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Date: 25/11/2021

DH-DD(2021)1275

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Meeting: 1419th meeting (December 2021) (DH)

Communication from an NGO (15/11/2021) in the case of Levchuk v. Ukraine (Application No. 17496/19) and reply from the authorities (23/11/2021)

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1419e réunion (décembre 2021) (DH)

Communication d'une ONG (15/11/2021) relative à l'affaire Levchuk c. Ukraine (requête n° 17496/19) et réponse des autorités (23/11/2021) ***[anglais uniquement].***

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DH-DD(2021)1275: Rules 9.2 & 9.6 Communication from an NGO in Levchuk v. Ukraine & reply from the authorities.
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UKRAINIAN HELSINKI HUMAN RIGHTS UNION

11 November 2021

DGI
15 NOV. 2021
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DES ARRETS DE LA CEDH

Council of Europe
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UKRAINIAN HELSINKI HUMAN RIGHTS UNION'S SUBMISSION TO COUNCIL OF EUROPE COMMITTEE OF MINISTERS: LEVCHUK V. UKRAINE

This briefing is submitted in accordance with Rule 9(2) of the Rules of Committee of Ministers for the supervision of the execution of judgement.

1. Introduction

1.1. The Ukrainian Helsinki Human Rights Union

The Ukrainian Helsinki Human Rights Union (UHHRU) is the largest All-Ukrainian association of human rights organizations. Among UHHRU efforts to protect human rights are ongoing monitoring of the human rights situation in Ukraine and informing the public about facts of their violation; provision of legal assistance to victims of human rights violations, including supporting strategically important cases; protection of human rights and fundamental freedoms in court, the authorities and bodies of local self-government; human rights research and analysis, including regular monitoring of draft laws and legal acts; as well as preparing and advocating our own legislative initiatives, conducting awareness-raising campaigns, educational seminars, and training of human rights.

1.2. Case summary

The case concerns a violation of the applicant's right to respect for her private life as, in 2016-2018, the domestic courts dismissed an eviction claim against her former husband without having conducted a comprehensive analysis of her personal situation and the risk of future psychological and physical violence that herself and her minor children faced (violation of Article 8). Noting further that the proceedings had lasted over two years at three levels of jurisdiction, during which the applicant and her children remained at risk of further violence, the Court considered that the domestic courts' response did not comply with the State's positive obligation to ensure the applicant's effective protection from domestic violence (§ 90).

1.3. Aim of the submission

The aim of this submission is to comment on the scope and content of the respondent state's action plan and to suggest other individual and general measures that can help to solve the complex problem of domestic violence in Ukraine according to the ECtHR decision.

2. Individual measures

2.1. A new civil proceedings

The main problem the ECtHR revealed is the violation of the principles of comprehensiveness and proportionality by the Ukrainian courts (§ 87, 90). The most appropriate individual measure is a new trial that takes into account all circumstances of the case and decides whether it should be used an eviction according to article 116 of the Housing Code.

As of today, a new civil procedure is pending before the Rivne Court of Appeal. The next court hearing is scheduled on 5 October 2021. However, the Rivne Court of Appeal is able to fix the violation of the aforementioned principles, but not to evict ex-husband. Ukrainian Women Lawyers Association "JurFem" mentioned in her submission to the Committee of Ministers that the ex-husband owns the ⅙ part of the social apartment. Therefore, the claim of the applicant will be dismissed even after taking into account the aforementioned principles, because article 116 of the Housing Code cannot be used in order to evict an owner.

On the one hand, violation of the aforementioned principles can be fixed, but on the other hand, it does not make sense, because of non-fulfilment of the positive obligation to ensure the applicant's effective protection from domestic violence. Therefore, we disagree with the Government of Ukraine that the new civil procedure according to article 116 of the Housing Code is an example of restitution in integrum.

2.2. Procedural obligation

The applicant claimed the authorities had not wanted to investigate her complaint about domestic violence. They had persuaded her that it was in her own best interests to reconcile with her former husband and close the case (§ 69).

The Government of Ukraine mentioned that the Police department in the Rivne region registered three complaints by an applicant with no. 52202 of 21 December 2019, no. 52321 of 22 December 2019 and no. 53164 of 27 December 2019. Also, the applicant lodged a complaint about domestic violence, which was considered in accordance with the Law of Ukraine "On Citizens' Appeals" by the Police Department in the Rivne region. Based on the results of consideration of this complaint a report on an administrative offence was drawn (no. 489578 of 02 January 2020, under article 173-2 of the Code of Administrative Offences, which relates to the "Committing domestic violence, gender-based violence, failure to abide by a restraining order or failure to notify the place of temporary residence").

However, the Government of Ukraine did not provide information on whether any of these complaints were considered by the court or what was done by the Police.

A report on an administrative offence (no. 489578 of 02 January 2020, under article 173-2 of the Code of Administrative Offences) was to be considered by the court according to article 221 of the Code of Administrative Offences (hereinafter - "the CAO").

The Government of Ukraine did not mention any individual measure relating to these complaints.

2.3. Parental rights and child support

The Government of Ukraine mentioned that the Ukrainian courts deprived the ex-husband of his parental rights over their children and obliged him to pay child support and alimony.

Our organization agrees that deprivation of parental rights and the obligation to pay child support and alimony are a part of the policy against domestic violence. However, we suppose it has only a secondary place to comply with a positive obligation to ensure the applicant's effective protection from domestic violence. Despite the fact, ECtHR revealed a complex problem, the applicant did not complain about parental rights and child support. Moreover, most of the judgements of the Ukrainian courts were adopted before the judgment of ECtHR or around that time. The Government of Ukraine did not take into account primary activities that should be done to comply with positive obligations.

