sciendo
JOURNAL OF LEGAL STUDIES
"Vasile Goldiş" Western University of Arad
J. L. S.
2022 – 29(43)
DOI: 10.2478/jles-2022-0004

PROBLEMS OF LEGAL REGULATION OF COMBATING TORTURE IN UKRAINE

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(Received: February 2022; Accepted: April 2022; Published: May 2022)

Abstract: The relevance of this study is due to the lack of an effective mechanism to combat torture in Ukraine and an insufficiently effective system of prevention and protection against torture, which creates an atmosphere of impunity and leads to the spread of this phenomenon in Ukraine. The purpose of the article is to explore the problematic aspects of legal counteraction to torture in Ukraine and to suggest ways to improve the mechanism of legal counteraction to torture in Ukraine in the context of international standards. Thus, first of all, the article reveals the composition of the crime of torture and the specifics of responsibility for it in Ukraine. Then the paper characterizes the mechanism for ensuring legal counteraction to torture in Ukraine. The article also analyzes the main problems of legal counteraction to torture in Ukraine suggests ways to improve certain problems of legal counteraction to torture in Ukraine in the context of international standards.

Keywords: torture; international legal standards; crime; criminal law; corpus delicti.

1. Introduction

One of the priority tasks of the state in the field of criminal law protection of human rights is the protection of its life and health, honor and dignity, which in accordance with the Constitution of Ukraine are determined by the highest social value. Article 28 of the Constitution of Ukraine states that "no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment", but in practice, the lack of an effective mechanism for ensuring such rights leads to frequent violations. Based on the above, the analysis of criminal law problems of combating torture in Ukraine and research of ways to solve them and prospects for improving the mechanism of legal counteraction to torture in Ukraine is relevant.

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2. Guarantees of legal counteraction to torture in the context of international legal standards

The existing system of international legal instruments aimed at combating torture and other ill-treatment and punishment, which contains direct prohibitions on such acts and mechanisms for bringing to justice those responsible for their commission, is the legal basis for combating torture and, accordingly, is a guarantee of human rights. However, effective counteraction to torture cannot be limited to the existence of a legal framework in this area but requires a combination of both legislative and administrative, judicial and enforcement measures.

In view of the above, the European Court of Human Rights has been established to ensure compliance by the High Contracting Parties with their obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms, including the prohibition of torture provided for in Article 3 of the Convention. The Convention provides for the right of everyone, after using all domestic remedies, to apply to the Court, which considers an individual application and, if necessary, investigates and makes reasoned final decisions, which are binding on the High Contracting Parties.

The text of the International Covenant on Civil and Political Rights, in order to guarantee the realization of the rights enshrined in it, provided for the establishment of a body of independent experts - the Human Rights Committee. In accordance with the provisions of the Covenant, each State that has ratified it undertakes to report regularly on the measures it has taken to implement the rights recognized in the Covenant and on the progress made in the exercise of those rights. After examining such reports, the Committee shall transmit to the States Parties its reports and comments of a general nature which it considers appropriate.

The main function of the Committee is to study the reports prepared by the States parties. However, such reports cannot be considered completely objective, as there is a factor of interest to the State directly compiling the report. A progressive step in this direction was the adoption of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

In the Convention adopted on 26 November 1987, the member states of the Council of Europe proclaimed the establishment of a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The Committee, as the international body to combat torture, shall, through periodic and in some cases other inspections, review the treatment of persons deprived of their liberty with a view to strengthening protecting them from torture or inhuman or degrading treatment or punishment. After each inspection, the Committee shall send to the Party in whose territory the inspection has conducted a report on the facts established during the inspection and the recommendations it considers necessary. The Committee may consult with the Party concerned with a view to make, if

necessary, proposals for improving the protection of persons deprived of their liberty.

The effectiveness of the Committee's work is ensured by co-operation with States Parties that undertake to provide free access to their territory and to all places where persons deprived of their liberty are located, as well as to complete information on places where persons deprived of their liberty and other facilities are located. The parties shall have the information necessary for the Committee to carry out its tasks. Overall, the Committee became the first international body to establish, through regular visits to places of detention, the cessation and prevention of all forms of torture, inhuman, cruel, or degrading treatment or punishment, as well as prospects for improving existing imprisonment systems.

Similar ideas were expressed at the World Conference on Human Rights, which declared that efforts to eradicate torture should focus primarily on preventive measures and called for the adoption of an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted in 2006.

