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Muravyeva, Marianna

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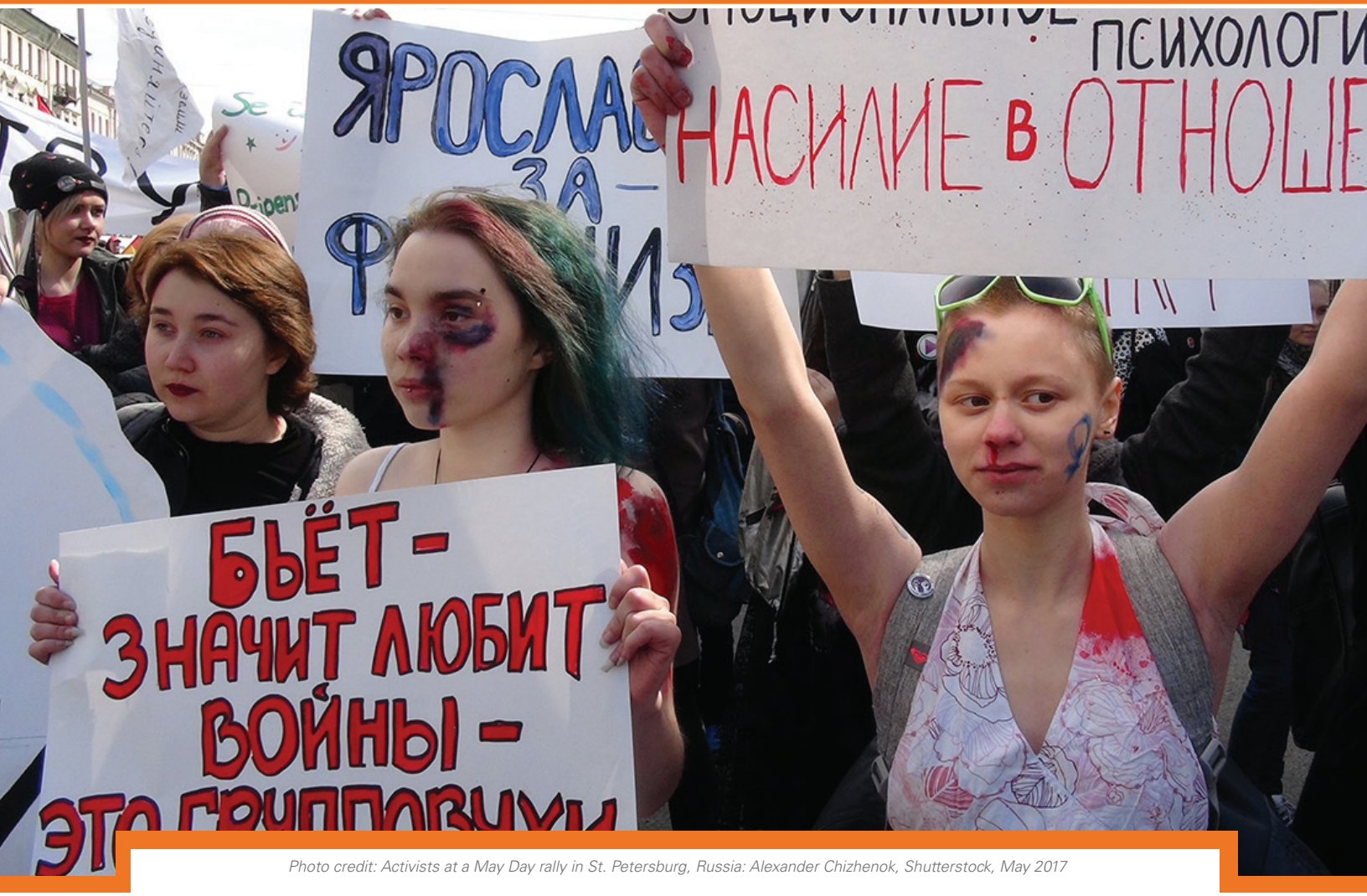


Photo credit: Activists at a May Day rally in St. Petersburg, Russia: Alexander Chizhenok, Shutterstock, May 2017

Domestic Violence Legislation in Russia: Campaigning for Change

Dr. Marianna Muravyeva

Wilson Center | Gender Based Violence

About the Series

Gender-based violence (GBV) affects one in three women worldwide, making it an urgent and important policy challenge. Many countries around the world have passed laws intended to protect women from violence, yet violence persists. Over the past year, the COVID-19 pandemic has raised awareness of the perils women face from gender-based violence—what has come to be known as the "shadow pandemic"—but it has also aggravated risk factors while increasing barriers to protection, support, and justice.

