

MECHANISMS OF LEGAL RESPONSE AND SOCIAL PROTECTION ON THE FACTS OF DOMESTIC VIOLENCE ACCORDING TO CURRENT LEGISLATION OF GEORGIA

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Abstract

Domestic violence in itself is one of the most difficult, specific and wide-spread social-legal problems containing the number of signs of violation. Conflict directly concerns people connected with coexistence; it has the local, exclusive character and the fight against it is less effective in accordance with common practice of fight against the crime. Specificity of the fight against the crime of this category is expressed in both complexity of its revealing and in effective and lawful choice of coercive measures against it. The issue of domestic violence has been tabooed in many countries for a long time, because the disclosure of such issues was considered as interference in people's private life. Although the society has gradually realized that the problem of domestic violence must not be ignored as violence endangers people's health and life. Domestic violence is not only the problem of separate individuals, it has negative effect on the other members of the family, especially on minors and leads to distortion of their psyche and consciousness which, in its turn, leads to the formation of an unhealthy situation in the society.

Keywords: Domestic violence, Victims, Criminal Code, Administrative Code, Civil Code

Introduction

It is to be admitted that despite the urgency, the facts of domestic violence are mainly in shade, as the victim avoids public disclosure of his/her problem sometimes because of shame but sometimes because of fear of revenge or aggression.

Georgian Law on "Prevention of Domestic Violence, Protection and Assistance to the Victims of Domestic Violence" sets out the definition that domestic violence implies the violation of constitutional rights or neglect and/or physical, psychological, economic, sexual violence or coercion by one member of the family against the other. Domestic violence, bearing in mind its definition, includes the number of signs of violation and is characterized by specific features of unlawful acts. Domestic violence implies both the crime prescribed by the Criminal Code of Georgia and the administrative offence prescribed by Administration Code and obligation arisen from the damage caused.

The fight against domestic violence, together with current legal and practical experience of fight against crime, needs additional mechanisms. The complexity of the problem led to definition of additional systemic measures for the fight against domestic violence, proposed by Georgian Law on "Prevention of Domestic Violence, Protection and Assistance to the Victims of Domestic Violence" and the amendments to Legislative Acts proceeding from it. According to the Article 9 of the mentioned Law, criminal, civil and administrative mechanisms prescribed by Law are used for revelation and prevention of domestic violence. It can be said that criminal, civil and administrative mechanisms are used in the process of response to the facts of domestic violence considering the context of the

violation. The decisive factor, naturally, is unlawful character of the action and the degree of public danger. Also the volume and limits of damage caused.

Considering all of the above mentioned, according to paragraphs 2, 4 of the Article 9 of Georgian Law on “Prevention of Domestic Violence, Protection and Assistance to the Victims of Domestic Violence”:

- Criminal mechanisms are used against the facts of domestic violence which imply the actions with the signs of criminal actions.

- Administrative mechanisms are used with the purpose of covering the damage caused by domestic violence according to the rules of Administrative Law.

- Administrative mechanisms are used in the form of issuing restrictive and protective orders, also when the unlawful action in itself does not lead to criminal liability according to Georgian Legislation and it can be prevented with the use of provisions of Administrative Code of Georgia.

Therefore, in the process of response to the facts of domestic violence, it is important to evaluate the action performed, whether it is a crime or an administrative offence. Accordingly, adequate mechanism of response is to be selected. Moreover, more than one mechanism of response can be used simultaneously against the fact of domestic response. The most serious form of domestic violence is performing an action under the Criminal Code by one member of the family against the other. During the process of response to the mentioned action, criminal mechanisms are used. Enforcement of the mechanism of criminal response to the fact of domestic violence was considered in the amendment to Criminal Code of Georgia made on June 12, 2012. According to it, two new articles were added to the Criminal Code of Georgia 11¹-Liability for domestic offence and 126¹-Domestic violence. With the help of the mentioned amendments the ability of using criminal mechanisms has been substantially broadened. The definition of domestic violence was allocated in the Article 126¹ of the Criminal Code of Georgia. With the purpose of criminal Legislation the signs of its qualification and sanctions for the mentioned action were defined. The Article 126¹ of the Criminal Code of Georgia states that domestic violence is the violence by one member of the family towards the other one, regular offence, chantage, humiliation which caused physical pain or suffrage and which was not followed by the consequences prescribed in the Articles 117 (intentional damage to health), 118 (intentional less major damage to health) or 120 (intentional light damage to health).

The signs of the qualification of crime were defined in the mentioned Article and the legislator has determined that if the action prescribed by the first part of the Article 126¹ is performed against a minor, a pregnant woman, or a helpless person, or against the member of the family in the presence of a minor, repeatedly, by a group of people and against one or more person, the criminal liability is burdened and in the case considered by the first part it is limited to community service work, the measure of criminal liability for the aggravated action is defined as restrictions on freedom for a year's period and imprisonment for the same period of time, together with the community service work.

It is to be admitted, that the Article 126¹ of the Criminal Code of Georgia applies only in cases, if the form of domestic violence does not contain any other signs of crime prescribed by other articles of Criminal Code such as serious, less serious and light body injuries, etc.

