



PROTECTION OF CHILDREN FROM DOMESTIC VIOLENCE IN THE CONTEXT OF ARMED CONFLICT: CHALLENGES OF EVIDENCE AND INSTITUTIONAL RESPONSE



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The article examines the issue of protecting children from domestic violence in the context of armed conflict and martial law in Ukraine. It demonstrates that war has a profound impact on family life: forced displacement, economic hardship, psychological stress, and the loss of stability increase the risk of violence against children within the family. It is emphasized that the private sphere, which should be a safe environment for a child, often becomes a zone of heightened vulnerability under wartime conditions.

The study analyzes international standards for the protection of children's rights, in particular the provisions of the UN Convention on the Rights of the Child and the approaches developed in the case law of the European Court of Human Rights. It is noted that the State bears the obligation to take effective measures to prevent violence, to conduct effective investigations of such cases, and to ensure an adequate institutional response even in emergency situations. Martial law does not release the State from these obligations and cannot serve as a justification for violence or for a formalistic approach to the examination of cases.

Particular attention is paid to the challenges of proving domestic violence against children during wartime. It is noted that difficulties in collecting evidence, limited access to medical and social services, the child's fear, and the risk of re-traumatization significantly complicate the prosecution of perpetrators. The article

substantiates the need to apply a child-centered approach, improve interagency cooperation, and enhance law enforcement practice in line with international standards.

Keywords: children's rights, domestic violence against children, armed conflict, martial law, evidence, positive obligations of the State, ECtHR case law, international human rights protection standards.

Problem Statement

The armed aggression against Ukraine and the introduction of martial law have significantly transformed the social and legal conditions of children's lives, increasing their vulnerability within the family environment. Forced displacement, economic instability, psychological stress, loss of housing or loved ones create additional risks of the emergence or escalation of domestic violence against children. At the same time, the family sphere remains the most closed domain, where incidents of violence are often latent in nature and difficult to detect in a timely manner.

Despite the existence of a well-developed regulatory framework and Ukraine's international obligations in the field of child rights protection, law enforcement practice under martial law faces a number of significant challenges. Among them are difficulties in the legal qualification of acts, complexities of

evidence collection and assessment, limited institutional capacity of public authorities, and the risk of a formalistic response to reports of violence. The issue of ensuring an effective, child-centered approach becomes particularly acute in emergency conditions, when security challenges often push child protection concerns into the background. Thus, there is a pressing need for a comprehensive analysis of mechanisms for protecting children from domestic violence in the context of armed conflict, taking into account international standards, the case law of the European Court of Human Rights, and the contemporary challenges of law enforcement practice.

Analysis of the Research Problem

The issue of protecting children from domestic violence in situations of armed conflict lies at the intersection of national legislation, international human rights standards, and law enforcement practice. The theoretical foundation of this study is based on the scholarly works of I. P. Andrusiak, which examine the legal challenges of combating domestic violence against children, the adaptation of European standards, and the impact of violence on social relations and children's behavior. These works substantiate the need for a systemic approach to child protection and the strengthening of interagency cooperation.

The normative basis of the research consists of the provisions of the 1989 Convention on the Rights of the Child, in particular Article 19, which obliges the state to take all necessary measures to protect the child from all forms of violence. Particular importance is attached to General Comment No. 14 of the UN Committee on the Rights of the Child, which defines the principle of the best interests of the child as a rule of direct application that takes precedence even in situations of emergency.

The case law of the European Court of Human Rights plays a significant role in shaping the standards of state response. In its judgments in *A. v. the United Kingdom*, *Z and Others v. the United Kingdom*, *E. and Others v. the United Kingdom*, and *Opuz v. Turkey*, the Court emphasized the positive obligations of the state to prevent violence,

conduct effective investigations, and ensure proper protection of vulnerable persons, including children. These legal positions serve as important guidelines for assessing national practice under conditions of martial law.

Certain aspects of the problem are revealed through the analysis of international experience in protecting children's rights in conflict zones, in particular the example of Malala Yousafzai as a symbol of children's resistance to violence and violations of the right to education.

