

## THE CASES OF DOMESTIC VIOLENCE IN PROTRACTED QUARANTINE CAUSED BY COVID-19

<sup>1,2</sup> Babkina O.P. <https://orcid.org/0000-0001-8120-6526>

<sup>1</sup> Ushko I.A. <https://orcid.org/0000-0003-3017-7766>

<sup>3</sup> Danylchenko S. <https://orcid.org/0000-0001-5312-0231>

<sup>4</sup> Tarasyuk V. <https://orcid.org/0000-0002-8915-2443>

<sup>3</sup> Vako I. <https://orcid.org/0000-0002-0541-5761>

<sup>1</sup> Bohomolets National Medical University, Kyiv, Ukraine

<sup>2</sup> Kyiv Clinical Bureau of Forensic Medicine, Kyiv, Ukraine

<sup>3</sup> Petro Mohyla Black Sea National University, Nicolaev, Ukraine

<sup>4</sup> Koretsky Institute of state and law, Kyiv, Ukraine

[hpbsme@gmail.com](mailto:hpbsme@gmail.com)

**Relevance.** The analysis demonstrated that legislative documents in Ukraine were developed to prevent and combat domestic violence, protect and respect human rights. The basic standards of the regulatory framework of Ukraine are consistent with the Istanbul Convention. A positive moment in the modern legislation of Ukraine is the establishment of restrictive measures for people who have committed domestic violence in the form of a ban on staying in a place of joint residence with a person who has suffered from domestic violence. Some recommendations on conducting a forensic medical examination in cases of domestic violence are proposed. Displayed aspects of an ethical approach in the «Rules for the Examination of Victims, Accused, and Other Persons» in order to reduce psychological trauma during the examination.

**Objective:** to analyze and summarize the legal and forensic aspects of providing legal assistance to victims of domestic violence in Ukraine and to offer recommendations for their improvement

**Material and methods.** The materials are data from available Internet sources within the spring of 2020; 68 appeals to forensic medical institutions. The analysis was performed using a descriptive method; fixation methods, statistical processing of the results.

**Results.** Ukraine is oriented towards European standards, including in the area of issues of prevention and counteraction to domestic violence and respect for human rights. Recommended using modern methods of fixation during data collection and further examination of the victim in order to be able to use the obtained data by the parties to criminal proceedings / Court.

**Conclusions.** The issue of prevention and counteraction to domestic violence needs special attention and further resolution due to the increase in domestic violence cases, especially during quarantine caused by COVID-19.

**Keywords:** domestic violence, legal assistance, forensic examination, Istanbul Convention, COVID-19.

**Relevance.** The problem of developing ways to prevent and combat domestic violence is one of the most pressing in all countries of the world, including Ukraine. In the wake of the COVID-19 pandemic, when most people are forced to stay at home because of commonly used quarantine measures, we can see an increase in domestic violence affecting both children, adolescents, and adults regardless of gender. It is well-known that domestic violence can be applied to both women and men, but since there is a disproportion in the world today, girls and women are overwhelmingly affected by domestic violence. It should be noted that the normative acts of Ukraine put the liability for psychological, physical and sexual violence on the family when considering facts of domestic violence, especially when investigating the family violence against people who are married (registered or civil marriage) or living in a family (children, parents, relatives). Despite the high number of law enforcement appeals, there was only administrative responsibility for violence in the family that was provided by the law in 2003 [1].

The objective of the study was to analyze and summarize the legal and forensic aspects of providing legal assistance to victims of domestic violence in Ukraine and to offer recommendations for their improvement.

### MATERIALS AND METHODS

The materials are data from available Internet sources of domestic violence cases during quarantine by the COVID-19 pandemic in Ukraine within the spring of 2020; data of appeals to law enforcement agencies; 68 appeals to forensic medical institutions. The analysis was performed using a descriptive method; fixation methods (photo and video) followed by statistical processing of the results.

All the procedures and experiments of this study respect the ethical standards in the Helsinki Declaration of 1975, as revised in 2008, as well as the national law.

