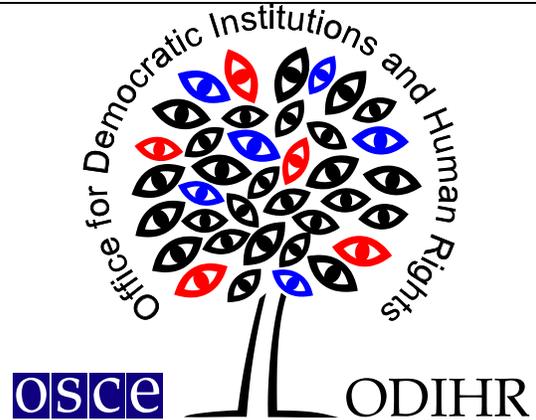


Warsaw, 31 July 2013

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**OPINION**

**ON THE DRAFT LAW**

**ON PREVENTING AND COMBATING**

**DOMESTIC VIOLENCE**

**OF UKRAINE**

**based on English translations of the draft law and other selected legal texts  
provided by the Ukrainian Parliament Commissioner for Human Rights**

OSCE Office for Democratic Institutions and Human Rights  
Ulica Miodowa 10 PL-00-251 Warsaw ph. +48 22 520 06 00 fax. +48 22 520 0605

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**Annex 1: The Draft Law of Ukraine on Preventing and Combating Domestic Violence**

## **I. INTRODUCTION**

1. *On 22 April 2013, the Ukrainian Parliament Commissioner for Human Rights (hereinafter “the Human Rights Commissioner”) sent a letter to the Director of the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) requesting a review of selected draft legal acts of Ukraine in the field of combating domestic violence, particularly the Draft Law of Ukraine on Preventing and Combating Domestic Violence (hereinafter “the Draft Law”), and amendments to Article 173-2 of the Code of Ukraine on Administrative Offences (hereinafter “the Code of Administrative Offences”). The Human Rights Commissioner also provided the following selected legal texts:*
  - *The Law of Ukraine “on Prevention of Domestic Violence” (2001) (hereinafter “the 2001 Law”); and*
  - *Articles 115 to 127, 146, 149 and 152 to 156 of the Criminal Code of Ukraine.*
2. *This Opinion is provided in response to the Human Rights Commissioner’s request.*
3. *The OSCE/ODIHR conducts this assessment within the mandate established by the OSCE Action Plan for the Promotion of Gender Equality, which states that, “[t]he ODIHR, in co-operation with other international organisations and relevant national bodies and institutions, will assist OSCE participating States in complying with international instruments for the promotion of gender equality and women’s rights, and in reviewing legislation to ensure appropriate legal guarantees for the promotion of gender equality in accordance with OSCE and other commitments.”*
4. *Previously, in 2006, the OSCE/ODIHR had already reviewed the Law of Ukraine on the Prevention of Domestic Violence, of 15 November 2001, upon the request of the OSCE Project Coordinator’s Office in Ukraine.<sup>1</sup> This law was then subsequently amended in 2009.*

## **II. SCOPE OF REVIEW**

5. *The scope of the Opinion covers only the above-mentioned Draft Law, which includes draft amendments to Article 173-2 of the Code of Administrative Offences. The current Article 173-2 of the Code of Administrative Offences, as well as certain relevant articles of the Criminal Code and the 2001 Law were also considered and referenced to the extent relevant. However, the Opinion does not constitute a full and comprehensive review of all available framework legislation governing prevention and protection from domestic violence in Ukraine.*

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<sup>1</sup> See the OSCE/ODIHR Comments on the Law of Ukraine on Prevention of Domestic Violence (issued on 25 October 2006) available at <http://www.legislationline.org/documents/id/1982>.

6. The Opinion raises key issues and indicates areas of concern. In the interests of conciseness, the Opinion focuses more on problematic areas rather than on the positive aspects of the Draft Law and related legislation. The ensuing recommendations are based on international standards and practices related to the prevention and protection from domestic violence, as well as relevant OSCE commitments.<sup>2</sup> The Opinion will also seek to highlight good practices from other OSCE participating States in this field.
7. The Opinion is based on translations of the Draft Law and the other relevant legal texts, as provided by the Ukrainian Human Rights Commissioner; the Draft Law is attached hereto under Annex 1. Errors from translation may result.
8. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to the Draft Law and related legislation that the OSCE/ODIHR may wish to make in the future.

### **III. EXECUTIVE SUMMARY**

9. At the outset, it should be noted that this Draft Law is generally compliant with international standards on the prevention and protection against domestic violence and introduces significant changes to the 2001 Law. The authors of the Draft Law are to be commended for the protective measures that can now be issued by both the police and the courts.
10. At the same time, certain parts of the Draft Law, particularly the definitions contained in the Draft Law and the provisions relating to liability for committing acts of domestic violence, could be further elaborated and clarified. In order to improve the Draft Law's compliance with international standards and to make certain provisions more effective, it is recommended as follows:

#### **1. *Main Recommendations:***

- A. to ensure that the specific rights and interests of different categories of victims, including children, persons with disabilities, the elderly, and incapacitated persons, are adequately addressed throughout the Draft Law; [pars 43, 49, 61, 63, 76-79, 86, 89]
- B. to introduce under Article 5 an urgent procedure for cases that need to be considered within 24 hours, or 48 hours maximum; [par 45]
- C. to clarify the division of tasks between various categories of public bodies under Articles 8, 9 and 11; [par 56]

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<sup>2</sup> OSCE Document of the Moscow Conference on the Human Dimension (1991); OSCE Action Plan for the Promotion of Gender Equality, MC DEC/14/04 7 December, 2004; Ministerial Council Decision on Preventing and Combating Violence against Women 2005, MC DEC/15/05, 6 December 2005.

- D. to extend the scope of protection of the ‘temporary restraining order’ (Article 22) and, as needed, of ‘measures of temporary limitation of rights’ (Article 25) to other categories of persons such as relatives of the victim, social workers or other persons assisting the victim; [par 70]
- E. to include in the Draft Law the requirement for temporary restraining orders to be confirmed by court decision immediately after having been issued; [par 72]
- F. to indicate in Article 22 the consequences of a violation of a temporary restraining order, and delete the reference to official warning from par 3; [pars 73 and 75]
- G. to clarify the types of liability for acts of domestic violence under Article 28, and include references to other relevant legislation of Ukraine, particularly the Criminal Code; [pars 93-94]
- H. to change the proposed amendment to Article 173-2 of the Code of Administrative Offences in such a way that it covers only less serious types of domestic violence; [par 99]

## ***2. Other Recommendations***

- I. to amend the Preamble of the Draft Law to reflect the protection of victims and the rights of victims of domestic violence; [par 20]
- J. to amend the following aspects of Article 1:
  - 1) expand the wording of par 1 to include instances where the perpetrators threaten third parties or cause potential victims to fear for third persons’ wellbeing; [par 25]
  - 2) clarify that the definition of ‘domestic violence’ under par 1 also encompasses recklessness, negligence or omission; [par 26]
  - 3) consider broadening the scope of ‘economic violence’ under par 2; [par 30]
  - 4) delete the word ‘real’ when referring to the threat of child abuse under par 3, and to the threat of sexual violence under par 11; [pars 30 and 36]
  - 5) to remove from par 6 the statement “restrictions or obligations on [a] person who suffered from domestic violence”; [par 33]
- K. to delete the reference to cohabitation from Article 1 par 1 and to expressly state under Article 3 that domestic violence may occur whether or not the perpetrator shares or has shared the same residence with the victim; [par 27]
- L. to specify in Article 2 the laws, or at least the types of laws, that Article 2 is referring to; [par 21]
- M. to ensure consistency between the wording of Article 1 par 1 and Article 3; [pars 24 and 27]

- N. to add to the list of possible victims of domestic violence under Article 3 the additional category of household workers; [par 29]
- O. to include express references to provisions of the Criminal Code of Ukraine in relevant provisions of the Draft Law, particularly in relation to crimes against sexual freedom and sexual inviolability of a person, and in provisions on liability; [pars 36 and 93-94]
- P. to specify the alternative (rather than cumulative) nature of the grounds for taking measures for preventing and combating domestic violence under Article 5 par 1; [par 42]
- Q. to consider amending Article 6 as follows:
  - 1) consider broadening the scope of compensation for victims of domestic violence under par 4 to expressly include financial and social damage, as well as legal costs incurred; [par 46]
  - 2) include the rights to privacy, confidentiality of information and privileged communications; [par 48]
  - 3) introduce a specific statement relating to the rights of the child victim of domestic violence; [par 49]
- R. to expressly mention the media as a body responsible for assisting in the fight against domestic violence in Article 4, while also highlighting that its participation shall be qualified by the freedom of expression and media independence; [par 51]
- S. to expressly task under Article 7 par 1 the central executive body responsible for the formation of state policy with the responsibility to initiate and coordinate gender mainstreamed budgets and ensure the allocation of appropriate financial and human resources for the implementation of the policies, measures and programmes in this area; [par 52]
- T. to include under Article 7 par 2 the dissemination of the results of the data collection, with due respect to the right to privacy of the persons affected; [par 53]
- U. to clarify under Article 11 par 1 subpar 1 the kind of interventions and activities considered as preventive work carried out by the bodies of internal affairs and consider broadening the types of information provided by such bodies; [pars 57 and 59]
- V. to make it explicit in Article 15 par 1, subpar 3 of the Draft Law that legal aid services, including interpretation services, shall be provided free of charge; [par 64]
- W. to clarify in Article 22 pars 1-2 the reference to criminal procedure legislation and consider broadening the scope of the restrictions imposed under the temporary restraining order; [pars 70 and 71]

- X. to amend Article 25 as follows:
  - 1) clarify in par 1 whether the centers of social services have the possibility to file a complaint in all cases or only where the victim is a child; [par 76-77]
  - 2) provide for an emergency procedure for the issuance by the court of measures of temporary limitation of rights; [par 82]
  - 3) broaden the scope of the measures of temporary limitation of rights under par 4; [par 83]
  - 4) expressly provide for the possibility of the extension of the duration of the measures of temporary limitation; [par 84]
- Y. to expressly provide for the possibility of appeal against the measures of temporary restraining orders and temporary limitation of rights under Articles 22 and 25; [pars 72 and 80]
- Z. to make it clear under both Article 22 and 25 that the procedures are without prejudice to the right of the victim to file a criminal complaint against the perpetrator and initiate civil proceedings; [par 87]
- AA. to consider amending Article 26 par 2 to reflect the possibility of state funding for NGOs which carry out measures on preventing and combating domestic violence; [par 88]
- BB. to clearly specify which laws or types of laws may limit the principle of non-disclosure of information on personal and family life of victims of domestic violence; [par 89]
- CC. to consider introducing under Article 27 a provision specifying that a violation of the confidentiality rule could lead to criminal, civil, administrative or disciplinary liability; [par 91] and
- DD. to consider making amendments to Ukraine’s criminal legislation in tandem with the Draft Law. [pars 31, 39-40, 75, 78, 81, 85, 98, 100, and 102]

#### **IV. ANALYSIS AND RECOMMENDATIONS**

##### **1. International Documents on Preventing and Combating Domestic violence**

- 11. Over the last twenty years, the notion of an obligation for the State to protect individuals from domestic violence, previously considered a “private” or “family” matter, has become increasingly prevalent, both at the national and international level. This development has been encoded in a number of binding international legal instruments.

12. While the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”)<sup>3</sup> does not directly mention domestic violence or violence against women, its Article 2 does stipulate that “States Parties condemn discrimination against women in all its forms”, and obliges States to eliminate, through all appropriate measures, such discrimination, including by modifying or abolishing laws, regulations, customs and practices that discriminate against women. Later, the Committee on the Elimination of All Forms of Discrimination against Women, specified that gender-based violence constituted discrimination within the meaning of Article 1 of the CEDAW.<sup>4</sup> This Committee specified that this meant “violence that is directed against a woman because she is a woman or that affects women disproportionately” more specifically “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty”, including private acts of violence, and family violence”. The Committee also specified that “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.
13. Shortly after, the UN General Assembly issued a Declaration on the Elimination of Violence against Women<sup>5</sup> in which it urged States to “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or private persons”. The declaration explains that violence in the family may include battery, sexual abuse, and marital rape.<sup>6</sup> For children, the United Nations Convention on the Rights of the Child (hereinafter “the CRC”)<sup>7</sup> likewise requires that legislative measures shall protect children from all forms of physical or mental violence, injury or abuse, neglect, maltreatment or exploitation.
14. At the European level, since the 1990s, the Council of Europe (hereinafter “the CoE”) has intensified its activities to combat all forms of violence against women, including domestic violence, notably with the adoption of the Recommendation Rec (2002)5 by the Committee of Ministers on the protection of women against violence. In this Recommendation, the Council of Ministers also stresses the need for victim protection and support, as well as awareness-raising, adjustment of legislation, and training of professionals.
15. The European Court of Human Rights (hereinafter “ECtHR”) has also expressly stated in several judgments that domestic violence constitutes a form of discrimination and violation of women’s human rights and that national

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<sup>3</sup> The CEDAW was ratified by Ukraine on 12 March 1981 and the Optional Protocol to the CEDAW, on 26 September 2003.