This publication aims to focus on the intersection of gender-based violence and the rule of law by examining how legal frameworks, judicial system responses, and public policy contribute to the ways in which gender-based violence is—and is not—addressed around the world. Each piece addresses the complicated challenge of gender-based violence and the successes and failures of various public policy responses globally, and offers recommendations for a path forward.

INTRODUCTION

Violence against women is recognized as one of the main human rights violations against women in Russia by several international organizations, including the latest communications from the Committee on the Elimination of Discrimination against Women (CEDAW) and the European Court of Human Rights. [1] In its responses to international organizations, Russian representatives continue to insists that "the country has all necessary instruments of administrative and criminal law to protect women from domestic violence and their effectiveness is confirmed by law enforcement practices." [2] Such statements happen against the background of active domestic campaigns to enact legislation on the prevention of domestic violence, which were the result of active mass media coverage of particularly brutal cases of violence against women and the work of activists campaigning for change.

Following the 2016 Ukrainian-Russian virtual flash mob #IAmNotAfraidToTell (#янебоюсьсказать/ти), in which thousands of women shared stories of sexual and domestic abuse, other feminist hashtag campaigns such as #ItIsNotAReasonToKill and #IDoNotWantToDie gathered and related a multitude of narratives of domestic violence.[3] The newly created center and information resource Nasiliu.net launched an aggressive information campaign about domestic violence, reporting incidents of women being maimed or killed, which were further reposted by major media outlets. Several especially brutal criminal cases made headlines in all of the major newspapers and online news outlets. Those included the 2017 case of Margarita Gracheva, who had her hands chopped off by her husband due to his jealousy (Gracheva had filed a complaint with the police about his abuse just two weeks prior to the incident),[4] as well as the case of the Khachaturian sisters, who killed their father in 2018 after years of abuse.[5]



Source: ROSSTAT: https://rosstat.gov.ru/folder/13807



Photo credit: Women protest at a feminist rally in St. Petersburg, Russia: Farhad Sadykov, Shutterstock, March 2017

Each of these mass media campaigns has revealed so many stories of violence against women in Russia that it has been difficult to ignore.

> "Domestic violence, including intimate-partner violence, is not officially considered a violation of women's human rights in Russia."

The available statistics also confirm that domestic violence remains a major violation of women's rights in Russia. In 2012, the Russian Statistical Service (ROSSTAT) started publishing statistics on crimes within the family, which they received from the Ministry of Internal Affairs. The stats in Graph 1 show that around 35,000 incidents are recorded every year, on average, and that in the vast majority of these crimes, women are the victims. Also, the cases spiked in 2016, when a short-lived attempt to criminalize domestic violence entered the Criminal Code (Article 116), which suggests that domestic violence is highly underreported and clearly attests to the need for explicit criminalization of intimate-partner and domestic violence in Russia.

POST-SOVIET LEGISLATION ON VIOLENCE AGAINST WOMEN

Domestic violence, including intimate-partner violence, is not officially considered a violation of women's human rights in Russia. It is rather seen as a social problem, a result of intoxication and poverty, which is a continuation of Soviet criminological and legal research into "family-domestic violence," a special term widely used by contemporary Russian scholarship and official law.[6] Such an approach is also closely connected with the way women's movement and gender studies developed in the 1990s and early 2000s in Russia, as well as the



Photo credit: State Duma deputy Elena Mizulin at a meeting of the interim commission of the Federation Council in Moscow, Russia: Federal Assembly of the Russian Federation, February 2020

failure to make violence against women central to the women's rights agenda.

During the post-Soviet period, many scholars have noted a resurgence in gender essentialism in Russia, which has been particularly successful in framing public understandings of gender politics.[7] The success of models of gender relations between men and women that underline the "natural" differences between them and their roles in society has in large part been ascribed to the persisting negative legacies of gender inequality from the Soviet period. The supporters of the reform in the late 1980s and the early 1990s in socialist countries represented these changes as normalization, as a return to the "natural order of things, in which gender essentialism and the natural role of mothering have a crucial role."[8] The opponents of the Soviet gender order interpreted it as a consequence of an abnormal social system.[9] Scholars also note that the contentious and problematic relations of post-Soviet society and especially women with feminism as an ideology and an academic discipline, did a lot of damage to genuine feminist initiatives in the 1990s.[10] For the new Russian Federation, however, while human rights were declared of the "highest value" (Article 2 of the Constitution), the rights of women did not constitute a priority.