### RESULTS AND THEIR DISCUSSION

During the research process, 28 occasions of women recourse of juridical and medical assistance in cases

of single and systematic physical and moral domestic violence by their husbands or close relatives were studied. In all cases, the women showed signs of physical violence, which manifest themselves as external injuries, namely multiple sores, bruises, abrasions, scratches, or wounds. We found that in all cases by the morphological characteristics of the injuries it was possible to determine the duration of domestic violence, its one-time or multiple events, the number of blows, the mechanism of formation, and the characteristics of receiving injuries. In two cases we want to demonstrate the features of fixing and differential diagnosis of the facts of multiple (many day-long) and one-time (day-long) domestic violence (case 1 and case 2).

Case 1. A 26-year-old woman applied for juridical and medical assistance. She was subjected to systematic physical and mental domestic violence by her husband for a year. During the last week, the husband had beat up the woman several times, had multiple punches, had kicked her, hit her in the head with household items the woman repeatedly falls, lost consciousness. Also, the husband did not allow her to leave the house. After the intervention of relatives, an ambulance was called which took the woman to the hospital for examination by a medical expert. On examination, the woman showed multiple bruises of the face, oval and rounded (in the amount of 18), with clear contours, ranging in size from 1.0 x 1.0 cm to 6.0 x 4.0 cm, of various colors from reddish-purple to violet-yellowish. Also in the face area, multiple abrasions of an irregular linear and arched shape (38 in number) were found, measuring from 0.8 x 0.6 cm to 2.9 x 1.0 cm, which is covered with two types of crusts. The red crusts located at the level of the surrounding tissues and brown, which are located above the level of surrounding tissues. After the examination, the woman was also recommended to be examined by a neuropathologist, a psychologist's consultation, as

well as accommodation in a rehabilitation center. The medical experts concluded that the different colors of the bruises indicated prolonged beating for 2-6 days. The different colors of the crusts of abrasions and their level concerning the surrounding tissues indicate a prolonged beating for 1-6 days (photo 1).

Case 2. A 34-year-old woman who was subjected to domestic violence by her husband applied for juridical and medical assistance. The husband had beat up the woman several hours, had multiple punches, had kicked her, hit her a belt on the back, the woman repeatedly falls, lost consciousness. The husband did not allow her to leave the house. After the intervention of the relatives, an ambulance was called, which took the woman to the hospital and examined by a medical expert. On examination, the woman had multiple bruises of irregular oval and banded shape (22 in number) with indistinct contours, sizes from 2.0 x 1.0 cm to 26.0 x 4.0 cm, of a single reddish-violet color. After the examination the woman in the center is also recommended to be examined by a neuropathologist, a psychologist's consultation, as well as accommodation in a rehabilitation center. Medical experts give the conclusion that the nature and color of the bruising showed that a woman had been beaten for a long time during one day (photo 2).

As a result of the European integration, Ukraine is guided by the European standards on many issues, including those in the field of prevention and counteraction to domestic violence and respect for human rights. Ukraine became the 17th State to accede to the Istanbul Convention on November 7, 2011 (although it has not yet ratified it) and supported the main objectives of the Convention, in particular, section 1: "...protecting women against all types of violence and prevention, prosecution and eradication of violence against women and domestic violence; promoting the elimination of all forms of discrimination against women, promoting equality



**Photo 1.** A – The face is covered in multiple sores (general view); B – Multiple face abrasion.



**Photo 2.** A – The back is covered in multiple sores (general view); B – The detailed view of the back sores  
A – The back is covered in multiple sores (general view); B – The detailed view of the back sores

between women and men and promoting women's rights; protection and assistance to all victims of violence against women and domestic violence; promoting international cooperation against these types of violence; providing support and assistance to organizations and law enforcement agencies in cooperating with one another to introduce an integrated approach to eradicating violence against women and domestic violence». However, it should be noted that despite the non-ratification of the Istanbul Convention by the Verkhovna Rada of Ukraine, the Law of Ukraine «On Amendments to the Criminal and Criminal Procedure Codes of Ukraine with a view to implementing the provisions of the Council of Europe Convention on the Prevention and Combating of Violence against Women and Domestic Violence» [2]. The adopted Law [2], as well as the Law of Ukraine «On Prevention and Countering Domestic Violence» [3], transposed the basic standards contained in the Istanbul Convention into the national law.

