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Meeting: 1443rd meeting (September 2021) (DH)

Communication from an NGO (ANAL VTICAL CENTER JURFEM) (20/06/2022) in the case of Levchuk v. Ukraine (Application No. 17496/19).

Information made available under Rule 9.2 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 : 1443^e réunion (septembre 2022) (DH)

Communication d'une ONG (ANAL VTICAL CENTER JURFEM) (20/06/2022) dans l'affaire Levchuk c. Ukraine (requête n° 17496/19) **[anglais uniquement]**

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



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Rule 9.2 Submission to the Committee of Ministers concerning general measures in

LEVCHUK v. UKRAINE¹

(Application no. № 17496/19)

I. Introduction

Under Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, the Ukrainian Women Lawyers Association “JurFem” is submitting a second communication regarding the general measures necessary for the implementation of the “*Levchuk v. Ukraine*” judgment.

Ukrainian Women Lawyers Association “JurFem” is one of the first Ukrainian associations of women lawyers. The aim of the organization is to become a platform for the exchange of experience, development and support of women in the legal profession. Our mission is to improve the understanding of national and international legislation on equal rights and opportunities for women and men among the legal community to effectively protect women’s rights and opportunities in all spheres of public and political life in Ukraine; to uphold the rights and interests of women, including those who have been abused and discriminated or are in other crisis situations; and to monitor and investigate the protection of women’s rights in Ukraine, as well as the principle of gender equality and non-discrimination in Ukraine.

¹ CASE OF LEVCHUK v. UKRAINE. URL: <http://hudoc.echr.coe.int/eng?i=001-203931>

II. Case summary

The cases in this group concern principally the authorities' failure to ensure that the applicants can enjoy their homes free from harassment and violent disturbance (violations of Article 8). More specifically, in Levchuk the applicant and her children had to continue sharing their flat with the applicant's former husband, the perpetrator of domestic violence, for at least five years after the dissolution of the marriage, owing to the failure by the domestic court to strike a fair balance between the competing interests in the eviction proceedings (§ 90 of the Levchuk judgment).

III. General measures

In the previous [submission](#), several recommendations were formulated for the attention of the Committee of Ministers and the Ukrainian authorities, and we discuss the ongoing need for the implementation of these recommendations below.

Important expectations are placed on the successful implementation of the provisions of the Decree of the President of Ukraine "On Urgent Measures to Prevent and Combat Domestic Violence, Gender-Based Violence, Protection of the Rights of Victims of Such Violence" № 398/2020. The decree is aimed, in particular, at updating a number of measures already carried out by specially authorized bodies in the field of preventing and combating domestic violence, gender-based violence, namely improving coordination and interaction of these bodies, effective monitoring and control.

The decree declared the application of a comprehensive integrated approach to overcoming domestic violence and gender-based violence. The State Social Program is one of the key documents, which is expected to address the current problems by identifying solutions for them, expected results, and assessing the effectiveness of the program itself, as well as by consolidating the amount and sources of funding². The program will identify the responsible actors and the amount of funds allocated for a specific event with clear indicators to be achieved.

The Decree defines the approval of the State Social Program as one of its urgent measures. The State Social Program for Prevention and Counteraction to Domestic Violence and Gender-Based Violence for the Period up to 2025 was approved by the Cabinet of Ministers of Ukraine decision № 145 dated 24.02.2021 and it contains specific tasks and measures for its implementation, in particular: prevention of domestic violence (overcoming negative stereotypes in Ukrainian society and forming an intolerant attitude to violent behaviour); responding to domestic violence and gender-based violence (building a new system for responding to violence); ensuring the availability and quality of

² <https://zakon.rada.gov.ua/laws/show/145-2021-%D0%BF#Text>

the provision of necessary social services to victims of domestic and gender-based violence; proper investigation of domestic violence, bringing perpetrators to justice, and changing their behaviour.

