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**CASES OF THE EUROPEAN COURT OF HUMAN RIGHTS
SIGNIFICANT FOR EUROPEAN INTEGRATION OF UKRAINE**

***LEVCHUK V. UKRAINE*, JUDGMENT OF 3 SEPTEMBER 2020
(FINAL ON 3 DECEMBER 2020): CASE COMMENTARY¹**

On 3 December 2020, the judgment of the European Court of Human Rights in the case of *Levchuk*² concerning the issues of domestic violence became final and binding for Ukraine. The Ukrainian authorities have an obligation now, under Article 46 of the Convention, to undertake measures with a view to ensuring *restitutio in integrum* in this case. They also have an obligation to ensure cessation of a breach, on the assumption it is of continuous nature, making sure that similar breaches of the Convention no longer repeat. It could be a challenging task not only for the Ukrainian judiciary but also for the entire legal system of Ukraine.

As to the judgment itself, it does indeed deal with larger issues of domestic violence in Ukraine, which have recently been in the focus of public debate, with wide-scale public discussions by the civil society groups and international human rights organisations. In the past years, many women rights' groups pronounced themselves on issues of gender equality within the Ukrainian society, campaigning for equality not only declared by the Ukrainian authorities but real enforcement of rights for women. Domestic violence in this sense is seen

as one of the extreme manifestations of gender inequality problems. The feminist discourse in the Ukrainian society is slowly becoming recognisable, not only from the point of view of acceptance of “feminitives” or “gender specific job titles and professional roles” in the common professional speech but also as a part of discussions in women’s impact on formation of law and in the discourse on feminist approaches to international law. A much wider view on the role of women in forming and applying law is growing from the domestic dialogue on gender issues, with visible important benefits for largely and traditionally male-dominated Ukrainian legal professional scene. Some argue that it, again, is a sign of transformation of the Ukrainian post-communist and post-colonial society, based on traditional assignments of gender roles to men and women, into a much stronger stance on real equality in practice, based on equal opportunities approach, possibly with some necessity of “affirmative action” required on the part of the state authorities to reach these equality goals.

Even though the judgment depicts and focuses on the problem of domestic violence and judicial practice, in a narrow sense, it also deals with issues pertaining to still outdated provisions of the Housing Code of Ukraine (*de facto* Housing Code of the Ukrainian Soviet Socialist Republic that remains unchanged since the 1960s, being based on the Soviet Foundations for Legislation on

¹ The views expressed in this case commentary are solely of the author. They are personal academic views and do not represent a view of the Council of Europe or the Department for the Execution of Judgments of the European Court of Human Rights, where the author is employed.

² See, *Levchuk v. Ukraine*, <http://hudoc.echr.coe.int/eng?i=001-203931>

Housing). Eviction and ownership rights over flats and residences, as well as the issue of balancing the right to protection against domestic violence vis-à-vis eviction of tenants from property they own or use, remain highly problematic legal issues, requiring careful subsidiary approach of the domestic authorities, based on the ideas of margin of appreciation.

As to the case itself, the applicant, Ms Levchuk, complained that the dismissal of an eviction claim against her ex-husband had exposed her and her children to the risk of domestic violence and harassment. From the date of the couple's marriage in 2006, they, having had triplets in 2007, were provided with social housing, a flat, by the local municipal council. The applicant's husband drank heavily, harassed and threatened her and the children, sometimes resorting to physical violence. As a result, they divorced, and the applicant was granted custody of the children; however, her former husband, having no other place to live, continued to live in the same flat. This resulted in further intimidation and violence, leading to the police and social services interventions. Eventually, the applicant's former husband was charged with, but never found formally guilty, of domestic violence. The applicant requested to evict her former husband in 2016 from the flat they jointly occupied, having used the respective procedure under Article 116 of the Housing Code. As such this legal provision provided a remedy in a form of possibility to evict social housing tenants for systematic misconduct also in relation to those with whom they co-habitated. The national courts ultimately dismissed the claim in 2018. The courts did not find that the misconduct had been systematic and considered that there were no grounds for such an extreme measure as eviction, in breach of tenancy rights. At the moment of the judgment, as the Court established, the applicant and her children continued to share the flat with the domestic violence perpetrator. In the proceedings before the Strasbourg Court, the applicant relied on Article 8 (the right to respect for private and family life, i.e. the right to privacy) of the European Convention on Human Rights. She complained about the court's refusal to order her ex-husband's eviction, alleging that the courts had been excessively formalistic in their decisions and had built a sense of impunity for her ex-husband which had exposed her and her children to an even greater risk of psychological harassment and assault.