The Convention gives particular attention to domestic violence, especially against women, with the statement that “violence against women is defined as a violation of human rights and a form of discrimination against women and denotes all acts of gender-based violence that result or maybe physical, sexual, psychological or economic harm or suffering to women, including the threat of such acts, coercion or arbitrary deprivation of liberty, whether in the public or private life; domestic violence is one of the above types of violence, but it occurs within the family or between current or former partners, married or not, regardless of whether the offender currently lives or has lived with the victim». Thus, the Convention prohibits all forms of discrimination against women, protects their right to the life free from violence, and emphasizes the need to respect equality between women and men as one of the conditions to prevent the elimination of violence against women [4].

In addition, it should be noted that the situation regarding domestic violence combat is constantly changing in Ukraine. The situation is dramatic and causes the adoption of a number of legislative documents and amendments to existing ones. Here are some examples: the Law of Ukraine No. 2227-VIII “On Amendments to the Criminal and Criminal Procedure Codes of Ukraine with a view to implementing the provisions of the Council of Europe Convention on the Prevention of Violence against Women and Domestic Violence” (dated 06.12.2017, entered into force 11.01.2019); several amendments to the Criminal Procedure Code of Ukraine, namely the definition of domestic violence in Article 1261: «Domestic violence, that is, the intentional systematic commission of physical, psychological or economic violence against a spouse or former spouse or another person with whom the perpetrator is in (family) or close relationships, which leads to physical or psychological suffering, loss of health, loss of health, performance, emotional dependence or deterioration in the quality of life of the victim». At the same time, Article 173-2 of the Code of Administrative Offenses “Committing Domestic Violence, Gender-Based Violence, Failure to Comply with an Urgent Restraining Order, or Notifying Your Place of Stay” [5] is still working.

The Law of Ukraine No. 2229-VIII «On Prevention and Countering Domestic Violence» (adopted on 07.12.2017, entered into force on 07.01.2018) define «organizational and legal principles of prevention and counteraction to domestic violence, the main directions of implementation of the state policy in the field of prevention and counteraction domestic violence aimed at protecting the rights and interests of the victims of such violence» [3, 6].

There is also the Cabinet of Ministers of Ukraine Resolution “On Approving the Procedure for Interaction of Subjects Acting in the Field of Preventing and

Combating Domestic and Gender-Based Violence” [7] and several orders that have significantly improved the quality of legal assistance to victims of domestic violence. They are the following:

- Order of the Ministry of Internal Affairs № 654 «On Approval of the Procedure of Issuing an Urgent Injunction against the Offender by the Authorized Units of the National Police of Ukraine», dated 01.08.2018 [8];
- Order of the Ministry of Social Policy, Ministry of Internal Affairs № 369/180 «On Approval of the Procedure for Conducting Risk Assessment of Domestic Violence» (dated 13.03.2019) [9];
- Order of the Ministry of Internal Affairs № 124 “On Approval of the Procedure for Conducting Preventive Work with an Offender by an authorized unit of the National Police of Ukraine” (dated 25.02.2019) [10].

The current legislation (Article 911 of the Criminal Procedure Code of Ukraine) provides for restrictive measures applicable to persons who have committed domestic violence:

1) “In the interests of the victim of a crime related to domestic violence, together with the punishment not related to imprisonment or release on criminal grounds or punishment provided by this Code, the court may apply to a person, the perpetrator of domestic violence, one or more restrictive measures under which the convicted person may be charged with the following duties: 1) a ban on staying in a place of cohabitation with a person affected by domestic violence; 2) restricting communication with the child if domestic violence is committed against or in the presence of the child; 3) prohibition of approaching a certain distance to a place where a person affected by domestic violence may permanently or temporarily reside, temporarily or systematically in connection with work, study, treatment or other reasons; 4) prohibition of correspondence, telephone conversations with the victim of domestic violence, other contacts through communication or electronic communications in person or through third parties; 5) referrals for the offender or probation program”.

The Law clearly states that domestic violence is “the act (action or omission) of physical, sexual, psychological or economic violence perpetrated in the family or within the place of residence or between relatives, or between former or current spouses, or between other persons who co-live with one family but are not (have been) in a family relationship or are married to each other, regardless of whether the person who has committed domestic violence lives in the same place with an injured person, or not, or threatening of such acts commission»(Art. 1 Section I of the Law) [3]. There are three forms of domestic violence: psychological, physical, sexual.