Attempts of the Government relating to parental rights over the children and child support and alimony should be evaluated positively anyway. However, Ukrainian Women Lawyers Association "JurFem" mentioned that the court decisions regarding both child custody and alimony payments in favour of the victim and her children have remained unenforced, due to the evasion and non-compliance of the perpetrator.

2.4. Conclusions and recommendations

We ask the Committee of Ministers to include the following individual measures for the execution of the judgement of ECtHR by the Government of Ukraine:

1) to ensure that violation of the principles of comprehensiveness and proportionality will be fixed during the new civil procedure;
2) to notify an applicant about effective measures enshrined in the Ukrainian legislature that can be used to evict a perpetrator temporarily or on an ongoing basis in case of domestic violence;
3) to provide information about results of investigations and judicial proceedings relating to complaints of the applicant to the National Police about domestic violence;
4) to ensure bringing to justice those responsible for non-fulfilment of official duties relating to complaints about domestic violence by the applicant;
5) to ensure execution of judgments of Ukrainian courts relating to the payment of child support and alimony by ex-husband.

3. General measures

Despite the fact, ECtHR revealed a violation of positive obligation in terms of a comprehensive analysis of the situation and principle of proportionality, the case of Levchuk v. Ukraine is under the enhanced procedure of execution because of a complex problem. It means that general measures should be executed in order to guarantee compliance with the positive obligation to ensure effective protection from domestic violence in general. Therefore, our organization is going to offer two blocks of general measures: one of them that is exactly related to violations revealed by ECtHR and others that include measures to overcome domestic violence in Ukraine as a complex problem.

We would like to underline that all general measures concerning the Law of Ukraine “On Prevention and Combating Domestic Violence” are interconnected with the Law "On Ensuring Equal Rights and Opportunities for Women and Men".

3.1. Violations revealed by ECtHR

3.1.1. The principles of comprehensiveness and proportionality

The government of Ukraine claims that Ukrainian judges take into account the principles of comprehensiveness and proportionality during solving cases relating to domestic violence. It was demonstrated by the legal position of the Supreme Court.

However, even offered judicial practice demonstrated that not all Ukrainian courts took into account the positive obligation to ensure effective protection from domestic violence and the principle of proportionality. This problem was also identified in the report “Court Considerations on Issuing Restraining or Protection Orders in Cases of Domestic Violence: International Standards and Overview of Ukrainian National Practice” that was produced under the project “The Istanbul Convention: a tool to advance in fighting violence against women and domestic violence in Ukraine”[1].

We suppose that preparing the practice of the application of legislative norms concerning domestic violence by the Plenum of the Supreme Court can be a way to draw the attention of the judges of Ukraine to the legal position of ECtHR.

The same recommendation was underlined in the aforementioned report: “It is feasible to summarize the data on the issuance and extension of restraining orders by judges, as well as case law on their violation so that the judges could apply unified approaches to the consideration of cases of this category, which is in line with international standards and ECtHR practice”[2].

[1] https://rm.coe.int/restraining-protection-orders-dv-report-ukraine/1680a01299 (en.);
https://rm.coe.int/ukr-restraining-protection-orders-dv-report-ukraine/1680a03399 (ukr.)
[2] https://rm.coe.int/restraining-protection-orders-dv-report-ukraine/1680a01299 (page 80)

The practice should be in an integrated manner and include, in particular, the application of the Law of Ukraine "On Prevention and Combating Domestic Violence", the Criminal Code of Ukraine (hereinafter - "the CCU") and the CAO during prosecution, the Civil Code of Ukraine and the Housing Code of Ukraine during the eviction of the perpetrator and so on.

The Government of Ukraine also mentioned that the judgment of ECtHR was sent, in particular, to the National Police of Ukraine, the Main Department of the National Police in the Rivne Region, the Rivne Court of Appeal, and the National Academy of Internal Affairs of Ukraine and others.

The Government of Ukraine could initiate a process of bilateral communication with Ukrainian organs that violate and/or should adhere to ECtHR. The Government of Ukraine could get suggestions from the National Police of Ukraine, the courts and so on how to ensure execution of articles of ECHR and what should be done for that in terms of a specific violation.

3.1.2. Measures to stop further domestic violence

ECtHR notes that the proceedings of the applicant lasted over two years at three levels of jurisdiction, during which the applicant and her children remained at risk of further violence (§ 90).

In Ukraine there exists a mechanism that could solve this situation: restrictive or prohibitive orders (article 23-24 of the Law of Ukraine "On Prevention and Combating Domestic Violence").

However, the National Police do not often use mechanisms by themself and the court cannot use prohibitive orders by itself without an application by the victim, their relatives or guardianship authority (only concerning children). Moreover, the physical and psychological state of the victim, feelings to the perpetrator or attitude of relatives to domestic violence obstruct the use of mechanism by the victim or relatives.

We believe the National Police shall have a possibility to appeal to the court in order to apply for a restrictive order. Other authorities should also have such a possibility. The courts should also have a possibility to use a restrictive order on his own initiative during solving cases of deprivation of parental rights, imposition of obligations to pay alimony, eviction of a perpetrator, criminal proceedings (art. 126-1,152-153 and so on) and administrative proceedings according to the CAO (art. 173-2 and relating).

This problem was partly underlined in the analytical report "Risk Assessment Standards and Methodologies...": "judges of general jurisdiction with competence over administrative offences do not have the competence to issue restrictive measures. These constitute wide gaps in available protection for victims". It was recommended "to amend Article 173-2 of the Code of Administrative Offences to enable judges of general jurisdiction to issue urgent injunctions and/or restrictive measures on the basis of risk assessments"[3].