Thus, the scholarly works of Ukrainian researchers, international treaties, and the case law of the European Court of Human Rights form the methodological and normative basis of the study. At the same time, the analysis indicates the existence of a gap between the declared standards and their practical implementation in wartime conditions, which necessitates further scholarly reflection and the improvement of mechanisms for protecting children from domestic violence.

The purpose of the article is to analyze the problems of protecting children from domestic violence in the context of armed conflict and martial law, to clarify the specific features of the legal qualification and evidentiary process in such cases, and to assess the effectiveness of institutional responses through the prism of international standards for the protection of children's rights and the case law of the European Court of Human Rights, with a view to formulating proposals for improving national law-enforcement practice.

Main Body of the Study

Armed aggression and the introduction of martial law have significantly transformed the social, psychological, and legal conditions of children's lives in Ukraine, while simultaneously exacerbating the risks of domestic violence against them. Forced displacement of families, prolonged exposure to conditions of constant danger, the destruction of established social ties, economic instability, the loss of housing or family members, as well as limited access to educational, medical, and social institutions create an environment of increased vulnerability for children, particularly within

the private family sphere. This sphere, on the one hand, is recognized as an area requiring special protection, and on the other hand, remains the least controlled and the most closed to external intervention.

The scholar Iryna Andrusiak notes that the constitutional norms of Ukraine define the human being, their life, dignity, security, and inviolability as the highest social value. The ideology of human-centrism indicates the need to implement the highest standards of legal reality and positive international practice in light of the axiological positioning of the human being as a fundamental value. Therefore, the issue of protecting and guaranteeing a person's life, health, and security has a dominant value for legal policy [1, p. 150]. Constitutional norms also position childhood as an important institution of state and legal protection.

International standards in the field of children's rights are based on the unconditional priority of protecting the child from all forms of violence, regardless of extraordinary circumstances. According to Article 19 of the Convention on the Rights of the Child, the state is obliged to take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, abuse, neglect, or negligent treatment, maltreatment, or exploitation by parents or other persons responsible for the care of the child. In the article "Children as Victims of Domestic Violence: Analysis of the Adaptation of European Standards," I. P. Andrusiak outlines two stages in the formation of the legal status of the child in Europe.

The first stage was initiated by the 1959 United Nations Declaration of the Rights of the Child. As the scholar notes, this historical document established general principles and standards recognizing the rights of every child, regardless of their social or economic status. It laid the foundation for the future protection and guarantee of children's rights as an integral component of universal human rights [2, p. 7]. The second decisive stage was the adoption of the United Nations Convention on the Rights of the Child in 1989, which recognized children's rights as an integral and

indivisible part of universal human rights. The Convention established a broad range of rights and freedoms for children, including the right to life, development, participation in matters affecting them, education, and protection from any form of violence or abuse [3].

Particular importance in the context of martial law is attached to General Comment No. 14 of the UN Committee on the Rights of the Child, in which the principle of the best interests of the child is defined as a rule of direct application that takes precedence over considerations of administrative expediency, lack of resources, or the exceptional nature of the situation. The Committee explicitly states that crisis circumstances, including armed conflicts, cannot justify lowering the standards of child protection or tolerating violent practices within the family under the pretext of "stress," "discipline," or "difficult living conditions" [4, pp. 3–4].

During wartime, domestic violence against children often takes latent forms and is disguised as disciplinary or educational measures, which complicates its identification and proper legal assessment. Such relativization of violence contradicts international human rights law approaches, which consider any form of physical or mental impact on a child that harms their development or dignity as a violation of fundamental human rights.

The case law of the European Court of Human Rights consistently confirms that the state bears positive obligations to protect children from domestic violence, even within the private sphere. In the case of *A. v. the United Kingdom*, the Court ruled that the tolerance of corporal punishment of children under the guise of 'upbringing' constitutes a violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms [5]. In the cases of *Z and Others v. the United Kingdom* [6] and *E. and Others v. the United Kingdom* [7], the ECtHR noted that the failure to act or a formalistic approach by state authorities to reports of violence against children may constitute a violation of Articles 3 and 8 of the Convention.

