and Methods

The dialectical method was used to study social relations related to the prevention of domestic violence, as well as the measures provided by law to prevent such violence. Consideration of these aspects in their interconnection and unity made it possible to identify patterns and dynamics of development of both the phenomenon itself and legislation in this area. The historical method was used to study the chronological causes of domestic violence and develop legislative regulation aimed at preventing such violence. The formal-logical method contributed to a thorough study of the norms of the current legislation establishing legal responsibility for domestic violence, as well as regulating the activities of bodies involved in the process of preventing domestic violence. The method of analysis was used to clarify the features and trends of the current state of legal regulation and scientific research in the field of preventing domestic violence. With the help of the synthesis method, the studied phenomena were investigated in their interrelation and general conclusions were made.

The system-structural method contributed to the study of various components of the mechanism for preventing domestic violence in the family and their content. At the same time, the logical-semantic method was used to clarify the conceptual-categorical apparatus used in the article. To determine the specifics of preventing domestic violence in foreign countries, as well as to study the impact of the COVID-19 pandemic on the state of domestic violence in them, a comparative legal method was used, which helped to identify positive experience of legal support in this area. The formal legal method was used to analyse the effectiveness and consistency of laws and regulations in the field of preventing domestic violence, as well as to identify legal conflicts and inaccuracies. Finally, the predictive method was used to study the consequences of implementing proposals to improve the current legislation of the Republic of Kazakhstan, amend the system of domestic regulatory legal acts to prevent domestic violence, as well

as to determine the prospects for the development of new forms of domestic violence in connection with the development of modern technologies.

The regulatory framework for the study conducted in this article was international legal acts, reports, and studies of international organizations, as well as regulatory legal acts adopted by the President, the Cabinet of Ministers and other central and local government bodies of the Republic of Kazakhstan, which determine the legal basis for the prevention of domestic violence. The information and empirical base of the study was obtained by studying judicial practice in cases of administrative and criminal offences related to domestic violence, as well as statistical data. Additionally, criminological and forensic information from other sources was used, including reports and statistical studies of international institutions such as the United Nations (UN), the Council of Europe, and the World Health Organization. The empirical basis of the study was also the scientific work of leading legal scholars of the Republic of Kazakhstan, Ukraine, Great Britain and other countries.

Results

Today, the Republic of Kazakhstan has basically created a legislative framework for the prevention of domestic violence. An important legislative milestone in this process was the adoption on December 4, 2009 of the Law of the Republic of Kazakhstan “On Prevention of Domestic Violence” (2009), which singled out the sphere of domestic violence prevention from the general context of violent assaults. This law was the first attempt to create a comprehensive legal act in this area, which should cover various aspects related to the prevention of domestic violence. As indicated in the preamble of this law, its norms are aimed at determining the legal, economic, social and organizational foundations for the activities of state bodies, local governments, organizations, and citizens of the Republic of Kazakhstan in the prevention of domestic violence. An analysis of the norms of the law allows speaking about the main focus of its norms on the protection of victims, the prevention of ill-treatment and bringing offenders to justice.

One of the key features of the law is the definition of terms related to domestic violence, which should provide a common understanding of what constitutes domestic violence. For the purposes of this article, the attention is, firstly, to be paid to three of them: the concept of family and domestic relations, the concept of domestic violence and the concept of prevention of domestic violence. Thus, by family and household relations, the Law means relations that take place between certain categories of persons, such as spouses (including former spouses), persons who live (or lived) together, close relatives, persons who

have a common child or children. Thus, it is possible to talk about three evaluation criteria that make it possible to classify relationships as family and domestic: family status (spouses, close relatives, parents); Cohabitation; emotional connection based on former marital status or cohabitation (former spouses, persons who previously lived together). Here, special attention should be paid to the legislator's approach to referring to family and domestic relations between former spouses and persons who previously lived together, which fully meets international standards, in particular the provisions of the Council of Europe Convention on prevention and control of violence against women and domestic violence (2011), which contains the concept of domestic violence as such, which means "all acts of physical, sexual, psychological or economic violence that occur in the family or domestic circle or between former or current spouses or partners, regardless of whether the perpetrator lives in the same place as the victim." This approach is fully justified and meets the specifics of family relations, since family ties are of a continuing nature and the problems that arise during their existence cannot be resolved by a simple change in the legal status of the persons in such relations. Taking this, to a greater extent, psychological aspect into account makes it possible to make the entire system for the prevention of domestic violence more effective.