<sup>4</sup> General Recommendation No. 19 of the Committee on the Elimination of All Forms of Discrimination Against Women, passed at the CEDAW Committee’s 11<sup>th</sup> session (1992), par 6.

<sup>5</sup> Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, U.N. GAOR, 48th Sess., at 217, U.N. Doc. A/48/49 (1993) (hereinafter “the 1993 Declaration on Violence Against Women”).

<sup>6</sup> See 1993 Declaration on Violence Against Women, art. 2.

<sup>7</sup> The CRC was ratified by Ukraine on 28 August 1991.

authorities have a positive obligation to protect victims of domestic violence.<sup>8</sup> More recently, it has specified that this positive obligation includes setting up a legal framework aimed at preventing and punishing ill-treatment by private individuals.<sup>9</sup>

16. In 2011, the Ad Hoc Committee on prevention and combating violence against women and domestic violence (CAHVIO), created by the Committee of Ministers, developed the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter “the Istanbul Convention”).<sup>10</sup> The Istanbul Convention was opened for signature in mid-2011, but will not enter into force until it is ratified by at least ten countries, eight of which must be Member States of the Council of Europe. As of 31 July 2013, thirty countries, including Ukraine, have signed this Convention, but so far, only six of them (Albania, Bosnia and Herzegovina,<sup>11</sup> Italy,<sup>12</sup> Montenegro, Portugal and Turkey) have ratified it.
17. The Convention is the first legally binding instrument in Europe to create a comprehensive legal framework to protect women from acts of violence as well as prevent, prosecute and eliminate all forms of violence against women, including domestic violence.
18. It is much welcome that Ukraine signed the Istanbul Convention on 7 November 2011. In this context, the adoption of a new Law of Ukraine “On preventing and combating domestic violence” offers a good opportunity to devise a legal framework that would be in line with the Istanbul Convention, prior to this Convention’s ratification. Therefore, the Opinion will make reference to the provisions of the Istanbul Convention as appropriate.

## **2. General Comments**

19. Overall, the Draft Law contains some positive aspects which reflect international standards in the field of prevention of and protection from domestic violence. At the same time, many provisions may benefit from certain improvements, which will be detailed in the following sections of the Opinion.

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<sup>8</sup> See *Opuz v. Turkey*, European Court of Human Rights (hereinafter “ECtHR”) judgment of 9 June 2009 (Application No 33401/02), par 191.

<sup>9</sup> See *Eremia v. Republic of Moldova*, ECtHR judgment of 28 May 2013 (Application No 3564/11), par 56.

<sup>10</sup> CoE Convention on preventing and combating violence against women and domestic violence, Council of Europe Committee of Ministers, CM(2011)49 final, 7 April 2011 (hereinafter “the Istanbul Convention”) signed by Ukraine on 7 November 2011, not yet ratified.

<sup>11</sup> The Parliament of Bosnia and Herzegovina ratified the Istanbul Convention on 23 July 2013; as of 31 July 2013, instruments of ratification are still in the process of being deposited with the Secretary-General of the Council of Europe.

<sup>12</sup> The Italian Senate unanimously ratified the Istanbul Convention on 19 June 2013; as of 31 July 2013, instruments of ratification are still in the process of being deposited with the Secretary-General of the Council of Europe.

20. The Preamble of the Draft Law outlines the scope of its application. While the objective of preventing and combating domestic violence as well as the system and powers of bodies and institutions responsible for preventing and combating domestic violence are expressly stated as part of the Preamble, explicit support and protection of victims and the rights of victims of domestic violence are not mentioned therein, even though they are part of the Draft Law under Articles 6 and 27. Similarly, the Preamble does not touch on the prosecution of perpetrators of instances of domestic violence, despite the fact that bringing perpetrators to justice is a key aspect of preventing domestic violence, and protecting victims from further abuse. It is recommended to include the above aspects in the Preamble as well.
21. In the Draft Law, Article 2 specifies that legislation on preventing and combating domestic violence consists of the Constitution, the [Draft] Law, and other legal acts which govern the relation in the area of prevention of domestic violence, and international treaties of Ukraine approved by the Verkhovna Rada of Ukraine. It is particularly welcome that the Draft Law expressly refers to international treaties since this will allow for the incorporation of principles contained therein at the time of judicial decision-making.<sup>13</sup> However, it would be advisable to provide for a clear indication of whether or not the Draft Law constitutes a *lex specialis*<sup>14</sup> over other laws. Further, Article 2 does not specify which other relevant codes, acts and regulations deal with domestic violence issues. To enhance clarity and foreseeability of the Draft Law, it is recommended to specify in Article 2 the laws, or at least the types of laws that it is referring to.

### **3. Definitions under Articles 1 and 3 of the Draft Law**

22. Article 1 of the Draft Law on definitions contains positive features; in particular, the definition of domestic violence includes a wide array of acts not only of a physical but also of a sexual, mental or economic nature. The definition contained in the Draft Law is overall better phrased and more inclusive than the one contained in the law currently in force. This is in line with international standards<sup>15</sup>, which urge States to adopt the broadest possible definitions of acts of domestic violence.<sup>16</sup>
23. Nevertheless, there is still room for improvement with regard to certain individual provisions and concepts. The following comments will highlight these parts of the Draft Law and outline how they may be enhanced or further clarified.

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<sup>13</sup> See section 3.1.1. of the 2009 UN Handbook for Legislation on VAW.

<sup>14</sup> The term *lex specialis* refers to a law regulating a specific subject matter as opposed to a more general law, which should take precedence over the more general rule.

<sup>15</sup> The Istanbul Convention defines ‘domestic violence’ as “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim” (Article 3).

<sup>16</sup> See section 3.4.2.1. of the 2009 UN Handbook for Legislation on VAW.

### *3.1 The Definition of Domestic Violence and of Related Concepts*

24. The definition of “domestic violence” under Article 1 par 1 makes reference to certain family or other relationships falling under the scope of domestic violence. It is noted that this group of persons differs from the group mentioned in Article 3 listing relationships covered by domestic violence, which refer to persons who are or used to be in a domestic relationship. It is recommended to ensure consistency of both articles.
25. It is positive that the definition of domestic violence includes not only acts, but also the “threat” of causing physical, psychological, sexual or economic losses. It would also be advisable to expressly cover cases where certain actions by a perpetrator threaten third parties or cause potential victims to fear for third persons’ wellbeing. Since fear for other persons may sometimes be a greater coercive force than fear for oneself, it is recommended to expand the wording of the above provisions to include such instances as well.
26. It is particularly noteworthy and welcome that the term “intentional” that was part of the definition of domestic violence in the 2001 Law has been removed from the Draft Law. The new definition under Article 1 should clarify that ‘domestic violence’ does not only include the commission of certain acts, but may also encompass recklessness, negligence or omission.<sup>17</sup>
27. As for the group of people protected by the Draft Law, Article 1 par 1 and Article 3 refer to former spouses “in case of living together”. According to international standards<sup>18</sup> (see also Article 3(b) of the Istanbul Convention), domestic violence can occur whether or not the perpetrator shares or has shared the same residence with the victim. Therefore, it would be recommended to delete the reference to cohabitation from Article 1 par 1 and to expressly state also under Article 3 that domestic violence may occur whether or not the perpetrator shares or has shared the same residence with the victim.
28. It is particularly welcome that Article 3 refers to present and past relationships and covers a broad range of family and close relationships. Nevertheless, Article 3 largely focuses on persons living together “as a family” or refers to “family relations”. Such wording may limit the scope of this provision, since it may exclude certain household relationships from the protection offered by the Draft Law, e.g. relationships between persons having (or having formerly been involved in) an intimate, romantic or sexual relationship, where these individuals do not actually live together. It would be preferable to use the more neutral terminology of ‘domestic relationship’ followed by the list of the specific relationships envisioned.<sup>19</sup>

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<sup>17</sup> See section 3.4.2.1. of the 2009 UN Handbook for Legislation on VAW.

<sup>18</sup> See section 3.4.2.2. of the 2009 UN Handbook for Legislation on VAW.

<sup>19</sup> Section 3.4.2.2. of the 2009 UN Handbook for Legislation on Violence against Women (hereinafter (“2009 UN Handbook for Legislation on VAW”). See also, for example, the Spanish Organic Act on Integrated Protection Measures against Gender Violence (2004) which defines domestic relationships broadly to include relationships with a spouse or former spouse, non-marital relationships, non-cohabiting relationships, romantic and sexual relationships, as well as relationships between family or

29. In addition, in order to be in line with international standards, it is recommended to extend the scope of the Draft Law to additional categories of relationships such as household workers.<sup>20</sup>
30. As stated above, the definition of domestic violence under Article 1 is very broad, and also covers psychological and economic violence. While the term ‘economic violence’ is not defined by key international instruments or documents<sup>21</sup>, it may be helpful to broaden the scope of this term in the Draft Law based on examples from other countries, to encompass situations beyond the mere deprivation of housing, food, clothing and other property or funds (as specified in Article 1 par 2 of the Draft Law). For example, this could include the intentional destruction of or damage to another’s property, movable or immovable assets or personal documents, or the threat thereof.<sup>22</sup>
31. Article 1 par 10 of the Draft Law defines ‘psychological violence’ as “verbal insults, threats, harassment, intimidation, and other psychological actions which cause emotional instability, inability to protect himself/herself, and which can damage mental health of a person, and his/her honor and dignity”. Such definition encompasses a broad range of conduct<sup>23</sup>, some of which could be subject to criminal liability under the selected articles of the Criminal Code. Article 33 of the Istanbul Convention states that ‘psychological violence’ should be criminalized, but according to Article 78 par 3, the States party to the Istanbul Convention may declare that they reserve the right to provide for non-criminal sanctions, instead of criminal sanctions. In the Criminal Code of Ukraine, ‘psychological violence’ is not expressly referred to as a criminal offence, even if some aspects may partially be covered by existing criminal provisions. Stakeholders are urged to debate whether it may be useful to include this concept into the Ukrainian Criminal Code, in particular as Ukraine has not made any reservation to the Istanbul Convention in that respect.<sup>24</sup>

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household members, such as ascendants, descendants, persons related by blood, persons residing together and minors or disabled individuals under guardianship or custody.

<sup>20</sup> See par 7, Part II, 1996 UN Model Legislation on DV.

<sup>21</sup> See, however, section 3.4.2.1. of the 2009 UN Handbook for Legislation on VAW.

<sup>22</sup> See various definitions of “economic violence” or “economic abuse” at <http://www.endvawnow.org/en/articles/398-definition-of-domestic-violence.html>.

<sup>23</sup> See the Report on Psychological Violence by the Committee on Equal Opportunities for Women and Men of the Parliamentary Assembly of the Council of Europe (2011), available at <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=12971&Language=EN>, pars 21-32, which defines ‘psychological violence’ as “reiterated words and acts aimed at or having the consequence of causing harm or putting the victim in a position of subjugation”, which can take a wide range of forms outlined in the report; Article 33 of the Istanbul Convention defines ‘psychological violence’ as the “intentional conduct of seriously impairing a person’s psychological integrity through coercion or threats”.