[3] https://rm.coe.int/eng-26-06-corrected-by-designer/16809eedf5 (page 64, 76)

We should also underline that the CCU has special measures that can be used near to punishment in case of domestic violence (art. 91-1 of the CCU). Such special measures ensure the security of a victim after the prosecution of a perpetrator. Nonetheless, the CAO does not contain similar special measures. We are convinced that the security of a victim must be guaranteed even after "administrative" domestic violence. A special programme for a perpetrator is not enough to ensure security (art. 39-1 of the CAO).

3.2. Complex problem

3.2.1. Eviction of a perpetrator

The Ukrainian legislature has several options to evict a perpetrator:

- a perpetrator can be temporarily evicted because of prohibitive (up to 10 days) or restrictive (up to 6 + 6 months) orders (the Law of Ukraine "On Prevention and Combating Domestic Violence");
- a perpetrator can be permanently evicted from rented housing (art. 116 of the Housing Code);
- a perpetrator (not an owner) can be permanently evicted as a family member by an owner of a house (art. 157 of the Housing Code);
- a perpetrator (not an owner) can be permanently evicted by an owner of an apartment (art. 391 of the Civil Code of Ukraine);
- property rights of a perpetrator (co-owner) can be permanently terminated by a co-owner of an apartment if it is impossible to use the property (art. 365 of the Civil Code of Ukraine);

The aforementioned Housing Code is a Code of the Ukrainian SSR. This Code is useless in the democratic society of Ukraine. Any cosmetic changes to Code complicate its application. For example, an applicant used article 116 of the Housing Code to evict the ex-husband. This article includes a concept of rules of socialist coexistence. Only systematic violation of the rules of socialist coexistence is a legal reason to evict any person, including family members (no-owners). It clearly violates the principle of legal certainty and foreseeability. Moreover, the right of an ex-family member (not an owner) to live in an apartment prevails over the property rights of the owner (art. 158 of the Housing Code). It means the owner of the apartment is obliged to prove a systematic violation of the rules of socialist coexistence by not an owner in order to evict him.

ECtHR found that on 14 June 2017 the Rivne Regional Court of Appeal quashed the Town Court's judgment and dismissed the applicant's claim because "It is apparent from the case-file material that on a number of occasions the applicant called the police to her home address and accused the defendant of having committed unlawful acts in respect of her and in respect of her family members; however, it has not been demonstrated that [O.L.] systematically breached the rules on living together and was found liable [on this account]"(§ 39).

Therefore, the Housing Code cannot be used as an effective instrument in order to evict a perpetrator of domestic violence, because its principles are not the principles of modern Ukraine. Moreover, the Housing Code does not take into account the problem of domestic violence. The only third and more cases of domestic violence can be a "systematic violation of the rules of socialist coexistence".

The judges of the Romano-Germanic system of law in Ukraine are usually very formalistic. They are not able to change or interpret the legal norms of the Housing code in other ways.

The Supreme Court in case No. 447/455/17 expressed a partly similar position that "the Housing Code of the Ukrainian SSR was adopted on 30 June 1983 and does not reflect all the realities. The Civil Code of Ukraine was adopted later, so the conflict of laws shall be resolved in favour of the provisions of the Civil Code"[4].

The Government of Ukraine mentioned the judgement of the Supreme Court as one of the examples of general measures. We agree that the judgement can help other judges to find a benchmark for solving cases. However, we disagree that it decides a problem in a comprehensive manner. Firstly, the judges of Ukraine can move away from a position of the Supreme Court and offer their own legal position. Secondly, the aforementioned judgement of the Supreme Court does not include a universal approach to the issue of domestic violence and the eviction of a perpetrator. The individual measure of para. 3.1.1. can cover the issue of domestic violence in an integrated manner.

The Housing Code of the Ukraine SSR should be cancelled or changed at least. However, the Housing code shall be changed in a comprehensive manner, because the principles of the Code must be changed, not only some articles.

We also suppose that articles 391, 405 of the Housing Code should be changed in order to underline the prevailing right to life and health over the right of a perpetrator (an owner or not) to live in the same house with a victim of domestic violence. Any owner and more importantly a victim of domestic violence (also the owner) do not have to prove that no owner of an apartment (even wife or husband) violates anything to force him to leave the victim's apartment. The National Police should have the possibility to force a perpetrator (not an owner) to leave an apartment at the request of an owner without any verdict or judgement.

Article 365 of the Civil Code of Ukraine also should be changed to cover the problem of domestic violence. We suppose that the perpetrator`s share could be sold to a victim or to the local authorities. According to current practice, article 365 of the Civil Code of Ukraine can be used only when "termination does not significantly harm the interests of the co-owner and his family member". That is why article 365 of the Civil Code should be changed to underline the rights of a victim, but not a perpetrator.

The more complicated problem is when a victim is not the owner of the apartment. Prohibitive and restrictive orders can temporarily help and 12 (6 + 6) months is time to rent a new apartment, when a perpetrator is an owner of the apartment. However, if the apartment is rented housing, the Civil Code of Ukraine should have a special legal norm to defend the rights of the victim of domestic violence. For example, changes to art. 391 or/and to Chapter 58 of the Civil Code of Ukraine could cover such a situation. The interests of the victim must prevail over any right of a perpetrator to live in the rented house. The case Levchuk v. Ukraine demonstrated that article 116 of the Housing code is not an option.

[4] https://reyestr.court.gov.ua/Review/93217994

Relevant provisions of the Family Code of Ukraine should also be changed.

3.2.2. Private prosecution

The applicant claimed the authorities had not wanted to investigate her complaints about domestic violence. They had persuaded her that it was in her own best interests to reconcile with her former husband and close the case (§ 69).