Psychological abuse is “a form of domestic violence, including verbal abuse, threats, including threats against third parties, humiliation, harassment, intimidation, other

acts aimed at limiting the will of a person, controlling in the reproductive sphere, if such acts or omissions caused the victim’s fear for his/her own safety or the safety of a third person, have caused emotional insecurity, inability to protect themselves or have harmed the mental health of a person” (Article 14, Section I of the Law) [3].

Physical violence is “a form of domestic violence, including slaps, kicks, pushing, pinching, tapping, biting, as well as unlawful imprisonment, beating, snorting, bodily harm of varying severity, leaving in danger, not assisting a person in a life-threatening condition, causing death, committing other violent offenses” (Article 17, Section I of the Law) [3].

Sexual violence is “a form of domestic violence involving any act of a sexual nature committed against an adult without consent or against a child regardless of his or her consent, or in the presence of a child, coercion to a sexual act with a third party, and other offenses against sexual freedom or sexual integrity of a person, committed against or in the presence of a child” (Article 54, Section I of the Law) [3].

Scientists also suggested believing that the phrase «the systematic commission of physical, psychological, or economic violence» describes an act. Thus, a crime is considered to be completed if the commission of at least one of the three forms of violence (physical, psychological or economic) for the third time, resulting in at least one of the consequences listed in the Law of Ukraine “On Domestic Violence Prevention and Counteraction” [6]. It should be emphasized that the perpetrator can be brought to administrative responsibility for the first two offenses, and on the third time there is criminal liability.

In case of suspected domestic violence, law enforcement, social services, medical professionals are required to respond swiftly to an impartial investigation of impartial investigation and assistance to female and male victims of domestic violence, as well as the timely detection and fixation of psychological, physical and sexual violence.

The issue of timely appointment and expertise in cases of domestic violence arising from pre-trial investigation/court bodies in cases of psychological, physical, and sexual abuse is quite relevant. In cases of psychological violence, the forensic psychiatric examination is foreseen, in cases of physical and sexual violence, there must be a forensic examination. Examples of physical violence are illustrated below (Photo 1 and Photo 2). In this case, it is necessary to carry out the examination of an injured woman all parts of the body and describe all available lesions (bruises, abrasions, scratches, hemorrhages, scars, etc.) in order to determine the nature of the damage, its quantity, localization, and the degree of severity of each injury.

Thus, in order to detect the existence and fixation of physical and sexual violence against victims, it is necessary to appoint and conduct a forensic medical examination in a timely manner, which is regulated by

the legal framework, namely: the Criminal Procedure Code of Ukraine, the Law of Ukraine “On Forensic Examination”, and others legislative acts, international treaties and agreements on mutual legal assistance and cooperation which regulate legal relations in the field of forensic activities and normative documents, approved by orders of the Ministry of Health (Order No. 6 «On the Development and Improvement of the Forensic Medical Service of Ukraine» (dated 17.01.1995) and «The Instruction on the Forensic Examination», approved by this order, etc. [11].

Taking into account the mentioned above information about domestic violence, we recommend to follow the basic rules for conducting forensic examinations of victims, accused persons, and others and to pay attention to the following aspects:

1) to conduct interviews with the observance of moral and ethical norms, taking into account the possibility of negative situational factors that may remind the victim about the circumstances of the violence;

2) to be polite towards the victim, to formulate questions correctly, to try to create a trusting environment in order to fully describe the situation;

3) to explain clearly to the injured person that all information provided by her/ him is confidential and will not be disclosed to other persons, including the person who caused the injury;

4) it is desirable that the forensic physician be of the same sex with the victim to create comfortable situation during the survey and follow-up examination (i.e., if a female victim is affected, the forensic doctor should be female, or if the expert is a man, there must be permission from a female victim);

5) to record in full all the complaints of the victim (taking into account that sometimes the victims do not pay attention to their condition, fixing only on the psychological aspect); in cases of repeated violence, record all-time intervals, circumstances of the incident, etc.;

6) to carry out the examination of an injured woman insufficient light and at a comfortable temperature in the room, necessarily in the presence of a third person from the medical staff (nurse / medical registrar/others);