Domestic violence is defined by the Law on the Prevention of Domestic Violence as a deliberate unlawful act (action or inaction) of one person in the sphere of family and domestic relations in relation to another (others), causing or containing a threat of causing physical and (or) mental suffering. Thus, the main characteristics of domestic violence will be its intentional nature, wrongfulness, specific legal characteristics of the subjects, as well as the fact that the very threat of such behaviour is already considered as violence, which is of particular importance precisely from the point of view of preventing such offences. Finally, the prevention of domestic violence is defined as a set of legal, economic, social and organizational measures carried out by the subjects of prevention of domestic violence (which include state bodies, local governments, organizations, and citizens of the Republic of Kazakhstan), aimed at protecting constitutional rights, freedoms and legitimate interests of a person and a citizen in the sphere of family and domestic relations, the prevention, and suppression of domestic violence, as well as the identification and elimination of the causes and conditions that contribute to their commission.

The law distinguishes such types of domestic violence as physical, psychological, sexual and economic. This approach is a reflection of the understanding of the fact that ill-treatment can manifest itself in different ways. By recognizing and classifying these different forms of abuse, the Domestic

Violence Prevention Act provides a more accurate understanding of domestic violence and facilitates individual responses. In order to ensure that victims receive the necessary support, the Law prescribes the provision of special social services. These services are designed to assist victims in their recovery and enable them to break the cycle of violence. In an effort to prioritize the needs of victims, the law recognizes the importance of a holistic approach to combating domestic violence. At the individual level, specific measures are established to prevent domestic violence. These include preventive conversations, the purpose of which is to identify potential risks and intervene before the situation escalates to the point where serious harm is possible. In addition, orders of protection may be issued to provide immediate protection to victims (Komarynska, 2022; Komarynska & Polian, 2023). Offenders may be subject to administrative detention to prevent further harm. The law also establishes behavioural requirements for offenders aimed at preventing their illegal behaviour (Saktaganova et al., 2023). This approach is aimed at correcting their behaviour in the family and household sphere.

In criminal proceedings, the law guarantees that procedural enforcement and safeguards are in place to protect victims during investigations and trials. This should ensure that victims are not further traumatized during the trial and can safely seek justice. It is important to note that the Law emphasizes the need for confidentiality in providing assistance to victims of domestic violence. This provision ensures that victims can seek help without fear of disclosure of their personal information, thereby encouraging them to come forward and receive the necessary support. Speaking about the prevention of domestic violence, one should also note the norms of administrative legislation, in particular “On administrative infractions” (2014), which in Part 1 of Article 73 contains a list of illegal actions in the sphere of family and domestic relations, namely: obscene language, insulting harassment, humiliation, damage to household items. This list is not exhaustive, since the specified article also includes other actions expressing disrespect for persons who are in family and domestic relations with the offender, violating their peace of mind. There are two defining features of this offence. Firstly, the place of its commission may be an individual residential building, flat or other dwelling and, secondly, these actions should not contain signs of a criminally punishable act.

The definition of domestic relations is contained in article 73 and is the same as in the Law on the Prevention of Domestic Violence. The criterion of being in family and domestic relations is provided as a qualifying sign when committing other administrative offences. So, for example, part 1-1 of article 73-1 of the Code of Administrative Offences of the Republic of Kazakhstan provides