The Court's judgment is noteworthy, as it focuses on the methodology of establishing a fair balance between the competing demands for

protection of physical integrity and the right to housing. The Court is not only taking the note of the civil remedy under Article 116 of the Housing Code, but it also notes that while the courts refused to evict the applicant's husband, they still *de facto* recognised that domestic violence continued, but that eviction was not an appropriate avenue to undertake (Pars. 82 and 83 of the Judgment). In this sense it is important to quote one of the paragraphs from the judgment (Par. 84):

“...84. The Court has earlier indicated in its case law that eviction is the most extreme measure of interference with one's right to respect for the home guaranteed by Article 8 of the Convention (see, among other authorities, *Kryvitska and Kryvitskyi v. Ukraine*, no. 30856/03, § 41, 2 December 2010). However, it has also stated that interference by the national authorities with individual rights under Article 8 might be necessary in order to protect the health and rights of the others (see, among other authorities, *mutatis mutandis*, *Opuz*, cited above, § 144; *Eremia*, cited above, § 52; and *Volodina*, cited above, § 86). Moreover, in context of Article 2 the Court noted that, in domestic violence cases, perpetrators' rights cannot supersede victims' human rights, in particular, to physical and mental integrity (see, *mutatis mutandis*, *Opuz*, cited above, § 147, and *Talpis*, cited above, § 123).”

In its further analysis, the Court underlined that it was “not apparent from the material before the Court that a comprehensive assessment of those elements [i.e. credibility of the applicant's statements and the risk of future violence, in the event that the parties remained living under the same roof] had been performed either by the Court of Appeal or the Supreme Court” (Par. 85 of the Judgment). In addition, the Court established that even certain misconduct on behalf of the applicant's husband occurred, the police authorities had conducted “pre-emptive conversations” with him and issued him “warnings” on a number of occasions, the courts nevertheless found that “it had not been demonstrated that the former husband systematically breached the rules on living together” (Par. 86 of the Judgment). The Court also noted in this sense the recurrent practice of withdrawal of the complaints from the victims of domestic violence and the special duty “to take into consideration the vulnerability of the victims of domestic violence when discharging their positive obligations in that area under Articles 3 and 8 of the

Convention” (Par. 87 of the Judgment). The Court also referred to the social tenancy contract, the results of the divorce proceedings and the sole custody over children for the applicant as factors that should have been discussed and taken into account by the domestic courts, including the Supreme Court, in the course of examination of the case (Par. 88 of the Judgment). As a result, the Court concluded that “the domestic judicial authorities did not conduct a comprehensive analysis of the situation and the risk of future psychological and physical violence faced by the applicant and her children” (Par. 90 of the Judgment). The Court also referred therein to the fact that proceedings had lasted extensively long in a situation where the domestic violence and its risks were recurring, i.e. over two years, at three levels of jurisdiction, during which the applicant and her children remained at risk of further violence. It concluded that the “the fair balance between all the competing private interests at stake has therefore not been struck” and the judicial response given to the applicant’s eviction claim has not been in compliance with the State’s positive obligation to ensure the applicant’s effective protection from domestic violence (Par. 90 of the Judgment).

