

- *Whether Covid-19 has made a difference to domestic abuse figures and approaches? What effect has the pandemic had on the numbers of those reporting domestic abuse:*

Domestic abuse is really a big problem in Russia. It was always a complicated issue and unfortunately, approximately 40 women daily die in Russia from severe injuries inflicted by husbands or partners.

I would like to give some figures of a joint study by the Russian Federal Statistics Service and the Ministry of Health, which found together that

38% of Russian women had been subject to verbal abuse and a further 20% had experienced physical violence.

In the latter group, 26% had not told anyone about what had happened. Of those who had, a majority of 73% had confided in friends or family, 10% had reported the incident to the police, 6% had visited a doctor and only 2% had seen a lawyer.

About 14,000 women died each year at the hands of their husbands or relatives, and that up to 40% of all serious violent crimes were committed within families.

And it is no doubt it became far worse during the pandemic. Domestic abuse figures went up because most of the families spent more time together being not able to leave their homes, the victims were not able to find a shelter/a refuge or an effective remedy in their situation as there are still no effective remedies in Russia.

The restriction measures and lockdown imposed to prevent the COVID-19 spreading caused the increase of the domestic abuse cases all over Russia.

The Russian Ombudsman in human rights recently informed that the figure of reported cases on domestic abuse during the self-isolation period from March till June 2020 has increased 2 and a half times.

I do not trust our authorities that this figure is accurate because the most victims are afraid to complain as they understand that in Russia there are no effective legal instruments to help them and that they may even suffer more because of their open position and if they try to lodge the complaints seeking for help and support and punishment for their abusers.

The restriction measures undertaken by the regional authorities including the special passes which was introduced in Moscow, for example, and other cities and aimed to stop the spread of the COVID – 19 infection, influenced the number of domestic abuse cases as the victims could not leave their homes and were closed with their abusers.

It is also a problem of good communication during the pandemic. If a woman tried to leave her home without a special pass it could be considered as her violation of the COVID restriction measures. And even if the victims managed to come to the police department, the departments were often closed or their applications were rejected. The same situation was with the domestic abuse victim shelters.

- *What legal remedies are available to victims and how effective they are  
What remedies exist?*
- *What has the response been from the police and or the courts?*

Unfortunately, despite almost two decades of discussion and debates, “domestic violence” or “domestic abuse” are not classified as a crime in the Criminal Code of the Russian Federation and there are no full and comprehensive national statistics on these cases.

This problem hampers efficient help and support for the victims of domestic abuse.

Many Russian women live in constant fear, not knowing where to apply and how to seek help and support.

A 2017 report by Russia’s High Commissioner for Human Rights noted a lack of progress in addressing the problem of domestic violence:

“Complaints to the High Commissioner indicate that the problem of domestic violence is a topical issue in Russia ... Thousands of women and children suffer from family conflicts. Unfortunately, no official statistical data is available.

**Despite the topicality of the problem, no specific legislation ensuring the prevention and prosecution of crimes within the family and households has been adopted. Since the early 1990s, more than forty draft laws have been developed but none has been enacted ...**

Actual instances of violence against women are highly latent. Many women prefer to put up with it or to look for ways to solve the issue without involving official authorities, because they do not expect to find support from them. Unfortunately, the practice has demonstrated that women's complaints of threats of violence have received little attention from police and even from the courts.

Thus, in December 2017, the public was shocked by an incident in the Moscow Region, when Mr G., seeking to assert his dominant position and acting out of jealousy, chopped off his wife's hands. Prior to that, he had threatened her with death and had told her that he would maim her. Eighteen days before the incident, the woman had reported the threats to a district police inspector, who had intervened only to the extent of issuing an admonition ...” I think you know also the recent 2019 story of 63-year old Professor Sokolov, a big fan of Napoleon and a francophone, a lecturer of the Faculty of History of the Saint – Petersburg State University loved by many of his students who dated his 24-year old girl – friend, also his graduated magna cum laude student who imagined that she was his Josephine and then during another fight between them he shot her dead in his apartment where they lived together and tried to hide her remnants packed in bags throwing them into Moika river but he fell down himself and was saved by the police. The bags contain pieces of Anastasia Yeshchenko's body

Even if a victim decides to file a complaint, the police is often helpless, they often refuse to deal with it as the problem is considered as just a family matter which does not require a special attention. Sometimes the victims continue to share their homes with their abusers because they can not afford their own flat.

Very often it can be difficult to get the proof of abuse both emotionally and legally and police can be of little help.

Typically, not witnessing violence at the spot, all policemen can do is to caution the presumed offender. This caution does little to prevent future aggression.