for administrative liability for the intentional infliction of minor bodily harm in relation to a person who is in family and domestic relations with the offender, and part 1-1 of article 73-2 – for beatings. It should be noted that sanctions providing for liability for offences in the family and household sphere were tightened in 2023 (On introducing amendments and additions to the Code of... 2023). So, if earlier administrative arrest for such actions was provided for up to five days (up to 10 days in case of a repeated offence within a year after the imposition of an administrative penalty), then from July 1 this period is set to five and ten days, respectively. The same changes were made to parts 1-1 of article 73-1, when the term of administrative arrest was changed from up to fifteen days to fifteen days, and part 1-1 of article 73-2, when the term of administrative arrest was changed from up to ten days for ten days. And although in the legal literature “increased dynamism of the legislation on administrative offences” is named among its important problems (Kalguzhinova & Serikbayeva, 2019; Hloviuk et al., 2024), the proposed approach to strengthening administrative measures to a certain extent is a departure from that enshrined in Article 3 of the Law of the Republic of Kazakhstan “On Prevention of Domestic Violence” (2009) of the principle of prioritizing preventive measures to prevent domestic violence over repressive ones, given the increase in cases of domestic violence due to the COVID-19 pandemic and the need for a prompt response to the problem that has arisen, this approach can be called reasonable.

The Part 2 of Article 54 “On administrative infractions” (2014) provides for the possibility of establishing special requirements for the behaviour of a person who has committed an administrative offence in the sphere of family and domestic relations. Thus, in order to protect the victim and his family members, the court has the right to impose a ban on the residence of the person who committed domestic violence in the same dwelling as the victim for up to thirty days, if such a person has an alternative place of residence. Here, one should immediately pay attention to the controversy of this provision of the Law, since it guards the interests of the offender much more than it guards the interests and rights of the victim. It is unlikely that, in this wording, this provision of the Code can be considered an effective tool for preventing domestic violence. As mentioned above, this type of violence has its own specifics, which is reflected in a long-term nature, deep psychological (and sometimes mental) changes in the character and behaviour of both the offender and the victim. It can be predicted that in such a situation, the offender will make every effort to retain the opportunity to live in the same living space with the victim, which can lead to tragic consequences, and also practically deprive the victim, who will remain under the control and pressure from the offender, to fight for one’s rights. In connection with the foregoing, it is

expedient to exclude the words “if this person has another home” from paragraph 2 of clause 3 of part 3 of Article 22 “Establishment of special requirements for the behaviour of the offender” of the Law of the Republic of Kazakhstan “On Prevention of Domestic Violence” (2009) and the above article “On administrative infractions” (2014). With the overall positive dynamics in the development of legislative regulation of the prevention of violence in the domestic sphere, attention should be paid to a number of points that require further rethinking and clarification.

Returning to the message of K.K. Tokaev to the people of Kazakhstan (President Kassym-Jomart Tokayev’s state of... 2023), one should once again pay attention to raising the issue of the need to criminalize violence in the domestic sphere. It should be noted that with the adoption in 2017 of the Law of the Republic of Kazakhstan “On Introduction of amendments and additions to some legislative acts of the Republic of Kazakhstan on improvement of the criminal prosecution system” (2017), which decriminalized such acts as the intentional infliction of minor bodily harm (Art. 108 Penal Code of the Republic of Kazakhstan (2014)) and beatings (Art. 109 Criminal Code of Ukraine (2001)), the entire domestic violence prevention system was simply deactivated. For comparison, it is worth citing the approach that was reflected in the criminal legislation of Ukraine, when domestic violence was defined as a separate type of crime. Thus, article 126-1 of the Criminal Code of Ukraine (2001) defines domestic violence as the deliberate systematic infliction of physical, psychological or economic violence against one of the spouses (including the former) or another person with whom the perpetrator is (was) in family or close relationship that caused physical or psychological suffering, health disorder, disability, emotional dependence or deterioration in the quality of life of the victim. Punishment for this type of criminal act is established in the form of community service, arrest, restriction, or imprisonment. Taking into account the specifics of the functioning of the family and household sphere and the high public danger of family and domestic violence, this approach seems to be fully justified.

Not only the criminalization of domestic violence as such, but also, given the particularly dependent state of the victim in such relationships, considering it as an aggravating feature of other types of violent crimes, continues to be the most effective deterrent for subjects of this type of offence today. It is this approach that was introduced in the Turkish Criminal Code (1926). The commission of a violent crime against one of the parents or descendants, against a spouse (including former ones), a brother or sister is classified as a qualified type of premeditated murder (Art. 82), intentional bodily harm (Art. 86), infliction of torment (Art. 96), imprisonment (Art. 109).