Recognizing their primary responsibility for the observance and enforcement of legal acts aimed at combating torture and the need to strengthen the protection and strict observance of the rights of persons deprived of their liberty, the States Parties approved the establishment of a system of regular visits to places of detention. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Subcommittee on Prevention) has been designated as the body responsible for visiting places of detention and drawing conclusions in the form of recommendations and comments and national preventive mechanisms established in a particular State to ensure proper implementation of the provisions of the Protocol.

Interaction and cooperation of the Subcommittee on Prevention and National Preventive Mechanisms through consultations, direct and, if necessary, confidential contacts, provision of training and technical assistance services, as well as objective assessment of needs and measures needed to strengthen the protection of prisoners consistent and effective implementation of the provisions of the Protocol and high standards of human rights.

Thus, the prevention of torture is the existence of a wide range of international regulations on combating torture and other cruel, inhuman, or degrading treatment or punishment, mechanisms for their practical application and implementation, the activities of relevant international bodies to monitor the implementation of such legislation and rights human beings, which together form an effective system of guarantees of legal counteraction to torture in the context of international standards.

3. Guarantees of legal counteraction to torture in Ukraine

The mechanism of legal counteraction to torture in Ukraine is based primarily on the legal regulation of the prohibition of torture, enshrined in both international instruments and regulations of Ukraine. Following the ratification of the UN Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment on 26 January 1987, Ukraine was faced with the question of bringing its national legislation into line with international law. Therefore, taking into account international standards, Ukraine enshrined the prohibition of torture at the constitutional level and for the first time criminalized torture in the Criminal Code of Ukraine in 2001.

However, the activities of the state in this area are not limited to the adoption of the relevant norm on the prohibition of torture and its implementation. The need to improve the state's activities to promote and ensure human rights and freedoms and create an effective mechanism to protect human rights and freedoms in Ukraine led to the approval on August 25, 2015, by the President of Ukraine National Human Rights Strategy (hereinafter - the National Strategy). The main goal of the Strategy was to ensure the priority of human rights and freedoms as a determining factor in determining public policy, decision-making by public authorities and local governments, which should result in the introduction of a systematic approach to tasks and ensuring coherence of public authorities. and local governments in the field of human rights and freedoms, the creation in Ukraine of an effective (accessible, understandable, predictable) mechanism for the implementation and protection of human rights and freedoms. One of the strategic directions of the Strategy was to combat torture in order to create an effective system of combating torture, cruel, inhuman or degrading treatment, prevention of abuse and public intolerance of any form of abuse.

The implementation of the National Human Rights Strategy is carried out in accordance with the "Action Plan for the Implementation of the National Human Rights Strategy until 2020" (hereinafter - the "Action Plan"), approved by the Cabinet of Ministers of Ukraine dated November 23, 2015. Based on the expected results of the Strategy in the field of combating torture, cruel, inhuman or degrading treatment or punishment, measures to implement the Strategy are divided into 6 key areas: creating an effective system for investigating crimes related to torture, cruel, inhuman or degrading treatment or punishment; ensuring the effectiveness of remedies against misconduct; ensuring compensation for and rehabilitation of victims of crimes related to torture, cruel, inhuman or degrading treatment or punishment, in accordance with international standards; ensuring compliance with international standards on the conditions of detention and treatment of persons in other places of their involuntary detention by a court decision or a decision of an administrative body in accordance with the law; ensuring the effective operation of

the national preventive mechanism; adherence to the principle of prohibition of deportation of foreigners and stateless persons to a state where they are threatened with ill-treatment.

The undoubted advantage of the National Strategy and the guarantee of its effectiveness in the process of establishing an effective mechanism for protection of human rights and their guarantees is ensuring its implementation by joint actions of state bodies, civil society institutions, the Ukrainian Parliament Commissioner for Human Rights with the support of the United Nations and the Council of Europe. Organization for Security and Co-operation in Europe and other international organizations. After all, only such interaction between international and national, state and non-state structures can provide an effective, professional and independent mechanism for the protection of human rights, in particular in the field of combating torture.