In a majority of cases the injuries sustained by victims of abuse are not sufficient to launch criminal investigation and the best the police can do is to advise a victim to file a petition for a private case.

The Russia's law enforcement, judicial and social systems do not protect or support women who face even severe domestic violence and domestic abuse at the hands of their partners.

To my mind we have the significant gaps in our legislation that deprive women of protection from, and justice for, domestic violence and domestic abuse, including dramatic, recent steps in 2017 backward that put survivors at heightened risk. It details the barriers survivors face in reporting and getting help, including social stigma, lack of awareness about domestic violence and services for survivors, and lack of trust in police.

In Russia the absence of the required legislation gives abusers a sense of impunity.

By the Federal Law of 07 February 2017 N 8-FZ, article 116 – On Beatings is revised.

Article 116. Beatings or other violent acts that caused physical pain, but did not entail the consequences specified in Article 115 of the Penal Code, committed out of hooligan motives, as well as on the grounds of political, ideological, racial, national or religious hatred or enmity, or on the grounds of hatred or enmity towards any social group, -

shall be punished by compulsory labor for a term of up to three hundred and sixty hours, or correctional labor for a term of up to one year, or restriction of liberty for a term of up to two years, or forced labor for a term of up to two years, or arrest for a term of up to six months, or imprisonment for a term of up to two years.

Before it was also in regard to the close circle – family members:

Close relatives in this article are understood as close relatives (spouses, parents, children, adoptive parents, adopted children, siblings, grandfathers, grandmothers, grandchildren), guardians, trustees, as well as persons who are in property with a person who committed the act provided for in this article, or persons conducting a common household with him.

If there is a criminal case under article 115 of the Criminal Code of the Russian Federation (“Intentional infliction of slight harm to health”), then a claim for compensation for non-pecuniary damage and pecuniary damage (it may be related to paid treatment or experienced stress) can be filed as part of the case. So you do not have to go to court twice.

In the case of administrative offence under Article 6.1.1 of the Code of Administrative Offences of the Russian Federation (“Beatings”), only from the moment a person is brought to justice, the victim receives the right to demand compensation. So there will be a separate civil process.

First, common (non-aggravated) form of battery was decriminalised and reclassified as an administrative offence.

On 7 February 2017 the reference to “close persons” was removed from the definition of aggravated battery in the text of Article 116 for the purpose of decriminalising acts of battery inflicted by spouses, parents or partners. The only remaining forms of aggravated battery now include battery committed for racial, ethnic, social or disorderly (*хулиганские*) motives.

“I believe that decriminalization was a mistake and we need to adopt a law to combat domestic abuse,” Russia's Human Rights Ombudswoman said at one of human rights conference.

"Today, a person who is in the family space is not protected from family members who do harm unto them without it being considered a crime,

We have the Code of Administrative Offences – article 6.1.1 which provides that beating or other violent acts that inflicted physical pain but did not entail the consequences referred to in Article 115 of the Criminal/Penal Code of the Russian Federation, if these actions do not contain a criminal offense, - a fine of five to thirty thousand rubles, or an administrative arrest for a period of ten to fifteen days, or compulsory work for a period of sixty to one hundred and twenty hours. So it will be an administrative investigation and then the case will be transferred to the trial/magistrate court.

If there is some more serious but still minor harm to one’s health is inflicted, a victim may initiate a criminal case of a private offence/prosecution under article 115 of the Penal Code of the Russian Federation (“Intentionally causing minor harm to health”). It is possible to seek the penalty for an abuser during 2 years.

Cases of domestic violence only become criminal cases if the police are able to establish that injuries have been serious or severe - or that death has occurred: "It becomes a criminal case when it's almost too late to respond to domestic violence".

The stereotypes on the attitude towards the acts of domestic abuse:

'What's wrong with those women, what have they done to deserve this beating?'

'What do we do to change this? It is a family matter'

But years of campaigning for a law which would recognize domestic abuse as a specific crime have so far brought no result yet.

After more than a decade of discussion, the draft law on domestic violence now has been introduced in parliament.

In Russia, they do not take into account that often victim is economically dependent on her abuser, they often live together and the abuse is usually repetitive and continues over a lengthy period of time.

In Russia we do not have an opportunity to file a petition for a Protective order that prohibits an accused from approaching his victim and making contact for a period of time.

But there is a draft law On Domestic violence where it is proposed such measures. And it should be that the very fact of domestic violence is sufficient to issue such a warrant.

If an offender has already been prosecuted under Administrative Article 6.1.1 of the Code of Administrative Offenses of the Russian Federation “Beatings” less than a year ago, after repeated violence, it will be possible to apply for criminal liability.