With regard to sexual violence, if the victim is a spouse, a criminal case is initiated on the complaint of the victim, if the victim is a person with whom the perpetrator is related by blood or kinship to the third degree, stepmother or stepfather, half-brother/sister, adoptive parent or adopted, then this will be considered as a qualifying sign (Spytska, 2023). Canadian legislation follows the same path. Thus, the current federal Criminal Code of Canada (1985) contains a number of articles that can be applied in cases of domestic violence: child pornography (Art. 163.1), intrusion at night (Art. 177), failure to provide necessities (Art. 215) stalking (Art. 264), threatening (Art. 264.1), assault (Art. 265-268), imprisonment (Art. 279), sexual assault (Art. 271-273), committing obscene and offensive telephone calls (Article 372) and a number of other articles. The commission of such actions in relation to the spouse is considered as an aggravating circumstance, and Art. 718-201 indicates the duty of a court sentencing for the offence of intimate partner abuse to take into account the particular vulnerability of female victims.

Thus, the criminalization of domestic violence can take different forms. This may be either the inclusion of a specific article “domestic violence” in the criminal law, or the consideration of the commission of crimes provided for by criminal law against persons falling under the definition of victims of domestic violence as a qualifying (aggravating) sign of a crime. In the latter case, it must be taken into account that domestic violence can take a wide variety of forms. For example, the decriminalization of minor bodily harm has practically removed a significant number of cases of domestic violence from the scope of the criminal law.

Discussion

Today, discussions about the prevention of domestic violence among legal scholars continue unabated. The variety of proposed approaches to solving this problem can be explained, in particular, by the fact that its understanding affects not only professional knowledge, but also the personal, moral and ethical considerations of each participant. The most topical issue is the need for criminalization of crimes in the domestic sphere, which is assessed differently in the legal literature. For example, according to V. RUFANOVA and A. KUATOVA (2021), although domestic violence is not considered a separate criminal offence, the current criminal legislation of the Republic of Kazakhstan includes 20 specific offences that can be qualified as criminal acts in the sphere of family and domestic relations. In addition, the Code of Administrative Offences provides for the punishment of persons involved in offences related to family relations. Most of these norms are interrelated. Thus, the absence of specific criminal and

administrative rules on domestic violence is compensated by the existence of a wide range of general laws regulating issues related to violence. Such a position can hardly be considered justified, since it is the specifics of domestic violence that determines its increased social danger, and therefore it is necessary and justified, if not the criminalization of domestic violence itself, then the inclusion of the commission of a violent act in the family and domestic sphere as an aggravating feature of the crime.

Here, it is worth agreeing with the opinion of A.M. Kalguzhina and S.S. Serikbayeva (2019), that the criminalization of a specific act is appropriate based on several factors, which include the public danger of the act, its prevalence in law enforcement practice, and countermeasures taken. The legislator criminalizes behaviour that is recognized as dangerous because of its negative impact on society. The establishment of a criminal law norm for domestic violence will thus be socially conditioned. This conditionality is determined by the significant damage that it causes to public relations, the antisocial orientation of the person who commits acts of domestic violence, the widespread occurrence of this act, and its increased threat to society. To date, non-criminal measures have shown their low effectiveness in combating domestic violence. Ultimately, the criminalization of domestic violence will significantly reduce the response time from the law, prevent the growth of crime and ensure the stability of society and the peace of citizens.

At the same time, it should be noted that the issue of acts that may characterize the composition of domestic violence should be approached critically. For example, in the legal literature there is a proposal to include before the list of actions constituting domestic violence, forcing the victim to engage in prostitution or to participate in the production of pornographic materials (Rakhimberdin & Geta, 2021). The Penal Code of the Republic of Kazakhstan contains Article 132 “Involving a minor in prostitution” (2014), part 4 of which refers to a qualified type of this crime when it is committed by a parent or other person who, by the law of the Republic of Kazakhstan, is responsible for raising a minor. Thus, it will be sufficient to expand the qualified composition of Part 4 of Art. 132, supplementing it with an indication that the subjects of this *corpus delicti* are any persons who may be subjects of domestic violence. Also, Article 308 of the Penal Code of the Republic of Kazakhstan “Involvement in prostitution” (2014) can be supplemented by an appropriately qualified composition. The same decision can be implemented with regard to coercion to participate in the production of pornographic materials, criminal liability for which is provided for in Article 312 of the Penal Code of the Republic of Kazakhstan “Production and circulation of materials or objects with pornographic images of minors or their involvement in