Domestic violence is a crime of private prosecution that can be initiated only by a victim (art. 477 of Criminal Procedure Code of Ukraine). It entails closure of criminal proceedings, persuasion and threatening of a victim in order to force her to withdraw the application, legal troubles in the court during deciding whether to deprive of parental rights, use of restrictive order and so on.

“The ECtHR has required ex officio investigations and prosecutions under the positive obligations found within Article 2 (right to life) and Article 3 (prohibition on torture and ill-treatment) in cases involving domestic violence (Branko Tomašić and Others v. Croatia, Application No. 46598/06, 2009, para 62). The Court held that States also have a positive obligation to investigate under both Articles 3 (prohibition against torture and ill-treatment) and 8 (right to respect for private life) of the Convention (M.C. v. Bulgaria, Application No. 39272/98, 2004, paras 150-153)”[5].

“Where discrimination against women also constitutes an abuse of other human rights, such as the right to life and physical integrity in, for example, cases of domestic and other forms of violence, States parties are obliged to initiate criminal proceedings, bring the perpetrator(s) to trial and impose appropriate penal sanctions”[6].

Despite the fact, the Government of Ukraine has not ratified the Istanbul Convention yet, the latter obliges to ensure ex officio investigations and prosecutions in cases of physical, sexual violence, forced marriage, female genital mutilation, forced abortion and forced sterilisation (art. 55).

Crimes of forced abortion and forced sterilisation (art. 134 (2,4) of the CCU), forced marriage (art. 151-2 of the CCU), forced sexual intercourse (art. 154 of the CCU) are also the crimes of private prosecution. Despite the fact, ECtHR mentioned only the issue of domestic violence in terms of article 8 of ECHR, the aforementioned crimes are interconnected.

The Government of Ukraine implemented many requirements of the Istanbul Convention during the adoption of a special legislature relating to domestic violence and demonstrated adherence to the content of the Istanbul Convention. The Government of Ukraine also intends to ratify the Istanbul Convention.

The aforementioned crimes should be out of the private prosecution.

[5] https://rm.coe.int/eng-26-06-corrected-by-designer/16809eedf5 (p. 65-67)
[6] https://www.refworld.org/docid/4d467ea72.html (para. 34)

3.2.3. Criminal and administrative domestic violence

On 10 June 2015, the applicant lodged a criminal complaint with the police, informing them that at about 9 p.m. on 31 May 2015 O.L. had kicked her during an argument at home. On 11 June 2015 criminal proceedings were initiated against the ex-husband under Article 125 of the Criminal Code in relation to the alleged assault on the applicant (§ 13-14).

Article 125 of the Criminal Code of Ukraine covers intentional minor bodily injury without specifying whether it is domestic violence. It means that any fighting between people and inflicting minor bodily injury to a family member is equated by the CCU. The only difference is that bodily injury to a family member is an aggravating circumstance that influences punishment within art. 125 (art. 67 of the CCU).

First of all, it means law enforcement agencies do not identify domestic violence as domestic violence. Secondly, punishment for intentional minor bodily injury (art. 125(1)) is much less than punishment for domestic violence (art. 126-1). Thirdly, a judge can not use special restrictive measures to a perpetrator of domestic violence according to article 91-1 of the CCU. Fourthly, such qualification confuses the judges during other proceedings relating to the relationship between partners, because the judges refuse to take into account an act of domestic violence without a verdict according to art. 126-1 of CCU or art. 173-2 of the CAO.

One of the problems is the “systematic nature” of domestic violence according to art. 126-1 of the CCU. Only one or two cases of domestic violence can not be qualified as domestic violence according to art. 126-1 of the CCU.

Another disturbing point is article 126 of the CCU (blows, beatings that do not cause bodily harm) and article 173-2 of CAO (in particular, domestic violence that does not cause bodily harm). It is a little bit strange that general blows, beatings are criminal offences, but blows, beatings of a partner are administrative misconduct. Moreover, it means the law enforcement agencies are obliged to qualify domestic violence as general blows, beatings according to art. 126 of the CCU (art. 9 of the CAO). Therefore, domestic violence is not identified again, not by the CCU or the CAO. The aforementioned problems are also relevant here.

We are assured that domestic violence must be identified and criminalised. Any repeated act of domestic violence (art. 173-2 (2) of the CAO) should be criminalised. Any act of physical violence should be criminalised, as underlined in General Recommendation No. 28 on the Core Obligations of State Parties Under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women and Article 35 of the Instanbul Convention.

We should also underline that the aforementioned problems were described in the analytical report “Risk Assessment Standards and Methodologies to ensure the safety of victims of violence against women and domestic violence in Ukraine”[7].

[7] https://rm.coe.int/eng-26-06-corrected-by-designer/16809eedf5 (pages 63-67)

3.2.4. Exemption from liability and punishment

When society tries to overcome discrimination, gender-based violence that is a model of co-existence before, any possibility of releasing from liability is a destructive one for attempts to overcome a problem.

Many people are still guided by stereotypes relating to the social roles of men and women: what they can or cannot do and what they should tolerate because of their social role or not. A victim as a part of society is in a vulnerable position because society is guided by “real” social roles. Domestic violence destroys the principles of modern society and cannot be tolerated. Any exemption from liability is one of the examples of tolerating discrimination and gender-based violence because of the nature and complex character of a problem.

An applicant mentioned that “On 5 July 2016, with respect to the conduct of ex-husband on 13 April 2016, the Rivne Town Court found him guilty of an act of domestic violence within the meaning of Article 173-2 of the CAO. O.L., who took part in the hearing, acknowledged that he was guilty of the offence in question. The court also decided that the ex-husband could be relieved of formal liability for the offence and given only an oral reprimand, in view of the fact that the applicant had asked for this, as the parties had already resolved their differences” (§ 32).

