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NATIONAL LEGAL MECHANISMS IN COMBATING DOMESTIC VIOLENCE AGAINST THE WOMEN AND THEIR EFFICIENCY

Abstract

Domestic violence is a significant social problem affecting millions of women globally. In Azerbaijan, domestic violence is also a prevalent issue that continues to impact the lives of many women. However, the government of Azerbaijan has put in place various legal mechanisms to combat domestic violence against women. This article aims to provide an overview of national legal mechanisms in Azerbaijan that address domestic violence against women, as well as the efficiency of these mechanisms.

Keywords: *violence, domestic violence, women, legal mechanisms, measures*

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Qadınlara qarşı məişət zorakılığı ilə mübarizədə milli hüquqi mexanizmlər və onların effektivliyi

Xülasə

Məişət zorakılığı global miqyasda milyonlarla qadına təsir edən mühüm sosial problemdir. Azərbaycanda məişət zorakılığı da bir çox qadınların həyatına təsir etməkdə davam edən geniş yayılmış problemdir. Bununla belə, Azərbaycan hökuməti qadınlara qarşı məişət zorakılığı ilə mübarizə üçün müxtəlif hüquqi mexanizmlər tətbiq edib. Bu məqalə Azərbaycanda qadınlara qarşı məişət zorakılığına qarşı mübarizə aparan milli hüquqi mexanizmlər, eləcə də bu mexanizmlərin səmərəliliyi haqqında ümumi məlumat vermək məqsədi daşıyır.

Açar sözlər: *zorakılıq, məişət zorakılığı, qadınlar, hüquqi mexanizmlər, tədbirlər*

Introduction

Azerbaijan ratified the Convention on the Elimination of All Forms of Discrimination Against Women in 1995. However, the formation of the national legislation on domestic violence in our country was started quite late.

For the first time on December 21, 2006, the AR Milli Majlis adopted Statement No. 207-IIIQR "On the fight against violence against women, including domestic violence". With a statement, the deputies of the Milli Majlis of the Republic of Azerbaijan declared that they support the campaign of the Council of Europe to combat violence against women, including domestic violence, and that they will assist in its implementation with the parliamentary means within their powers.

After numerous discussions, the Law of the Republic of Azerbaijan "On Prevention of Domestic Violence" (hereinafter the "Law") was adopted in 2010. The law defines the definition of domestic violence, the procedure for handling complaints related to domestic violence and measures.

According to the Article 1 of the Law, domestic violence is defined as "intentionally inflicting physical or moral harm on one of the persons to whom this Law applies, by abusing close family relations, joint or previous cohabitation". The law includes spouses, former spouses, parents,

children, grandparents, grandchildren, biological and step-siblings, adoptive and adopted persons, ex-spouses, guardians and custodians, and mentions the persons assigned guardianship and other relatives living together as subjects of domestic violence (1, Article 1).

The relevant law defines four types of domestic violence:

- Physical violence
- Mental or moral abuse
- Economic or material violence
- Sexual violence

When analyzing the legislation on domestic violence, we consider it more appropriate to divide into two categories the measures related to the prevention of domestic violence are sanctions measures (measures to be taken under the Criminal Code and the Code of Administrative Offenses) and administrative measures (measures provided for in the Law on Prevention of Domestic Violence (legal, social, preventive).

• *sanction measures*

The Criminal Code does not provide for the crime of "domestic violence". However, if the persons listed in the Law commit a crime against each other on a domestic ground (that is, acts prohibited by the Criminal Code), these acts are classified as domestic violence in criminal nature. For example, intentional homicide (Article 120 of the Criminal Code); bringing oneself to the point of suicide (Article 125 of the Criminal Code); crimes related to intentional harm to health (Articles 126, 127 and 128 of the Criminal Code); torture (Article 133 of the Criminal Code); threatening to kill or cause serious harm to health (Article 134 of the Criminal Code); human trafficking (Article 144-1 of the Criminal Code); forced labor (Article 144-2 of the CM); illegal deprivation of liberty (Article 145 of the Criminal Code) rape (Article 149 of the Criminal Code); acts of sexual violence (Article 150 of the Criminal Code); forcing sexual acts (Article 151 of the Criminal Code); not having sex with a person under the age of sixteen or performing other acts of a sexual nature (Article 152 of the CM); Immoral acts (Art. 153 of the CM) Do not force a woman to enter into marriage (Art. 176-1 of the CM), etc. (2).

