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БЫТЬ ИЛИ НЕ БЫТЬ: ЗАКОН О ПРОФИЛАКТИКЕ СЕМЕЙНО-БЫТОВОГО НАСИЛИЯ В РОССИЙСКОЙ ФЕДЕРАЦИИ

Александрова А.Г.¹, Речапова Е.Х.²

¹ Тюменский государственный университет, Россия, Тюмень, e-mail: aleksandrva-asya@rambler.ru

² Тюменский государственный университет, Россия, Тюмень, e-mail: rechapova.eh@gmail.com

Согласно опубликованным Всемирной организацией здравоохранения данным о глобальной распространенности насилия, каждая третья женщина (35%) в мире подвергается физическому или сексуальному насилию со стороны интимного партнера или сексуальному насилию со стороны другого лица. По данным Министерства внутренних дел РФ, только в период с января по сентябрь 2019 года в России было совершено 15 381 преступлений против женщин в сфере семейно-бытовых отношений. Многие страны уже приняли все возможные законодательные меры по борьбе с насилием в семье. В России действующая редакция законопроекта «О профилактике домашнего насилия в Российской Федерации» была опубликована на сайте Совета Федерации РФ 29 ноября 2019 года. Законопроект разделил общественность на две части: сторонники нормативного регулирования данного вопроса считают его слишком мягким, а противники видят в нем способ разрушения семейных ценностей. Какова дальнейшая судьба российского закона? В статье отражен анализ законопроекта: новые меры по борьбе с бытовым насилием и проблемы их реализации. Поднят вопрос о соответствии положений законопроекта международной практике.

Ключевые слова: Насилие, домашнее насилие, профилактика, законодательство, защита.

TO BE OR NOT TO BE: RUSSIA'S LAW ON PREVENTION OF DOMESTIC VIOLENCE

Aleksandrova A.G.¹, Rechapova E.Kh.²

Tyumen State University, Russia, Tyumen, e-mail: aleksandrva-asya@rambler.ru

² Tyumen State University, Russia, Tyumen, e-mail: rechapova.eh@gmail.com

According to the data on the global prevalence of violence published by who, one in three women (35%) in the world is subjected to physical or sexual violence by an intimate partner, or sexual violence by another person during their lifetime. According to the Ministry of internal Affairs, only in the period from January to September 2019, 15,381 crimes against women in domestic relations were committed in Russia. Many countries have already adopted all possible legislative measures to combat domestic violence. In Russia current version of the bill «On prevention of domestic violence in the Russian Federation» is published on the website of the Federation Council on November 29, 2019. The bill divided the public into two parts: supporters of the bill consider it too soft, and opponents see the bill as a way to destroy family values. What is the future of the Russian law? The article reflects the analysis of the draft law: new measures to combat domestic violence and problems of their implementation. The issue of compliance of the bill's provisions with international practice was raised.

Keywords: Violence, domestic abuse, prevention, legislation, protection.

The paper presents the results of the analysis of the existing Russian bill "On prevention of domestic violence", the comparison of Russian legislation in this field with foreign legislation and the study of the experience of other states in the fight against domestic violence.

The notorious phrase 'if he beats you, he loves you, be sure', i.e. abuse is a sign of love, is often used by Russians and shows the attitude to domestic violence based on the historical context and the centuries-old way of life in the patriarchy. This phrase looks ironic, but the statistics are

shocking: according to the Ministry of internal Affairs, only in the period from January to September 2019, 15,381 crimes against women in domestic relations were committed in Russia. However, domestic violence includes not only cases of violence between spouses, but also parental violence against a child, a child against a parent, and violence between siblings in the same family, and can take many forms, including physical aggression or assault or threats thereof, sexual abuse, psychological abuse, financial abuse.

Many countries have already adopted all possible legislative measures to combat domestic violence including in accordance with international acts, in particular the Council of Europe Convention on preventing and combating violence against women and domestic violence (also known as the Istanbul Convention). This is also due to the fact that according to the data on the global prevalence of violence published by WHO, one in three women (35%) in the world is subjected to physical or sexual violence by an intimate partner, or sexual violence by another person during their lifetime.

Legislative regulation of the issue of domestic violence took place in several stages in Russia. A special role was played by legislative changes in 2017, which decriminalised some instances of domestic violence making them administrative offenses. These decisions of the legislator were discussed for a long time in the society and were criticized by public organizations related to the fight against domestic violence. According to women's protection organizations, domestic violence has increased and the number of reports has dropped dramatically, and the police have begun to refuse to investigate cases of domestic violence.

After that, a number of high-profile trials took place across the country, including those of the Khachaturian sisters accused of murdering their father. The defense argued that the girls were in a desperate situation because of prolonged domestic violence. The case caused a wide public response. Pickets were held in Russian cities, both demanding that the sisters be put in prison, and demanding that the sisters' sentences be commuted and that legislation on domestic violence be changed.

Despite the fact that the bill on the prevention of domestic violence in Russia was officially submitted to the state Duma in 2016, its active promotion began only after that. The current version of the bill is published on the website of the Federation Council on November 29, 2019. Until December 15, it received reviews, which came to about 11 thousand.

The bill divided the public into two parts: supporters of the bill consider it too soft, and opponents see the bill as a way to destroy family (and not only) values.

Today's problem is the lack of protection mechanisms. Will the measures enshrined in the law be able to ensure this? Let us turn to the provisions of the Russian bill.

This law involves obtaining an emergency protection order from police who respond to the

scene of a domestic violence incident. A protection order may prohibit the offender from committing domestic violence, as well as from communicating and attempting to find out the place of residence of a person who has been subjected to domestic violence.