The state social program (with available performance indicators) is expected, in particular, to:

- Ensure the collection, analysis and sharing of information on domestic and/or gender-based violence, improvement of the system of indicators in the form of state statistical reporting on the prevention and combating of domestic and/or gender-based violence;
- Raise public awareness of the forms, manifestations, causes and consequences of domestic and/or gender-based violence; increase society's understanding of the nature of domestic violence and/or gender-based violence, its disproportionate impact on women and men;
- Contribute to the formation in society of an intolerant attitude to violent patterns of behaviour, indifferent attitude to victims, awareness of domestic violence as a violation of human rights;
- Ensure coordination and effective cooperation of specially authorized bodies implementing measures in the field of preventing and combating domestic violence, other bodies, and institutions that perform functions related to measures in the field of preventing and combating domestic and/or gender-based violence;
- Provide access to general and specialized support services for victims to receive social services of medical, social, and psychological assistance;
- Ensure responses to cases of domestic and gender-based violence, creating conditions for round-the-clock processing of citizens' appeals/reports on domestic violence, gender-based violence, and violence against children and child participation.

Thus, a comprehensive integrated approach to overcoming domestic and gender-based violence will be fully in place from the moment of effective implementation by the government and other executors of this State Social Program until 2025.

A. Evictions of perpetrators in cases of domestic violence

According to the principles laid out in *Levchuk v. Ukraine*, in domestic violence cases, the rights of perpetrators may not take precedence over the rights of victims, including the right to physical and psychological integrity, and *eviction should be considered by the judiciary and law as an appropriate means of protecting victims from domestic violence. (p.57, 84)*. In para. 82 of the judgment the Court underlined that “... *civil remedy [eviction without the provision of another*



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dwelling in accordance with Article 116 of the Housing Code of Ukraine] was capable, in principle, of redressing the essence of the applicant's complaint, although it is not apparent that, unlike a restraining order, it could be effective as a matter of urgency". In fact, in practice, the eviction procedure provided by the Ukrainian Housing Code is not effective as a matter of urgency, as it would need to be in situations of domestic violence.

In order to remove barriers encountered by victims of domestic violence when seeking protection and safety, the Ukrainian authorities should:

- amend the existing legal provisions regarding the use of property and housing in order to ensure in domestic law the possibility to suspend the use of the property of perpetrators in cases of domestic violence and to provide the clear possibility in law for the eviction of perpetrators of domestic violence from housing which does not belong to them.
- set up an effective mechanism in Ukrainian law for the eviction of perpetrators of domestic violence, able to ensure the protection of the rights of domestic violence victims, particularly the right to safety from harm and to the protection of one's physical and psychological integrity, as well as the right to property.
- ensure that legal amendments and relevant policies regarding eviction and the new mechanism reflect that the property rights of perpetrators may never prevail over victims' rights in eviction cases.

In paragraph 82 of the Judgment the Court underlined that "... civil remedy [eviction without the provision of another dwelling in accordance with Article 116 of the Housing Code of Ukraine] was capable, in principle, of redressing the essence of the applicant's complaint, although it is not apparent that, unlike a restraining order, it could be effective as a matter of urgency".

The Ukrainian legislation does not provide an effective mechanism for ensuring the protection of the property rights of the victim, as well as the right to safety from harm and to the protection of one's physical and psychological integrity if the perpetrator is a co-owner of housing or lives in it. While Article 116 works in non-domestic violence cases, it does not work in cases concerning a domestic violence emergency (as also the Court, in its' judgment, stated that "*it is not apparent that, unlike a restraining order, it could be effective as a matter of urgency*").

However, there have been some minor positive developments in protecting the rights of children who are victims and witnesses of domestic violence. The legislative drafter initiated an attempt to protect the housing rights of children, as it imposes restrictions on the eviction of children together

with their legal representatives with whom they live, from official housing, without providing other housing alternatives, which meets the requirements of national legislation and international law in terms of respect for the right to respect for housing in terms of proportionality and fair balance (draft law №6441 of 17.12.2021). The legislative drafter intends to implement such an attempt by amending Article 125 of the Housing Code of Ukraine³. The bill proposes to amend Article 125 of the Housing Code of the Ukrainian SSR by expanding the range of persons covered by legal guarantees prohibiting the eviction of persons without providing them with other living space. This bill is important in the context of the *Levchuk* case in connection with the proposed changes that protect the housing rights of children and aimed at ensuring housing conditions for children, regardless of the circumstances that give them the right to evict, provided for in Art. 124 of the Housing Code of the Ukrainian SSR⁴.