7) to inspect all parts of the body (even in cases where the victim initially refers only to blows, for example, to the area of the face or extremities); the practice shows that victims remember of their injuries in other areas after a while, sometimes after several hours or the day after the inspection;

8) to describe all available lesions (bruises, abrasions, scratches, hemorrhages, scars, etc.) according to the traditional medical scheme of description with the obligatory indication of localization, quantity and full characteristics (depending on the type of damage); if necessary to carry out research in ultraviolet rays, etc.;

9) after determining the nature of the damage, its localization, quantity, all the characteristic features, we are to establish the mechanism of damage occurrence

and features of traumatic objects, the prescription of each injury, its simultaneous or different in time character of obtaining, the possibility of getting injuries in the circumstances mentioned by the victim; and the degree of severity of each injury;

10) if necessary, to send the victim to additional examinations (radiological, ultrasound, consultations of specialists such as a neurologist, cardiologist, etc.), the results of which must be taken into account in determining the severity of injuries;

11) in case of damage or other changes in the victim's clothing, to indicate this and, if necessary, recommend to law enforcement officers to order a forensic examination if this has not been done yet;

12) to carry out obligatory fixing of the damage revealed in the victim during an inspection by modern methods (photographing, etc.) additionally for the purpose of documentary confirmation;

13) to record video during data collection and further examination of the victim in order to use the obtained video data (to prevent psychological traumatization of the victim) in the course of further investigative actions, which should be reported to the party of criminal proceedings/court;

14) to remember that the competence of a forensic expert does not include the qualification of injuries such as beating, torment, and mortification. This issue is the responsibility of the pre-trial / judicial authorities.

Thus, as a result of our analysis and synthesis of legal and forensic aspects of providing legal assistance to victims of domestic violence in Ukraine, we can confidently say that Ukraine is oriented towards the European standards on many issues, including in the area of issues of prevention and counteraction to domestic violence and respect for human rights.

## CONCLUSIONS

1. Ukraine together with the whole world widely uses measures to prevent and combat domestic violence and constantly develop recommendations to involve law enforcement, social services, medical institutions, public and international organizations demonstrating implementation of the European standards.

2. An effective fair investigation of domestic violence is outlined at the legislative level, including restrictive measures against domestic violence perpetrators.

3. The timely conduct of forensic examinations in order to detect the existence of injuries with the subsequent fixation of domestic violence will help the criminal/judicial side to take effective administrative, criminal, or other measures against the offender.

4. In order to prevent psychological traumatization of the injured person, it is recommended to use modern methods of fixation (photographing, video recording) during the evidence collection and further examination of

an injured person in order to be able to use the obtained data by the parties to criminal proceedings/court.

5. Due to the increasing incidence of domestic violence, especially in emergencies and lockdown situation of COVID-19, the issue of prevention and counteraction against domestic violence needs special attention and further resolution.

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## ВИПАДКИ ДОМАШНЬОГО НАСИЛЬСТВА В УМОВАХ ТРИВАЛОГО КАРАНТИНУ, ВИКЛИКАНОГО COVID-19

<sup>1,2</sup>Бабкіна О.П., <sup>1</sup>Ушко Я.А., <sup>3</sup>Данильченко С., <sup>4</sup>Тарасюк В., <sup>3</sup>Вак І.

<sup>1</sup>Національний медичний університет імені О.О. Богомольця, Київ, Україна

<sup>2</sup>Київське міське клінічне бюро судово-медичної експертизи, Київ, Україна

<sup>3</sup>Чорноморський національний університет імені Петра Могили, Миколаїв, Україна

<sup>4</sup>Інститут держави і права ім. Корецького НАН України, Київ, Україна  
[hpbsme@gmail.com](mailto:hpbsme@gmail.com)

**Актуальність.** Законодавчі документи в Україні розроблені для запобігання та боротьби з домашнім насильством, для захисту і дотримання прав людини. Основні стандарти нормативно-правової бази України відповідають Стамбульській конвенції. Позитивними моментами в сучасному законодавстві України є: встановлення обмежувальних заходів для осіб, які вчинили домашнє насильство у вигляді заборони на перебування в місці спільного проживання з особою, яка постраждала від домашнього насильства; пропонуються деякі рекомендації з проведення судово-медичної експертизи; висвітлюються аспекти етичного підходу в «Правилах допиту потерпілих, обвинувачених та інших осіб» з метою зменшення психологічної травми під час допиту. Але, у зв'язку зі збільшенням випадків домашнього насильства, особливо в умовах тривалого карантину, правові та судово-медичні аспекти надання правової допомоги залишаються актуальними.