Apart from abovementioned circumstances, there was an important development in the fight against crime at the legislative level by specifying the group of people who are protected by Criminal Code. A broadened group of people was defined by the Law this provision applies to. In particular, unlike the Georgian Law on “Prevention of Domestic Violence, Protection and Assistance to the Victims of Domestic Violence”, Criminal Code

has broadened the area of the provision and the person who was or is engaged in a common household with the family is allocated to the category of family member.

According to additions made to Criminal Code of Georgia in June 12, 2012, a new Article 11¹ was added to the Criminal Code, which defined the crimes belonging to the category of domestic violence. According to the mentioned Article, the action prescribed by the number of articles of Criminal Code, committed by one member of the family against the other, is considered as domestic violence. In accordance with the Law, such crimes as murder, body injury of different degree, rape, humiliating treatment, illegal imprisonment, engagement in prostitution, and so forth if committed by one member of the family against the other, are punishable under relevant article of Criminal Code, referring to the Article 11¹.

The most important and effective measures against domestic violence are administrative-legal mechanisms which can be considered as an essential innovation in Georgian Legislation, namely, restrictive and protective orders. These orders were made with the purpose of rapid response to the facts of domestic violence when the actions of abuser do not reveal the signs of the crime prescribed by Criminal Code by one member of the family against the other. Restrictive and protective orders differ from each other by issuing entity, terms of validity, issues to be considered, specificity of issuing and enforcement. In particular, protective order is issued by the First Instance Court by administrative proceedings, but the restrictive order is issued by an authorized police officer with the purpose of rapid response to the facts of domestic violence and submitted to the court within 24 hours from issuing. The main distinguishing feature between these orders is that, an authorized person to submit the protective order to the court is direct victim of the violence, her family member, or the person who provides medical, legal or psychological assistance to the victim with her consent, also in case of violence against a minor-guardianship or care body. But in order to issue a restrictive order, it is not necessary to apply to police. The matter of its issuing is decided by relevant authorized person according to current urgent needs, with the purpose of protection of a probable victim, which is approved by the court within 24 hours after examining the grounds and circumstances of the case and the term of which does not exceed one month.

As for the civil mechanisms of response to the facts of domestic violence, it implies providing coverage of property and non-property damage to the victim of domestic violence in the process of criminal or administrative offense in the way of claim proceedings according to rules and procedures defined by Civil Code and Code of Civil Procedures.

Apart from the prevention of domestic violence and the mechanisms of fighting against it, Georgian Law on “Prevention of Domestic Violence, Protection and Assistance to the Victims of Domestic Violence” includes the guarantees of social protection of victims. According to the Law, a victim has the following guarantees of social protection: the right to use specific means for defending from the abuser, the right to use an asylum, the right to use emergency medical aid and psychological aid in the period of being in an asylum, the right to permanent retention. Among above listed guarantees, the most important one is to provide the victim with temporary places, asylums and crisis centers. An asylum/crisis center, according to the law, represents a temporary place for the victims of domestic violence which belongs to the state system or exists on the basis of non-private legal entity, which serves for rehabilitation of psycho-social condition of victims, providing medical and legal assistance, also the measures for their protection. Such kind of asylums and crisis centers are to meet the victim’s condition of life and provide the necessary medical and psychological assistance.

Individuals being in crisis centers stay there before defining their status and after it, only in case if victim does not have any desire to leave for an asylum and needs only psychological-social rehabilitation and/or legal assistance and/or emergency medical aid without living in an asylum.

An important guarantee of social and labor rights of the victims of domestic violence is Labor Code provision, according to which, labor relationship with the victim of domestic violence is suspended for the period of being in an asylum or crisis center, when it is impossible to perform the work duties without termination of labor relationship. The same provision applies to public officers in Georgian Law on “Public Service”.

With the purpose of formation effective and adequate system of fight against the problem of domestic violence, it is important to evaluate the area of spread and statistics of violence in the family, which may be defined on the basis of quantitative and qualitative studies carried out on appropriate issues. Increase in the number of facts of domestic violence and the necessity of formation of effective system of response in Georgia has led to preparation such special Legislative Act as Georgian Law on “Prevention of Domestic Violence, Protection and Assistance to the Victims of Domestic Violence”. With the purpose of perfect regulation of measures to be taken against the domestic violence and deciding certain issues related to it, amendments were made to such Laws as Georgian Law on “Weapons”, “Labor Code”, “Public Service”, “Police”, Criminal Code, Administrative Code, Code of administrative procedures and to the number of subordinate normative acts.

Conclusion

When reviewing the current Legislation of Georgia on domestic violence, it should be admitted that mechanisms defined by Law providing rapid and effective response to the facts of domestic violence, also provides the victim of domestic violence with the means of protection (both legal and physical). Legislation defined such additional mechanisms which should provide the prevention of domestic violence. Also permanent and dynamic renovation of the mentioned measures is taken into consideration. Substantial accents of Legislation are oriented on victim’s protection, introducing effective and acceptable mechanisms of protection.

References:

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