Also important for analysis is the Court's approach to the standards of proof in cases

of violence against children. The ECHR has repeatedly noted that the child's special vulnerability, their dependent position, and psychological state necessitate adapted procedural mechanisms, and that the difficulty of collecting evidence cannot serve as a justification for failing to conduct an effective investigation. In rulings concerning the state's inadequate response to domestic violence, notably in the case of *Opuz v. Turkey* [8], the Court articulated due diligence standards that remain relevant to cases of violence against children, especially in the context of crises and emergency situations.

Under martial law, the issue of proving domestic violence against children becomes particularly acute. The erosion of local institutional capacity, limited access to medical and psychological assistance, disrupted interagency cooperation, a child's fear of reporting violence, and the risk of secondary traumatization significantly complicate the proper legal classification of such acts. At the same time, international standards and ECHR case law clearly indicate that emergency circumstances do not exempt the state from its obligation to ensure an effective, thorough, and child-oriented response.

In this context, the analysis of the legal classification of domestic violence against children during wartime, as well as the related difficulties of evidence and institutional response, becomes particularly relevant. The purpose of this article is to identify key gaps in national law enforcement practice through the prism of international standards for the protection of children's rights and the case law of the European Court of Human Rights, as well as to formulate proposals for improving child protection mechanisms in conditions of armed conflict.

Ukraine's national legislation formally enshrines a wide range of guarantees for the protection of children from domestic violence, particularly through the provisions of the Law of Ukraine 'On Preventing and Combating Domestic Violence.' Under Article 1, a child is defined as a person under the age of 18, and a child witness of violence is also classified as a victim; Article 3 establishes the principle of the priority of the best interests of the child;

Article 7 defines the system of measures for preventing and combating domestic violence; and Article 26 outlines specific procedures for implementing measures concerning child victims of domestic violence, providing for the mandatory involvement of guardianship and trusteeship authorities and the provision of comprehensive assistance [9].

Additional guarantees are provided by the Law of Ukraine 'On Child Protection', specifically Article 10, which guarantees the child's right to protection from all forms of violence, ill-treatment, exploitation, and other encroachments on their dignity, while also imposing an obligation on the state to ensure such protection [10].

The criminal law mechanism of liability is enshrined in Article 126-1 of the Criminal Code of Ukraine, which establishes liability for the systematic commission of physical, psychological, or economic violence against a spouse, former spouse, or another person with whom the perpetrator is (was) in a family or close relationship, resulting in physical or psychological suffering, health disorders, or a decline in the quality of life of the victim [11].

Martial law does not create a legal vacuum in the field of child rights protection; however, it significantly transforms the conditions for the state to fulfill its positive obligations. Restricted access to justice, reduced institutional capacity of local authorities, staff shortages in social services, disrupted interagency cooperation, and the prioritization of security tasks lead to cases of domestic violence against children often being overlooked or receiving a formal assessment that fails to account for the real impact on the child.

The legal classification of acts constituting domestic violence against children is particularly problematic. In the practice of law enforcement agencies and courts, such actions are often relativized and interpreted as 'upbringing methods,' 'family conflict,' or a consequence of difficult life circumstances related to the war. Such an approach contradicts international standards, according to which any physical or psychological violence against a child, regardless of the adult's motives, is considered a violation of their fundamental rights and dignity.

The use of war as a contextual ‘mitigating factor’ in cases of violence against children effectively leads to the toleration of violent practices within the family and creates a dangerous precedent of lowering child rights protection standards. Such a practice is inconsistent with the approach of the European Court of Human Rights, which consistently emphasizes that difficult social conditions, economic instability, or psychological stress cannot justify violence or exempt the state from its obligation to ensure the effective protection of the most vulnerable persons.

The issue of proving domestic violence against children under martial law requires a separate analysis. Armed conflict significantly complicates the recording of facts of violence: access to medical facilities and psychological assistance is often limited, traces of violence may be lost due to family displacement, and the child themselves remains in a state of heightened fear and dependency on the perpetrator. An additional factor is the risk of secondary traumatization of the child during procedural actions, which frequently leads to a refusal to actively collect evidence.