There are several reasons why this case is significant for the European perspectives of integration for Ukraine. First of all, it depicts that the issues of “domestic violence”, reactions to it, related balancing test and positive obligations to protect from domestic violence are not yet “high enough” on the legal agenda of the Ukrainian judiciary that has only started forming its jurisprudence on this matter. This could possibly also relate to a low number of such cases arriving to the domestic courts and actually reaching the Supreme Court, which in turn could also mean, inconclusively, that legislative measures undertaken by the authorities with regard to domestic violence remain insufficient. Secondly, it could also mean that the protection offered by an eviction remedy

suggested by Article 116 of the Housing Code could still be problematic, not only from the point of view of judicial practice on the basis of this provision but also on the basis of the Housing Code itself and limitations of the above-mentioned provision has on the scope of judicial review. Thirdly, the issue of domestic violence, in the public discourse in Ukraine, is highly centred around the problem of ratification of the “Istanbul Convention” (*Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*), which entered into force on 1 August 2014 after 10 ratifications from 8 member states of the Council of Europe. Ukraine is not a party to the Convention but has signed and ratified this Convention on 7 November 2011, having unsuccessfully tried to ratify it in 2018. This international instrument remains the most comprehensive international legal instrument dealing with issues of domestic violence. It has partly “grown” from a soft law Recommendation of the Committee of Ministers of the Council of Europe (Recommendation Rec(2002)5 of 30 April 2002 on the Protection of Women against Violence), which is also referred to in the *Levchuk Judgment* (Pars. 55 and 56). In addition to the above, the ratification of the Istanbul Convention is high on the political agenda of the European Union itself, and one might expect that the European Union would be guided by the ideas of “zero tolerance” towards domestic violence and deep gender equality in its relations with Ukraine as its Association Treaty partner. Obviously, more remains to be seen as a result of the potential reaction, which would be suggested by the Ukrainian authorities in reply to this judgment, which should be taking into account constant case-law of the European Court of Human Rights on this matter, body of jurisprudence having *erga omnes* effect and direct judicial applicability in Ukraine, as well as the legal obligations arising from the signature of the Istanbul Convention by Ukraine.

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СПРАВИ ЄВРОПЕЙСЬКОГО СУДУ З ПРАВ ЛЮДИНИ, ЗНАЧУЩІ ДЛЯ ЄВРОПЕЙСЬКОЇ ІНТЕГРАЦІЇ УКРАЇНИ

«ЛЕВЧУК ПРОТИ УКРАЇНИ», РІШЕННЯ ВІД 3 ВЕРЕСНЯ 2020 РОКУ (ОСТАТОЧНЕ 3 ГРУДНЯ 2020 РОКУ): КОМЕНТАР ДО СПРАВИ

Рішення Страсбурзького Суду у справі Левчук є важливим з погляду євроінтеграційних перспектив України: по-перше, з точки зору реагування судової системи на прояви домашнього насильства; по-друге, з точки зору базисного законодавства, що стосується можливостей реагування держави на ці прояви та наявні засоби захисту. По-третє, це стосується і проблеми ратифікації Стамбульської конвенції (Конвенції Ради Європи про запобігання насильству стосовно жінок і домашньому насильству та боротьбу із цими явищами), яка набула чинності 1 серпня 2014 року, оскільки Україна підписала Конвенцію, але ще не є її стороною за відсутності ратифікації Конвенції. Цілком очевидно, що майбутні дії, що пропонуватимуться українською владою, мають базуватися на усталеній практиці Європейського суду з прав людини, а також на інших міжнародно-правових інструментах, включно з підписаною, але не ратифікованою Україною Стамбульською конвенцією. Не останнім є і визнання Стамбульської конвенції одним із ключових елементів зовнішньої, а отже і внутрішньої, політики ЄС як правового механізму системної протидії домашньому насильству.

Ключові слова: домашнє насильство, Європейський суд з прав людини, рішення у справі Левчук, усталена судова практика, виконання рішень Європейського Суду, Комітет Міністрів, Рада Європи, Стамбульська конвенція.

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