<sup>24</sup> For specific provisions on the criminalization of psychological violence, see e.g. Article 222-33-2-1 of the French Penal Code which states that harassing one’s spouse, partner, or co-habitant by repeated acts that “degrade one’s quality of life and cause a change in one’s physical or mental state of health” is punishable by a maximum penalty of three years in prison and a €45,000 fine, if such harassment resulted in an incapacity to work for eight days or less (five years and a fine of €75,000 if the resulting incapacity to work is over eight days). See also Article 207 par 1 of the Criminal Code of the Republic

32. The definition of ‘child abuse’ in Article 1 par 3 of the Draft Law is in line with the definition provided by Article 19 of the CRC to which Ukraine is a party. However, it is recommended to remove from the definition the word ‘real’ when referring to the threat of such act as it would pose an additional burden on parties to criminal proceedings in terms of evidence.
33. Regarding the definition of ‘measures of temporary limitation of rights’, contained in Article 1 par 6, it is unclear why such measures should include “restrictions or obligations on [a] person who suffered from domestic violence” (unless this is a translation error). It is recommended that such statement be removed.
34. While the purpose of protecting a person exposed to domestic violence through the Draft Law is in line with international standards, it is recommended to consider extending such protection also to relatives of the victim, social workers or other persons assisting the victim;<sup>25</sup> the definitions of temporary limitation of rights and of temporary restraining order under Article 1 pars 6 and 14 respectively could be amended accordingly.

### ***3.2 The Definition of Sexual Violence***

35. Article 1 par 11 defines “sexual violence” as “a form of domestic violence expressed in obscene remarks, touching, and unlawful infringement on sexual freedom and sexual immunity of persons specified in Article 3 of this Law”. In this context, it is welcome that the definition of ‘sexual violence’ is not limited to physical acts but may also include acts that do not involve physical contact (such as “obscene remarks”) and related threatening actions.
36. In order to clarify the meaning of “unlawful infringement on sexual freedom and sexual immunity” under Article 1 par 11 of the Draft Law, it is advised to expressly refer to relevant provisions of the Criminal Code of Ukraine on crimes against sexual freedom and sexual inviolability of a person; this would be particularly relevant for offences where the perpetrator takes advantage of the victim’s “helpless” condition. Additionally, it is recommended to remove from the definition the word ‘real’ when referring to the threat of such act, as it would pose an additional burden on the victim in terms of evidence.
37. Article 1 par 11 also expressly refers to “actions of sexual nature against children which are detrimental to their physical or mental health, honor and dignity, or actions which pose real threat of causing such damage”. Pursuant to Article 18 of the CoE Convention on the Protection of Children against Sexual Exploitation and

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of Poland which states that “[w]hoever mentally or physically mistreats a person close to him/her, or another person being in a permanent or temporary state of dependence to the perpetrator, a minor or a person who is vulnerable because of his mental or physical condition shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years”.

<sup>25</sup> See par 35, Part IV, 1996 UN Model Legislation on DV.

- Sexual Abuse,<sup>26</sup> the mere sexual abuse against a child, regardless of whether such conduct is causing damage, shall be criminalized. Consequently, it would be recommended to delete the mention that such acts would need to be “detrimental to their physical or mental health, honor and dignity”.
38. In relation to such offences against children, it may be helpful to look at related provisions found in the Criminal Code. Certain selected articles of the Criminal Code deal with sexual offences against “minors”, “persons under 14 years”, “persons under 16 years” and “sexually immature persons”. The age of the victims is considered either as an aggravating circumstance (see e.g. Article 152 on rape, Article 153 on violent unnatural gratification of sexual desire) or constitutes *per se* a constituent element of the criminal offence (see e.g. Article 155 on sexual intercourse with a sexually immature person and Article 156 on debauchery of minors).
39. First, it is worth recalling the recommendations of the CRC Committee to introduce an overall clear legal minimum age for sexual consent.<sup>27</sup>
40. Second, it should be noted that the selected articles of the Criminal Code are not fully in compliance with the provisions of the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. This Convention’s Article 18.1.b (second indent) criminalizes intentional sexual activities with a child (even when they have already reached the legal age for sexual activities) where the person involved abuses a recognised position of trust, authority or influence over the child (including within the family), regardless of whether this involves coercion, force or threat.<sup>28</sup> In that respect, Article 155 par 2 of the Criminal Code which covers sexual intercourse - without violence or threat of violence - committed by “a parent, step parent, foster parent or guardian, or any person imposed by a duty of upbringing or taking care of a sexually immature person”, only covers ‘sexually immature persons’, i.e. who have not reached the legal age for sexual consent, and not the broader category of ‘children’ even if they have already reached the legal age for sexual consent. As for Article 152 of the Criminal Code on rape, it provides for aggravating circumstances when the victim is a minor (understood as a ‘child’) but one of the constituent elements of the criminal offence of rape is some degree of violence, threats of violence or taking advantage of the victim's helpless condition. Consequently, and assuming that the Criminal Code will be amended in tandem with the adoption of the Draft Law (see also pars 93-98 *infra*), it would be recommended to introduce a criminal offence covering sexual intercourse, without coercion, force nor threat, with a

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<sup>26</sup> CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) ratified by Ukraine on 27 August 2012, in force in Ukraine since 1 December 2012.

<sup>27</sup> See par 26 of the Concluding Observations of the CRC Committee on the consolidated third and fourth periodic report of Ukraine (CRC/C/UKR/3-4), 21 April 2011, available at [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.UKR.CO.3-4\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.UKR.CO.3-4_en.pdf).

<sup>28</sup> See par 124 of the Explanatory Report to the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, available at <http://conventions.coe.int/Treaty/EN/Reports/Html/201.htm>.

child, when committed by a person who is in a recognised position of trust, authority or influence over the child, including within the family.<sup>29</sup>

41. It should also be ensured that the reference to “sexual intercourse” with respect to rape as stated under Article 152 of the Criminal Code of Ukraine will encompass “vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object” as stated under Article 36 of the Istanbul Convention, and could also include a situation whereby the perpetrator would “cause the victim to engage in non-consensual acts of a sexual nature with a third person”.

#### **4. Grounds for Taking Measures for Preventing and Combating Domestic Violence**

42. Article 5 par 1 of the Draft Law lists three grounds for taking measures to prevent and combat domestic violence; presumably, these are alternative grounds, though this is not clear from the Draft Law. Unless this is due to a translation error, it is recommended to specify the alternative (rather than cumulative) nature of these grounds in Article 5 par 1.
43. One of these grounds is a notification made by third parties in cases where victims provide written consent to such notification, or, in the case of children, persons with disabilities, aged persons or incapacitated persons, without such consent. While it is positive that the Draft Law provides the possibility of third party notification for victims who appear to be in a more vulnerable situation, “persons with disabilities” and “aged persons” may still have the capacity to give consent, and should thus not be deprived of this possibility. Article 5 par 1 should thus only permit third party notification for persons who are mentally incapacitated, so that disabled and elderly persons with full mental capacity may participate in the decision-making processes concerning them.<sup>30</sup>
44. It should be noted that in situations where the victim is a child, the Draft Law should expressly refer to the definition of a “child” according to existing Ukrainian law and in compliance with the CRC; this definition should always be taken into consideration in relation to child victims of domestic violence.

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<sup>29</sup> Article 18.1.b (third indent) of the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse also criminalizes intentional sexual activities with a child (even when they have already reached the legal age for sexual activities) where abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

<sup>30</sup> For ‘people with disabilities’, see chapter 6 of the Handbook for parliamentarians on the Convention on the Rights of Persons with disability: from exclusion to equality realizing the rights of persons with disabilities (2007), issued by the Office of the UN High Commissioner for Human Rights (UN OHCHR), available at: <http://www.un.org/disabilities/default.asp?id=212>. For “aged persons”, see pages 21-22 of the UN OHCHR Analytical Outcome Paper on normative standards in international human rights law in relation to older persons (August 2012) available at <http://social.un.org/ageing-working-group/documents/ohchr-outcome-paper-olderpersons12.pdf>.

45. Article 5 par 4 provides for seven working days to consider the application or notification, but should additionally clarify when this period starts (presumably, from the moment that the application or notification is lodged with any state authority). This article should also provide for urgent cases that should be considered within a shorter timeframe, such as 24 hours, or 48 hours at a maximum.

## **5. Rights of Victims of Domestic Violence**

46. In Article 6, the Draft Law provides for various rights for victims of domestic violence, which is a welcome improvement compared to the 2001 Law. In particular, it is expressly provided that a victim has the right to “reimbursement of material damage and damage to physical and mental health caused by a person who committed domestic violence” (Article 6 par 4). The scope of the compensation could be further broadened to expressly include financial and social damage, as well as legal costs incurred.<sup>31</sup>
47. The Istanbul Convention also specifically addresses the situation of victims who are foreigners or stateless persons. Such victims should benefit from the same rights under Article 6 of the Draft Law, and should also have the right to be provided with independent and competent interpreters when they are parties to proceedings or when they are providing evidence. Their access to justice must be guaranteed<sup>32</sup> and they shall benefit from extended protection measures relating to their residence status in Ukraine.<sup>33</sup>
48. In addition, while provisions relating to the non-disclosure of information on personal and family life of the victims are provided in Article 27 of the Draft Law, this right could be strengthened by also including the rights to privacy, confidentiality of information and privileged communications under Article 6.
49. A specific statement relating to the rights of the child victim of domestic violence could likewise be added to Article 6, which would stress that the best interests of the child should be the primary consideration in all actions undertaken.<sup>34</sup>

## **6. Bodies and Entities Responsible for Preventing and Combating Domestic Violence**

50. Article 4 of the Draft Law lists the entities in charge of preventing and combating domestic violence, the powers of which are then detailed under Chapter II. It is positive that a wide range of entities are listed, including private companies,

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<sup>31</sup> Recommendation (2002)5 states that: “Civil law: Member States should: 36. ensure that, in cases where the facts of violence have been established, victims receive appropriate compensation for any pecuniary, physical, psychological, moral and social damage suffered, corresponding to the degree of gravity, including legal costs incurred; 37. envisage the establishment of financing systems in order to compensate victims.”

<sup>32</sup> See Article 56(h) of the Istanbul Convention.

<sup>33</sup> See Article 60 on gender-based asylum claims and Article 61 on non-refoulement of the Istanbul Convention.

<sup>34</sup> See Article 3 of the CRC.

- NGOs, individuals as well as institutions or other organizations, and that roles and responsibilities of such bodies are described in separate provisions.
51. At the same time, while NGOs and other entities are expressly listed as participating in the prevention and combat of domestic violence, their role is not outlined in detail under Chapter II. In order to ensure effective cooperation between the state and civil society, as encouraged by the Istanbul Convention (Article 9), the Draft Law should foresee the establishment of a strong public-private partnership in the area of preventing and combating domestic violence, particularly in terms of assistance to victims (see further comments relating to funding under pars 88 *infra*). Moreover, given the central role of the media in reporting about cases of domestic violence and informing public debate, it is recommended to expressly mention the media as a body responsible for assisting in the fight against domestic violence in Article 4, while also highlighting that its participation shall be qualified by the freedom of expression and media independence (see also Article 17 of the Istanbul Convention on this topic).
  52. While the powers of the central executive body responsible for the formation of state policy are detailed under Article 7 par 1, it would be advisable to expressly task such body with the responsibility to initiate and coordinate gender mainstreamed budgets for all entities listed under Article 4 par 1. Such body should also ensure the allocation of appropriate financial and human resources for the implementation of the policies, measures and programmes in this area, including those carried out by non-governmental organizations and civil society (which would also be in line with Article 8 of the Istanbul Convention).
  53. It is particularly welcome that Article 7 par 2 of the Draft Law explicitly mentions the exchange of information with representatives of foreign states, as provided in the Istanbul Convention. At the same time, an additional task under Article 7 par 2 could include not only the gathering and consolidation of data, but also the dissemination of the results of such data collection to all relevant stakeholders, with due respect to the right to privacy of the persons affected.<sup>35</sup> It is also not clear which legislation Article 7 par 2 (2) refers to when it states that data collection shall be conducted “according to the legislation”.
  54. In terms of policy implementation, given the importance of the role of the media, additional tasks could also include awareness raising and training of journalists and other media personnel regarding domestic violence, and violence against women in general, and how to handle information and report on such cases accurately.<sup>36</sup> In turn, the police should also be trained on how to interact with the media and the extent of information that they are permitted to share.
  55. A further measure of preventing and combating domestic violence could be the establishment of state-wide 24-hour telephone helplines under the Draft Law, to provide callers with free advice. This would be very much in line with Article 24 of the Istanbul Convention.

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<sup>35</sup> See pars 70-73 of the Explanatory Report to the Istanbul Convention.