Before the Law on Prevention of Domestic Violence was adopted, victims of domestic violence could file a complaint with law enforcement agencies only when a crime was committed against them. Currently, the Law mentioned above allows victims of domestic violence to be protected from non-criminal acts as well.

Protection from non-criminal domestic violence is carried out in civil and administrative proceedings. In this regard, according to the Rule "Reviewing complaints if there are no signs of criminality in a complaint about domestic violence" approved by the Decision of the Cabinet of Ministers of the Republic of Azerbaijan, if there are no signs of a crime in a complaint about domestic violence, that complaint is considered by the executive authority of the place where the victim of domestic violence lives (is located).

The basics of protection against domestic violence in civil proceedings are determined by Articles 1096-1098 of the Civil Code. Damage caused to a person's person or property as a result of a civil law violation must be paid in full by the victim (3, Article 1096-1098).

Two articles of the Code of Administrative Offenses (Article 157 (beating) and Article 158 (violation of the legislation on prevention of domestic violence)) are related to domestic violence (4, Article 157, 158).

If we pay attention to the sanctions of the mentioned articles, we will see that the sanctions are quite light in relation to the mentioned actions. In our opinion, special attention should be paid to the sanctions of the mentioned articles and correspondingly heavier punishments should be provided for those acts.

• *administrative measures*

Protection order. In order to protect against domestic violence, the legislature provides for the granting of a short-term and long-term protection order to the victim.

In a short-term protection order, it is forbidden to repeat domestic violence, to search for the victim, to do any action that causes discomfort to the victim (the victim can specify which action should be restricted) (1, Article 11).

A short-term protection warrant is issued by the relevant executive authority within 24 hours and up to 30 days after receiving a relevant complaint.

A long-term protection order is issued by the court. The application regarding it is submitted to the court of the place where the victim lives (is located). After the application is submitted to the court, it is considered in a closed court session in a special procedure within 3 days (1, Article 12).

A long-term protection order is issued for a period of 30 to 180 days. A long-term protection order may include the following in addition to the provisions of a short-term order:

- rules of communication with minor children of the perpetrator of domestic violence;
- determining the rules for using the living area or joint property;
- imposing the payment of expenses related to the provision of medical and legal assistance to the injured person on the person who commits violence and determining the terms of payment;
- information about the explanation of the liability of the person who does not fulfill the requirements of the protection order according to the law.

The court's decision to issue a long-term protection order to victims of domestic violence is immediately implemented. In my opinion, the main problem with issuing protection orders is their duration. Practice shows that the duration of a protection order, whether short-term or long-term, should be extended.

It is also necessary to envisage the application of the following measures in warrants:

- imposing a ban on the unilateral control of joint ownership by the perpetrator of violence;
- imposing the duty of handing over children, residential area and other important documents to the victim on the perpetrator of violence;
- immediate return of minors to the custody of a non-violent parent;
- imposition of the duty of mandatory participation in rehabilitation programs on the perpetrator of violence;
- prohibiting the perpetrator from possessing and carrying a weapon (if the person legally owns a weapon) (5).

The decision to issue a long-term protection order can be appealed in the manner established by the legislation. Filing an appeal to a higher court does not stop the execution of the decision on the protection order (1, Article 12).

The relevant law also provides for the implementation of **social** (arranging of social protection of victims, assistance in obtaining relevant documents or social allowances determined by legislation) and **preventive measures** (arranging of awareness-raising activities) for victims of domestic violence.