participation in entertainment events of a pornographic nature” (2014). At the same time, it should be noted that the current legislation provides for criminal liability for this crime only in relation to minors, while there is no such *corpus delicti* for adults. In this case, it is necessary to raise the issue of criminalizing the forcible involvement of a person to participate as a model or actor in the production of materials and (or) objects of a pornographic nature, as well as performers in entertainment events of a pornographic nature, and the commission of this crime by a person with whom the victim is in family and domestic relations, include in the composition as a qualifying feature.

Thus, today, there is every reason to revise and improve the national legislation of the Republic of Kazakhstan in the field of prevention of domestic violence. It should be noted that the aggravation of this problem can be caused by many factors, for which national instruments to combat domestic violence are simply not ready. This is not only a problem of the Republic of Kazakhstan. Thus, the analysis and statistics provided on the basis of the COVID-19 Global Gender Response Tracker in 42 countries out of 206 studied lack gender-responsive responses to the problems caused by the pandemic. And only 25 countries out of 206 have taken measures to combat violence against women during the pandemic (Government responses to COVID-19: Lessons on gender... 2022.). At the same time, statistics show a widespread increase in domestic violence during the quarantine period. The pandemic has become a litmus test for gender issues, highlighting the vulnerabilities and inequalities faced by women around the world (Hbur, 2021; Yara et al., 2023). Thus, an increase in domestic violence and an increase in reports of domestic violence was reported: in France – by 30 percent, in Spain – by 20, in Cyprus – by 30, in Brazil – by 40-50 (Ertana, El-Hagec, Thierréc, Javelote & Hingray, 2020).

It should be noted that the impact of the pandemic on the level of domestic violence in the legal scientific literature is considered not only as a consequence of the long stay of the victim and the offender in a confined space, but also as a consequence of the economic crisis caused by the pandemic. Thus, in her study of economic violence as a type of domestic violence in Lithuania, R. Jakštienė (2023) points to the decline in employment among women and the resulting financial difficulties as factors that increase the dependence of victims of domestic violence. While social exclusion, limited access to legal assistance and other support institutions are seen as factors that exacerbate the situation with domestic violence during the pandemic. Such an approach to assessing the situation in the field of domestic violence through the economic crisis clearly demonstrated the remaining rather high gender inequality in the economic sphere and allows concluding not only that there is an underestimation of the danger of economic

violence in the domestic sphere, but also that building an effective prevention system of domestic violence is inseparable from the problem of ensuring gender equality in the economic sphere. It must be understood that with the end of the pandemic, the problem of domestic violence has remained, and the experience gained and its competent implementation will not only improve existing mechanisms, but also prepare for possible future challenges. In connection with the pandemic, governments around the world have once again become convinced that the key to effectively combating domestic violence is a comprehensive and multifaceted approach to the problem, including raising awareness of victims of domestic violence and the public, providing support services, improving regulatory legal regulation, providing access to safe spaces for victims of domestic violence. The combination of these measures with a gender-sensitive approach to the development of public policy is a prerequisite for creating an effective system to combat domestic violence (Yara et al., 2021).

An analysis of the legal literature also showed that in recent years, the impact of technology on the dynamics of family and domestic violence has become a subject of growing concern. As more and more publications shed light on this issue, it becomes clear that the latest technologies can be used to harass, exploit, and control victims of domestic violence. This suggests that domestic violence persists even in the digital realm. Today, various “technological” tools are used to commit acts of family and domestic violence. One such tool is coercive control, using technology to monitor and limit the activities of victims. This may include actions such as tracking the location of the victim using GPS-enabled devices or monitoring their online activity using spyware. By applying this level of control, the perpetrator seeks to further isolate and intimidate his victim. Another type of domestic violence that has been enhanced by technology is financial abuse by gaining control over the victim’s finances or limiting their access to their own financial resources, as well as exploiting the victim’s financial resources. As an example of control over victims of domestic violence, the use of “smart home” systems is also given by including remote control of household appliances, security systems, or even the use of voice assistants to monitor and pursue their victims (PenzeyMoog & Slakoff, 2021). Recognizing the seriousness of this problem, leading companies around the world are starting to use the concept of inclusive safety, which encourages them to take a proactive stance in the fight against the use of digital tools to combat domestic violence. In turn, legal science should concentrate on developing possible legal frameworks for countering new challenges in the field of combating domestic violence. This approach to the inclusion of new types of violence has already found understanding at the international level. Thus, in September 2021, MEPs called for