<sup>36</sup> See section 3.5.4. of the 2009 UN Handbook for Legislation on VAW.

56. While the listing of the respective roles and responsibilities of local state administrations (Article 8) and of the local self-government bodies (Article 9) is useful, there seems to be some overlap between the activities listed under Articles 8 and 9. Several different bodies, e.g. local state administrations (Article 8), regional and district self-government bodies (Article 9) and bodies of internal affairs (Article 11) appear to have the power to accept applications and notifications on domestic violence, and may take certain measures following such notifications/applications. Also, in Article 10, it is not clear when social services centers shall inform local state administrations, when local self-government bodies and when bodies of internal affairs. To avoid confusion and potential duplication, it would be preferable to provide for a clearer division of tasks between the various categories of bodies, which would also be useful in clarifying the use of the respective budgets at the local level.
57. Article 11 of the Draft Law lists the powers of bodies of internal affairs, but for the most part this is done in relatively vague terms. Article 11 par 1 subpar 1 indicates that bodies of internal affairs shall conduct “preventive work” with persons whose rights are temporarily restricted due to the commission of acts of domestic violence. It would be advisable to clarify the kind of interventions and activities that could be considered as preventive work, and whether they involve awareness-raising, the confiscation of weapons, and/or other types of action.
58. With regard to placing family members on a “preventive list” as well as visits to the families by bodies of internal affairs (Article 11 par 1.2 of the Draft Law), due regard to privacy and confidentiality of related data should be ensured (see additional comments under pars 65 and 89-92 *infra*).
59. It is also commendable that bodies of internal affairs have a duty to inform the victims of their rights and other services that are offered to them, which is in line with international standards.<sup>37</sup> However, in order to fully align Article 11 with Article 56 of the Istanbul Convention, such bodies could be obliged to also provide other types of information relating to the temporary or permanent release, or escape, of the perpetrator, investigations and proceedings against him/her and the role of the victims in this context, as well as the outcome of such proceedings.<sup>38</sup>
60. While Article 11 par 9 of the Draft Law provides for cooperation with other bodies and institutions, what is meant by “cooperation” remains unclear. A more pro-active approach could be envisaged, whereby the police/internal affairs bodies

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<sup>37</sup> Article 5 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, “Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair and inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.”

<sup>38</sup> See also pars 285 to 287 of the Explanatory Report to the Istanbul Convention.

- contact competent social service providers, who will then pro-actively contact the victims to offer their help.<sup>39</sup>
61. In line with the comments on the importance of practicing a “zero tolerance” policy, it would be important to expressly state in Article 11 of the Draft Law the possibility or even the obligation for the bodies of internal affairs to *ex officio* initiate criminal investigations against perpetrators for actions committed in certain cases (to be defined, e.g. when the victim is a child or an incapacitated person) for inflicting serious bodily harm on others, certain sexual offences, coercion, or other criminal offences that the perpetrator may have committed.<sup>40</sup> This might require correlative amendments to the Criminal Procedure Code of Ukraine, which could be identified in a review following the adoption of this Draft Law.
62. It should be reiterated at this point that acts of domestic violence which constitute crimes should be treated the same as any other crime, and that protection of the victims and relatives should be ensured at all times.<sup>41</sup>
63. It is commendable that the provision of legal aid services to victims of domestic violence is included in the set of services that shall be provided by the centers of medical and social rehabilitation in Article 15 par 1 subpar 3 of the Draft Law. In that respect, this provision should ensure that when providing such legal assistance, the centers will take into consideration the needs of persons with disabilities to ensure effective access to justice, while respecting decision-making rights of the victim (in compliance with Article 13 of the UN Convention on the Rights of Persons with Disabilities (hereinafter “the CPRD”)).<sup>42</sup> Adequate training of the staff of the centers will need to be guaranteed.
64. As acknowledged in the UN Handbook for Legislation on Violence against Women (hereinafter “UN Handbook for Legislation on VAW”), many good practices have emerged in legislating for the provision of free legal aid and the right of the complainant/survivor to independent legal counsel and support,<sup>43</sup> such as interpretation services. Article 15 par 1, subpar 3 of the Draft Law should explicitly foresee that such legal aid services, including interpretation services, shall be provided free of charge in order to ensure full access to justice and avoid secondary victimization. It should be noted that Article 57 of the Istanbul

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<sup>39</sup> See par 58 d of the Appendix to the Council of Europe Committee of Ministers Recommendation Rec(2002)5.

<sup>40</sup> See Article 55 of the Istanbul Convention.

<sup>41</sup> Such protective measures include e.g. accompanying victims of violence when they go to collect their personal items in their home; confiscating any weapon(s) involved in the alleged domestic violence; transporting the victim and any children or other relative to a shelter; assisting the victim and any child or other relative in obtaining medical treatment (see Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, adopted by the General Assembly, resolution 65/228 of 31 March 2011 available at [http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Model\\_Strategies\\_and\\_Practical\\_Measures\\_on\\_the\\_Elimination\\_of\\_Violence\\_against\\_Women\\_in\\_the\\_Field\\_of\\_Crime\\_Prevention\\_and\\_Criminal\\_Justice.pdf](http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Model_Strategies_and_Practical_Measures_on_the_Elimination_of_Violence_against_Women_in_the_Field_of_Crime_Prevention_and_Criminal_Justice.pdf)).

<sup>42</sup> The CPRD was ratified by Ukraine on 4 February 2010.

<sup>43</sup> See section 3.9.3. of the 2009 UN Handbook for Legislation on VAW.

- Convention mentions free legal aid for victims, but leaves it up to the respective State Party to the Convention to define the requirements for obtaining such aid.<sup>44</sup>
65. It is commendable that the collection and analysis of data expressly falls within the responsibility of various bodies. However, it seems that there might be some overlap in terms of the collection of the same data by both local state administrations and by the local self-government bodies (see Articles 8 and 9 of the Draft Law). As mentioned above, in order to avoid duplication, a clearer division of labour and budget in terms of collection and analysis of data between the various entities should be provided. Generally, a central inter-agency database would be a welcome introduction, either in this Draft Law, or in secondary legislation, and would help ensure synergy in public institutions' actions against domestic violence. Good practices of such data collection include the collection of police data categorized by the sex of the perpetrator, the sex of the victim, and the relationship between the two<sup>45</sup>; data is often also disaggregated by age<sup>46</sup>. In any case, the storage and use of personal data should respect international standards on personal data protection, particularly the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.<sup>47</sup>
66. It is welcome that Article 12 par 3 of the Draft Law requires educational establishments and institutions to report to various entities about acts of domestic violence against children. At the same time, it is noted that under Article 13 par 2, health-care institutions are held to inform various bodies in *all* cases of domestic violence. Victims of violence should still have the right to determine their own course of action; it would thus be important to distinguish between the obligation to report in cases of domestic violence against children or incapacitated persons (in which case it should be mandatory) and reporting requirements in cases involving adult victims, where the consent of the victim should be required. The same comment applies to the obligation to inform bodies of internal affairs of acts of domestic violence by centers of medical and social rehabilitation of victims of domestic violence (Article 15 par 4 of the Draft Law).
67. The Draft Law introduces special provisions on assistance to children who are victims of domestic violence, such as shelters for children and centers of social and psychological rehabilitation for children, as well as special reporting

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<sup>44</sup> The case-law of the ECtHR recognises that effective access to a court may necessitate free legal assistance, depending on whether appearance before a court without the assistance of a lawyer would be effective, meaning whether this would allow the persons concerned to present their case properly and satisfactorily. See *Airey v. Ireland*, ECtHR judgment of 9 October 1979 (Application No [6289/73](#)).

<sup>45</sup> Analytical study of the results of the 3<sup>rd</sup> round of monitoring the implementation of the Recommendation (2002)5, available at [http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/cdeg\\_2010\\_12en.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/cdeg_2010_12en.pdf).

<sup>46</sup> This would allow tracking data regarding sexual abuse against children as stated under Article 10 of the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

<sup>47</sup> Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), ratified by Ukraine on 30 September 2010, available at <http://conventions.coe.int/treaty/EN/Treaties/Html/108.htm>.

mechanisms in case of violence against children, all of which constitute great progress compared to the 2001 Law. In particular, such measures are important during the rehabilitation process, where special care is required for children, and during judicial proceedings where special measures should be ensured in order for children's rights to be protected.<sup>48</sup>

## **7. Social and Special Measures to Prevent and Combat Domestic Violence**

68. It is commendable that Chapter IV of the Draft Law describes social and special measures to prevent and combat domestic violence, including temporary restraining orders issued by bodies of internal affairs and measures for the temporary, but longer term limitation of rights of perpetrators by a court of law.
69. In Article 22 of the Draft Law, it is not certain which bodies of internal affairs would have the power to issue temporary restraining orders. It is assumed that the provision provides the police with this mandate, which would be a positive step. As recommended in prior OSCE/ODIHR Opinions,<sup>49</sup> the possibility of immediately issuing protection orders upon the interception of domestic violence, or threat of domestic violence, is key to the prevention of domestic violence (or further domestic violence). In the interest of expedience, such tool should be available to the police. As prescribed by Article 22 par 1 of the Draft Law, temporary restraining orders offer protection for the duration of 1 month, which provides the victim with the chance to be rehabilitated, receive legal assistance and decide on next steps.<sup>50</sup>
70. As mentioned above in relation to Article 1 (see par 34 *supra*), the scope of protection of both the 'temporary restraining order' and of 'measures of temporary limitation of rights' could be extended to protect other categories of persons such as relatives of the victim, social workers or other persons assisting the victim.<sup>51</sup> Article 22 could be amended accordingly since these persons, due to their association with the victim, may also be in need of protection. The same applies to Article 25 on temporary limitation of rights of perpetrators, unless the third parties mentioned in this article are able to request such limitations of rights in their own interest (as opposed to the interest of the victim of domestic violence).

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<sup>48</sup> Recommendation (2002)5 states that Member States should: "31. ensure that children are suitably cared for in a comprehensive manner by specialised staff at all the relevant stages (initial reception, police, public prosecutor's department and courts) and that the assistance provided is adapted to the needs of the child; 32. take steps to ensure the necessary psychological and moral support for children who are victims of violence by setting up appropriate facilities and providing trained staff to treat the child from initial contact to recovery; these services should be provided free of charge;"

<sup>49</sup> See par 32 of OSCE/ODIHR Opinion on the Draft Law of the Republic of Azerbaijan on Prevention of Domestic Violence, opinion no. GEND-AZ/142/2009, issued on 12 September 2009 and par 33 of OSCE/ODIHR Opinion on the Opinion on the Draft Law of the Republic of Kazakhstan on Prevention of Domestic Violence, opinion no. GEN-KAZ/146/2009, issued on 15 October 2009.

<sup>50</sup> The duration of similar emergency orders in Council of Europe Member States range between 10 days and four weeks, with or without the possibility of renewal – see par 264 of the Explanatory Report to the Istanbul Convention.

<sup>51</sup> See par 35, Part IV, 1996 UN Model Legislation on DV.

71. It is commendable that Article 22 par 1 of the Draft Law states that a restraining order can be issued “regardless of whether the acts have elements of crime”. However, par 2 of the same Article states that a temporary restraining order shall be issued “if it is compatible with the preventive measure applicable to persons under criminal procedure legislation of Ukraine”. It is unclear how the two cited paragraphs can be reconciled since ‘measures of restraint’ under Chapter 13 of the Criminal Procedure Code of Ukraine aim at *inter alia* preventing the continuation of a criminal activity. This point should be clarified in Article 22.
72. According to Article 22 of the Draft Law, temporary restraining orders, which are in force for one month, are issued by bodies of internal affairs. Paragraph 4 of the same Article states that the issuing procedure will be approved by the Ministry of Internal Affairs of Ukraine. It should be noted that the person against whom such an order has been issued should have the right to request the competent authorities to set aside such temporary restraining order according to the appropriate procedures;<sup>52</sup> such right should be expressly provided for in the Draft Law. The temporary restraining order should also be subject to judicial confirmation within a certain period of time, as is the case in some OSCE participating States, in which case the court would either confirm, modify or set aside the temporary restraining order.<sup>53</sup> Consequently, the provision relating to the one-month duration of such an order should be supplemented by stating that the order is in force for one month or until modified or annulled. The procedure for the appeal, including the competent authority, should also be defined in the Draft Law.
73. Article 22 par 3 of the Draft Law refers to an official warning (accompanied by additional restrictions detailed under par 3, such as the prohibition to obtain information about the location of the victim, to search for the victim, to visit the victim if not residing at the place of residence and to speak by telephone with the victim or to contact him/her by other means of communication). Providing an official warning to a perpetrator of domestic violence, may sometimes aggravate the situation between the perpetrator and victim. Furthermore, the nature of the restrictions envisaged under Article 22 par 3 seems to be relatively limited and it is unclear how such restrictions would be enforced on perpetrators who remain in the household where the victim is still residing. Rather than impose an official warning, law enforcement should act immediately upon a report of domestic violence, issue a restraining order, charge the perpetrator if sufficient evidence of domestic violence is present and seek to ensure the protection of the victim. For this reason, it is recommended to remove the imposition of official warnings and references to them from the Draft Law.