In addition, the law also provides for a judicial protection order. Taking into account the specific circumstances of the case, a judicial protection order may additionally be ordered oblige the offender to leave the place of joint residence with the victim for the duration of the judicial protection order, regardless of who is the owner of the premises. Opponents of the law claim that this provision violates the constitutional right to housing. But international practice regards this as the norm. For example, in France, a judge also has the right to expel the aggressor from the couple's shared home. The same measure applies in Belarus.

Besides in France the court can prohibit the aggressor from meeting the victim, and allow the victim and her children to hide their place of residence. Failure to comply with the protection order is a crime. It is punishable by a prison term and a fine.

The same strict practice in the fight against violence in the United States. So, a Florida resident, 57-year-old Harry Breder, was jailed for twice sending his wife a request to add friends to the social network Facebook and thereby violating a protective court order.

In other countries, women are entitled to various subsidies from the state, including the right to receive public housing out of turn. Unfortunately, Russia has not yet developed measures that could ensure the operation of the law " on the prevention of domestic violence in the same way.

Also, the new bill gives the right to Russian court to oblige the offender to compensate the property and moral damage to the victim, as well as the costs of consulting or staying in a hotel or renting a dwelling, the court costs of the victim, including the costs of providing legal assistance. Will this be done from the General family budget? Or is it immediately implied that there will be a divorce?

International practice shows that the effectiveness of these measures is possible only at the financial cost of the state. For example, The 1994 Violence Against Women Act (VAWA) in the USA provides for full funding of rape kits and legal/court fees for domestic violence protection orders. No less important is the provision in this law about special domestic violence and sexual violence training for law enforcement officers. Is Russia ready to Finance measures to combat domestic violence? The current situation with overdue changes in the Russian Constitution does not allow us to answer this question in the affirmative.

With all this a protection order is issued only with the consent of persons who have been subjected to violence or their legal representatives. What to do if there is reason to believe that this person is dependent on the abuser or is afraid of him?

For example, in the Czech Republic, law enforcement agencies are not required to take the consent of a victim of domestic violence to initiate criminal proceedings. Most likely, this is due to

the appalling statistics: one in six women and one in twenty-two men in the Czech Republic becomes a victim of domestic violence.

Also, the Russian bill is criticized for refusing the presumption of innocence. The message to the police about the threat of violence allows you to accuse any citizen. Defenders of the law say that any order can be appealed. But this does not give grounds to believe that the constitutional principle of presumption of innocence has been observed.

The discussion of this bill by religious organizations was not spared. The Russian Orthodox Church says that the bill has a clear anti-family orientation, infringing on the rights and freedoms of people who choose a family lifestyle, the birth of a child and the child-rearing that differ from others.

«This is simply a sign of a very low level of General culture. However, for a number of offenses, you can use the current rules, including for hooliganism, for beating or even more serious bodily harm, all this is in the current legislation. I don't really understand whether people are for this law or against violence» - this is how Russian President Vladimir Putin commented on the bill.

Opponents of the bill believe that there are sufficient tools to protect family members from crimes under current law. If these laws do not work well in practice, then this is an excuse to work with law enforcement agencies, and not to adopt unconstitutional legal acts that allow gross interference in family relations.

It is difficult to imagine that the existing draft law on the prevention of domestic violence in Russia will be fully implemented. So, the concept and procedure for preventing domestic violence is too broad for a law enforcement officer and is formally vague. Any disputes between spouses, any educational measures in relation to children can become the basis for including punitive mechanisms of the law.

In addition, the adoption of only one law is clearly not enough. The United States has long struggled with this problem, and there are dozens of services and shelters for victims of violence in this country. At the same time, according to statistics, more than 1.5 thousand women in the United States are killed by their husbands or permanent partners, and about 2 million are seriously injured.

In fact, the main areas of struggle against any kind of violence should be the fight against poverty, reducing the level of alcoholism and unemployment, and improving housing conditions, and it is absolutely justified. Efforts should be made to ensure such measures as prevention of violations of current legislation, active measures to combat alcoholism and drug addiction as factors affecting the statistics of domestic violence, increasing in the number of crisis centers for victims of domestic violence.

Список источников

1. Андреева А. А. Насилие в семье как социальная проблема современного общества / А. А. Андреева // Актуальные вопросы современной педагогики: материалы VI Международной научной конференции. – Уфа. – 2015. – С. 1-3.
2. Лысова Александра Владимировна, Щитов Николай Георгиевич Системы реагирования на домашнее насилие: опыт США // Социологический журнал. – 2003. – №3.
3. О профилактике семейно-бытового насилия: проект федерального закона N 1183390-6 // не принят и не опубликован.
4. The 1994 Violence Against Women Act (VAWA): закон США // [Электронный ресурс] URL – <https://fas.org/sgp/crs/misc/R45410.pdf> (дата обращения 17.01.2020 г.)
5. Об основах деятельности по профилактике правонарушений: закон Республики Беларусь от 4 января 2014 г. № 122-3 // [Электронный ресурс] URL – https://kodeksy-by.com/zakon_rb_ob_osnovah_deyatelnosti_po_profilaktike_pravonarushenij.htm (дата обращения 10.01.2020 г.)
6. Конвенция Совета Европы о предотвращении и борьбе с насилием в отношении женщин и домашним насилием от 11 мая 2011 г. // [Электронный ресурс] URL – <http://docs.cntd.ru/document/420206767> (дата обращения 10.01.2020 г.)
7. Special Eurobarometer 344: Domestic Violence against Women // [Электронный ресурс] URL – https://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_344_en.pdf (дата обращения 12.01.2020 г.)
8. Czech family law. XII. Law against domestic violence. Radovan Dávid // [Электронный ресурс] URL – https://is.muni.cz/do/rect/el/estud/praf/ps11/r_pravo/web/pdf/en/law-against-domestic-violence.pdf (дата обращения 15.01.2020 г.)