In 2017, a new article 116.1 was introduced into the Criminal Code of the Russian Federation: “For being beaten by a person who was subject to administrative punishment.”

One must record the beatings, go to the police and write a statement to initiate criminal proceedings against the private prosecution under article 116.1.

Very often the police refuses to accept the complaints, because they consider the verbal threats not to be sufficiently specific as to constitute an offence under Article 119 of the Criminal Code (Threat of death or bodily harm), and a single punch was not prosecutable under Article 116 (Battery), which required that two or more blows be inflicted. They refused to accept the complaint and start the criminal investigation several times: the police declined to institute criminal proceedings several times. They found that the applicant and an abuser

“knew each other, had lived together before and had maintained a common household”, so they were close relatives and it was – in accordance to them - a family matter

that the applicant had not submitted an independent assessment of the blows and the damage caused to her, that a single blow did not constitute an offence under Article 116 of the Criminal Code, and that the verbal threats had been “neither real nor specific” to be prosecutable under Article 119.

Very often the police decide not to institute proceedings in respect of the threats, finding no indications of a criminal offence. In their view, neither the threatening statements nor actions on the part of an abuser are sufficiently credible to conclude that the death threats had been “real”.

(it was like this in a terrible case of Valeria Volodina which in June 2019 was heard by the European Court of Human Rights – the first case on domestic abuse against Russia).

*What changes/reforms are needed?*

The Convention on the Elimination of All Forms of Discrimination against Women (“the CEDAW Convention”), which Russia ratified on 23 January 1981, provides a comprehensive international framework in which gender-based violence against women is seen as a manifestation of the historically unequal power relationship between women and men.

“gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”

Unfortunately, the Russian authorities do not see domestic abuse as a significant crime which has public ramifications rather than simply private.

Russian law does not provide for protection orders, which could help keep women safe from recurrent violence by their partners.

In Russia we urgently need to correct the situation and to make it possible the women’s immediate access to justice and the state has to “take steps to guarantee that women are not subjected to undue delays in applications for protection orders and that all cases of gender-based discrimination under criminal law, including violence, are heard in a timely and impartial manner”

The Russian legal order does not contain adequate legal mechanisms for the protection from domestic violence and the existing remedies are not applied effectively in practice. There is a common understanding that comprehensive legal and other measures are necessary to provide victims of domestic violence with effective protection and safeguards.

The obligation on the State in cases involving acts of domestic violence would usually require the domestic authorities to adopt positive measures in the sphere of criminal-law protection. Such measures would include, in particular, the criminalisation of acts of violence within the family by providing effective, proportionate and dissuasive sanctions. Bringing the perpetrators of violent acts

to justice serves to ensure that such acts do not remain ignored by the competent authorities and to provide effective protection against them.

Russia has not enacted specific legislation to address violence occurring within the family context. Neither a law on domestic violence — nor any other similar laws have ever been adopted. The concept of “domestic violence” or any equivalent thereof is not defined or mentioned in any form in the Russian legislation.

Domestic violence is not a separate offence under either the Criminal Code or the Code of Administrative Offences. Nor has it been criminalised as an aggravating form of any other offence, except for a brief period between July 2016 and January 2017, when inflicting beatings on “close persons” was treated as an aggravating element of battery under Article 116 of the Criminal Code.

Otherwise, the Russian Criminal Code makes no distinction between domestic violence and other forms of violence against the person, dealing with it through provisions on causing harm to a person’s health or other related provisions, such as murder, death threats or rape.

So a stand-alone offence should be introduced to the Russian Criminal/Penal Code. The Russian authorities should maintain consistent comprehensive statistics of domestic abuse cases and carry out an effective strategy not only to combat it but to prevent it.

We need also changes in our Social service structure if we speak about domestic abuse in regard to children. They do not always adequately provide for the needs of domestic abuse victims. In Russia there are not enough spaces in shelters for women protection so it needs to be changed too.

And the most important to adopt a special law On Domestic Violence/ Abuse there will be a clear definition of this terrible legal and social phenomena.

What is also to be changed is the approach.

Domestic violence in Russia is still, more frequently than not, approached in the context of child abuse and child welfare rather than as a stand - alone issue. It is also still predominantly viewed as a private, “family” matter. Police, courts, and other competent authorities engage in victim-blaming and advise women seeking protection to reconcile with their abusers or avoid “provoking” them.

It is a good sign that several members of Parliament supported a draft law on domestic violence. This law is aimed to address the existing key legal gaps.