Despite these objective difficulties, international standards and the case law of the ECtHR clearly stipulate that the complexity of proof cannot serve as a justification for state passivity. In this context, examples of individual child resistance to violence and discrimination in conditions of armed conflict that have gained international recognition are of particular importance.

A prime example is Malala Yousafzai — a human rights activist and Nobel Peace Prize laureate whose experience demonstrates that even in situations of systemic violence and military confrontation, a child remains a bearer of inalienable rights, particularly the rights to education, safety, and dignity. The attack on Malala Yousafzai as a child advocating for the right to education in conditions of armed conflict was recognized by the international community not only as an act of individual violence but as a gross violation of fundamental children’s rights, which imposes a positive obligation on the state to ensure effective protection even in the absence of full control over the security situation.

This example emphasizes that armed conflict does not nullify the legal status of the child and cannot be viewed as a justification for the state’s failure to fulfill its obligations regarding the protection of children’s rights. On the contrary, in wartime conditions, the state is obliged to apply heightened standards of due diligence and protection, particularly concerning children experiencing violence in the private sphere, where the risk of remaining invisible to the system is highest [12].

The special vulnerability of the child necessitates the use of adapted, child-oriented procedures that allow for the effective establishment of facts of violence without causing additional harm. In this context, the due diligence standards formulated by the Court in the case of *Opuz v. Turkey* are relevant, as they envisage an active role for the state in preventing, investigating, and punishing violent acts, even in the absence of irrefutable evidence.

For cases involving children, these standards must be applied taking into account their age, psychological state, and dependent position. The state is obliged to ensure coordination between law enforcement agencies, social services, and healthcare institutions, as well as to create conditions in which the child’s testimony, indirect evidence, and expert opinions are evaluated in their totality, rather than in isolation.

Effective protection of children from domestic violence under martial law is impossible without proper institutional response. An analysis of practice indicates that existing mechanisms often function fragmentarily, and responsibility among responding entities is becoming blurred. Formal compliance with procedures without a genuine assessment of risks to the child does not meet the standards of the state’s positive obligations defined in the ECtHR case law.

Child protection from violence cannot be limited to a post factum response. International human rights law requires the state to adopt a preventive approach aimed at the timely identification of risks, prevention of recurrent violence, and ensuring a safe environment for the child, even in emergency conditions. In this sense, martial law should be viewed not as a

ground for lowering protection standards, but as a factor that reinforces the state's obligation to act more proactively and responsibly.

As the researcher I. Andrusyak rightly points out, the study of domestic violence against children helps increase public awareness and consciousness regarding this issue; the findings are significant for isolating objective data and statistics that reveal the prevalence of domestic violence among children, and the analysis of the problem allows for the identification of risk factors contributing to domestic violence, as well as protective factors that can reduce children's vulnerability. Scientific analysis of domestic violence issues provides information for the development and implementation of programs and interventions for the prevention of occurrences and the rehabilitation of children who have become victims of domestic violence [13, p. 9].

Conclusions

Child protection from domestic violence under martial law is a litmus test of the state's capacity to fulfill its positive human rights obligations. Emergency circumstances do not abolish or diminish international legal standards for child protection; on the contrary, they increase the requirements for the effectiveness of the state response. Addressing existing gaps in legal classification, evidence collection, and the institutional framework for child protection requires a systemic review of law enforcement practice in light of international standards and ECtHR case law, as well as the implementation of a child-centered approach as a fundamental principle of state policy in combating domestic violence during armed conflict.