³ **Article 125.** Persons who cannot be evicted from office premises without providing other premises

Without the provision of other accommodation in the cases specified in Article 124 of this Code, the following may not be evicted:

- persons with disabilities as a result of war and other persons with disabilities from among servicemen who have become persons with disabilities as a result of injury, contusion or mutilation received by them in defense or in the performance of other military duties, or due to illness related to being at the front; participants of the Second World War, who were part of the active army; families of servicemen and guerrillas who died or went missing while defending or performing other military duties; families of servicemen; persons with disabilities from among the rank and file and senior staff of the bodies of the Ministry of Internal Affairs who have become persons with disabilities as a result of injury, contusion or mutilation, which they received in the performance of official duties;
- persons who have worked at the enterprise, institution, organization that provided them with office accommodation for at least ten years;
- persons who have been dismissed from the position in connection with which they were provided with housing, but have not terminated their employment with the enterprise, institution, organization that provided the premises;
- persons dismissed in connection with the liquidation of an enterprise, institution, organization or reduction of the number or staff;
- old-age pensioners, personal pensioners; family members of the deceased employee who was provided with official accommodation; persons with disabilities due to an accident at work or occupational disease of groups I and II, persons with disabilities of groups I and II from among servicemen and persons equated to them and persons of rank and file and senior staff of the State Service for Special Communications and Information Protection of Ukraine;
- single people with minor children living with them.

⁴ **Article 124.** Eviction from office premises without providing other premises

Workers and employees who have terminated their employment with an enterprise, institution, organization, as well as citizens who are expelled from the collective farm or left the collective farm of their own volition, are subject to eviction from office accommodation with all persons living with them. living space.



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However, despite these positive developments, this bill doesn't foresee any possibility of evicting domestic violence perpetrators. Article 116 of the Housing Code of Ukraine doesn't work for such situations and domestic violence perpetrators can't be evicted according to the law.

Still, this draft law has not been adopted and changes in the housing legislation of Ukraine in this area have not occurred. While domestic violence victims may still access protective orders, or emergency protection orders, and eviction proceedings separately, the timeline of simultaneous eviction proceedings under the Housing Code do not reflect the specific urgency needs in such case.

B. Ensuring the effective work of law enforcement agencies, and social services in terms of proper response to cases of domestic violence, including the qualification of actions as domestic violence and bringing perpetrators to justice.

The positive obligation of authorities to protect victims of domestic violence also implies the correct identification of domestic violence offences. Without the proper classification of domestic violence offences, the dismissal of women's claims for eviction and the failures to conduct comprehensive analysis of such situations and assess the risks of future psychological and physical violence will continue reproducing.

However, in practice, there are different approaches taken by courts in the qualification of a person's action, when dealing with domestic violence (for example, in some cases only Article 126-1 of the CC of Ukraine⁵, in other – Article 126 of the Criminal Code of Ukraine regarding battery and torture). The main reason is that in practice, law enforcement and the court do not always establish that the offense was committed because it is related to domestic violence. As a result, they do not establish that the damage to dignity and health is due to physical, psychological, or economic violence against the spouse or ex-spouse or another person with whom the perpetrator is (was) in a family or close relationship, leading to physical or psychological suffering, health disorders, disability, emotional dependence or deterioration of the victim's quality of life.

If these crimes are not correctly qualified under Article 126-1 of the Criminal Code of Ukraine in the interests of the victim of a crime related to domestic violence, the court may not apply to a person suspected of committing such a criminal offense any of the restrictive measures provided for

⁵ **Article 126-1.** Domestic violence

Domestic violence is intentional systematic physical, psychological or economic violence against a spouse or ex-spouse or another person with whom the perpetrator is (was) in a family or close relationship, leading to physical or psychological suffering, health disorders, disability, emotional dependence or deterioration of the victim's quality of life, - shall be punishable by community service for a term of one hundred and fifty to two hundred and forty hours, or arrest for up to six months, or restriction of liberty for up to five years, or imprisonment for up to two years.