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<sup>52</sup> See par 272 of the Explanatory Report to the Istanbul Convention.

<sup>53</sup> E.g. in Canada, certain Canadian Provinces require judicial confirmation of emergency order within a specific period of usually 3 to 7 days by a Superior Court within the jurisdiction, except Manitoba Province, which instead provides for the right of the respondent to contest the emergency order within 20 days of service of the order; see also the Law of Bulgaria on Protection against Domestic Violence Act (State Gazette issue 27 of 29 March 2005), section 4(2).

74. As for the types of restrictions to impose on perpetrators, it would be advisable to broaden the scope of such restrictions to include e.g. one or a combination of the following:
- compelling the offender to vacate the family home;<sup>54</sup>
  - regulating the offender's access to dependent children and/or other household members;
  - compelling the offender to pay the victim's medical bills;
  - restricting the unilateral disposal of joint assets;<sup>55</sup>
  - directing the perpetrator to keep a specified distance from the residence, school, workplace or any other specified place of the victim, children of the victim or other family member;
  - prohibiting the perpetrator from using or possessing firearms or other specified weapons;
  - granting the victim possession or use of an automobile, or other essential personal effects;
  - granting temporary custody of children to the non-violent parent with due consideration for the safety of the children;
  - denying visitation rights, or specifying visitation under supervision; and/or
  - requiring the payment of certain costs and fees.
75. It would be important to also expressly state in the Draft Law (as well as in the restraining order itself) the consequences of the violation of such an order,<sup>56</sup> i.e. that the perpetrator will be subject to liability as defined by the Code of Ukraine on Administrative Offences. In that respect, it is acknowledged by several OSCE participating States which are currently revising their domestic violence legislation that criminalizing the violation of restrictive or protective measures was extremely important in ensuring the effectiveness of their laws<sup>57</sup> (for more

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<sup>54</sup> For instance, based on Article 13 and Article 14 of the Law on Counteracting Domestic Violence of the Republic of Poland, in cases where all conditions of committing an act of domestic violence (as defined by the law) are met, the police may take the perpetrator into custody or alternatively, issue a protection order for the victims of the violence, once the perpetrator is removed from home. The protection order may consist in the prohibition of contact with the victim of the violence. *Official Journal 05.180.1493, Law on Counteracting Domestic Violence of 29 July, 2005*. See also the UN Secretary-General's in-depth study on violence against women (2006) regarding the Austrian Protection against Violence Women Act (1997) which mentions the Austrian Act, based on which the police may impose an expulsion or ban from the home immediately upon request of the occupants of the residence, as a promising and good practice example of legislation mandating restraining or removal orders available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/419/74/PDF/N0641974.pdf?OpenElement>.

<sup>55</sup> As recommended by par 29, Part IV, 1996 UN Model Legislation on DV.

<sup>56</sup> See par 29(vi), Part IV, 1996 UN Model Legislation on DV.

<sup>57</sup> See the UN Expert Group Meeting on Good Practices in Legislation on Violence Against Women, Expert Paper by Cheryl A. Thomas on Legal Reform on Domestic Violence in Central and Eastern Europe and the Former Soviet Union, 17 June 2008, available at

- comments on the content and wording of Article 173-2 of the Code of Ukraine on Administrative Offences, see pars 99-100 *infra*).
76. According to Article 25 par 1 of the Draft Law, “measures of temporary limitation of rights” may be filed by “the victim or his/her representative, centers of social services for families, children and youth”. It is unclear from the English translation whether the centers of social services have the possibility to file a complaint in all cases or only where the victim is a child (as defined in Ukrainian law). This should be clarified in the Draft Law.
  77. In principle, a representative of the center of social services should only be permitted to apply to the court if the protected or affected party is a minor. In other cases, consent of the protected party should be required, as also stipulated in Article 5 par 1.
  78. Regarding persons with disabilities, in addition to assistance by centers of medical and social rehabilitation (see par 63 *supra*), it is noted that Article 13 of the CPRD requires State Parties to ensure equal and effective access to justice for persons with disabilities, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings. This might require correlative amendments to the Criminal Procedure Code of Ukraine, which could be identified in a review following the adoption of this Draft Law.
  79. In those cases where representatives of the centers for social services are entitled to apply to courts, the lawmakers could even consider changing this right to an *obligation*. Such an obligation would arise if the designated individual has reasonable cause to believe or suspect child maltreatment, or has observed conditions which would reasonably result in child maltreatment. The same should apply in cases involving mentally incapacitated persons.
  80. The person against whom such measures are applied should be entitled to appeal. Unless this is already laid down in other legislation, the possibility of such legal remedy should be explicitly included in the Draft Law.
  81. Also, it is recommended to expressly mention that such measures may be issued by the court even in the absence of and without representation of the respondent party (*ex parte*), which would require an amendment of Article 262 of the Criminal Procedure Code. It would then be necessary to expressly indicate in the legal provision that such measures must be notified to the perpetrator.
  82. The above mechanisms should also be available to the applicant irrespective of whether or not he/she chooses to set in motion any other legal proceedings.<sup>58</sup> An

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[http://www.un.org/womenwatch/daw/egm/vaw\\_legislation\\_2008/expertpapers/EGMGPLVAW%20Paper%20\(Cheryl%20Thomas\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20(Cheryl%20Thomas).pdf).

<sup>58</sup> See also par 21, Part IV, 1996 UN Model Legislation on DV.

emergency procedure allowing the court to issue such measures of temporary limitation of rights may also be introduced.<sup>59</sup>

83. Under Article 25 par 4 of the Draft Law, the “measures of temporary limitation of rights” of perpetrators which can be issued by a court of law, are relatively restricted in number and type. Namely, these limitations involve three types: the prohibition to reside at the place of cohabitation with the victim; removing obstacles on the use of joint property; and imposing restrictions on communication with a child in case of child abuse. Many OSCE participating States,<sup>60</sup> have introduced similar, but also other measures limiting the rights of perpetrators, such as:

- directing the perpetrator to maintain a specified distance from the residence, school, workplace or any other specified place of the victim, children of the victim or other family members;
- prohibiting the perpetrator from using or possessing firearms or other specified weapons;
- granting the victim possession or use of an automobile, or other essential personal effects;
- granting custody of children or denying visitation rights;
- specifying visitation under supervision; and/or
- requiring the payment of certain costs and fees.<sup>61</sup>

It is recommended to consider broadening the scope of Article 25 par 4 of the Draft Law accordingly, to allow for a wider array of measures in this respect.

84. To ensure the continued protection of the victim, it would also be advisable to expressly provide for the possibility of the extension of the time duration of such measures.<sup>62</sup>
85. With a view to safeguarding victims’ rights and interests, including their special needs as witnesses, at all stages of criminal investigations and in court proceedings, special procedures should be in place to prevent direct contact with the perpetrators and the victims, e.g. through the use of appropriate communication technologies.<sup>63</sup> Such measures would require amendments to the

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<sup>59</sup> See for example Article 15 of the Law on preventing and combating domestic violence, of Moldova (no. 45, from 1 March 2007, in force from 18 September 2008; with subsequent amendments). Under that Article, a court of law may issue a protection order, within 24 hrs from its submission, requiring the perpetrator of domestic violence to, *inter alia*, vacate the family home.

<sup>60</sup> On the scope of limitations see e.g. Law of Bulgaria on Protection against Domestic Violence Act (State Gazette issue 27 of 29 March 2005), section 5(1); see also the Law of Albania on Measures Against Violence in Family Relations (2006) Chapter III, Article 10.

<sup>61</sup> See also par 29, Part IV, 1996 UN Model Legislation on DV.

<sup>62</sup> See the section on “Time limits on orders for protection” from the UN Women Tools on Developing legislation on violence against women and girls (May 2011) available at <http://www.endvawnow.org/en/modules/view/8-legislation.html>.

<sup>63</sup> See Article 56 of the Istanbul Convention and pars 290 and 292 of the Explanatory Report.

- Ukrainian Criminal Procedure Code, and should ensure the protection of the victims, while guaranteeing the fair trial rights of the suspects/accused.
86. Special procedural protective measures should also address the specific situation of children who are victims of domestic violence; also here, the Ukrainian Criminal Procedure Code should be amended accordingly (see Chapter VII of the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse).<sup>64</sup>
87. Last but not least, it is recommended to make it clear under both Articles 22 and 25 of the Draft Law that the issuance of temporary restraining orders, of any envisioned protection orders or of measures for the temporary limitation of rights, is without prejudice to the right of the victim to file a criminal complaint against the perpetrator. The same applies to the initiation of civil proceedings and lawsuits whereby he/she may sue for temporary custody of children, divorce, separation, damages or compensation, in accordance with applicable Ukrainian legislation.<sup>65</sup>
88. Article 26 speaks of funding for bodies and institutions working on preventing domestic violence. Currently, par 2 provides that non-governmental organizations shall provide their own funding. It is noted that Article 8 of the Istanbul Convention states that the States party to the Convention shall allocate appropriate financial and human resources for its implementation, including measures and programmes carried out by NGOs and civil society. Consequently, consideration may be given to amending Article 26 par 2 of the Draft Law, to reflect the possibility of state funding for such organizations when they carry out measures on preventing and combating domestic violence.

## **8. Protection of the Rights of Victims of Domestic Violence**

89. It is commendable that Article 27 of the Draft Law expressly provides for the non-disclosure of information about the personal and family life of victims. Par 2 of this provision states that officials and employees who take measures for preventing or combating domestic violence shall not disclose information on the personal and family life of victims of such violence, which they obtained by fulfilling their official duties, “except for the cases foreseen by law”. In this context, it would be important to clearly specify which laws or types of laws may limit the principle of non-disclosure of information on personal and family life of victims of domestic violence. In addition, the non-disclosure privilege would *not*

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<sup>64</sup> See also the Concluding Observations of the Committee on the Rights of the Child on the consolidated third and fourth periodic report of Ukraine adopted during its 1611<sup>th</sup> meeting held on 3 February 2011 available at [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.UKR.CO.3-4\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.UKR.CO.3-4_en.pdf): “The Committee recommends that the State party ensure by law and in practice that all child victims or witnesses of crimes, e.g. child victims of abuse, domestic violence, sexual and economic exploitation, abduction and trafficking, and witnesses of such crimes, are provided with the protection required by the Convention and that it take fully into account the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex).”

<sup>65</sup> See par 29(vii) and (viii), Part IV, 1996 UN Model Legislation on DV.

- apply if there is prior consent of the victim or in instances when the victim is a minor or is unable to protect himself/herself due to physical or *mental* disabilities.<sup>66</sup>
90. Child victims and witnesses, who are of suitable age to testify, should have their privacy protected as a matter of primary importance. Information related to a child's involvement in the justice process should be protected<sup>67</sup> e.g. through maintaining confidentiality and restricting disclosure of information that could lead to the identification of a child who is a victim or witness. Measures should also be taken to protect children from undue exposure to the public by, for example, excluding the public and the media from the courtroom during the child's testimony where permitted by national law, and anonymizing the child's personal data in documents and records.
91. It is also recommended that shelters and centres for rehabilitation of victims, as well as police or other persons that provide security for the shelter, are bound by an absolute confidentiality rule as to the address, employees and persons/victims present in the centres at any given time. To ensure that the respective bodies adhere to the principle of absolute confidentiality, a correlative provision may be added, specifying that a violation of the confidentiality rule could lead to criminal, civil, administrative or disciplinary liability.
92. In sum, it is advisable to enhance Article 27 of the Draft Law on confidentiality of information and protection of the identity of victims and their families, to cover specific cases, and all persons working in this field.