Particular attention should be paid to the work of the national preventive mechanism established in accordance with the requirements of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. According to the Law of Ukraine "On Amendments to the Law of Ukraine "On the Commissioner for Human Rights of the Verkhovna Rada of Ukraine" on the National Preventive Mechanism", a wide range of functions of the national preventive mechanism was entrusted to the Ombudsman - the Verkhovna Rada Commissioner for Human Rights. In addition to his powers:

- regular visits to places where persons are forcibly detained by the court or administrative body in accordance with the law, without prior notice of the time and purpose of such visits and without limiting their number;
- interviewing persons who are forcibly detained by a court or administrative body in accordance with the law in the places specified in paragraph 8 of Article 13 of the Law of Ukraine "On the Ukrainian Parliamentary Commissioner for Human Rights" in order to obtain information on their treatment; conditions of their detention, as well as interviews with other persons who may provide such information;
- making proposals to public authorities, state bodies, enterprises, institutions, organizations, regardless of the form of ownership, on the prevention of torture and other cruel, inhuman, or degrading treatment or punishment;
- involvement of representatives of public organizations, experts, scientists and specialists in regular visits to the places specified in paragraph 8 of Article 13 of the Law of Ukraine "On the Commissioner for Human Rights of the Verkhovna Rada of Ukraine".

Although the main functions of the national preventive mechanism in the Ombudsman + format are entrusted to the central office of the ombudsman and his regional representatives, the activities of the Expert Council on the implementation of the national preventive mechanism are integral components of the national

preventive mechanism. It is a public body to provide advice to the Ombudsman's Secretariat, conduct research, develop proposals for the National Preventive Mechanism, as well as non-governmental human rights organizations and individual monitors involved by the Ombudsman on a contractual basis in the national preventive mechanism. Therefore, the availability and interaction of a wide range of actors in the National Preventive Mechanism creates enhanced safeguards against torture and other cruel, inhuman, or degrading treatment or punishment, and minimizes the risk of falling victim to such treatment.

In addition to national preventive activities, the guarantee of combating torture is the activity on the territory of Ukraine of international organizations - the European Committee for the Prevention of Torture and the Subcommittee on Prevention. They organize regular inspections, sending after each of these reports on violations and individual remarks and law enforcement practice of an independent judicial body - the European Court of Human Rights in cases to which Ukraine is a party.

Thus, guarantees of legal counteraction to torture in Ukraine include a system of national and ratified regulations and their practical implementation through individual judgments, the operation of a national preventive mechanism, the implementation of the National Human Rights Strategy and regular visits to places of detention by independent international bodies.

4. Problems of legal counteraction to torture in Ukraine in the context of international standards

When considering the problems of legal counteraction to torture in Ukraine, first of all, it is necessary to pay attention to the very definition of "torture". Systematic analysis of approaches to the definition of "torture" in national and international law differs significantly. Thus, according to Article 127 of the Criminal Code of Ukraine, the subject of the crime of torture is universal, while the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that the crime is committed by “public officials or others which act as official ". Although the wording of Article 127 of the Criminal Code of Ukraine of 2005 and 2008 included such qualifying circumstances as the commission of a crime by "law enforcement officers" and the commission of a crime by an "official using his official position", they became invalid with the following versions. In addition, it should be noted that such a decision was not duly substantiated in the accompanying note to the draft law, given the fact that the accompanying note emphasized the urgency of introducing a new qualifying circumstance, bypassing the reasons for repealing the existing one.

It should also be noted that the meaning of "torture" reflected in the Criminal Code of Ukraine is characterized exclusively as active behavior, i.e. - action, while in the Convention "torture" is also defined as inaction, due to the use of the phrase "or with

their tacit consent". Thus, in national law, the term "torture" has a narrower meaning, because it does not cover passive criminal behavior, which is referred to in Art. 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Thus, illegal actions recognized by the international community remain out of the attention of our state, i.e. their commission is indirectly allowed on the territory of Ukraine.

Given the fact that the crime of "torture" is relatively new to Ukrainian law, in practice, there are problems in distinguishing it from related crimes. When investigating cases of torture, investigators do not always correctly identify the nature of acts of violence involving assault, and allow such actions to be incorrectly described. That is why the separation of torture from related crimes is an urgent problem.

The rules on the basic and qualified elements of each of the intentional crimes against health in terms of those qualifiers that are not related to serious harm to health may be in potential competition with the general and special rules. For example, intentional grievous bodily harm committed in a manner that has the character of special torture (Article 121 of the Criminal Code of Ukraine) and "torture" are related categories, but the crime of torture has a specific purpose, not inherent in intentional grievous bodily harm.

There is also a certain conflict between the qualified corpus delicti of beatings and killings "committed to intimidate the victim or his relatives" (Article 126 of the Criminal Code of Ukraine) and "torture". These two crimes should be distinguished by their purpose. At the same time, the essence of the problem lies in the fact that in both syllables such a feature is named as a goal that has the same meaning.