The Criminal Code of 1996 maintained the structure of the Soviet criminal codes in relation to physical assault and sexual violence; that is, it did not include any explicit protection in situations of domestic violence, especially intimate-partner violence. To this day, women (and men) must use more general articles on assault (Articles 109–116), torment (Article 117), kidnapping (Article 121), and rape (Article 131-132) to prosecute their partners and spouses. Articles 127.1 and 127.2 were introduced into the Criminal Code in 2003 prosecute human trafficking and slavery, but without explicit mention of sex trafficking or special protections for female victims.[11]

What this suggests is that the issue of women's rights has continued to be handled using a Soviet understanding and approach to the "woman question." Instead of the Soviet Women's Committee, which provided the infrastructure for women in the Soviet Union, and which later transformed into the Union of Russian Women and became a semi-independent nongovernmental organization (NGO),[12] post-Soviet government organized the State Duma's Committee on the Affairs of Women, Family and Youth (and later Children), which has existed since then. The Committee was given the role of overseeing the "woman question," in cooperation with the government and other agencies. In accordance with the Russian Federation's commitment to building democracy and being part of international legal order, the Committee was very attentive to the international agenda for women's rights. Several legal initiatives that originated in the Committee addressed violence against women and domestic violence.

The 1996 Concept of the Improvement of the Status of Women in the Russian Federation, which stayed in force till 2004 and was the result of Russia's commitment to the Beijing Platform, stated that one of its major goals was "to prevent and stop violence against women."[13] The document included such steps as "development of criminal, civil, labor and administrative legal sanctions to prosecute for crimes … committed against women, including in the family."[14] To fulfill this obligation, in 1997 the Committee introduced the draft law "On the basics of socio-legal protection from violence in the family," which continued the Soviet tradition of providing social services to those in a "difficult life situation" (trudnaia zhiznennaia situatsiia).[15] The draft law was closely connected with the 1995 federal law "On the basics of provision of social services to the population of the Russian Federation,"[16] which contained a definition of the "difficult life situation" (trudnaia zhiznennaia situatsiia) as "the situation which violates a citizen's livelihood … and which cannot be overcome on their own" (Article 3.4) and is still in use. The list of conditions included disability, old age, poverty, unemployment, homelessness, and conflicts and abuse in the family. The 1995 law guaranteed financial and in-kind help for such citizens and even temporary shelter for children in abusive families (Articles 8–12).

The 1997 draft law "On the basics of socio-legal protection from violence in the family" focused on prevention and intervention. It provided definitions of domestic violence and described measures that were to be undertaken by public agencies and social services to help survivors of family abuse. Already in 1997, the law included protection orders, a novelty for the Russian legal system, as well as shelters and other means of protection. The draft even dealt with legal issues by detailing how complaints about domestic violence should be communicated from law enforcement agencies to social services (Articles 7–9).

However, in June 1997 the draft was withdrawn by its sponsors, who agreed with the Duma's concluding assessment that Russian criminal and family codes contained all necessary norms to deal with violence in the family and that there was no need for a separate federal law.[17] This argument against specialized legislation on domestic violence also expanded to other gender-specific legislation, namely, the draft law "On state guarantees of equal rights and freedoms of men and women and equal opportunities for their realization,"[18] which entered the State Duma in 2003 as a result of several years' worth of work. In its official review of the draft law in 2008, after the draft spent almost six years tabled in the State Duma after its first reading, the government of the Russian Federation provided a detailed list of references to the existing legislation



Photo credit: A meeting of the Council under the President of the Russian Federation in Moscow, Russia, regarding state policy around family and child protection: Federal Assembly of the Russian Federation, November 2019

that made the provisions of the draft moot, in their opinion.[19]

> **"It was also the first international document that Russia rejected based on its incompatibility with Russia's culture and tradition, which indicated Russia's turn toward active use of the concept of cultural sovereignty."**