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in part six Article 194 of the Criminal Procedure Code of Ukraine (Application of a precautionary measure)⁶.

The Committee of Ministers, in its decision of December 2021, welcomed the changes to the legislative framework introducing, in particular, measures to enable urgent reactions and temporary solutions in cases of domestic violence. However, further measures need to be implemented in order to enable urgent reactions and temporary solutions in cases of domestic violence, including in cases which require eviction measures. For this to be possible, it is essential that the authorities are able properly identify domestic violence offences. Therefore, further amendments should be included into the draft legislation on the following issues:

- domestic violence cases should no longer be considered cases of ‘private prosecution’ and should be investigated even in the absence of statements and complaints from the victim (Article 477 of the Criminal Procedure Code of Ukraine⁷). This problem can be solved by amending the first part of Article 477 of the Criminal Procedure Code of Ukraine to exclude Article 126-1 of the Criminal Code of Ukraine from the list of criminal proceedings in the form of ‘private prosecution’. These changes will make it possible to respond more quickly to cases of domestic violence (including those which require eviction measures) without waiting for the relevant statement of the victim.
- introduce reasonable terms of consideration of domestic violence cases and non-delay of consideration;
- abolish of time limits for prosecution for crimes related to domestic violence;
- incorporate into criminal law the definition of “*crimes related to domestic violence*”, in line with the standards of the Istanbul Convention, and ensure proper identification of these crimes in other pending criminal cases, and not only under Article 126 of the Criminal Code of Ukraine regarding Battery and torture.

These measures will enable the proper identification of domestic violence offences, they will enable proper risk assessment results and they will **enable urgent reactions and temporary solutions in cases of domestic violence – including in cases which require eviction measures**. Without the

⁶ <https://zakon.rada.gov.ua/laws/show/4651-17#Text>

⁷ **Article 477.** The term of criminal proceedings in the form of private prosecution

Criminal proceedings in the form of ‘private prosecution’ are proceedings that can be initiated by an investigator, prosecutor only on the basis of the victim’s statement on criminal offenses provided for, in particular, Article 126-1 (domestic violence).

proper identification of domestic violence offences, the judicial and law enforcement authorities will not be able to intervene with the right protection and eviction measures in each situation.

C. The need for systematization of judicial practice on the refusal of eviction

The *Levchuk* case concerns, *inter alia*, domestic court's failure to conduct comprehensive analysis of the situation and assess risk of future psychological and physical violence.

The practice of courts plays an important role in resolving disputes, because national legislation is not perfect, and laws do not always have an ideal norm for resolving public relations. Judicial authorities create standards for resolving cases and offer ways to close gaps in legislation.

As of today, the systematization of judicial practice on eviction in domestic violence cases is needed (even when they are not classified by authorities as 'domestic violence') in order to assess how domestic courts' carry out this comprehensive analysis on a national scale. Given that eviction can only be resolved in court, it would be important to be able to assess how systematic actions that constitute crimes are taken into account - including in the presence of court rulings on administrative prosecution or court verdicts finding the perpetrator of domestic violence guilty.

In the Action Plan submitted by the Ukrainian government last year, several developments on the judicial practice concerning Article 116 of the Housing Code were provided, but they do not constitute a full judicial review of the practice on evictions.

Furthermore, to date, the Supreme Court has not reviewed the case law on restrictive measures in domestic violence cases, in particular in terms of proper analysis and assessment of the situation as a whole and the risk of future violence. This would be highly relevant in order to determine any further legislative and/or policy measures needed for protecting victims of domestic violence in similar situations.

D. Identification of child witnesses as children' victims of domestic violence

Having regard to the findings of the Court in the *Levchuk* case that, despite the fact that "The children, who repeatedly witnessed his arguments with the applicant, were reported to be seriously distressed", it was not "apparent from the ruling of the Court of Appeal that it considered the impact of those circumstances on the validity of O.L.'s continuing interest in keeping the social tenancy or analysed how his violent conduct towards the applicant affected the best interests of the children", it results that **there is a need to improve the identification of child witnesses of domestic violence as victims of domestic violence in practice.**