The Russian parliament should adopt a law that treats domestic violence as a stand - alone criminal offense to be investigated and prosecuted by the state, rather than through the process of private prosecution.



It is also important to oblige police to react on any reports on domestic abuse in timely manner even during such periods like self-isolation and restriction measures lockdown. Not just wait when situation is extremely serious and it might be already late to react and police should protect victims, not abusers as it often happens now. There should be offered a special plan on the state complex medical, social, psychological and legal help and support which should be attainable and free for the victims.

A Russian draft law On Domestic Abuse which would be Russia's first law addressing domestic violence should be in line with international standards and include key protection and recourse measures for victims. It is a long – awaited law. There should be a full and comprehensive definition of domestic violence, including physical, sexual, economic, emotional and verbal abuse.

There should be provisions on protection orders, measures on protection and access to justice for victims of domestic abuse. It should list persons who might be affected by domestic violence includes close relatives and extended family and former and current spouses and partners, whether or not an abuser shares or has shared a residence with a victim.

The victims of domestic violence should have an opportunity to apply for immediate measures of protection. Such measures are variously known as “restraining orders”, “protection orders” or “safety orders”, and they aim to forestall the recurrence of domestic violence and to safeguard the victim of such violence by typically requiring the offender to leave the shared residence and to abstain from approaching or contacting the victim.

Russia still remains a country among only a few countries in the world whose national legislation does not provide victims of domestic violence with any comparable measures of protection.

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- What the law is relating to child custody and child arrangements? What is the legal position relating to children when parents separate?

Russian law – the Family Code of the Russian Federation uses the concept of parental rights, which includes the rights and duties of the parents: natural and adoptive parents regarding their minor children.

The current source of family law in the Russian Federation is the Russian Family Code of Russian Federation of 8 December 1995, enacted on 1 March 1996. The most relevant provisions are: Chapter 11 entitled ‘Rights of Minor Children’, Chapter 12 entitled ‘Rights and Duties of the Parents’, and article 24.

The Russian family law uses the concept of custody only in regard to children left without parental care.

The parental responsibilities are equal (article 61 of the Russian Family Code). The parents shall enjoy equal rights and shall discharge equal duties with respect to their children (the parental rights).

The contents of parental responsibilities are the same irrespective of whether the parents are or have been married or have never been married; or live or have lived together.

Parental responsibility is a constitutional right. Article 38 (2) of the Constitution of the Russian Federation states the equality of parental rights and duties of both parents. According to Russian law, parents always have joint parental responsibility. This means that parents enjoy a formal equality in their parental rights irrespective of whether they are or have been married, or whether parentage has been established by voluntary recognition of a child or by a court order against the will of the parent (generally the father). Parental rights are temporal in nature and they exist as long as the child is under age.

Parents are the legal representatives of their child by operation of law (Art. 64 (1) Russian Family Code).

Parents who do not live together are entitled to determine by agreement with whom of them the children shall reside (Art. 65 (3) Russian Family Code). The parents have to make this decision 'according to the best interests the child and taking into consideration his or her wishes'(Art. 65 (2) Russian Family Code). If they are not able to agree on the place of residence of their children, they have to apply to court.

Divorce has no formal affect on parental responsibility. Parents always retain joint responsibility after divorce. Their parental rights and duties remain formally equal. However, the Russian experience teaches that when joint parental responsibility is always the case (Art. 61 (1) Russian Family Code), the post-divorce problems shift from the issue of attribution of parental responsibility to that of determination of the child's residence and the participation of the non-residential parent in the upbringing of the child.

The institution of legal separation does not exist under Russian law.

#### Factual separation

Factual separation, like divorce, has no formal affect on parental responsibility. Similar to the situation after divorce, the main problems after the separation of the parents relate to the child's residence and contact arrangements.

After the divorce of their parents, children always formally remain under the joint parental responsibility of both parents. This means that the parental responsibility of divorced spouses, at least on paper, remains equal. However, in

reality the parent with whom the children reside after the divorce exercises parental rights almost alone. Therefore the contested issue concerning children in the divorce is not about parental responsibility but about child's residence.

Parents are free to make agreements about the child's residence after a divorce (Art. 24 (1) Russian Family Code); even if the parents of the child, due to whatever reason, are not living together (Art. 65 (3) Russian Family Code). If the child's residence is being determined other than in the framework of a divorce, there is no obligatory judicial scrutiny of parental arrangements. Only if parents fail to reach such agreement must the issue be brought before the court (Art. 65 (2, 3) Russian Family Code).

