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Sviderska D. V.,
group 201, International law,
Kyiv National University of Economics

Arhatiuk I.V.,
Senior Lecturer Foreign
Languages Department, KNEU, Law Institute

SEXUAL VIOLENCE AS A WEAPON OF WAR: LEGAL AND PSYCHOLOGICAL SUPPORT FOR UKRAINIAN VICTIMS

Conflict-related sexual violence is as old as war itself. There are many examples of colonial invasions that involved sexual violence, which we now call conflict-related sexual violence. The Crusades were no exception. The American Civil War. World War I. World War II. The Rwandan genocide. Armed conflicts in the former Yugoslavia, Sierra Leone, Liberia, South Sudan, the Democratic Republic of Congo, the Central African Republic, Myanmar, Afghanistan, Iraq. The Arab Spring in Libya, which witnessed some of the worst cases of conflict-related sexual violence,

and the list goes on. Conflict-related sexual violence includes rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, forced sterilization, forced marriage, forced nudity and other forms of sexual violence of comparable severity committed against women, girls, men and boys in situations of armed conflicts. This list of crimes is not exhaustive. It can be committed against women, men, children and the elderly. A key feature of conflict-related sexual violence is that it is always linked to conflict [1, p. 8].

Since the commencement of the full-scale war, Ukraine and the entire world have witnessed unprecedented cruelty and disregard for international law by Russia. Over 68,000 war crimes by the Russian military have already been documented, with 171 cases of sexual violence currently under investigation by the Prosecutor General's Office. These are cases where survivors have been willing to testify, but the actual scale of these crimes is likely much larger, as hostilities continue, and due to the lack of data on the situation in temporarily occupied territories. It is crucial to note that conflict-related sexual violence is a war crime without a statute of limitation, allowing survivors to report it at any time, whenever they are ready. Based on the experience of other countries, it can be reported even 10 or 30 years later [4].

First of all, it is worth noting that the jurisdictional basis for prosecuting rape as a war crime was established by the Geneva Conventions of 1949. Article 27 of the Geneva Conventions (IV) relative to the Protection of Civilian Persons in Time of War states that women require special protection against any attack on their honour, in particular protection against rape, forced prostitution or any other form of invasion of their morals. [5] If we turn to the Rome Statute of the International Criminal Court, then according to Art. 8 war crimes are (xxii) rape, sexual slavery, enforced prostitution, enforced pregnancy as defined in Art. 7, paragraph 2(f), enforced sterilization or any other form of sexual violence, which constitute a grave breach of the Geneva Conventions. This article reflects the provision previously mentioned in the Geneva Conventions relative to the Protection of Civilian Persons in Time of War.

In order for sexual violence or any other criminal offense to qualify as a war crime, there must be two important components: 1/ the sexual violence must occur during (be related to) an armed conflict; 2/ the existence of a crime of sexual violence [1, p. 19].

An effective foreign experience that we should adopt is changing the name, passport and other personal data of the victim in the proceedings, even moving to other places or changing the information about which place or village the victim is from, in order to prevent re-traumatization or disclosure of information, as well as to maintain the confidentiality of the victims. After all, currently the real data of the victims is submitted in the proceedings. The described step is necessary in order to reduce the negative impact of the environment and society on the victims, since some will express sympathy, while others will blame, saying that they themselves are to blame for what happened. Often, victims of conflict-related sexual violence do not report what happened, because they feel ashamed. In many societies, there is a stigma against such victims: they are condemned, considered to be those who «had a reputation as a slutty woman, those who could have avoided it, those who provoked it». As a result, due to stigma, such crimes were very underreported.

The International Criminal Court has one of the most developed reparations mechanisms, as it has established a Trust Fund for Victims. The funds for such a fund are provided by the participating States. However, the first obstacle here is the issue of availability of funds, since the need for compensation often exceeds the available resources. The key in defining reparations is to understand who they are intended for, as well as to understand that they represent a single individual concept. In my opinion, reparations should be individual, that is, adapted to each case and person, to each victim and each victim separately. A certain set of reparations measures designed for one person will most likely not be suitable for another. The goal of reparations is to provide psychological, medical, legal and financial assistance to victims. But reparations also have a very important social component - the reintegration of victims

into society as valuable, equally important members. At the same time, it is worth talking about rehabilitation, which usually concerns psychological and physical trauma suffered in war. In addition, in the context of rehabilitation, it is worth understanding medical, as well as psychosocial assistance, and other aspects, including legal support and all other social services [2].

If Ukraine had created its own system of compensation for victims of sexual violence committed by the Russian military, this could not be considered classic compensation. Because such compensation should be paid primarily by Russia. Ukraine could pay these amounts and then demand that Russia return them. However, Ukraine is not directly responsible for paying compensation for something that it is not guilty of [3].

Responding to conflict-related sexual violence requires a comprehensive, multi-sectoral approach that includes coordinated provision of health services, protection, psychosocial support and access to justice for victims. Sometimes victims and their families need economic and financial support. The availability and accessibility of such services increases the likelihood that a victim will report the sexual violence they have experienced [3, p. 36].

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Сидоренко С. Г.,

адвокат,

Національна асоціація адвокатів України

ПРОЦЕСУАЛЬНІ АСПЕКТИ ЗАСТОСУВАННЯ ЗАХОДІВ ПРОТИДІЇ ДОМАШНЬОМУ НАСИЛЬСТВУ

Основним нормативно-правовим актом, яким визначається реалізація державної політики щодо запобігання та протидії домашньому насильству, є Закон України «Про запобігання та протидію домашньому насильству» (далі – Закон) [1]. Запобігання та протидія домашньому насильству відповідно до преамбули зазначеного Закону мають на меті захист прав та інтересів тих осіб, які є постраждалими. Але в процесі звернення постраждалої особи за наданням допомоги та захистом від домашнього насильства виникає значна кількість процесуальних аспектів, які не мають реального механізму їх належного втілення та реалізації.

До прикладу Законом передбачений такий спеціальний захід протидії домашньому насильству як «терміновий заборонний припис стосовно