According to the Ukrainian legislature, a perpetrator can be exempted from liability for domestic violence because of the insignificance of misconduct (art. 22 of CAO), committing firstly, reconciliation with a victim and making amends (art. 46 of the CCU). A perpetrator can also be exempted from punishment for domestic violence (art. 74-75 of the CCU).

Art. 46, 74 of the CCU cannot be used when a perpetrator is guilty of a crime according to art 126-1 of the CCU (domestic violence). However, releasing from liability or punishment are options if domestic violence qualifies as intentional minor bodily injury or blows, beatings that do not cause bodily harm (art. 125-126 of the CCU), because of the systemic nature of the art. 126-1 of the CCU (see. 3.2.2.).

Our organization is convinced that exemption from liability and punishment for domestic violence (art. 22 of CAO and art. 46, 74 of the CCU) is not compatible with trying to overcome discrimination and gender-based violence.

An option of probation release (art. 75(1) of the CCU) is a little bit more debatable. However, article 75 of the CCU does not have clear criteria when it can be used. Moreover, it does adapt to nature and the reasons for domestic violence. Therefore, a perpetrator has the possibility to persuade the judges and policemen with stereotypes to tolerate domestic violence, because it is a private problem, a victim is guilty of herself and so on.

Mechanism of probation release also has a defect relating to domestic violence: “another significant gap in the legislation in Ukraine [article 78(2) of the CCU] enables perpetrators to commit three administrative offences prior to having been considered as violating probation. Given that domestic violence offences are often addressed as administrative offences and not

crimes, this exposes the victim to multiple additional acts of violence prior to the imposition of consequences to the perpetrator”[8].

3.2.5. Initiative

“As signalled by CEDAW General Recommendation 35: "Protection measures should avoid imposing an undue financial, bureaucratic or personal burden on women victims/survivors."[9] It is very important to note in this regard that with the exception of the urgent injunction, the financial, procedural and evidentiary burden of ensuring victim safety in Ukraine falls almost entirely upon the victim. Victims must inform police of violations of the protection order and must hire a lawyer to file a request for a restrictive measure, bearing the evidentiary burden. Victims must inform police of violations of protection orders, and must hire a lawyer to request a restrictive measure, bearing the entire evidentiary burden. There are often difficult emotional and economic barriers for victims of domestic violence to overcome to take such actions. Furthermore, given the short duration of urgent injunctions and restrictive measures, victims must also bear the burden of frequently reapplying”[10].

Some general measures to solve this problem were mentioned in 3.1.2. and 3.2.2 It is obvious domestic violence complicates as much as possible the life of a victim. Therefore, the system should have an automatic mechanism where only one call of a victim is enough to defend her.

In addition to section 3.1.2. and 3.2.2. we offer to change the Law of Ukraine “On Prevention and Combating Domestic Violence” and "On Ensuring Equal Rights and Opportunities for Women and Men", “On free legal aid”.

We offer to ensure intercommunication between all organs that are fighting domestic violence in order to ensure legal aid to a victim. We suppose that the National Police or other special bodies after getting notice about domestic violence should notify a centre of free legal aid. The latter should offer legal aid to a victim by himself and simplify the procedure as much as possible.

The National Police and other special bodies should have the authority to apply to a court in order to ensure the adoption of restrictive order. They will be obliged to prove whether prohibitive order should be used even without the initiative of a victim. It would also be an interesting option to enable non-governmental organizations that defend human rights to apply to the court in order to ensure the adoption of restrictive order.

After the expiration of the first restrictive order (until 6 months), the system should also be automatic. The court should appoint a re-trial by summoning the National Police, special bodies and victims. As of today, re-order can be adopted because of the initiative of the victim.

This problem was also mentioned in the analytical report Risk Assessment Standards and Methodologies to ensure the safety of victims of violence against women and domestic violence in Ukraine: “The 6-month outer limit will also require the victim to reinitiate

[8] https://rm.coe.int/eng-26-06-corrected-by-designer/16809eedf5 (page 49)
[9] https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf (para 40(b).)
[10] https://rm.coe.int/eng-26-06-corrected-by-designer/16809eedf5 (page 69)

proceedings for serious cases, the types of cases in which victims face numerous obstacles to engaging in legal battles, including the effects of economic violence. These procedural barriers as a practical matter place the onus on the victim".

We also support that the judge should have more possibilities to find out whether restrictive order should be adopted. As of today, the Civil Procedure Code of Ukraine (art. 81(7)) does not contain a clear legal norm in order to ensure the initiative of the judge. We suppose that the judge should collect evidence if the National Police or other special bodies do nothing in case of domestic violence and notify about the improper performance of duties by them in order to prosecute. We suppose that art. 294(2) of the Civil Procedure Code of Ukraine is not enough to ensure the initiative of the judge.

We also offer to consider the possibility to include such an idea in the Criminal Procedure Code and the Code of Administrative Offences.

In order to simplify such cases, we suppose that should be adopted special protocol or methodical recommendations together with judges, the National Police and other special bodies. It should include recommendations on how domestic violence should be investigated, what evidence is needed. It also should include issues of the principle of proportionality, risk assessments standards and so on. It can guarantee that the National Police and special bodies know how and when to apply to the court in order to adopt prohibitive order or ensure prosecution. It also ensures that the possibility of the judge to collect evidence by himself is not used too often and a judge is still a judge, not an investigator or prosecutor. Such protocol should also include the issue of urgent prohibitive order.

The aforementioned recommendation was mentioned by the Committee of Ministers in Recommendation Rec(2002)5 to member states on the protection of women against violence: "establish a compulsory protocol for operation so that the police and medical and social services follow the same procedure"[11]. These are specific methods of work aimed at providing victims with appropriate assistance, as well as at gathering evidence of the violence committed, which is necessary for the opening of judicial proceedings[12].

