

The legal regulation in Ukraine victims of domestic violence medical examination and providing them medical assistance

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ABSTRACT

The article explores the legal regulation of the system of medical examination and medical assistance in relation to victims of domestic violence in Ukraine, taking into account the priority of international law and the signing by representatives of Ukraine on November 7, 2011 of the Istanbul Convention of May 11, 2011, (but until now time not ratified by the Verkhovna Rada). The latest legislation of Ukraine on prevention and counteraction domestic violence defines the list of subjects authorized to carry out the relevant measures, including bodies, healthcare establishments and institutions, and regulates their powers in this area. By the decrees of the President of Ukraine, Resolutions of the Cabinet of Ministers of Ukraine and orders of the Ministry of Health of Ukraine, the procedure and mechanism for conducting medical examinations of victims of domestic violence and gender-based violence and documenting its results, providing them with medical assistance to ensure an intersectoral approach to countering such violence and overcoming it, and promoting the realization of the rights of victims of him. The legal regulation in Ukraine medical examination of victims of domestic violence and the provision of medical assistance to them, the main problems are identified and ways to solve them are proposed.



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1. INTRODUCTION

Domestic violence as a result of numerous social contradictions creates significant problems for the state of mental, physiological, moral-ethical and cultural-spiritual health of society. It is caused by reactionary

historical traditions and stereotypes, social contradictions, personal psychophysical disabilities and entails a deterioration in the health of the affected person. Therefore, the purpose of the article is to clarify the state of medical-legal regulation by the legislation of Ukraine of the procedure for medical examination of persons who have suffered from domestic violence and the provision of medical assistance to them. More than one hundred thousand statements and reports of domestic violence are registered in Ukraine every year. According to information from the international public organization “Health Right International in Ukraine”, last year 324 children suffered from crimes against sexual freedom and integrity (according to the National Police). In January-August 2020, 147 children became victims of rape. At the same time, according to the National Police of Ukraine, for 10 months of 2020, 174 applications were received, 113 administrative protocols were drawn up. In 90% of cases, women who have children who witnessed domestic violence addressed [1]. According to the International Women’s Human Rights Center “La Strada – Ukraine”, the National Hotline on the prevention of domestic violence, human trafficking and gender discrimination, organized by the center in 2010, has received more than 150 thousand applications over the course of 5 years. During 2014, 7725 calls were received, which is 689 (8.9%) calls more than in 2013. If in 2013 in the gender aspect, calls to the National Hotline for the Prevention of Domestic Violence, Human Trafficking and Gender Discrimination were distributed by 63.7% from women and 36.3% from men, then in 2014 the number of calls from women increased by 11.8% and amounted to 75.5%, and from men, respectively, decreased by 11.8% and amounted to 24.5%. In a difficult socio-political situation, many families find themselves in difficult life circumstances that affect their functioning, and in matters of protecting their rights and the rights of family members, women are most often active, who more quickly take responsibility for their solution. In 2014, the National Hotline for Children received 27,073 calls, which is 8498 calls, which is 31.3% more than in 2013 [2]. Violence is an unlawful, guilty, socially harmful or dangerous, punishable act in the form of inflicting or threatening to inflict physical or mental harm from one person to another, against the will of the latter, physical, moral, property damage. In accordance with paragraph 3 of Part 1 of Art. 1 of the Law of Ukraine “On Prevention and Counteraction Domestic Violence” dated December 7, 2017 No. 2229-VIII (entered into force on January 7, 2018) [3] domestic violence is an act (act or omission) of physical, sexual, psychological or economic violence, committed in the family or within the place of residence or between relatives, or between the former or current spouses or between other persons who live together (lived) in the same family, but are not (were not) in a family relationship or married to each other, regardless of whether the perpetrator of domestic violence lives (has lived) in the same place as the victim, as well as threats to commit such acts.

2. Methodological base

The methodological basis of the article is the dialectical method, which provides an understanding of social contradictions in connection with the phenomenon of domestic violence, as well as the ways and possibilities of their resolution through legal regulation, which ensures social progress in connection with the strengthening of the humanistic principles of legislation, the establishment of the rule of international law, the real provision of rights of a person for life, health, honor and dignity, inviolability and safety. With the help of the systemic-structural method, the legal and regulatory sources have been identified that regulate the examination of victims of domestic violence and the provision of medical assistance to them. The use of the structural-functional method helped to identify the subjects of preventing and counteracting domestic violence, to investigate their respective powers defined by laws. The mechanisms of their implementation, regulated by the bylaws of the higher and central executive authorities of Ukraine, have been studied using the instrumental-legal method. The formal legal method was used to formulate the definitions of “violence” and “domestic violence”.