### **9. Liability for Committing Acts of Domestic Violence**

93. Article 28 of the Draft Law states that “persons who committed domestic violence bear responsibility pursuant to law” without referring to any specific legal provisions. It is not clear what kind of domestic violence cases and what type of liability (criminal, administrative, or civil) this provision is referring to, and under what substantive provisions such cases or such liability can be established (e.g. whether this shall be under the Criminal Code, Administrative Offences Code or Civil Code). As it now stands, the provision is very vague. Generally, it would be helpful for persons and entities applying the law to know what type of behaviour would constitute a violation of the law and what the consequences of such violations would be. This should be specified in the Draft Law, and references to other pertinent legislation should be included.

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<sup>66</sup> See pars 146 to 148 of the Explanatory Report to the Istanbul Convention. See also the Council of Europe Committee of Ministers Recommendation No. R (85) 4 on Violence in the Family, which encourages Member States to “consider the possibility of removing the obligation of secrecy from the members of certain professions so as to enable them to disclose [...] any information concerning cases of violence in the family.” See also par 49 of the Appendix to the Council of Europe Committee of Ministers Recommendation Rec(2002)5, which states that Member States should waive the requirement of professional confidentiality on an exceptional basis “in the case of persons who may learn of cases of children subject to sexual violence in the course of their work, as a result of examinations carried out or of information given in confidence”.

<sup>67</sup> See pars 26-28 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

94. Additionally, it is of particular importance to expressly acknowledge the [potentially] criminal nature of acts of domestic violence. Regardless of the surroundings in which acts of domestic violence take place, they often fulfill the elements of one or several crimes punishable under the Criminal Code of Ukraine, e.g. murder (Article 115), intended grievous bodily injury (Article 121), or intended bodily injury of medium gravity (Article 122), to name a few. The Draft Law should, at a minimum, make reference to the provisions of the Criminal Code of Ukraine and list the specific crimes.
95. In addition, international standards and good practices emphasize the importance of adopting a comprehensive legislative approach, encompassing the criminalization of all forms of violence against women and the effective prosecution and punishment of perpetrators.<sup>68</sup> For instance, the Istanbul Convention expressly provides that State Parties shall ensure that certain specific acts of violence against women and domestic violence are criminalized.<sup>69</sup>
96. The Criminal Code of Ukraine currently does not appear to contain specific criminal offences for acts of domestic violence; rather, some aspects of domestic violence are dealt with under various provisions of the Criminal Code, such as aggravating circumstances due to conduct that targets child victims, pregnant women or dependent persons,<sup>70</sup> The circumstance of having committed a criminal act within a domestic setting is not included as an aggravating circumstance.
97. Article 40 of the Istanbul Convention refers to certain circumstances which may be taken into consideration as aggravating circumstances in the determination of the sentence, insofar as they do not already form part of the constituent elements of the offence to avoid double punishments. This particularly includes the following: “a. the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority; [...]; c. the offence was committed against a person made vulnerable by particular circumstances; [...]; h. the offence resulted in severe physical or psychological harm for the victim”.

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<sup>68</sup> Recommendation (2002)5 states that Member States should: “classify all forms of violence within the family as criminal offence”; The Ministerial Council’s Decision on Preventing and Combating Violence against Women 2005, MC DEC/15/05 of 6 December 2005 urges participating States “to adopt and implement legislation that criminalizes gender-based violence and establishes adequate legal protection; UN General Assembly resolution 61/143 of 19 December 2006 on the intensification of efforts to eliminate all forms of violence against women stresses the need to criminalize all forms of violence against women.

<sup>69</sup> See Articles 33 to 43 of the Istanbul Convention requiring the criminalization of the acts of psychological violence (Article 33) if the State party has not made a reservation in that respect, stalking (Article 34) if the State party has not made a reservation in that respect, physical violence (Article 35), sexual violence, including rape (Article 36), forced marriage (Article 37), female genital mutilation (Article 38), and forced abortion and forced sterilisation (Article 39).

<sup>70</sup> E.g. murder against a minor under 14 or a pregnant woman (Article 115.2.2), driving a person to suicide when under financial or other dependency or committed in respect of a minor (Article 120), rape of a minor or of a minor under 14 (Article 152), sexual intercourse with a sexually immature person (Article 155); debauchery of minors where committed by a parent or other person under a duty to take care of them (Article 156), etc.

98. Given that Article 3 of the Criminal Code of Ukraine expressly provides that “[t]he criminality of any act as well as its punishability and other criminal consequences shall be determined exclusively by this Code”, an act amending Ukraine’s Criminal Code could be introduced in tandem with the Draft Law, which could then establish a separate criminal offence of domestic violence just like the existing article in the Criminal Code specifically criminalizing trafficking in human beings. Provided that it is accompanied by strong penalties, such a new provision would clearly demonstrate the State’s “zero tolerance” attitude towards domestic violence offences, and show that acts of domestic violence constitute serious criminal offences that should be investigated and prosecuted to the fullest extent of the law by public authorities. Alternatively, where not already covered by current provisions, the existence of a domestic relationship between a perpetrator and a victim could also be considered in a more systematic manner as an aggravating circumstance in the Criminal Code of Ukraine (insofar as this fact does not already form part of the constituent elements of the offence).
99. While Article 173-2 of the Code of Administrative Offences and its alternative penalty in the form of a certain number of hours of community work is laudable, such liability does not substitute the need for a separate criminal offence on domestic violence. The wording of Article 173-2 of the current Code of Administrative Offences provides for administrative sanctions in case of ‘wilful acts of physical, psychological or economic nature’ and includes a non-exhaustive list of such acts (including physical violence without causing physical pain and bodily injuries, etc.). Given the potential overlap with the offences of the Criminal Code (particularly Articles 125 on intended minor bodily harms and 126 on battery), it is welcome that this article is being amended. However, the proposed amendment to Article 173-2 seems to now refer to all acts of domestic violence, irrespective of the nature of such acts. This may create confusion as to which acts of domestic violence are subject to administrative liability and which ones are subject to criminal liability. In practice, authorities may even opt for qualifying these acts as administrative offences instead of as criminal offences. Given the importance to criminalize serious cases of domestic violence, Article 173-2 should be amended in such a way that it covers only less serious types of domestic violence.
100. Regarding liability for the violation of temporary restraining orders and of temporary measures of limitation of rights, as stated in par 75 *supra*, criminal liability for such violations, rather than administrative liability could help ensure stricter law enforcement on both societal and institutional levels.<sup>71</sup> In addition, it would have the effect of encouraging public trust and confidence in the criminal

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<sup>71</sup> See Council of Europe, Recommendation Rec(2002)5, at par 58(f); See also the updated UN Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, adopted by the General Assembly, resolution 65/228 of 31 March 2011, Article 9(a) bis available at [http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Model\\_Strategies\\_and\\_Practical\\_Measures\\_on\\_the\\_Elimination\\_of\\_Violence\\_against\\_Women\\_in\\_the\\_Field\\_of\\_Crime\\_Prevention\\_and\\_Criminal\\_Justice.pdf](http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Model_Strategies_and_Practical_Measures_on_the_Elimination_of_Violence_against_Women_in_the_Field_of_Crime_Prevention_and_Criminal_Justice.pdf); See also the 2009 UN Handbook for Legislation on VAW, at p. 52.

justice system, particularly amongst victims of gender-based violence, who are often reluctant to try to gain access to justice.

## **10. Final Provisions**

101. Regarding the final provisions under Chapter VII of the Draft Law, the fact that this Draft Law expressly repeals the 2001 Law and includes changes to other legislation made necessary by the Draft Law is laudable. It should, however, be accompanied by a review and where necessary, the amendment of all other acts pertaining to domestic violence that could be in conflict with the Draft Law.
102. Furthermore, it is recommended that a list of secondary legislation in need of adoption (with a defined and realistic adoption schedule) is appended to the Draft Law, in particular since many provisions of the Draft Law refer to the introduction of procedures to be approved by various executive entities, namely:
  - a procedure for the consideration of applications and notifications of domestic violence by the Cabinet of Ministers (Article 5 par 6);
  - the rules of procedure of the centers of medical and social rehabilitation by the responsible central executive body (Article 15 par 3);
  - the rules of procedure of psychological support centres by the Cabinet of Ministers (Article 16 par 2);
  - the rules of procedures for shelters and centers of social and psychological rehabilitation of children by the Cabinet of Ministers (Articles 17 par 2 and 18 par 2); and
  - the procedures for the issuance of temporary restraining orders and for listing of perpetrators on preventive lists by the Ministry of Internal Affairs of Ukraine (Articles 22 par 4 and 23 par 3)).

In order to ensure proper implementation of the Law once adopted, it would be preferable if the above rules and procedures would be drafted in such a way as to be ready for adoption at the same time as the Draft Law; the new Draft Law, amendments to other legislation (possibly also the Criminal Code), and secondary legislation could then be adopted as a package.

103. Additionally, it would be beneficial for the Draft Law to include a monitoring and evaluation mechanism, which would allow for an assessment of its operation, particularly its efficiency and practicality, following e.g. two years of its implementation. The practice of many OSCE participating States has shown that a systematic and continual revision and strengthening of laws serves to ensure that measures introduced by new legislation are working well in practice.

*[END OF TEXT]*

ANNEX 1

DRAFT LAW

Submitted by the Cabinet of Ministers of  
Ukraine to the Verkhovna Rada of Ukraine

M. AZAROV

2013

**Law of Ukraine**

**“On preventing and combating domestic violence”**

This law defines the legal and organizational framework for preventing and combating domestic violence, system and powers of bodies and institutions responsible for preventing and combating domestic violence.

**Chapter I**

**GENERAL PROVISIONS**

**Article 1. Definitions**

1. In this Law terms shall be used in the following meaning:

1) domestic violence shall mean any wrongful acts of physical, sexual, mental or economic nature, committed against a member of the family or a person who were/are a part of family relationships, in particular, former spouses in case of cohabitation, including child abuse in the family, and also any wrongful acts that infringe on the rights, freedoms and legitimate interests of the person causing physical, moral or financial damages or threat of such losses;

2) economic violence shall mean a form of domestic violence, which is deprivation of housing, food, clothing and other property or funds to which a person who suffered from domestic violence has a statutory right, which can lead or led to his/her death, physical or mental health problems;

3) child abuse in the family shall mean insults, neglect, habitual negligence, abandonment and other forms of physical, sexual, mental or economic violence against a child by persons referred to in Article 3 of this Law, who violate rights, freedoms and legitimate interests of children, obstruct their normal development, hurt physical or mental health, honor and dignity of a child or pose a real threat of such acts;

4) threat of domestic violence shall mean expressions or actions which indicate the intention of committing acts of physical, sexual, mental or economic nature, if there are reasonable grounds to expect their implementation;

5) prevention and combating of domestic violence shall mean a system of social and special measures aimed at eliminating the causes and conditions that contribute to domestic violence, overcoming its negative consequences, correction of behavior of domestic violence perpetrators, bringing them to justice, as well as rehabilitation of victims of domestic violence;

6) measures of temporary limitation of rights shall mean special measures defined by the court according to which a person who committed domestic violence or created a threat of such acts is forbidden to perform certain actions, and restrictions or obligations are imposed on a person who suffered from domestic violence;

7) correctional program shall mean a set of measures aimed at correction of aggressive, violent and addictive behavior of a person who committed domestic violence, and development of a socially acceptable behavior, responsible attitude to his/her actions and its consequences;

8) person who committed domestic violence shall mean a person who committed illegal acts of physical, sexual, mental or economic nature against persons defined in Article 3 of this Law;

9) person who suffered from domestic violence shall mean a person who suffered from illegal acts of physical, sexual, mental or economic nature, including child abuse in the family, illegal acts which infringe on his/her rights, freedoms and legitimate interests, cause physical or moral harm or financial losses or create a threat of causing such damage by persons specified in Article 3 of this Law;

10) psychological violence shall mean a form of domestic violence expressed in verbal insults, threats, harassment, intimidation, and other psychological actions which cause emotional instability, inability to protect himself/herself, and which can damage mental health of a person, and his/her honor and dignity;

11) sexual violence shall mean a form of domestic violence expressed in obscene remarks, touching, and unlawful infringement on sexual freedom and sexual immunity of persons specified in Article 3 of this Law, including actions of sexual nature against children which are detrimental to their physical or mental health, honor and dignity, or actions which pose real threat of causing such damage;

12) social measures for preventing and combating domestic violence shall mean a system of social measures aimed at identification of social danger of domestic violence, its illegal antisocial character, formation of intolerant attitude towards violent relationships, identification and elimination of causes and conditions of violence, and overcoming its negative social consequences, rehabilitation of persons who lived in domestic violence conditions, and renewal of non-violent relationships between persons defined in Article 3 of this Law;

13) special measures for preventing and combating domestic violence shall mean a system of measures aimed at prevention and termination of specific cases of domestic violence;

14) temporary restraining order shall mean a special response of the bodies of internal affairs aimed at protection of a person who suffered from domestic violence, and which forbids a person who committed domestic violence to perform certain actions in relation to an individual who suffered from domestic violence;

15) physical violence shall mean a form of domestic violence which lies in a deprivation of liberty, infliction of injuries and pain, infliction of other violent acts against life, health, bodily integrity of persons specified in Article 3 of this law, and which can lead to the death of an injured person or lead to the death, physical or mental injury or infliction of damage to his/her honor and dignity;

## **Article 2.** Legislation on preventing and combating domestic violence

Legislation on preventing and combating domestic violence consists of the Constitution of Ukraine, this Law, and other legal acts which govern the relations in the area of prevention of domestic violence, and international treaties of Ukraine approved by the Verkhovna Rada of Ukraine.