RUSSIA AND THE ISTANBUL CONVENTION

In 2011, Russia refused to sign the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention, No. 210, hereafter "the Convention"). The Convention was the first major international treaty that Russia did not sign. That the convention pertained to human rights instruments specifically was an important indication of Russia's stance on human rights, especially the rights of women. It was also the first international document that Russia rejected based on its incompatibility with Russia's culture and tradition, which indicated Russia's turn toward active use of the concept of cultural sovereignty.[20]

The Istanbul Convention became a milestone and a bone of contention between Russia and the Council of Europe (CoE). This relationship had been contentious for some time prior to 2011,[21] but such open defiance of a major human rights convention signified a new stage of Russia's relationship with international organizations. The Convention follows CEDAW and other international instruments and does bind the states that signed the treaty to provide better protections for the rights of women based on

essentially feminist concepts of human rights and violence against women.[22] The Convention itself is a result of negotiations, debates, and compromises among the CoE member states. While there seems to have been consensus during the preparation process that a convention on violence against women was needed, delegations from various countries expressed different opinions on the scope of the Convention during the preparatory meetings. While most of the delegations were in favor of a convention that covers all forms of violence against women, a minority of delegates wanted the Convention to focus on domestic violence irrespective of the victim's gender. The final wording of the Convention is a compromise between these two approaches: the Convention covers all forms of violence against women (Article 2.1) and encourages parties to apply the Convention to "all victims of domestic violence" (Article 2.2). Part of the compromise was that the criminal law articles, with the exception of female genital mutilation, are gender neutral and do not refer to sex or gender. These disagreements have been reflected in the ratification processes.[23]

Russia expressed a dissatisfaction with several requirements of the Convention. The Convention requires state parties to criminalize several forms of conduct that amount to violence against women and domestic violence, despite whether these forms of conduct are included in the respective state's criminal codes. These types of conduct include forced marriage, female genital mutilation, forced abortion, stalking, sexual harassment, physical violence, psychological violence, and sexual violence. The Convention also requires state parties to ensure that in criminal proceedings regarding the acts of violence covered by the Convention, "culture, custom, religion, tradition or so-called 'honour' are not regarded as justifications of such acts" (Article 42, paragraph 1). The Convention then obliges state parties to take the necessary legislative steps or other measures to ensure that the offenses established in the Convention are punishable by effective, proportionate, and dissuasive sanctions (Article 45), taking into account their seriousness and aggravating circumstances, such as whether the acts are committed in the presence of a child (Article 46). As for preventive and protective measures, states must promote "changes in the social and cultural patterns of the behavior of women and men with a view to eradicating customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men" (Article 12). States must also provide support services for victims of violence, including legal and psychological counseling, financial assistance, housing, education, and training and assistance in finding employment (Article 20), specialist support services (Article 22), shelters (Article 23), and telephone helplines (Article 24). In order to implement the obligations set out the Convention, states must allocate "appropriate measures and human resources," thus creating a precise legal obligation in terms of public expenditure.[24] All these requirements would have resulted in serious amendments of Russian criminal law as well as civil law, social security legislation and, of course, a return to working on the federal law on gender equality.

"By trying to introduce restrictive conservative legislation under the auspices of a 'protect the children' slogan, Russian legislators inadvertently redirected society's attention to gender-sensitive issues, including gender equality, women's rights, and domestic violence."



Photo credit: Activists at a rally for women's rights in St. Petersburg, Russia: Konstantin Lenkov, Shutterstock, March 2021

CONSERVATIVE MOBILIZATION AND (DE)CRIMINALIZATION OF DOMESTIC VIOLENCE IN 2016-2017

The ideology of "traditional values" and the official "conservative turn" that took place in the early 2010s exposed post-Soviet negotiations on gender identity as a bone of contention in Russian society. By trying to introduce restrictive conservative legislation under the auspices of a "protect the children" slogan,[25] Russian legislators inadvertently redirected society's attention to gender-sensitive issues, including gender equality, women's rights, and domestic violence. Now every time the State Duma or the Federation Council received a piece of draft legislation involving gender-related issues, it stirred a wide public debate that turned into a standoff between conservative organizations, who spoke on behalf of "families" and "tradition," and feminist groups and NGOs, who advocated for women's rights.