3. Empirical information

On the complaints of Ukrainian citizens in connection with domestic violence was obtained from statistical information provided by the international public organization “HealthRight International in Ukraine”, which reported on the appeals of children, adolescents and women to the authorities and units of the National Police of Ukraine in connection with encroachments on sexual freedom and inviolability; International Women’s Human Rights Center “La Strada – Ukraine”, which provided information on calls to the National Children’s Hotline and the National Hotline for the Prevention of Domestic Violence, Human Trafficking and Gender Discrimination.

4. Results

The system of medical examination and medical assistance in relation to victims of domestic violence presupposes a systemic legal approach to its legal regulation. Taking into account the priority of international law, Ukraine, whose representatives on November 7, 2011 signed the Istanbul Convention of May 11, 2011, but the Verkhovna Rada has not yet ratified it, will improve the corresponding mechanism of legal regulation. Rectors of higher medical schools and institutions of postgraduate medical education were instructed to include modules (hours) on the topic of preventing and countering domestic violence in the curricula and educational programs of continuous professional development of health professionals [4], [5]. The legal sources regulating the examination of victims and the provision of medical assistance to them are the Constitution of Ukraine (Art. 49) [6]; international treaties of Ukraine, ratified by the Verkhovna Rada of Ukraine; laws of Ukraine “Fundamentals of Ukrainian legislation on Health Care” [7], “On Prevention and Counteraction Domestic Violence” [3], “On the protection of childhood” [8], “On Ensuring Equal Rights and Opportunities for Women and Men” [9], “On social services ”[10], “ On the National Police ”[11]; [12] Decree of the President of Ukraine dated September 21, 2020 No. 398/2020 “On urgent measures to prevent and counter domestic violence, gender-based violence and protect the rights of persons who have suffered from such violence”; Resolution of the Cabinet of Ministers of Ukraine dated October 3, 2018 No. 800 “Some issues of social protection of children in difficult life circumstances, including those that may threaten their life and health” [13] and others. The latest legislation of Ukraine on counteracting and preventing domestic violence has determined the list of subjects authorized to carry out the relevant measures. Among them, authorities, establishments and health care institutions are separately identified [14]. Article 12 of the Law of Ukraine “On Prevention and Counteraction to Domestic Violence” [3] defines and regulates the powers of health care authorities, establishments and institutions in the field of prevention and counteraction to domestic violence. The Ministry of Health of Ukraine by the order “On Approval of the Procedure for Conducting and Documenting the Results of Medical Examination of Victims of Domestic Violence or Persons Probably Victims of Domestic Violence and Providing them with Medical Assistants” from 02/01/2019 № 278 (entered into force on 04/12/2019) [15] determined the procedure for conducting a medical examination of victims of domestic violence. The procedure defines a mechanism for conducting and documenting the results of medical examinations of victims or probable victims of domestic violence, gender-based violence, and providing them with medical assistants to ensure a cross-sectoral approach to combating and overcoming such violence and promoting the rights of victims of violence him [16].

In accordance with the laws of Ukraine “On Prevention and Counteraction Domestic Violence” [3], “On the protection of childhood” [8], “On Social Services” [10], “On the National Police” [11], “Fundamentals of Ukrainian Legislation on Health Care” [7], its prescriptions apply to all subjects of medical care – state, municipal, private. Medical examinations and assistance to victims are not predetermined by the obligatory preliminary appeal of the latter to law enforcement and judicial authorities, other establishments and institutions that carry out measures to prevent and counteract domestic violence, from their participation in criminal or civil proceedings. At the same time, any discrimination is prohibited, and the justifications for