## **Article 3.** Persons covered by the scope of legislation on preventing and combating domestic violence

Legislation on preventing and combating domestic violence shall apply to family members and other individuals who have/had family relations, namely:

- spouses;
- former spouses under the condition of cohabitation;
- persons who live together as a family, but not married;
- parents (mother, father) and child (children);
- adoptive parents and adoptive children;
- grandfather (grandmother) and grandson (granddaughter);
- stepfather (stepmother) and stepson (stepdaughter);
- brothers and sisters;
- guardians (custodians) and persons under guardianship (custody);
- other relatives who live together.

**Article 4.** Bodies and institutions empowered to prevent and combat domestic violence

1. Prevention and combating of domestic violence within vested powers shall be carried out by:

central executive body responsible for the formation of the state policy in the area of preventing and combating domestic violence;

central executive body responsible for the implementation of the state policy in the area of preventing and combating domestic violence;

local state administrations;

local self-government authorities;

social services centers for family, children and youth;

bodies of internal affairs;

establishments and educational institutions;

health care establishments;

institutions and establishments which pursuant to their organizational documents are empowered to prevent and combat domestic violence.

2. Enterprises, institutions and organizations irrespective of form of ownership, NGOs as well as individuals can contribute to preventing and combating domestic violence.

**Article 5.** Grounds for taking measures for preventing and combating domestic violence

1. Grounds for taking measures for preventing and combating domestic violence are:

application of a person who suffered from a domestic violence or was under threat of such acts;

notification of domestic violence or threat of such acts from individuals and legal entities provided a person who suffered from a domestic violence had made a written request to take measures prescribed by this Law;

notification of domestic violence or threat of such acts against a child, persons with disabilities, aged persons or incapable persons from individuals and legal entities.

2. Application or notification of domestic violence shall be received by the bodies and institutions specified in part 1 of Article 4 of this Law.

3. Body and institution which received application or notification of domestic violence shall consider the application or notification and within their powers take measures prescribed by this Law, and inform other bodies and institutions responsible for preventing and combating domestic violence about received applications or notifications so that they take measures.

4. Application or notification of domestic violence shall be considered by bodies and institutions during seven work days.

5. Refusal to accept and consider application or notification of domestic violence shall not be accepted.

6. Procedure for consideration of applications and notifications of domestic violence shall be approved by the Cabinet of Ministers of Ukraine.

7. Decisions, acts or omission of bodies, institutions and their officials regarding violation of the procedure of domestic violence applications and notifications' consideration can be appealed against to the higher body or to the court.

**Article 6. Rights of persons who suffered from domestic violence**

1. Persons who suffered from domestic violence have the right to:
  - 1) apply for help to the authorities and institutions empowered to take measures for preventing and combating domestic violence;
  - 2) receive informational, medical, social, mental, legal and other aid;
  - 3) stay at the institution or establishment stated in Article 14 of this Law as stipulated by the legislation;
  - 4) reimbursement of material damage and damage to physical and mental health caused by a person who committed domestic violence;
  - 5) file a suit in order to temporarily limit the rights of a person who committed domestic violence and send this person to correctional program.

**Chapter II**

**POWERS OF AUTHORITIES AND INSTITUTIONS EMPOWERED TO TAKE MEASURES FOR PREVENTING AND COMBATING DOMESTIC VIOLENCE**

**Article 7. Powers of the central executive body responsible for the formation of the state policy in the area of preventing and combating domestic violence and central executive body responsible for the implementation of the state policy in the area of preventing and combating domestic violence**

1. Powers of the central executive body responsible for the formation of the state policy in the area of preventing and combating domestic violence include:

1) formation of the state policy in the sphere of preventing and combating domestic violence;

2) coordination of measures for preventing and combating domestic violence carried out by the authorities and institutions stated in article 4 of this Law;

3) improvement of the legislation on preventing and combating domestic violence;

4) setting the priorities and strategic spheres of realization of state policy in the sphere of preventing and combating domestic violence.

2. Powers of the central executive body responsible for the implementation of the state policy in the area of preventing and combating domestic violence include:

1) promotion of creation of institutions for persons who suffered from domestic violence and those who committed domestic violence, coordination of their activity;

2) gathering and summarizing data on domestic violence according to the legislation;

3) conduct of scientific and expert research according to the established order;

4) exchange of information in the sphere of preventing and combating domestic violence with the representatives of foreign states;

5) elaboration of educational materials on the organization of activity of specialists in preventing and combating domestic violence;

6) taking measures in order to:

Raise legal awareness of parents and children in the sphere of preventing and combating domestic violence;

Organize training and professional development for experts in preventing and combating domestic violence;

Carry out monitoring and generalization of results of measures taken for preventing and combating domestic violence;

Engage, according to the established order, specialists of relevant local state administrations and local self-government authorities, enterprises, institutions and organizations of different forms of ownership (in consultation with their leadership) to consideration of issues concerning preventing and combating domestic violence.

**Article 8.** Powers of local state administrations in the sphere of preventing and combating domestic violence

1. With a view to prevent and combat domestic violence local state administrations shall:

1) control and ensure implementation of measures for preventing and combating domestic violence;

2) cooperate with bodies of internal affairs, NGOs, and other bodies and institutions empowered to prevent and combat domestic violence;

3) conduct seminars, round-tables, and take other measures in the sphere of preventing and combating domestic violence;

4) train specialists who conduct correctional programs for persons who commit domestic violence and provide them with methodological recommendations on fulfilling such programs;

5) send persons who suffered from domestic violence to institutions and establishments which provide services to such persons;

6) keep track of the data on organizations, institutions and establishments taking measures for preventing and combating domestic violence together with services they provide;

7) accept and consider within their powers applications and notifications on acts of domestic violence including abuse of children in the family, take measures to protect rights of children and represent their interests in court;

8) inform bodies of internal affairs of the received applications and notifications on acts of domestic violence against children;

9) establish institutions for persons who suffered from domestic violence and persons who commit domestic violence in a family, according to the needs of the region, coordinate and control their activity;

10) define institutions and establishments to run correctional work with persons who committed domestic violence and organize their activity;

11) keep track of families, where domestic violence occurred, and of persons, who became victims of domestic violence, as well as of children who suffered from violent treatment in family;

12) raise before the relevant bodies a point of bringing those who committed violations of rights, freedoms and legitimate interests of children to justice;

13) take measures to send the child to healthcare institutions and establishments for examination in order to document the act of domestic violence, provide the child with necessary medical aid;

14) upon application of a child, his/her parents/parent or adoptive parents, guardians or guardianship authority, file a lawsuit in court for taking measures to temporarily limit the rights of a person who committed domestic violence against a child and/or send the person who committed domestic violence to undergo correctional program.

**Article 9. Powers of local self-government bodies in the sphere of preventing and combating domestic violence**

1. With the view to preventing and combating domestic violence regional and district councils:

1) create institutions for persons who became victims of domestic violence and persons who commit domestic violence, coordinate and control their activity according to the needs of the region;

2) define institutions and establishments to conduct correctional work with persons who committed domestic violence and organize their activity;

3) send persons who suffered from domestic violence to institutions and establishments which provide services to such persons;

4) keep track of the data on organizations, institutions and establishments which take measures for preventing and combating domestic violence together with services they provide;

5) within their powers accept and consider applications and notifications on acts of domestic violence including abuse of children in family, take to protect rights of children and represent their interests in court;

6) cooperate with bodies of internal affairs, NGOs, and other bodies and institutions empowered to prevent and combat domestic violence;

7) conduct seminars, round-tables, and take other measures in the sphere of preventing and combating domestic violence;

8) identify families facing a threat of domestic violence during social inspection of families;

9) keep track of families, where domestic violence occurred, and of persons, who became victims of domestic violence, as well as of children who suffered violent treatment in the family;

10) visit families which members became victims of domestic violence;

11) raise before the appropriate bodies a point of bringing individuals who committed violations of rights, freedoms and legitimate interests of children to justice;

12) upon application of a child, his/her parents/parent or adoptive parents, guardians or guardianship authority, file a lawsuit in court for taking measures to temporarily limit the rights of a person who committed domestic violence against a child and/or send the person who committed domestic violence to undergo correctional program.

**Article 10.** Powers of social services centers for families, children and youth

1. Social services centers for families, children and youth shall:

1) take part measures for preventing and combating domestic violence;

2) accept applications and notifications on cases of domestic violence;

3) carry out social inspections of families where domestic violence occurs;

4) upon the results of social inspections of families where domestic violence occurs, inform relevant local state administrations or relevant local self-government bodies so that they take appropriate measures;

5) inform relevant local state administrations or relevant local self-government bodies as well as bodies of internal affairs of the information concerning acts of domestic violence;

6) carry out social monitoring of families who ended up in complicated life conditions including those where domestic violence occurred;

7) conduct correctional programs together with bodies of internal affairs pursuant to the methodological recommendations, approved by the central executive body responsible for the formation of the state policy in the area of preventing and combating domestic violence;

8) represent in court, if necessary, the interests of persons, who suffered domestic violence;

9) cooperate with bodies of internal affairs, NGOs, and other bodies and institutions empowered to prevent and combat domestic violence.

**Article 11.** Powers of bodies of internal affairs:

1. Bodies of internal affairs shall:

1) put persons whose rights are temporarily restricted due to the commission of acts of domestic violence on the preventive list, and conduct preventive work with them;

2) visit families whose members are on the preventive list and conduct preventive work with them;

3) issue a temporary restrictive order to persons who committed acts of domestic violence;

4) control the implementation of temporary restrictive order during the period of its validity;

5) accept and consider applications and notifications of domestic violence;

6) within their powers take measures to stop domestic violence;

7) inform all persons who are covered by the scope of legislation on preventing and combating domestic violence of their rights, possibilities and services they may use;

8) control the judgment execution in respect of those persons whose rights are temporary limited due to acts of domestic violence;

9) cooperate with state bodies and institutions empowered to prevent and combat domestic violence, and NGOs dealing in the area of preventing and combating domestic violence;

10) at the request of the authorized state bodies provide by procedure established by law information on prevention and combating domestic violence.

**Article 12.** Educational establishments and institutions

1. Institutions and educational facilities shall:

1) raise awareness of participants of educational process about preventing and combating domestic violence and responsibility for its commission;

2) take measures to detect and stop abuse of children in families;

3) report urgently and in the manner prescribed by this Law to the appropriate local state administrations or local self-government authorities, the bodies of internal affairs, social services centers for families, children and youth of detected, notified or reported cases of violent treatment of children in families;

4) organize work of psychological services for children that are victims of domestic violence in institutions or educational institutions;

**Article 13.** Establishments of public health care system

1. Establishments of health care system shall:

1) conduct the twenty-four-hour reception of victims of domestic violence and deliver necessary medical aid;

2) in case of detected injuries appeared as a result of domestic violence, conduct social and medical rehabilitation of victims of such acts and inform the appropriate local state administrations or local self-government authorities, the bodies of internal affairs, social services centers for families, children and youth.