Considering the ratio of the qualified composition of the crime under Part 2 of Article 365 - Excess of power or official authority by a law enforcement officer, accompanied by violence or threat of violence and Article 127 of the Criminal Code of Ukraine, we believe that causing severe physical pain or physical or mental suffering by, torture or other acts of violence corresponds to the term "violence" used in Article 365 of the Criminal Code of Ukraine, as well as all the purposes set out in Article 127 of the Criminal Code of Ukraine may potentially be accompanied by abuse of power or official authority. rights and powers granted to an official. However, since the legislative structure of the qualified crime of abuse of power or official authority by a law enforcement officer provides for no signs of torture, we can conclude that in cases where abuse of power and official authority covers the purpose of Article 127 of the Criminal Code of Ukraine - a crime qualifies as torture, in other cases like excess of power or official authority.

Coercion to testify under Art. 373 of the Criminal Code of Ukraine, "combined with the use of violence or abuse of a person" is a manifestation of the purpose "to obtain information or recognition from the victim", i.e. signs of torture. In this case, the

realization of the goal (Article 373 of the Criminal Code of Ukraine) is achieved by the very fact of committing a socially dangerous act aimed at achieving the goal (Article 127 of the Criminal Code of Ukraine). It should be noted that the qualified corpus delicti provided for in part 2 of Article 373 of the Criminal Code of Ukraine provides for the absence of signs of torture. Although from a practical point of view, Part 1 of Art. 127 of the Criminal Code of Ukraine provides for liability for violent acts in order to persuade the victim to commit acts contrary to his will, and Part 2 of Art. 373 of the Criminal Code of Ukraine - responsibility for violence against a person in order to force him to testify that it is essentially the same.

Based on the fact that the basis for legal counteraction to torture is an unconditional legal prohibition of such actions, it should be noted that the vast majority of laws regulating the activities of law enforcement agencies contain only an indication of the principle of human and civil rights and freedoms. The principle of operational and investigative activities, according to the Law of Ukraine "On operational and investigative activities" is respect for human rights and freedoms, but, unfortunately, this principle is not interpreted in the text of the Law, which is limited to its declaration. The Law on the Security Service of Ukraine explains the similar principle of the Security Service of Ukraine more clearly, stating that "the bodies and employees of the Security Service of Ukraine must respect human dignity and show humane treatment." The rule of law and the State Bureau of Investigation is based on the rule of law, which means that a person, his life and health, honor and dignity, inviolability and security are recognized as the highest social value. Although such principles, in fact, provide for the prohibition of torture, in the absence of a legal interpretation of the above-mentioned documents, we cannot draw such legal conclusions.

Progressive in this regard is the Law of Ukraine "On the National Police", according to the text of which the principle of respect for human rights and freedoms provides that the police are prohibited under any circumstances to facilitate, carry out, incite or tolerate any form of torture, cruel, inhuman or degrading treatment or punishment, and if such actions are detected, each police officer must immediately take all possible measures to stop them and be sure to report to the immediate management the facts of torture and their intentions. If the facts of torture or other ill-treatment by the police are concealed, the head of the body is obliged to initiate an official investigation and bring the perpetrators to justice within 24 hours of receiving information about such facts.

Along with the existence of a number of problems of a theoretical nature, a high degree of latency of this type of crime is a practical obstacle to effective counteraction to torture in Ukraine. This means that victims, mainly due to fears or lack of faith that the perpetrators will be punished, do not turn to law enforcement agencies to protect their violated rights.

Thus, despite the existence of a sound legal framework for combating torture, many problematic issues, both theoretical and practical, in particular in the context of international standards, remain unresolved in Ukraine.

5. Problem of correlation between crimes of torture and domestic violence in Ukrainian legislation

With the introduction into Ukrainian legislation crime of domestic violence, there is a tendency to qualify torture as domestic violence if committed to family members. Such tendency is due to the lesser punishment provided for domestic violence crime. To date, the issue regarding the correlation between torture and domestic violence in Ukrainian legislation is still unresolved.

If we compare torture and domestic violence, it should be noted that these phenomena have much in common. First, domestic violence is very similar, and sometimes even identical, to torture. For example, the task of hitting the body, causing physical pain, encroachment on the sexual integrity of the person, suppression. The above actions are always accompanied by severe stress, fear and are able to humiliate a person. Secondly, in each case, the consequences must be in the form of severe physical pain and/or severe moral suffering. Third, in both cases, there are aggressors who, in order to achieve their goal, commit acts of verbal, physical, or emotional abuse against another person. Fourth, both the perpetrator of domestic violence and the subject of torture are aware that their actions do not comply with generally accepted rules of conduct in society, are intentional, purposeful and socially dangerous. It can be argued that domestic violence can actually escalate into torture with all the elements of this crime.