**Мета:** проаналізувати і узагальнити правові та судово-медичні аспекти надання правової допомоги жертвам домашнього насильства в Україні та запропонувати рекомендації щодо їх поліпшення.

**Матеріали та методи.** Матеріалом дослідження були дані з доступних інтернет-джерел протягом весни 2020 року, аналіз 68 звернень в судово-медичні установи. Аналіз проводився описовим методом, методами фіксації, з подальшою статистичною обробкою результатів.

**Результати.** Показано, що Україна орієнтована на європейські стандарти, в тому числі в галузі запобігання та протидії домашньому насильству та дотримання прав людини. Впровадження сучасних методів фіксації при зборі даних і подальшому огляді потерпілого дає можливість використання отриманих даних сторонами кримінального процесу / суду.

**Висновок.** Питання запобігання та протидії домашньому насильству вимагає особливої уваги і подальшого вирішення у зв'язку із збільшенням випадків домашнього насильства, особливо під час карантину, викликаного COVID-19.

**Ключові слова:** домашнє насильство, юридична допомога, судово-медична експертиза, Стамбульська конвенція, COVID-1

## ОСЛУЧАИ ДОМАШНЕГО НАСИЛИЯ В УСЛОВИЯХ ДЛИТЕЛЬНОГО КАРАНТИНА, ВЫЗВАННОГО COVID-19

<sup>1,2</sup>Бабкина Е.П., <sup>1</sup>Ушко Я.А., <sup>3</sup>Данильченко С., <sup>4</sup>Тарасюк В., <sup>3</sup>Вако И.

<sup>1</sup>Национальный медицинский университет имени А.А. Богомольца, Киев, Украина

<sup>2</sup>Киевское городское клиническое бюро судебно-медицинской экспертизы, Киев, Украина

<sup>3</sup>Черноморский национальный университет имени Петра Могилы, Николаев, Украина

<sup>4</sup>Институт государства и права им. Корещкого НАН Украины, Киев, Украина

hpbsme@gmail.com

**Актуальность.** Законодательные документы в Украине разработаны для предотвращения и борьбы с домашним насилием, для защиты и соблюдения прав человека. Основные стандарты нормативно-правовой базы Украины соответствуют Стамбульской конвенции. Положительными моментами в современном законодательстве Украины являются: установление ограничительных мер для лиц, совершивших домашнее насилие в виде запрета на пребывание в месте совместного проживания с лицом, пострадавшим от домашнего насилия; предлагаются некоторые рекомендации по проведению судебно-медицинской экспертизы; высвечиваются аспекты этического подхода в «Правилах допроса потерпевших, обвиняемых и других лиц» с целью уменьшения психологической травмы во время допроса. Однако, в связи с увеличением случаев домашнего насилия, особенно в условиях длительного карантина, правовые и судебно-медицинские аспекты оказания правовой помощи остаются актуальными.

**Цель:** проанализировать и обобщить правовые и судебно-медицинские аспекты оказания правовой помощи жертвам домашнего насилия в Украине и предложить рекомендации по их улучшению.

**Материалы и методы.** Материалом исследования были данные из доступных интернет-источников в течение весны 2020 года, анализ 68 обращений в судебно-медицинские учреждения. Анализ проводился описательным методом, методами фиксации, с последующей статистической обработкой результатов.

**Результаты.** Показано, что Украина ориентирована на европейские стандарты, в том числе в области предотвращения и противодействия домашнему насилию и соблюдения прав человека. Внедрение современных методов фиксации при сборе данных и последующем осмотре потерпевшего дает возможность использования полученных данных сторонами уголовного процесса /суда.

**Вывод.** Вопрос предотвращения и противодействия домашнему насилию требует особого внимания и дальнейшего решения в связи с увеличением случаев домашнего насилия, особенно во время карантина, вызванного COVID-19.

**Ключевые слова:** домашнее насилие, юридическая помощь, судебно-медицинская экспертиза, Стамбульская конвенция, COVID-19.