violent actions by customs, traditions, religious dogmas are insignificant. The processing of personal data about the injured person is carried out by employees of a healthcare institution in accordance with the Law of Ukraine “On the Protection of Personal Data” [17]. But the failure of the injured persons to comply with medical prescriptions or violation of the treatment regimen established by medical workers excludes the legal liability of the latter. The head of the health care institution or a person designated by him from among his deputies organizes professional thematic training of medical workers on the conduct and documentation of the results of medical examination of victims and the provision of medical assistance to them, and is also responsible for their direct implementation. In case of seeking medical help from victims, medical workers are required to record their complaints (appeals), take anamnesis, conduct a medical examination with an assessment of the condition of the injured person and, if necessary, conduct additional instrumental and laboratory examination and measures to prevent the consequences of sexual violence [5]. Further, they inform the injured person and / or his legal representative (if the representative is not the offender) about the rights, activities and social services that the injured person can use; on the rights of the injured person in accordance with Art. 21 of the Law of Ukraine “On Prevention and Counteraction Domestic Violence” [3], including on compensation by offenders for material damage and harm caused to physical and mental health, in the manner prescribed by law. A healthcare institution no later than one day by telephone, e-mail, with subsequent written confirmation, informs the authorized units of the National Police of Ukraine and authorized persons (structural unit) of regional, district in the cities of Kiev and Sevastopol state administrations, responsible employees of the executive committee (structural unit) executive bodies of councils of united territorial communities, urban, district in cities (if they are formed) councils which carry out work on receiving and registering statements and messages about committing violence, coordinating measures to respond to facts of committing violence, providing assistance and protection of victims, as well as work with offenders in accordance with the above laws and “The Procedure for Interaction of Subjects carrying out Measures in the Field of Prevention and Counteraction Domestic Violence and Gender-Based Violence”, issued by the Resolution of the Cabinet of Ministers of Ukraine dated August 22, 2018 No. 658 [18].

If the victim is a child, the health care institution, no later than one day by telephone, e-mail with subsequent written confirmation, informs the child affairs service about the identification of facts of violence by filling out a “Report about a Child who has Suffered from Abuse or in Relation to whom there is a Threat of it Committing”, the form of which is given in Appendix 2 with the obligatory indication in the fields of the position “Content of the message:” “victim or likely victim of domestic violence”, and filling out the register of appeals and reports of child abuse or threats to commit it, the form of which is given in Appendix 3 to the aforementioned Procedure, with the obligatory indication in column 8 “Note”: “victim or likely victim of domestic violence”. The health care institution, on a quarterly basis, by the 25th of the last month of the quarter, provides information to the Ministry of Health of the Autonomous Republic of Crimea, structural subdivisions on health issues of regional, Kiev and Sevastopol city state administrations on the appeal of victims and/or their legal representatives, provision of medical assistance to victims, referral of victims to other healthcare institutions. The Ministry of Health of the Autonomous Republic of Crimea, structural subdivisions on health issues of the regional, Kiev and Sevastopol city state administrations summarize the information provided by health care institutions and forward it by e-mail with subsequent written confirmation on a quarterly basis by the 30th of the last month of the quarter to the medical department of the Ministry of Health of Ukraine for reporting to the Ministry social policy of Ukraine on the results of the exercise of powers in the field of preventing and countering domestic violence. In the case of contact and delivery of persons to health care institutions in connection with the infliction of bodily harm of a criminal nature, information about them is recorded in “The Journal of the facts of treatment and delivery to a health care institution of persons in connection with bodily harm of a criminal

nature and informing police authorities and units about such cases” in the form approved by the order of the Ministry of Internal Affairs of Ukraine and the Ministry of Health of Ukraine “On the Procedure for Recording the Facts of Treatment and Delivery of Persons to Health Care Institutions in Connection with Bodily Harm of a Criminal Nature and Informing about Such Cases of Police Authorities and Units” dated July 6 2016, No. 612/679 [19]. A medical worker of a health care institution who finds injuries in a person that could arise as a result of domestic violence and gender-based violence, documents the results of their identification, examination, medical assistants and passes them on to the person in charge for further information within 24 hours (from the moment the injured person applies) authorities and units of the National Police and an authorized person determined in accordance with the first paragraph of clause 20 or clause 23 of the Procedure for Interaction of Subjects carrying out Measures in the Field of Prevention and Counteraction Domestic Violence and Gender-Based Violence, approved by the Resolution of the Cabinet of Ministers of Ukraine dated August 22, 2018 No. 658 [18]. Such cases are an example of the duty of a doctor to disclose information constituting a medical secret to the competent authorities in accordance with the law.