- *What effect has the Covid pandemic had on the practical arrangements for the children of separated parents?*

It is not customary in Russia for a child's residence to alternate after divorce. Post-divorce arrangements mostly provide for the child to reside with the mother, with the father granted a limited possibility to visit the child and/or to have the child with him for short periods of time during weekends and summer holidays. This practice is based on the dominant opinion that 'a child of any age needs a single stable educational patron, and should live according to familiar rules and in a trusted environment and the child should not be separated from his mother. In Russian domestic cases the courts including the Supreme Court of the Russian Federation often refer to principle 6 of the UN Declaration on the Child rights: that a child of tender age should not be separated from his mother if there are no exceptions - while considering the establishment of the place of residence of a child after the divorce.

I can not say that the pandemic made any huge influence on the domestic child arrangement cases. Yes, we are going to have more child contact arrangements and visitation cases as soon as the restriction measures have been fully lifted.

But there is an interesting tendency in our last cross - border cases which started before pandemic began in Russia and continued after the courts were re-opened. We have more amicable agreements in the cross - border cases than before. It became possible to agree with the Clients on changing the subject matter of their initial applications. For example, initially a left - behind parent is seeking a summary return of a child and then we manage to agree with him that his application will be amended to the establishment of his access rights. And it became easier to convince the Clients to participate in the mediation process.

For example, during the period of March - June 2020 we had two amicable agreements between the parents who reside in different countries: Russia, Canada and Hong Kong, Russia, Belgium and the UK. Initially the left - behind

parents were seeking summary return of their children, then agreed with the change of the habitual place of residence of their children and were able to discuss their reasonable access rights to their children that ended up by the conclusion of the amicable agreements approved by the Russian courts.

- *Have the courts been available to help during the Covid crisis*

Unfortunately the courts in Russia did not consider the cases on child custody and child arrangements remotely. And during the period of restriction measures, self-isolation and quarantine all the family cases were suspended and postponed. Even some urgent ones like abduction cases.

It was only possible to approve an amicable agreement if both parties confirm to the court that all the issues were agreed and they signed an amicable/settlement agreement which could be approved by the court. Then the parties had to submit mutual applications and ask the court to approve the agreement presented and to hear the case in their absence. In such manner one of our amicable agreement on child arrangements between the parents was approved by the court on 14 April.

Now after June 1<sup>st</sup> 2020 the courts are re-opened and all the cases are being heard. The participants as well as the judges should wear masks and gloves.

- *Whether there are calls for change and if so what*
- *Whether change is likely? What changes are needed?*

Although there is no general awareness that the current concept of parental responsibility and the law it is based upon are deficient (to my mind it is not efficient and it lags behind the times), there is a lot of discussion regarding particular problems resulting from it (e.g. contact arrangements, custody issues, abuse of parental rights etc.). These discussions, however, have so far not led to any concrete proposals for reforms.

The 1995 Code is still based upon the same concept of 'always joint' equal parental responsibility. However, it should be noticed that this concept, revolutionarily when it was first introduced in 1929, no longer seems to be in line with the requirements of our time.

If one of the holders of parental responsibility lives apart from the child, his or her rights remain formally equal, save for a few exceptions.

However, this is mainly just the law on the books. In reality, the parent with whom the children resides exercises parental rights in larger volume, sometimes almost alone. Russian law prescribes that the judge must treat both parents equally in respect to the options for the child's residence after divorce; however, in more than 90% of all cases the child is placed with his or her mother after

divorce. In practice, a parent (mostly a father) who is not living with a child can hardly exercise most of his parental rights because he does not have daily contact with the child.

In practice, each parent is generally allowed to make decisions of a daily nature alone; the silent consent of other parent is presumed. However, the other parent always has the right to contest or block a decision that was made without his or her consent. The law makes no distinction whether the parents live together with the child or apart. However, in practice a parent who lives with the child normally makes all decisions of a daily nature alone.

If the child's residence is determined by a court order, the term residence is understood in this sense. This interpretation gives a parent the possibility to move with the child not only within one city or area but all over the country without consent of the other parent and without asking for alteration of a court order. Considering the size of the Russian Federates the decision of a parent with whom the child resides to move far away from the place where the other parent lives can effectively deprive the child and the other parent from the possibility to maintain regular contacts. At the moment the law provides no remedy for this situation. The other parent can always ask the court to transfer the child's residence to him or her, but in order to make this application successful he or she needs to provide evidence that the transfer of residence would be more beneficial to the child than remaining with the other parent. This proves rather difficult, considering the fact that a court has already once evaluated which parent better fits the residential interests of the child. The non-residential parent cannot prohibit the residential parent from moving the child's residence within the country.