Office of the United Nations High Commissioner for Human Rights also recommends: "Issue instructions for law enforcement bodies on how to investigate cases of conflict-related sexual violence, ill-treatment and torture based on international standards and practice (e.g. Istanbul Protocol and the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict) and investigate all such allegations with due regard to the rights of survivors"[13].

All of the aforementioned measures are ways to comply with the practice of ECtHR: "in cases of domestic violence, the Court also holds States responsible for protecting victims, particularly when the risks of violence are known by State officers and when officers fail to enforce measures designed to protect victims of violence" (Levchuk v. Ukraine; Bevacqua and S. v. Bulgaria; A v. Croatia; Hajduová v. Slovakia; Kalucza v. Hungary; B. v. Moldova).

[11] https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e2612 (p. 25, 58(c))
[12] http://hrlibrary.umn.edu/russian/euro/RRec(2002)5.html (explanatory note, para. 70)
[13] https://www.ohchr.org/Documents/Countries/UA/UN_recommendations_Ukraine.pdf (page 14)

3.2.6. Period of restrictive and prohibitive measures

“Restrictive measures are available from 1 to 6 months, with a possible extension "no longer than 6 months".The length of the restrictive measures from 1 to 6 months is quite short. In other words, comparatively speaking, both types of protective orders in Ukraine provide short temporal protection to victims”. “For example, Spain’s Organic Act on Integral Protection Measures against Gender Violence (2004) provides that protective measures can be extended as long as they remain necessary”[14].

3.2.7. Liability

Ukraine has adopted the Concept of the State Social Program for Prevention and Counteraction to Domestic Violence and Gender-Based Violence until 2025[15]. It was declared to improve the legislation on administrative and criminal liability of officials for neglect of official duties to prevent, investigate, prosecute and punish domestic violence, especially domestic violence against children, and gender-based violence.

As of today, the Ukrainian legislature does not contain a special legal norm that would cover neglecting official duties relating to domestic violence. We are sure that impunity leads to toleration and repetition.

3.2.8. Statute of limitations

The Government of Ukraine mentioned in its Action plan that “the period of bringing to administrative responsibility for committing domestic violence was increased from 3 to 6 months from the date of detection of the offence”.

The Government of Ukraine mentioned the Law of Ukraine “On Amendments to the Code of Ukraine of Administrative Offences to Strengthen Liability for Domestic Violence and Gender-Based Violence” № 3908-1[16].

The aforementioned law does not contain any changes relating to the statute of limitations. Moreover, article 38 of the CAO still has a statute of 3 months for the prosecution of domestic violence.

Committing domestic violence does not come out immediately. A victim is not always ready to call the National Police and to initiate a prosecution. The National Police is not always ready to investigate because of stereotypes and tries to reconcile partners (the idea of private prosecution). Quality of investigation according to the CAO is not always very high and the court often returns cases for proper investigation to the National Police. All of that entails the omission of the statute of limitations (3 months). We also suppose that 6 months can be a short term to ensure prosecution.

[14] https://rm.coe.int/eng-26-06-corrected-by-designer/16809eedf5 (page 70)
[15] https://zakon.rada.gov.ua/laws/show/728-2018-%D1%80#Text
[16] http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69632

3.2.9. Special training

Any change to any phenomena depends on people. Judges, policemen, prosecutors are people that should be ready to fight domestic violence. They should know how to do it and not be guided by stereotypes.

The Government of Ukraine mentioned in the Action Plan that the National School of Judges of Ukraine developed the training program for judges on the topic: “Peculiarities of Consideration of Domestic Violence Cases”.

We believe that the judge must be properly trained and certified. The Law of Ukraine “On the judiciary and the status of judges” provides special training of a candidate for the position of a judge and exam to become a judge (article 77-78). However, the programme of special training covers the only issue of article 173-2 of the CAO[17]. It does not cover the problem of domestic violence in a comprehensive manner. The aforementioned training program “Peculiarities of Consideration of Domestic Violence Cases” is a better option, but it is not included in special training of judges. It is not also clear whether the training program is an option or obligation of appointed judges.

We believe that an exam for a candidate for the position of a judge (art. 78 of the Law) should include questions and tasks relating to domestic violence. It can guarantee proper training of the future judge.

The same idea should be used relating to special training and exams for candidates for the position of prosecutors (art. 31, 33 of the Law of Ukraine “On the prosecutor's office”). Training "Countering Domestic Violence by Prosecutor" offers to prosecutors by the training centre[18]. However, it is an option to improve qualification that does not cover special training or exams.

3.2.10. Urgent prohibitive order

Urgent prohibitive order can be adopted by the National Police in the event of an imminent threat to the life or health of a victim in order to immediately stop domestic violence, prevent its continuation or recurrence.

Article 53 of the Istanbul Convention Parties are obliged to take the necessary legislative or other measures to ensure that breaches of restraining or protection orders shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions.

Breach of urgent prohibitive order can cause administrative liability according to art. 173-2 of the CAO. Some acts of domestic violence and breaches of urgent prohibitive order are equated. The liability for breaches of an urgent prohibitive order is fine (up to 340 UAH ≈ 11 euro), administrative arrest up to 10 days or public works up to 40 hours.

Adoption of the urgent prohibition order means a high risk of further domestic violence for a victim. Moreover, it can also mean that domestic violence has already been committed.

[17] https://www.vkksu.gov.ua/userfiles/progama_spec_pidgotovk.pdf
[18] https://ptcu.gp.gov.ua/uk/prokuroram/onlajn-navchannya/trening-protydiya-prokurora-domashnomu-nasylstvu/

Therefore, the state admits that she knows about domestic violence and must prevent further violence. We are sure that a fine of 11 euro cannot be an effective, proportionate and dissuasive sanction. Vis-a-vis, administrative arrest and public works can help.