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We acknowledge there have been some positive developments in the fight against domestic violence as the legislator has taken measures to ensure the effective functioning of the established mechanism against domestic violence as a whole and to identify children who have suffered from domestic violence. However, such changes have occurred only in some aspects and are not comprehensive, namely:

- Decree of the President of Ukraine № 398/2020 of 21 September 2020 “On urgent measures to prevent and combat domestic violence, gender-based violence, protection of the rights of victims of such violence” was adopted to ensure a comprehensive integrated approach to overcoming domestic violence, violence against a sign of gender, increasing people's confidence in services designed to help in such cases. However, some of the provisions of this Decree have not yet found their legislative implementation.
- The Law of Ukraine “On Child Protection” was amended by supplementing Article 30-2 “Protection of Children Victims of Sexual Violence or Witnesses”.

Since 2018, the legislation of Ukraine (Art. 1 of the Law «On preventing and combating domestic violence»⁸) stipulates that children who witness domestic violence must be recognized as victims of domestic violence, and therefore receive all services and receive appropriate legal assistance and effective protection. However, amendments haven't been properly made to the Criminal Procedural Code of Ukraine for children to get this status automatically.

The law "On preventing and combating domestic violence" automatically contains the concept of "*a child who witnesses domestic violence is considered a victim of domestic violence.*" However, according to the Criminal Procedure Code of Ukraine, in order for a child to be recognized as a victim, parents or other legal representatives must submit an appropriate application. So, there is no automatic acquisition of victim status. Therefore, there is an issue of changing the approaches in the Criminal Procedure Code of Ukraine to get such a status to a child who has witnessed domestic violence. However, the expected amendments to the Criminal Procedure Code of Ukraine have not been made regarding the recognition of children who have witnessed domestic violence as victims of domestic violence. These expected amendments would enable the identification of child victims, would help children to receive all services, appropriate legal aid, and effective protection.

Thus, it is crucial to pay attention to changing the approach by amending Article 55 of the Criminal Procedure Code of Ukraine (Victim) in terms of the possibility of a child witnessing domestic

⁸ <https://zakon.rada.gov.ua/laws/show/2229-19#Text>



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violence and to get the status of a victim of the domestic violence without submitting an application by their parents.

Ukrainian authorities need to take measures to ensure the effective functioning of the established mechanism to fight domestic violence or to identify children who are victims of domestic violence and report them to other authorities by law enforcement agencies.

One piece of draft legislation may have a limited positive impact on the identification and protection of child victims and witnesses of domestic violence as well: the Decree of the President of Ukraine № 398/2020 "On urgent measures to prevent and combat domestic violence, gender-based violence, protection of the rights of victims of such violence". The decree provides drafting a bill concerning *additional procedural guarantees to minors during their interrogation during criminal proceedings based on best international practices, in particular on the Barnahus model*, where the Ministry of Justice of Ukraine is currently the main executor. Therefore, it appears that the bill will be aimed: at creating child-oriented multidisciplinary and interagency services; to keep all aspects of interaction with children and their relatives in "children's homes" (a conversation with the child (in the case of child litigation), medical examination, crisis support, psychological and social services for child victims and their families). Such aspects of interaction with children could also be applicable in cases regarding domestic violence.

In addition, the Supreme Council of Ukraine (Verkhovna Rada) adopted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Implementation of the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)". Article 30-2 concerning the "Protection of Children Victims of Sexual Violence **or Witnesses**" stipulates that the interaction with "a victim of sexual violence or a witness (eyewitness), using child-friendly methods, is carried out by specialized support services for victims formed by local executive bodies and local governments in accordance with the law", which is a positive embodiment of Article 15 of the Lanzarote Convention about for protection of children from sexual exploitation and sexual violence. These provisions could have an impact on the interaction with children who are also witnesses of domestic violence.

Clause 10 of the Procedure for Interaction of Entities Implementing Measures in the Sphere of Prevention and Counteraction to Domestic Violence and Gender-Based Violence is determined that the identification of children victims of violence, reception and consideration of appeals and reports

of violence against children, organization of social protection for such children are carried out *in accordance with the Procedure approved by the Cabinet of Ministers of Ukraine*⁹.