**Chapter III**

**AUTHORITIES AND INSTITUTIONS WITH FUNCTIONS, IN PARTICULAR, IN THE AREA OF PREVENTING AND COMBATING DOMESTIC VIOLENCE**

**Article 14.** Authorities and institutions with functions, in particular, in the area of preventing and combating domestic violence

1. Authorities and institutions with functions, in particular, in the area of preventing and combating domestic violence are:

1) centers of medical and social rehabilitation of victims of domestic violence;

2) psychosocial support centers;

3) repairs for children of children's services;

4) centers of social and psychological rehabilitation of children;

5) other authorities and institutions which pursuant to their organizational documents deal, in particular, in the area of preventing and combating domestic violence.

**Article 15.** Center of medical and social rehabilitation of victims of domestic violence

1. Center of medical and social rehabilitation of victims of domestic violence shall:

1) conduct medical and social rehabilitation of victims of domestic violence;

2) create necessary conditions for rehabilitation of victims of domestic violence and for health purposes send them for further treatment to specialized health care establishments;

3) organize legal aid services to victims of domestic violence;

- 4) inform the bodies of internal affairs of acts of domestic violence;
- 5) at the request of authorized bodies provide anonymised information on preventing and combating domestic violence.

2. Center of medical and social rehabilitation of victims of domestic violence shall be established as a legal entity or as a separated unit of health care establishment without corporate status;

3. The rules of operation of the center of medical and social rehabilitation of victims of domestic violence shall be approved by the central executive body responsible for the formation of the state policy in the area of public health care.

Scientific and methodological support to the center shall be provided by the central executive body responsible for the formation of the state policy in the area of public health care.

4. Center of medical and social rehabilitation of victims of domestic violence shall ensure implementation of measures for rehabilitation of such persons upon a decision of medical commission of the center which shall be formed by the head of the center. Rehabilitation of juvenile members of a family shall be conducted only upon written consent of one of parents, adoptive parents, guardian or guardianship authority.

**Article 16.** Social and psychological support center

1. Social and psychological support center shall:
  - 1) deliver medical care in day and night clinics and provide temporary shelter for victims of domestic violence in need;

provide such persons with social services in day hospitals, and by means of telephone consultations without providing them with temporary shelter and food;

provide consultations in the area of application of legislation, assist in paperwork, ensure protection and implementation of rights of children, youth and families who suffered from domestic violence, in particular, represent their interests before third parties;

provide informational services to persons who apply for help concerning the operation of structural units of the executive body, local self-governments authorities, enterprises, establishments and organizations regardless of their form of ownership and cooperate with them to address issues of victims of domestic violence;

upon request of authorized authorities and in a order prescribed by law provide information on preventing and combating domestic violence;

- 2) asses the needs of persons who applied to the center on account of domestic violence; together with victims of domestic violence draw up an individual action plan to eliminate causes of domestic violence and set time of its execution;

conduct psychological diagnostics of victims of domestic violence for the purpose of psychological treatment, rehabilitation and adaptation; if necessary provide emergency aid;

3) inform center of social services to families, children and youth located at the place of residence of a victim of domestic violence on further social assistance of victim of domestic violence;

4) address the appropriate state bodies regarding the necessity of application of statutory sanctions in relation to persons who violated legislation on preventing and combating domestic violence.

2. Rules of procedure of psychosocial support center shall be approved by the Cabinet of Ministers of Ukraine.

**Article 17. Shelters for children of children's services**

1. Shelters for children of children's services shall:

- 1) ensure social protection of children in need;
- 2) organize and carry out preventive and educational work based on the individual approach to a child;
- 3) assist in legal protection of children.

2. Rules of procedure of repairs for children of children's services shall be approved by the Cabinet of Ministers of Ukraine.

**Article 18. Centers of social and psychological rehabilitation of children**

1. Centers of social and psychological rehabilitation of children shall:

- 1) provide children with comprehensive social, psychological, educational, medical, legal and other aid;
- 2) carry out psychological and educational correction activities based on the individual needs of each particular child;
- 3) conduct awareness-raising campaigns among children and parents aimed at prevention of violence;
- 4) conduct psychological diagnostics of victims of domestic violence for the purpose of psychological treatment, rehabilitation and adaptation;
- 5) inform appropriate local state administrations or appropriate local self-government authorities on child's suffered from domestic violence location at the center;

2. Rules of procedure of center of social and psychological rehabilitation of children shall be approved by the Cabinet of Ministers of Ukraine.

**Article 19. Authorities and institutions which pursuant to their organizational documents deal, in particular, in the area of preventing and combating domestic violence**

1. Authorities and institutions which pursuant to their organizational documents deal, in particular, in the area of preventing and combating domestic violence shall be established by local state administrations, local self-government authorities, enterprises, establishments and institutions, charity foundations, associations of individuals and by individuals according to the social needs of the particular region for

the purpose of rehabilitation of persons in whose families acts of domestic violence were committed.

2. Rules of procedure of authorities and institutions which pursuant to their organizational documents deal, in particular, with preventing and combating domestic violence shall be approved by the central executive body responsible for the formation of the state policy in the area of preventing and combating domestic violence.

**CHAPTER IV**  
**SOCIAL AND SPECIAL MEASURES AIMED AT**  
**PREVENTING AND COMBATING DOMESTIC VIOLENCE**

**Article 20.** Social measures aimed at preventing and combating domestic violence

1. Social measures aimed at preventing and combating domestic violence include:

1) conduct of awareness-raising campaigns for all groups of population in order to raise awareness of prevention of domestic violence;

2) study, analysis and elimination of causes and conditions of domestic violence and its consequences;

3) trainings for experts in the sphere of preventing and combating domestic violence;

4) other social measures in the area of preventing and combating domestic violence.

**Article 21.** Special measures aimed at preventing and combating domestic violence

1. Special measures aimed at preventing and combating domestic violence include:

1) temporary restraining order;

2) measures of temporary limitation of rights of a person who committed domestic violence;

3) inclusion of persons who incurred measures of temporary limitation of rights on a preventive list and conduct of preventive work with them;

4) commitment of a person who committed domestic violence for correctional program.

**Article 22.** Temporary restraining order

1. Temporary restraining order shall be issued by bodies of internal affairs to the person who committed domestic violence or created threat of such acts, regardless of whether such acts have elements of crime, and if a person reached 16 years of age at the time of committing domestic violence or threat of such acts, and remains in force within one month from the date of its issuance.

2. Temporary restraining order shall be issued if it is compatible with the preventive measure applicable to persons under criminal procedure legislation of Ukraine.

3. A person who committed domestic violence or created threat of such acts shall be officially warned by temporary restraining order about the unacceptability of domestic violence and statutory responsibility for its commission; a person who committed domestic violence shall be also forbidden to take certain actions in relation to a victim of domestic violence, namely:

- 1) to obtain information about location of a victim of domestic violence;
- 2) to search for a victim of domestic violence if such victim is of his/her own free will in place unknown to a person who committed domestic violence;
- 3) to visit a victim of domestic violence if he/she is not at the place of residence;
- 4) to speak by telephone with a victim of domestic violence, or contact him/her by other means of communication.

4. Procedure for issuance of temporary restraining order shall be approved by the Ministry of Internal Affairs of Ukraine.

**Article 23.** Inclusion of persons who committed domestic violence on preventive list and conduct of preventive work with them

1. Bodies of internal affairs shall include persons whose rights are temporarily limited due to commission of domestic violence on preventive list for a specified period and conduct preventive work with them.

2. If a court did not extend measures of temporary limitation of rights of persons whose rights were limited due to commission of domestic violence, the same bodies of internal affairs shall exclude such persons from a preventive list automatically.

3. The procedure for inclusion into preventive list, conduct of preventive activities and exclusion from preventive list of persons whose rights were limited due to commission of domestic violence shall be approved by the Ministry of Internal Affairs of Ukraine.

**Article 24.** File a regress suit against a person who committed domestic violence with a view to receiving costs for compensating allowance of a victim of domestic violence in facilities for victims of domestic violence.

1. Decision on recovery of costs for compensating allowance of a victim of domestic violence in facilities for victims from domestic violence from a person who committed domestic violence shall be taken by a court pursuant to the legislation.

**Article 25.** Measures for temporary limitation of rights of a person who committed domestic violence

1. A victim of domestic violence or his/her representative, centers of social services for families, children and youth, and in case of abuse of a child - parents or in loco parents, bodies of guardianship and trusteeship may apply to court with an application to take measures prescribed by this Article aimed at temporary limitation of rights of a person who committed domestic violence and commitment of such person to correctional program.

2. Measures of temporary limitation of rights shall be applied to the person who achieved 16 years of age at the time of commission of domestic violence or threat of such acts.

3. Measures of temporary limitation of rights can be applied for a period of 3 to 12 months after the expiration of the temporary restraining order if it was issued.

4. Measures of temporary limitation of rights of a person who committed domestic violence shall be:

- 1) prohibition to reside at place of cohabitation with a victim of domestic violence;
- 2) elimination of obstacles to use joint property or property of a victim of domestic violence;
- 3) restrictions on communication with a child in case of abuse of a child.

5. A copy of judgment on application of measures of temporary limitation of rights of a person who committed domestic violence and/or referral of such person to undergo correctional program shall be sent to the appropriate bodies of internal affairs by the court.

## **CHAPTER V FUNDING OF BODIES AND INSTITUTIONS EMPOWERED TO IMPLEMENT MEASURES OF PREVENTING AND COMBATING DOMESTIC VIOLENCE**

**Article 26.** Sources of funding bodies and institutions empowered to implement measures of preventing and combating domestic violence

1. Bodies and institutions of state and municipal form of ownership empowered to implement measures of preventing and combating domestic violence shall be financed from relevant budget.

Maintenance and development of other institutions shall be financed by the founders.

2. Funding and development of the institutions for victims of domestic violence established by companies, institutions, organizations, charity funds, public associations or individuals shall be provided on their own.

## **CHAPTER VI PROTECTION OF RIGHTS OF VICTIMS OF DOMESTIC VIOLENCE**

**Article 27.** Protection of rights of persons covered by measures of preventing and combating domestic violence

1. The State shall guarantee protection of rights and legal interests of persons covered by measures of preventing and combating domestic violence.

2. Officials and employees who take measures for preventing and combating domestic violence shall not disclose information on personal and family life of victims of such violence, which they obtained by fulfilling their official duties, except for the cases foreseen by law.

**Article 28.** Responsibility for committing domestic violence

1. Persons who committed domestic violence bear responsibility pursuant to law.

**Chapter VII  
MISCELLANEOUS**

1. This Law shall enter into force on the day following the day of its publication.

2. The Law of Ukraine "On Prevention of Domestic Violence" (Bulletin of the Verkhovna Rada of Ukraine, 2002, № 10, p. 70; 2007, № 15, p. 194; 2009, № 13, p. 153; as amended by Laws of Ukraine of 16 October 2012 № 5462-VI and 6 November 2012 № 5477-VI shall be repealed.

3. Amend the following legislative acts of Ukraine:

1) Article 173-2 of the Code of Ukraine on Administrative Offences (Bulletin of the Supreme Council of the USSR, 1984, annex to № 51, p. 1122) as follows:

"Article 173-2 Committing domestic violence, violation of temporary restraining order, violation of measures of temporary restriction of the rights of a person or non-participation in corrective program

Domestic violence, i.e. any unlawful physical, sexual, psychological or economic actions committed against a member of the family or a person with whom there exists or existed family relationships, including a former spouse in case of living together, including ill-treatment against a child, as well as actions that infringe on the rights, freedoms and legitimate interests of a person causing him/her physical, moral or material injury or creating a threat of causing such damage, violation of a restriction of actions prescribed by temporary restraining order, violation of measures of temporary restriction of the rights of a person or non-participation in corrective program -

entails imposing a fine in the amount of three up to five personal exemptions, or public works for the period of 30 up to 40 hours, or up to 5 days of administrative arrest.

The same actions committed by person against whom administrative charges were brought for committing any type of offense mentioned above during one year –

entails imposing a fine in the amount of five up to ten personal exemptions, or public works for the period of 40 up to 60 hours, or up to 15 days of administrative arrest";

2) in paragraph 2 of Article 1191 of the Civil Code of Ukraine (Bulletin of the Verkhovna Rada of Ukraine, 2003, № 40 - 44, p. 356), the words "person aggrieved" shall be replaced by "and rehabilitation of affected persons"

**Chairman  
of the Verkhovna Rada of Ukraine**