

DOMESTIC VIOLENCE: UNDERSTANDING THE NUANCES

WHAT IS DOMESTIC VIOLENCE?

Ukraine has national legislation addressing the prevention and combat of domestic violence, - notably the Law of Ukraine "**On the Prevention and Counteraction to Domestic Violence.**" This law defines the organizational and legal frameworks for preventing and combating domestic violence, outlining the primary directions for state policy implementation in this field, aimed at protecting the rights and interests of persons affected by such violence.

Simultaneously, Ukrainian legislation includes provisions that establish liability for committing domestic violence:

- administrative liability – under Article 173-2 of the Code of Ukraine on Administrative Offenses (CUaAO)
- criminal liability – under Article 126-1 of the Criminal Code of Ukraine (CCU).

Administrative responsibility arises:

for cases of domestic violence (physical, psychological, economic, but not sexual), that do not result bodily harm, but may harm the survivor's physical or mental health.

Criminal responsibility arises:

for cases of domestic violence (in the form of physical, psychological, or economic violence, but not sexual) that are systematic in nature and cause physical or psychological suffering, health disorders, loss of working capacity, emotional dependence, or deterioration of the survivor's quality of life.

However, when comparing the definition of "domestic violence" outlined in the Law of Ukraine "On Prevention and Counteraction to Domestic Violence" with the definitions given in CUaAO and CCU, it's notable that the latter laws do not explicitly include "sexual violence" as a component of domestic violence. As a result, both administrative and criminal liability encompass **physical, psychological, or economic violence, but excluding sexual violence.** This is because responsibility for committing sexual violence is addressed by specific provisions in legislation. Further details on sexual violence, its types, and associated liability can be found in brief № 2.

The Law of Ukraine "On Prevention and Counteraction to Domestic Violence" also contains a definition of the term "domestic violence" and its possible forms:

Domestic violence - action (acts or inactions) of physical, sexual, psychological or economic violence committed in the family or within the place of residence or between relatives, or between former or current spouses, or between other persons living together (lived) in the same family, but are not (were not) in family relations or in marriage with each other, regardless of whether the person who committed domestic violence lives (lived) in the same place as the survivor, as well as threats to commit such acts.

Forms of domestic violence:



Physical violence - includes, in particular, slapping, kicking, pushing, pinching, flogging, biting, as well as illegal deprivation of liberty, beatings, torture, causing bodily harm of varying severity, leaving in danger, not providing help to a person who is in a life-threatening situation condition, causing death, committing other crimes of a violent nature.



Economic violence - includes, in particular, intentional deprivation of housing, food, clothing, other property, funds or documents or the ability to use them, leaving without care or guardianship, obstruction in obtaining the necessary treatment or rehabilitation services, prohibition to work, forced labor, prohibition to study and other offenses of an economic nature.



Psychological violence - includes, in particular, verbal insults, threats, including against third parties, humiliation, persecution, intimidation, other acts aimed at limiting the will of the person, control in the reproductive sphere, if such actions or inactions caused the survivor's fears for their safety or the safety of third parties, caused emotional insecurity, inability to protect themselves or harmed the mental health of the person.



Sexual violence - includes, in particular, any acts of a sexual nature committed against an adult without his/her consent or against a child regardless of his/her consent, or in the presence of a child, coercion to an act of a sexual nature with a third person, as well as other offenses against sexual freedom or sexual integrity of a person.

Domestic violence vs gender-based violence (GBV)

- ➔ Domestic violence can be one of the forms of GBV, although it may not always have its signs, meaning that domestic violence does not always contain signs of violence targeting an individual based on their gender or sex.
- ➔ The primary distinction between domestic violence and GBV lies not in the nature of the actions committed, but rather in the relationship between the perpetrator and the survivor. Therefore, if the mentioned individuals are or were in family relations, or if they cohabit/cohabited without being in such relations, the act will be categorized as domestic violence.
- ➔ In turn, the perpetrator and survivor in the case of GBV can be any person, regardless of their relationship or cohabitation status.

The above-mentioned differences determine the existence of a special legal regulation on preventing and combating domestic violence. The key legal act in this area is the Law of Ukraine "On Prevention and Counteraction to Domestic Violence," which defines the effect of the legislation on preventing and combating domestic violence, regardless of the fact of cohabitation, applies to the following persons:

- Spouses, ex-spouses, newlyweds, persons who have a common child
- Mother, father, children, children of one of the spouses, siblings
- Persons who live (lived) together as a family, their parents and children
- Grandfather, grandmother, great-grandfather, great-grandmother, grandson, granddaughter, great-grandson, great-granddaughter
- Stepfather, stepmother, stepson, stepdaughter
- Other relatives: uncle, aunt, nephew, niece, cousins, great-grandfather or grandmother and great-grandson or granddaughter

- Guardians, trustees, their children and persons who are (were) under guardianship or trusteeship
- Foster parents, foster caregivers, their children and foster children, children living (lived) in the family of a foster caregiver.
- This legislation also applies to other relatives, other persons who are connected by a common life, have mutual rights and obligations, subject to cohabitation, as well as to entities taking measures in the field of preventing and combating domestic violence.

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