the recognition of gender-based violence as a crime under EU law, including in the list of types of gender-based violence, in addition to traditional ones, such types of violence using the latest technologies as cyberstalking, remote control or surveillance (including using spyware), security), illegal access to messages or social media accounts (Stepanenko, Stepanenko, Boichenko & Pavlova, 2023).

At the same time, attention should be paid to the need for a balanced approach to the inclusion of certain types of actions in the general system of criminal acts provided for by criminal law. So, for example, despite the widespread criminalization of stalking in European countries (Austria, Belgium, Denmark, Germany, Holland, Great Britain, Ireland, Malta, Italy, Poland), Judge of the Collegium for Criminal Cases of the Supreme Court of Lithuania O. Fedosyukas expressed concern that criminalization of persecution as a separate type of crime will reduce the effectiveness of Article 145 of the Criminal Code of Lithuania, which provides for liability for the threat of murder or infliction of grievous bodily harm or intimidation (Juškaitė & Guliakaitė, 2021). On the other hand, it is noted that during stalking such threats may not exist, while the victims still suffer significant psychosocial damage, since the persecution itself is psychological violence. Thus, negative consequences for the life of the victim are observed in 62% of cases of persecution. These are mainly psychological consequences and health disorders, such as anxiety disorders, interpersonal communication problems, panic attacks, phobias, sleep disorders (Mozgava & Nazar, 2016). Thus, the criminalization of stalking as a separate type of crime is especially relevant from the point of view of the prevention of domestic violence, especially in the case of former spouses or former spouses who previously lived together, since it indicates the persistence of the offender's intentions to put pressure on the victim, but it is necessary to carefully approach its criminalization in terms of the already existing system of criminal law.

The legal literature also draws attention to the need for scientific development of the issue of terminology that will be used in legislation in connection with new types of domestic violence caused by the use of new technologies. Thus, B.A. Harris and D. Woodlock (2018) consider such options as "technology-assisted harassment", "technology-abused" and note that in this case, attention is redirected to the issue of technology use more than to issues related to gender. violence and come to the conclusion that the notion of "technologically facilitated" persecution would be more appropriate, which they also do not accept as final. This can also be said about any new types of domestic violence that lawyers have yet to face in connection with the development of new technologies, which means that with the current general trend of legal regulation lagging behind existing realities, this issue is becoming relevant for legal science already.

Conclusions

The legislation in force today in the field of combating domestic violence, although it basically fixes the mechanism for such counteraction, is still not effective enough, both because the protection of the interests and rights of the victim of such violence is mainly assigned to the victim herself, and in connection with the inability to have a really effective impact on the offender due to the decriminalization of such unlawful acts as causing minor bodily harm and beatings. Strengthening administrative responsibility for domestic violence is a positive, but still insufficient measure that could increase the effectiveness of preventing this type of offence.

Taking into account the social danger of domestic violence, its negative consequences for children, as well as the especially dependent position of the victim, this type of offence should not only be criminalized, but the commission of violence in the domestic sphere should, among other things, be defined as a qualifying sign of other violent crimes. At the same time, legislative work to improve national legislation in the field of prevention is moving extremely slowly. Thus, on January 22, 2021, the initiators withdrew the draft Law of the Republic of Kazakhstan “On Combating Domestic Violence”, submitted for consideration in March 2020. Almost a year of discussions ended in nothing. Now, the Parliament is considering a draft law “On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Strengthening the Institution of the Family”, which also does not provide for increased criminal liability for domestic violence, which means that if it is adopted, it is highly likely it will have only a “cosmetic” effect for the system of crime prevention in this area.

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