However, we suppose that when the state draws attention to a perpetrator, decides to adopt an urgent prohibition order, any other breaches should include more severe sanctions. Breaches of urgent prohibitive order sound like re-commission of domestic violence. Therefore, it cannot be considered in terms of the CAO. We believe that breach of restrictive order adopted by a judge and urgent prohibitive order adopted by the National Police both demonstrate the serious danger to the victim. Moreover, urgent prohibitive order is more serious because of urgency. Nonetheless, breaching of restrictive order entails criminal responsibility that provides a choice of more severe liability.

We suppose that criminal liability for breaching an urgent prohibitive order will have a more dissuasive effect. We suppose that Article 390-1 of CCU can offer more effective and proportionate sanctions.

It was also recommended to criminalise the violation of urgent injunctions in the analytical report “Risk Assessment Standards and Methodologies to ensure the safety of victims of violence against women and domestic violence in Ukraine”[19].

3.2.11. Divorce

Article 110 of the Family Code of Ukraine provides that “the legal action for marriage dissolution may not be taken during the wife’s pregnancy and within one year after the child has been born, save cases when one of the spouses has committed unlawful conduct containing elements of crime in respect of the other spouse or the child”.

It means that one of the spouses cannot initiate a divorce after committing domestic violence according to art. 173-2 of the CAO. It is a legal gap that should be fixed.

We would also underline that we suppose that the right to divorce cannot be forbidden because of a one year child or pregnancy. Existing serious quarrels and misunderstandings can only harm a child. Moreover, it is an issue of the right to private life.

3.2.12. Fine as a form of punishment

As noted above, article 172-2 of the CAO provides a fine as a form of punishment for domestic violence.

Firstly, we believe that a fine of a maximum of 11 euro as a form of liability for domestic violence is not an effective, proportionate and dissuasive legal sanction. Secondly, “fines are viewed as counter-productive as they may be paid for out of the family budget, and are not an effective deterrent”[20].

[19] https://rm.coe.int/eng-26-06-corrected-by-designer/16809eedf5 (page 49, 76)
[20] https://rm.coe.int/eng-26-06-corrected-by-designer/16809eedf5 (page 70)

We believe that a fine as a form of punishment for domestic violence should be cancelled or be considerably increased. The latter option should be subject to careful assessment because "any fine that a perpetrator is ordered to pay shall not indirectly lead to financial hardship on the part of the victim"[21].

We should also underline that developers of the new Criminal Code of Ukraine exclude using a fine as a form of punishment for domestic violence at all[22].

3.3. Conclusions and recommendations

We ask the Committee of Ministers to include the following general measures for the execution of the judgement of ECtHR by the Government of Ukraine:

1) ensure preparing of the complex practice of the application of legislative norms concerning domestic violence according to the practice of ECtHR by the Plenum of the Supreme Court;
    - ensure taking into account the report "Court Considerations on Issuing Restraining or Protection Orders in Cases of Domestic Violence: International Standards and Overview of Ukrainian National Practice" that was produced under the project "The Istanbul Convention: a tool to advance in fighting violence against women and domestic violence in Ukraine"[23] and other recommendations by the Council of Europe.
2) consider the possibility of bilateral communication and/or getting feedback about what should be done to prevent recurrence of violations similar to those found from Ukrainian government agencies that committed violations of ECHR;
3) Amend the existing legal provisions regarding restrictive and prohibitive orders in order to ensure:
    - the possibility to initiate appealing to the court in order to ensure adoption of restrictive order in cases of domestic violence by the National Police and other special bodies;
    - the possibility to initiate applying of a restrictive order by the court of Ukraine during solving cases of deprivation of parental rights, imposition of obligations to pay alimony, eviction of the perpetrator, criminal proceedings (art. 126-1,152-153 of the Criminal Code of Ukraine and so on) and proceedings according to the Code of Administrative Offences (art. 173-2 and so on).
4) Amend the existing legal provisions and ensure the security of a victim even after domestic violence according to the Code of Administrative Offences committed. Ensure inclusion of similar special measures in case of "administrative " domestic violence as it is implemented according to the Criminal Code of Ukraine (art. 91-1).
5) Explore statistical data and reasons of initiating restrictive and prohibitive order by the National Police and guardianship authority on their own initiative;

[21] https://rm.coe.int/16800d383a (page 42)
[22] https://newcriminalcode.org.ua/criminal-code (article 3.1.3.(3)(a), 3.1.7.(3)(a))
[23] https://rm.coe.int/restraining-protection-orders-dv-report-ukraine/1680a01299 (en.); https://rm.coe.int/ukr-restraining-protection-orders-dv-report-ukraine/1680a03399 (ukr.)

- ensure adoption of special action protocol for the National Police and special bodies with using the risk assessment methodologies for applying restrictive and prohibitive order on its own initiative or ensure applying other general measures to promote applying restrictive and prohibitive order on its own initiative after researching the aforementioned data;
- ensure taking into account the analytical report "Risk Assessment Standards and Methodologies to ensure the safety of victims of violence against women and domestic violence in Ukraine"[24].