In my opinion, in order to implement the mentioned measures and achieve an effective result, it is necessary to establish a unified network (commission) consisting of lawyers, psychologists and social workers under the local executive authority and send applications to that network. Also, the rights and duties of that commission should be regulated by the duly approved Regulations (6).

Examples of such institutions include monitoring groups on gender violence and violence against children established under local executive authorities.

One of the main measures to be implemented in combating domestic violence, especially domestic violence against women, is their placement in shelters (7).

When talking about national legal measures to prevent domestic violence against women, we should also mention the activities of The State Committee for Family, Women and Children Affairs of Azerbaijan Republic as organizational mechanism in this area. The Committee is a governmental agency within the Cabinet of Azerbaijan in charge of regulation of activities for protection of rights of women and children and overseeing activities of non-governmental organizations involved in family in Azerbaijan Republic. On January 14, 1998 the State Committee on Women's Affairs was

established by Presidential Decree. On February 6, 2006 committee expanded with additional duties for solution of problems of families and children thus being re-established as the State Committee for Family, Women and Children Affairs (8). Since its inception, the committees has promoted independence of women in civil societies in terms of earning for living and functioning while the lead family providers are away (9).

11 regional Child and Family Support Centers of the Committee organize about 300 different topics every year, including "Strengthening the family institution" and "Let's say NO to violence", "Let's say no to early marriages", etc. trainings are held on various topics. In the trainings, participants were taught the importance of family communication and relationships, regulation of family relationships, types of violence, ways to protect against violence, etc. information was given, printed products were distributed, short films were shown (10).

It should be noted that the strengthening of education for the prevention of cases of domestic violence is one of the most important priorities in the internal policy of our state today. Prevention of domestic violence is legal, social and preventive measures implemented with the aim of eliminating the threat of domestic violence. In accordance with the legislation, the prevention of domestic violence is carried out by local executive authorities, the State Committee for Family, Women and Children's Affairs, the Ministry of Internal Affairs, the Ministry of Health, the Ministry of Justice, the Ministry of Labor and Social Protection of the Population, and the Ministry of Education.

The Committee, together with the relevant state institutions, carried out relevant work within the framework of the action plan for 2016-2018 "Regarding the prevention of domestic violence".

Rules for the organization and operation of the domestic violence data bank According to the Decision No. 207 of the Cabinet of Ministers dated 19.12.2011, a domestic violence data bank was established by the State Committee on Family, Women and Children's Affairs (11). Cases of domestic violence that have occurred in the data bank, persons who have applied to state authorities regarding cases of domestic violence, investigations and results of investigations related to cases of domestic violence, persons held responsible for cases of domestic violence, court decisions, including those deprived of parental rights and or persons whose parental rights have been restricted, as well as persons whose parental rights have been restored or whose restriction of parental rights has been revoked, accredited assistance centers, their activities and other information are collected and analyzed (10).

As a result of these analyses, the goals of educational training are determined.

According to the standards of the Council of Europe, 1 shelter should be created for every 7500 women. According to the number of women in Azerbaijan, it is necessary to create at least 600 shelters in our country. However, in the case that the work in this direction is still slow, and has not even started, in our opinion, the competent authorities compensate for this at the expense of other sources (12).

Conclusion

We cannot talk about human rights without ensuring the protection of women's rights. Domestic violence against women is a threat to human rights.

Conducted research, statistics, as well as practice show that more attention should be paid to this area and that states should allocate more funds to this area.

Despite the fact that there are enough international mechanisms to fight against domestic violence against women, there are serious shortcomings in the process of their reflection in national legislation by states, and generally in the process of implementation by states, which is why thousands of women around the world are still victims of domestic violence.

This article provides recommendations for eliminating the gaps in our legislation in this area, for more effective implementation and organization of the combating against domestic violence against women.

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