Depending on the provision of the necessary medical assistants, the data of the general medical examination and the results of the research are entered into the appropriate forms of primary records. If the injured person needs a certificate of incapacity for work, then information about him is entered in the form of primary record documentation No. 036 / o “Journal of Registration of Sick Leave Certificates”, approved by Order of the Ministry of Health of Ukraine dated February 14, 2012 No. 110 “On Approval of Forms of Primary Record Documentation and Instructions for Filling them out used in Health Care Institutions, regardless of the Form of Ownership and Subordination” (part 1, p. 1.26.) [20], and the sheet itself is provided by the health care institution from which this person was discharged. In cases of investigating cases of administrative offenses and criminal cases in connection with the facts of domestic violence, specialized institutions, as ordered by the court, conduct forensic medical or forensic psychiatric examinations, ensuring timely examination of the victims in the manner and terms specified by law [7; 21; 22; 23; 24]. When carrying out a forensic medical or forensic psychiatric examination of the victims, the information contained in the medical documentation compiled upon the treatment of such persons to health care institutions must be taken into account [16]. The above legal regulation of medical examination of victims of domestic violence is supplemented with no less detailed procedure for the provision of medical assistance to such persons. One of the main directions of the implementation of state policy in the field of preventing and combating domestic violence, clause 3, part 1 of Art. 5 of the Law of Ukraine “On Prevention and Counteraction Domestic Violence” provides for the provision of assistance and protection to victims, and among the entities that carry out activities in the field of preventing and combating domestic violence, paragraph 4 of Part 3 of Art. 6 identified health authorities, establishments and health care institutions. Their respective powers, enshrined in Part 1 of Art. 12 of the Law are: development and approval of a standard for the provision of medical assistants to victims; methodological support of establishment and health care institutions on the prevention and counteraction of domestic violence; reporting to the Ministry of Social Policy of Ukraine on the results of exercising powers in this area in the manner determined by the Ministry. To exercise the authority to provide medical care, Part 2 of Art. 12 of the Law, health care establishments and institutions are prescribed: to provide such assistance, taking into account individual needs; inform victims about the measures and social services that they can use; interact with other authorized entities; report to the Ministry of Social Policy on the results of medical care [3]. The mechanism for the implementation of the above provisions of the Law is regulated by the Procedure for conducting and documenting the results of medical examination of victims of domestic violence or persons likely to have suffered from domestic violence, and the provision of medical assistance to them, approved by order of the Ministry of Health of Ukraine dated 01.02.2019 No. 278 [15].

The specified Procedure defines the principles of medical care for victims of domestic violence accessibility, safety, efficiency, timeliness, economic efficiency, non-discrimination, human orientation. Its provision, if necessary, is provided for at the primary, secondary and tertiary levels, both outpatient and inpatient, which must be determined by a medical worker by referring such a person to an appropriate health care institution. The injured person has the right to a free choice of a doctor, a method of treatment in accordance with medical recommendations, and a healthcare institution. Medical assistance to the victim is provided with the voluntary informed written consent of the latter or his legal representative, if he is not the offender. Before giving consent, the patient must be fully informed about his disease, treatment methods, proposed alternative methods, risks, contraindications, prognosis of treatment results, etc. “Without such information, – rightly insists M. A. Anishchenko, – the patient will not be able to make an objective and balanced decision about the need to use this or that type (method) of medical intervention” [25]. But such consent is not required if there are signs of a direct threat to the life of the injured person (provided that it is impossible to obtain it for objective reasons). If the injured person does not need emergency, secondary (specialized) or tertiary (highly specialized) medical care, then it is provided in a primary health care (PHC) health care institution. If it is necessary to provide planned secondary or tertiary medical care, such a person is provided with a referral to the appropriate health care institution. In the event of an emergency in the injured person, the primary care physician must call the emergency (ambulance) medical team and provide the victim with appropriate medical assistance before its arrival. In the case of injuries (or suspicions) of a sexual nature, complaints, anamnesis, examination of the genitals, a review of the proctologist surgeon are collected, if necessary, tests for HIV, hepatitis B, pregnancy test (b-hCG), testing for syphilis, sexually transmitted infections are carried out (STI), bacterioscopic tests, if necessary – vaccination against tetanus, as well as against hepatitis in accordance with the order of the Ministry of Health of Ukraine dated September 16, 2011 No. 595 “On the procedure for conducting preventive vaccinations in Ukraine and quality control and circulation of medical immunobiological preparations” [26]. If necessary, tetanus prevention, diagnosis and treatment are carried out. The data on the measures taken are recorded in the medical records. Medical workers of the emergency (emergency) medical care department are obliged to provide emergency medical assistance to the victim from the moment of his arrival, regardless of whether he is accompanied by an emergency (ambulance) medical team or other persons. It is provided in accordance with medical indications based on clinical protocols and standards of emergency medical care approved by the Ministry of Health of Ukraine. The provision of secondary or tertiary medical care to the victim is possible both in a planned and urgent manner. The documented clinical diagnosis of the affected person must be encrypted in accordance with the current ICD-10 or ICPC-2.