The 2013 legislation that prohibited the promotion of nontraditional sexual relationships or "propaganda law" resulted in vocal public debate about what should be considered "traditional" and "nontraditional" sexual relationships, as well as to what extent the state should interfere with the private life of its citizens.[26] The draft legislation to ban abortion or to at least remove it from being covered by state-sponsored medical insurance, which was actively pushed by the Russian Orthodox Church, faced opposition not only from feminist organizations but also from medical and legal professionals, as well as from the Ministry of Health and Social Security, which argued that the costs of illegal abortion would be higher than what was currently paid as part of medical insurance.[27] In this debate, tradition was monetized and rejected based on a pragmatic argument of neoliberal economics. When domestic violence legislation entered the State Duma in May 2016, Russian society was well prepared, alert, and divided.

The changes to Article 116 of the Criminal Code, enacted in July 2016, set a precedent in Soviet and post-Soviet legislation on domestic violence. Since 1996, Article 116, titled "Assault" (Poboi), had stipulated punishments for assaults not resulting in serious health damage, the first revised post-Soviet Criminal Code. The changes to this article came as part of the package initiated by the Ministry of Justice in 2015. The package was aimed at "optimizing" the criminal and administrative justice system, easing the judicial load, and creating more effective prosecutorial mechanisms.[28] Part of this process was to decriminalize some actions from Article 116.1 and transfer them to the Administrative Code.[29] The idea behind this measure was an attempt to "save" on criminal prosecutions by invoking a "cheaper" administrative procedure, without (presumably) endangering the public. Administrative prosecution allows for a type of summary prosecution without any lengthy and complicated criminal involvement. While the Duma and various Duma committees discussed the amendment, a group of feminist-minded lawyers who defended survivors of domestic violence, led by Mari Davtyan, insisted that assault against family members should remain within criminal law, since such assaults were prominent and domestic violence discriminates against and endangers women.[30]

The break came in June 2016 during the second reading of the draft in the Committee on Legislation, when the head of the committee, a prominent lawyer named Pavel Krasheninnikov, suggested including three important words in the new version of Article 116—that is assault "committed to close persons" (v otnozhenii blizkikh litz).[31] His argument came from "protect the children" principle, in which criminal liability for child abuse should be in place in order to better protect children. This version became a law on July 3, 2016, (FZ-323) and therefore the new Criminal Code allowed for private-public prosecution of violence committed by family members even if it did not result in grievous bodily harm or permanent health damage.[32] This amendment was labeled the "spanking law" (zakon o shlepkakh) in mass media and received furious criticism not only from conservative parental movements and the Russian Orthodox Church but also from infamous State Duma deputy Elena Mizulina. Mizulina called these changes "absurd" and "antifamily," and expressed her anger by saying: "One gets the impression from this article [116] that such behavior within the family [assault] is more dangerous to society than that of strangers."[33] On July 27, 2016, she introduced a bill to reverse these changes. It took six months and a new Duma composition to make it law. The new version of the code, in February 2017, excluded close persons from the article, so that "simple" assault not resulting in serious injury was relegated to the status of a petty offense punishable under Article 6.1 of the Administrative Code of the Russian Federation with a fine (60 to 400 euros) or other administrative punishments (10 to 15 days jail time or community labor).

"However, the political climate for such legislation was not favorable: It was a new Duma, and Elena Mizulina was on the warpath to cancel the 'spanking law.' Therefore, any legislation on domestic violence, no matter what its purpose, would not have succeeded."

During Mizulina's reconsolidation and aggressive campaign to "restore" the original intent of the 2015 package and remove "anti-family amendments," in September 2016 the State Duma deputy represent-

ing the republic of Bashkortostan, Salia Murzabaeva, and Federation council member Anton Beliaev, a senator from the city of Vladimir, introduced a draft law "On the prevention of family domestic violence" (O profilaktike semeino-bytovogo nasilia), which was developed by the Ministry of Labor of the Russian Federation.[34] The explanatory note of the draft argued that "there is no systematic approach to this problem [domestic violence] in Russia" and that "domestic violence … has become rampant."[35] The note mentioned the absence of protection orders and the inability of police to deal with domestic abusers. The draft itself provided detailed definitions of "family domestic violence" (Article 3) and principles of prevention (Article 4), including protection orders (Articles 22–23). It was a standard federal law very similar to other legislation on prevention, such as federal laws on crime prevention (FZ-182). However, it was dismissed by the State Duma on a technicality just a month later. The decision stated that the draft lacked the assessment of the government of the Russian Federation, which was necessary for such legislation since it required budgeting.[36] It is important to note that both Murzabaeva and Beliaev are medical professionals who took a keen interest in child protection legislation. Beliaev is also known for his legal initiatives to harshen punishments for pedophiles, including chemical castration.[37] However, the political climate for such legislation was not favorable: It was a new Duma, and Elena Mizulina was on the warpath to cancel the "spanking law." Therefore, any legislation on domestic violence, no matter what its purpose, would not have succeeded.