However, for today, *such a Procedure has not been approved*. It is expected that the approval of this Procedure, which will focus on receiving and reviewing applications and notifications of domestic violence against children and with the participation of children, especially in identifying children affected by domestic violence and providing them with assistance, will be the starting point for improving response to a given phenomenon.

In addition to the above changes in the legislation, legislation updates are expected in matters related to the possibility of providing officials of children's services, guardianship authorities with access to information constituting medical privacy, information of pre-trial investigation in cases where obtaining such information is necessary to make decisions on the protection of the rights and legitimate interests of the child.

An important aspect of responding to cases of domestic violence against children and involving children is to improve:

- the procedure for receiving and reviewing applications and reports of domestic violence against children and with the participation of children;
- the procedure for identifying children who have suffered from domestic violence;
- the procedure for the provision of assistance and protection to children who have suffered from domestic violence;
- a typical program for abusers with the definition of the peculiarities of such a program by child abusers.

E. Lack of gender-disaggregated judicial statistics in cases of domestic violence

There is currently no official data on the women who suffer most often from domestic and gender-based violence (rural areas/ urban areas, etc.). We do not know the age of the victims and perpetrators, or the nature of the relationship between the perpetrator and the victim, which means that we cannot formulate appropriate government policies to prevent and respond to cases of domestic violence.

⁹ <https://zakon.rada.gov.ua/laws/show/658-2018-%D0%BF#Text>

The Ukrainian authorities should collect disaggregated data, which should also include information on the proportion of convictions for all forms of violence, as well as the number of court orders issued to protect victims of violence.

IV. Conclusions and recommendations.

The implementation of the *Levchuk v. Ukraine* judgement must first facilitate the proper identification of domestic violence acts in order to help to improve legislation and practice on eviction in domestic violence situations and to provide an effective mechanism for ensuring the right to life, safety, and physical and psychological integrity of the victims when the perpetrator is a co-owner of housing or lives in it.

As regards general measures, we kindly ask the Committee of Ministers of the Council of Europe request the Ukrainian government to:

1. Ensure that the eviction procedure is an effective remedy to protect victims of domestic violence by:

- amend existing legislation on the use of property and housing to ensure that national law suspends the use of the property by perpetrators of domestic violence and to provide a clear opportunity to evict perpetrators of domestic violence from non-domestic housing;
- set up an effective mechanism in Ukrainian law for the eviction of perpetrators of domestic violence, able to ensure protection of the rights of domestic violence victims, particularly the right to safety from harm and to protection of one's physical and psychological integrity, as well as the right to property;
- ensure that legal amendments regarding eviction and the new mechanism reflect that the property rights of perpetrators may never prevail over victims' rights in eviction cases.

2. Ensure compliance with the obligations of the law enforcement system and judicial system to respond appropriately to cases of domestic violence, namely:

- to amend the legislation on the removal of offences related to domestic violence from the category of private prosecution;
- to amend the criminal legislation in order to include the definition of “crimes related to domestic violence”, according to the standards for the Istanbul Convention, and to ensure the

proper identification of these crimes in other ongoing criminal cases under this definition and not under Article 126 of the Criminal Code of Ukraine (regarding battery and torture);

- to ensure reasonable terms of consideration of domestic violence cases and non-delay of consideration of such cases.

3. Include in the training programs for judges, lawyers, and law enforcement officers' topics related to the pre-trial investigation of crimes related to domestic violence and risk assessment in the context of domestic violence, with an emphasis on the protection and restoration of the rights of victims.

4. The Supreme Court should carry out a research on the judicial practice in civil and criminal cases of domestic violence, including those which concern eviction and restriction measures.

5. Ensure that disaggregated judicial statistics on cases of domestic violence are kept, taking into account gender-disaggregated data, including the nature of the relationship between the perpetrator and the victim.

6. Take measures to ensure the effectiveness of the mechanism of cooperation between public authorities in the field of preventing and combating domestic violence, in particular, to identify children as victims of domestic violence and provide them with assistance and social services by amending the Criminal Procedure Code of Ukraine provisions regarding witnesses of domestic violence and victims of domestic violence.

7. Collaborate with civil society organizations in view of designing the action plan for the implementation of this judgment.