In the case of hospitalization of adult victims, a health care worker asks such a person about the presence of children and their provision of adequate care and accommodation for the period of inpatient treatment, while providing him with information about the rights, activities and social services that he can use. If, after the hospitalization of the injured person, his children may be left without proper care/parental care, the health care worker will notify the responsible person of the health care institution about this for further informing the child welfare service. If we are talking about an incapacitated person or a person with limited civil capacity, whose guardian or trustee is the injured person who is subject to hospitalization, or who needs constant care and remains without him as a result of the hospitalization of the injured person, the health care worker notifies the person responsible for this. organization of medical examination of the victims and documenting its results of the healthcare institution for further informing the authorized person determined in accordance with the first paragraph of clause 20 or clause 23 of the Procedure for interaction of subjects taking measures in the field of preventing and countering domestic violence and gender-based violence, approved by the Cabinet Ministers of Ukraine dated August 22, 2018 No. 658 [18]. The special problem of proper medical examination and the provision of medical assistance to persons who have

suffered from violence during their detention in pre-trial detention centers and while serving a sentence of imprisonment in institutions of the penitentiary system of the State Penitentiary Service of Ukraine requires a solution. In particular, M. A. Anishchenko, S. F. Denysov, T. A. Denysova, V. M. Palchenkova, O. Riabchynska noting that although the right to protection of human health is constantly taken into account in various branches of law, “however, this does not apply to persons, who have committed a crime and they are serving a sentence in prison. Despite the importance of this issue, this issue has been studied in fragments. Therefore, it remains non-investigated or not fully investigated the observance of the right to prisoners’ health in penitentiary institutions...” The authors remind “...that the implementation of health protection of convicts is the responsibility of the state within which health care must comply with international standards that exist in society. Convicts should be provided with free access to necessary medical services without any discrimination based on their legal status (p. 24 “Mandela Rules”)” [27].

5. CONCLUSION

The problems of implementing the legal regulation of medical examination of victims of domestic violence and the provision of medical assistance to them are due to the ongoing large-scale reform of the healthcare sector in Ukraine, during which many mistakes of a financial, organizational and personnel nature are made, the consequences of which are confusion, disorder, uncertainty, irresponsibility, and the spread of offenses in practical matters of medical activity, reducing its effectiveness while ensuring the rights of a person and a citizen to medical care, including in cases of domestic violence. Overcoming these negative phenomena is possible only with a significant adjustment of the socio-economic, cultural and educational policy of the state. The evasion of the Verkhovna Rada of Ukraine from the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul, 11.V.2011, signed by Ukrainian representatives back on November 7, 2011, of May 11, 2011, is motivated by MPs by the fact that its terminology includes the concepts of “gender” and “gender equality”, which contradict the family traditions of the Ukrainian people. Such a reaction testifies to the lack of will of parliamentarians to properly harmonize national legislation with international law for the most effective solution of the considered social contradiction. The Ukrainian legislator should not be afraid of the prevalence of conservative traditions in the mass legal consciousness, but guided by the supremacy of international legal principles of humanism and respect for human rights, find a compromise that ensures de facto respect and observance of human rights in the sphere of family relations. The main problems of providing medical care to victims of domestic violence in Ukraine arise in connection with obstacles to advancing the reform of the health care system in the form of insufficient budget funding and a reduction in the network of health care institutions, as well as with professional shortcomings of medical workers in taking into account and ensuring the individual needs of victims. In centers for the assistance of victims of domestic violence, the size of the living quarters is often less than the sanitary norms established in the quarantine conditions in connection with the Covid-19 pandemic. The ways to solve them are to ensure the feasibility of the mechanisms for the implementation of the current legislative provisions on the considered area of medical care provided for by the by-laws and to increase the deontological level and legal awareness of healthcare workers.

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