6) Ensure amending of the legislature to provide an effective mechanism of eviction a perpetrator from an apartment even when a perpetrator is a husband or wife, family member and an owner of the apartment;
   - Ensure that the Housing Code of Ukraine will be fundamentally changed to cover cases of domestic violence or will not be applied to cases of domestic violence at all;
   - Ensure that the interests of a victim of domestic violence prevail over proprietary interests of the perpetrator or his right to live in a rented apartment;
   - Ensure that the interests of the victim of domestic violence (as an owner of an apartment) prevail over any interests of a perpetrator to live in the same apartment at all.
7) Ensure amending the existing legal provisions and exclude the crime of domestic violence out of private prosecution;
8) Consider the possibility to amend the existing legal provisions and exclude the crimes of forced abortion, forced sterilisation, forced marriage, forced sexual intercourse and other out of private prosecution;
9) Ensure amending the existing legal provisions in order to guarantee that the crime of domestic violence is identified by law enforcement agency even after committing firstly;
   - Ensure the possibility of applying restrictive measures in article 91-1 of the CCU to all cases of the crime of domestic violence;
   - Ensure criminalisation of physical violence in terms of domestic violence even firstly and without bodily harm;
   - Ensure that all acts of violence that must be criminalised are not implemented into the Code of Administrative Offences;
   - Ensure proportionality between punishment for domestic violence and other more general crimes;
   - Ensure taking into account the analytical report "Risk Assessment Standards and Methodologies to ensure the safety of victims of violence against women and domestic violence in Ukraine"[25].
10) Ensure amending the existing legal provisions in order to guarantee that exemption from liability or punishment for domestic violence is forbidden;
11) Ensure amending the existing legal provision in order to guarantee that the burden of domestic violence does not fall almost entirely upon the victim and ensure the operation of an automatic system of stopping and preventing domestic violence;
   - ensure the initiative of the centre of free legal aid and other special bodies when domestic violence happens;

[24] https://rm.coe.int/eng-26-06-corrected-by-designer/16809eedf5
[25] https://rm.coe.int/eng-26-06-corrected-by-designer/16809eedf5 (pages 63-67)

- ensure the initiative of judges to collect evidence in cases of domestic violence when law enforcement agencies do nothing;
- ensure obligation of the judge to notify about the improper performance of duties by officials;
- ensure the obligation of the judge to initiate a retrial after the expiration of the restrictive order.

12) Ensure adoption of protocol or methodical recommendation together with judges, policemen, prosecutors and so on in cases of domestic violence or other violence against sex so that the police and medical and social services and so on following the same procedure. There should be specific methods of work aimed at providing victims with appropriate assistance, as well as at gathering evidence of the violence committed, which is necessary for the opening of judicial proceedings, adoption restrictive and prohibitive measures;
13) Consider the possibility to increase a period of restrictive orders;
14) Ensure improving the legislation on administrative and criminal liability of officials for neglect of official duties to prevent, investigate, prosecute and punish domestic violence, especially domestic violence against children, and gender-based violence;
15) Ensure amending the existing legal provision and ensure increasing the statute of limitations for domestic violence;
16) Ensure proper legal training of future prosecutors, judges and policemen:
    a) Ensure including the issue of domestic violence to special training and exam for prosecutors and judges;
    b) Ensure comprehensive special educational courses for current judges, prosecutors and policemen that deal with issues of domestic violence and do not pass the special training, exam or certification training.
17) Ensure that a breach of urgent prohibitive order is subject to effective, proportionate and dissuasive criminal or other legal sanctions;
18) Ensure the right to divorce for a victim in case of domestic violence and other relating misconducts;
    a) Consider the possibility to lift the limitation of the right to divorce at all when spouses have a one year child or when the victim is pregnant.

Executive Director
Ukrainian Helsinki Human Rights Union **Oleksandr Pavlichenko**

DH-DD(2021)1275: Rules 9.2 & 9.6 Communication from an NGO in Levchuk v. Ukraine & reply from the authorities.
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23 NOV. 2021
SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Mr Pavlo Pushkar

Head of Division
Department for the execution of judgments of the European Court of Human Rights
Directorate of Human Rights
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Council of Europe
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As to the communication submitted
by the Ukrainian Helsinki Human Rights Union

Dear Mr Pushkar,

On behalf of the Government of Ukraine please let me assure the Committee of Ministers in our commitment to solving the problems identified by the European Court of Human Rights in the case of "*Levchuk v. Ukraine"* (No.17496/19).

The Government would like to express appreciation to the Ukrainian Helsinki Human Rights Union (the **"UHHRU"**) for their genuine interest to the issue on effective protection from domestic violence.

The Government of Ukraine would like to underline that the UHHRU's submission regarding the information presented by the Government of Ukraine in their Action Plan of 6 August 2021[1] on measures to be taken for implementation of the Court's judgments in the *Levchuk* case.

[1] http://hudoc.exec.coe.int/eng?i=DH-DD(2021)793E

CEP:Action
Міністерство юстиції України
№ 113134/5.2.1/30-21 від 23.11.2021
Підписувач Давидчук Ольга Василівна
Сертифікат 58E2D9E7F900307B04000000D76B1700BB228A00
Дійсний з 23.10.2020 0:00:00 по 23.10.2022 0:00:00

DH-DD(2021)1275: Rules 9.2 & 9.6 Communication from an NGO in Levchuk v. Ukraine & reply from the authorities.
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As to individual measures, the civil proceedings on the eviction of the applicant's ex-husband without granting another dwelling are pending before the Rivne Court of Appeal. The next court hearing is scheduled on 8 February 2022 in simplified procedure.

Information on results of investigation of complaints of the applicant to the National Police about domestic violence and information on execution of decisions of national courts regarding the payment of child support by the applicant's ex-husband will be provided **until 1 January 2022.**

As to the UHHRU's recommendations on legislative changes to build up the effective system of protection of victims of domestic violence, the Government of Ukraine would like to assure that they will be translated into Ukrainian and disseminated among the authorities concerned.

As soon as the Government receive the results of authorities' analysis on the recommendations provided by the UHHRU, they will inform the Committee of Ministers about steps taken in this regard.

Yours sincerely,

Olga DAVYDCHUK
Acting Agent before
the European Court of Human Rights