References

1. Andrusyak I. P. *Domestic Violence Against Children: Legal Issues // Independence of Ukraine: Human Rights and National Security* : Proc. of the Fourth International Scientific and Practical Conference (Lviv, April 12, 2024). 2024. P. 150–151.
2. Andrusyak I. P. *Children as Victims of Domestic Violence: Analysis of Adaptation of European Standards // Scientific Bulletin of Kherson State University. Series: Legal Sciences*, 2023. Issue 5. P. 5–9. URL: <https://doi.org/10.32999/ksu2307-8049/2023-5-1>
3. *Convention on the Rights of the Child* : Adopted by General Assembly resolution 44/25 of 20 November 1989. URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>
4. *General Comment No. 14 to the Convention on the Rights of the Child* : UN Document, 2023. – URL: <https://www.refworld.org/sites/default/files/attachments/64e4da0e4.pdf>
5. *Case of A. v. the United Kingdom* (Application no. 25599/94). Judgment of 23 September 1998. – URL: <https://hudoc.echr.coe.int/eng?i=001-582326>.
6. *Case of Z and Others v. the United Kingdom* (Application no. 29392/95). Judgment of 10 May 2001. URL: <https://hudoc.echr.coe.int/eng?i=001-59455>
7. *Case of E. and Others v. the United Kingdom* (Application no. 33218/96). Judgment of 26 November 2002. URL: <https://hudoc.echr.coe.int/eng?i=001-60886>
8. *Case of Opuz v. Turkey* (Application no. 33401/02). Judgment of 9 June 2009. – URL: <https://hudoc.echr.coe.int/eng?i=001-92945>
9. *Law of Ukraine “On Prevention and Counteraction to Domestic Violence”*, No. 2229-VIII dated 07.12.2017. URL: <https://zakon.rada.gov.ua/laws/show/2229-19> (accessed: 22.02.2026).
10. *Law of Ukraine “On Child Protection”*, No. 2402-III dated 26.04.2001. URL: <https://zakon.rada.gov.ua/laws/show/2402-14> (accessed: 22.02.2026).
11. *Criminal Code of Ukraine*, No. 2341-III dated 05.04.2001 (with amendments), Art. 126-1. URL: <https://zakon.rada.gov.ua/laws/show/2341-14> (accessed: 22.02.2026).
12. Malala Yousafzai. *Britannica*. URL: https://www.britannica.com/biography/Malala-Yousafzai?utm_source=chatgpt.com
13. Andrusyak I. P. *Impact of Domestic Violence on Social Relations and Children's Behavior // Protection of Human Rights in Ukraine: Current State and Prospects for Improvement* : Proc. of the Scientific-Practical Round Table Dedicated to the 75th Anniversary of the Universal Declaration of Human Rights (Khmelnitskyi, December 8, 2023). 2023. P. 9–10.

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**ЗАХИСТ ДИТИНИ ВІД
ДОМАШНЬОГО НАСИЛЬСТВА В
УМОВАХ ЗБРОЙНОГО КОНФЛІКТУ:
ПРОБЛЕМИ ДОКАЗУВАННЯ ТА
ІНСТИТУЦІЙНОГО РЕАГУВАННЯ**

У статті досліджується проблема захисту дітей від домашнього насильства в умовах збройного конфлікту та воєнного стану в Україні. Показано, що війна суттєво впливає на життя сімей: вимушене переміщення, економічні труднощі, психологічний стрес і втрата стабільності підвищують ризики насильства щодо дітей у межах сім'ї. Наголошується, що приватний простір, який має бути безпечним для дитини, в умовах війни часто стає зоною підвищеної вразливості.

Проаналізовано міжнародні стандарти захисту прав дитини, зокрема положення Конвенції ООН про права дитини та підходи, сформовані в практиці Європейського суду з прав людини. Зазначено, що на державу покладається обов'язок вживати

дієвих заходів для недопущення насильства, ефективно розслідувати такі випадки та забезпечувати належне інституційне реагування навіть у надзвичайних умовах. Воєнний стан не звільняє державу від цих зобов'язань і не може бути підставою для виправдання насильства або формального підходу до розгляду справ.

Окрему увагу приділено проблемам доказування домашнього насильства щодо дітей у воєнний період. Зазначено, що складність збирання доказів, обмежений доступ до медичних і соціальних послуг, страх дитини та ризик повторної травматизації значно ускладнюють притягнення винних до відповідальності. У статті обґрунтовується необхідність застосування дитиноорієнтованого підходу, покращення міжвідомчої взаємодії та вдосконалення правозастосовної практики з урахуванням міжнародних стандартів.

Ключові слова: права дитини, домашнє насильство щодо дітей, збройний конфлікт, воєнний стан, доказування, позитивні зобов'язання держави, практика ЄСПЛ, міжнародні стандарти захисту прав людини.