As it was discussed in the previous sections, torture in Ukrainian legislation is characterized by a specific purpose established in Article 127 of the Criminal Code. According to Art.127, torture is committed with the purpose to compel the victim or another person to commit acts contrary to their will, including obtaining information or recognition from him or another person, or to punish him or another person for acts committed by him or another person or in which he or she another person is suspected, as well as to intimidate or discriminate against him or her or others. Thus, the question arising in practice: how to qualify according to this norm, a crime when torture is committed to a relative in order to prevent him/her to notify the competent bodies about the domestic violence act. Police officers tend to consider such activities as a continuation of domestic violence and thus qualify it as domestic violence provided for in Art.126-1 of the Criminal Code. Although, the specific aim (preventing of appealing to competent bodies) characterizes such action as torture. Therefore, such action should be qualified as a totality of crimes provided in Art.126-1 (domestic violence) and Art.127 (torture) of the Criminal Code of Ukraine.

Another difficulty in qualifying acts that will be subject to torture or domestic violence is the emotional reactions of some victims, which makes it difficult to establish the real picture of events, gather evidence, appoint examinations. From a procedural point of view, it is difficult and appropriate to involve the institution of witnesses who could serve as a third party in establishing a quality distinction between torture and domestic violence. All this harms judicial practice.

Another interesting problematic point is holding authorized bodies accountable for their inaction in relation to victims of domestic violence. As it was previously mentioned, the drawback of Ukrainian enshrinement of torture fails to provide criminal responsibility for torture expressed in inaction. But, particularly in the context of holding authorized bodies accountable for their inaction in relation to victims of domestic violence, such enshrinement does not correspond to the practice of the European Court of Human Rights. In this context, one should mention the decision of the European Court, in which France was found guilty because its authorities did not take sufficient measures to combat domestic violence against the child, although the principal of the school where she studied reported signs of abuse by parents. Despite numerous appeals and examinations, law enforcement and social services did not notice domestic violence, and as a result, in 2009, the girl was found dead. Although the parents were punished for the murder, human rights groups did not stop and complained about the state's inaction, which led to the child's death. In its decision, the ECHR acknowledged that in this case, the State violates Article 3 "Prohibition of Torture" of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In 2019, Ukrainian courts handed down only 17 sentences for violating Article 127 of the Criminal Code (torture). This is a catastrophically biased figure as human rights organizations say there are tens of thousands of cases of torture each year. Four children were recognized as victims, which also does not correspond to the real scale of the problem. Each year, the ECHR considers dozens of complaints of violations of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms in Ukraine. The state spends millions of hryvnias to compensate the victims and ranks third in the world in the number of complaints of torture.

Taking into consideration, that Ukrainian legislation and legal practice should be in line with the practice of the ECHR, we could conclude that there is an urgent need to align Ukrainian practice on torture and domestic violence with international standards. To this end, it is necessary to adopt a special clarification to establish strict rules on domestic violence and torture qualification.

6. Prospects for improving the mechanism of legal counteraction to torture in Ukraine

Having considered in the previous section a number of problems in the context of legal counteraction to torture in Ukraine, we want to point out possible ways to solve them as prospects for improving the mechanism of legal counteraction to torture in Ukraine.

First of all, it is worth starting with the very definition of torture contained in the Criminal Code of Ukraine. Of course, it is necessary to enshrine in national law the recognition of torture as an act provided for in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as the modern approach to defining the crime of torture is reflected in the Criminal Code. Ukraine is restrictive and in fact, legalizes the act committed in the form of passive inaction on the territory of Ukraine.

With regard to the special subject of the crime, it should be noted that the purpose is provided by Article 127 of the Criminal Code of Ukraine, in particular, to obtain information or confession from the victim or another person, or to punish him or another person for acts committed by him or another person or in the commission of which he or another person is suspected is inherent in the special subject of the crime, but such a goal as intimidation or discrimination may be realized by the general subject. In view of the above, in our opinion, it would be appropriate to include in the list of qualifying circumstances - the commission of a crime by public officials or other persons acting as officials. Such changes will not only differentiate between torture committed by a general and a special entity but will also help to avoid conflicts between the provisions of Articles 127, 365 and 373 of the Criminal Code of Ukraine.

With regard to the norm on coercion to testify, in our opinion, it is necessary to remove from the second part the indication of the absence of signs of torture, given the analysis in subsection 3.1. approach, the absence of signs of torture in such a qualified corpus delicti is excluded. At the same time, in the practice of defining a crime in such cases, we propose to rely on the approach to the application of a special rule - Part 2 of Art. 373 of the Criminal Code of Ukraine, which has precedence over the general (Article 127 of the Criminal Code of Ukraine), taking into account the fact that the special rule specifies the content of the purpose provided by the general rule.

Considering the relationship between Part 2 of Article 126 and Article 127 of the Criminal Code of Ukraine, it should be noted that the article "beatings and killings" is special for the article "torture", as it provides that torture may be committed "by beating, torture or other acts of violence." Therefore, in our opinion, in judicial practice, in the absence of bodily injury, as well as in the absence of a special subject

of the crime (which we propose to include in Article 127), in such cases, Part 2 of Art. 126 of the Criminal Code of Ukraine should be applied.

In resolving the issue of qualification of actions of a person when physical violence consisted of torture, the resolution of the Plenum of the Supreme Court of Ukraine "On Judicial Practice in Cases of Excess of Power or Official Powers" provides for recognizing such actions as the excess of power or official authority. If the torture contained signs of a crime, the responsibility for which is provided by Part 2 of Art. 127 of the Criminal Code of Ukraine, the actions of an official must be classified as a set of crimes - under Part 2 of Art. 127 and Part 2 of Art. 365 of the Criminal Code of Ukraine. However, taking into account the fact that the Resolution was adopted in 2003, after which Article 127 was amended 3 more times, the qualification of the act under Part 2 of Art. 127 and Part 2 of Art. 365 of the Criminal Code of Ukraine is impossible given that part 2 of Article 365 provides for the absence of signs of torture. Therefore, in our opinion, it is necessary to issue a new Resolution of the Plenum of the Supreme Court of Ukraine on judicial practice in cases of abuse of power or official authority, which contains a procedure for determining responsibility in cases where torture contains signs of abuse of power or official authority. excess of official authority is realized through torture. We also consider it expedient to issue a separate resolution of the Plenum of the Supreme Court on judicial practice in cases of torture, which would contain clear instructions on the separation of torture from related crimes and the procedure for qualifying such acts.

An important step towards improving the mechanism of legal counteraction to torture, in our opinion, is the legal expansion of the interpretation of such principles of law enforcement as the rule of law and respect for human rights and freedoms, which provide a total ban on torture and tolerance.

The problem of latency of crime must be solved by implementing the action plan of the National Strategy for Human Rights, timely and complete detection of such crimes and ensuring the inevitability of punishment for it, which will promote the rule of law, create an atmosphere of trust in law and law enforcement agencies.

Thus, the legal fight against torture in Ukraine still has a number of problematic issues, most notably the inconsistency of national legislation with international standards in the field of combating torture, but all such problems have prospects that require implementation of international law and legislative measures to reform national criminal legislation.

7. Conclusions

Thus, the paper analyzes in detail the main problems of combating torture in Ukraine, both in theoretical and practical spheres and offers basic proposals for their solution. We stressed that the problem of a limited approach to the definition of torture in national law must be addressed by recognizing torture as an act as provided for in

the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and qualifying Article 127 of the Criminal Code - the commission of a crime by public officials or other persons acting as officials.

In our opinion, the problem of legislative conflicts and the practice of incorrect application of the norms of related crimes should be resolved by amending Articles 127 and 373 and issuing a separate resolution of the Plenum of the Supreme Court on judicial practice in cases of torture, which would contain clear guidelines from related offenses and the procedure for qualifying such acts.

We also stressed the necessity to resolve obscurity in the correlation between domestic violence and torture. It was pointed out that current Ukrainian practice does not correspond to the international standard and violates a person`s right to protection against inhuman or degrading treatment or punishment. Thus, special clarification should be established regarding domestic violence and torture qualification.

In the context of improving the mechanism for combating torture in Ukraine, we consider it appropriate to supplement the provisions of regulations governing the activities of law enforcement agencies with provisions on the unconditional prohibition of torture, as the principles of the latter.

Acknowledgments

The author thanks the anonymous reviewers and editor for their valuable contribution.

Funding

This research received no specific grant from any funding agency in the public, commercial, or not–for–profit sectors.

Author Contributions

The entire article was written by Melnykova Dariia.

Disclosure Statement

The author has not any competing financial, professional, or personal interests from other parties.

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