THE 2019 DRAFT LAW ON THE PREVENTION OF FAMILY DOMESTIC VIOLENCE

In the autumn of 2019, the draft law on the prevention of family domestic (semeino-bytovoe) violence was the most controversial topic of public debate in Russia and a cause of intense campaigns and struggles between various sectors of civil society, social movement organizations, and the government. The draft law introduced new legal provisions for more effective prevention of domestic violence, the most controversial of which happened to be a definition of family domestic violence and protection orders, a universal international tool to deal with abusive husbands or partners. The debates around the definition stemmed from the absence of explicit criminalization of domestic violence in Russian legislation—and, therefore, any official definition of domestic violence. The same was also the case with protection orders, which the Russian legal system does not have. Therefore, when the draft defined family domestic violence as any "intentional act, inflicting or threatening to inflict physical and (or) psychological suffering and (or) property harm, which does not contain elements of administrative offense or a crime,"[38] it resulted in widespread criticism, which also reflected fears by the public that anyone could be prosecuted under this law, arbitrarily, based on an unclear and vague definition.[39]

The draft's text was very close to the 2016 version, except for edited definition of "family domestic violence" (Article 2) and changes to the priority of principles of prevention in Article 4, in which "support and preservation of the family" (no. 4 in the 2016 version) was moved ahead of legality and the protection of human rights (no. 1 and 2 in the 2016 version, respectively). Otherwise, Article 5 defined the "subjects of prevention," including social services, emergency shelters, medical services, and NGOs. Articles 6 to 16 detailed the responsibilities

of different agencies. Article 17 outlined the grounds for prevention measures, including information coming from social services, police, or the courts, which meant that official complaints ceased to be the only grounds for prosecution. Articles 18 to 25 defined the types and methods of prevention, including the controversial Articles 24 and 25 on protection orders. Overall, the draft continued the legal tradition of "prevention" legislation that was specifically applied to social problems such as crime, drug and alcohol abuse, poverty, homelessness, and so on.

> "The COVID-19 pandemic restriction measures changed the political discourse regarding violence against women."

The Federation Council, whose legal initiative put forward this draft law, organized a series of public debates culminating in the online discussion of the draft law between November 29 and December 15, 2019.[40] Such a situation was unusual, but it followed the 2012 Resolution of the Government of the Russian Federation on conducting public discussions of draft legislation[41] as part of the "open government" policy.[42] However, this particular "discussion" attracted a record number of participants, with the web page registering 11,186 entries. Prior to and parallel with the online discussion, conservative social movement organizations as well as feminist groups had been conducting their own mass media campaigns either against or in support of the draft law.[43] In addition, they each organized their supporters to participate in the online discussion with arguments that were developed by spokespeople from their respective organizations. The government was symbolically absent from this debate, although some officials and deputies did express their opinions on the problem of domestic violence and the need for such legislation.[44] With conservative groups rejecting the draft law as a foreign import and a breach of Russia's sovereignty in the form of a threat to family, and feminist groups advocating for special legislation based on the personal stories of abused women and terrifying statistics about femicide, the question of the necessity of specialized legislation for the prevention of domestic violence became central to the debate. The conservatives insisted that Russian legislation contained all necessary provisions to deal with domestic violence (and some listed those) and they blamed law enforcement and the judiciary for their ineffectiveness in applying those provisions. The feminists argued that new legislation was needed to ensure that law enforcement and the judiciary would be effective in applying the existing legislation.[45] Therefore, there seems to be a consensus about the inability of law enforcement and the judiciary to effectively deal with domestic violence.

CONCLUSION: COVID-19 RESTRICTIONS AND LEGISLATION ON PROTECTING WOMEN FROM DOMESTIC VIOLENCE

The COVID-19 pandemic restriction measures changed the political discourse regarding violence against women. Already in April 2020 the United Nations had described the worldwide increase in domestic abuse as a "shadow pandemic" alongside COVID-19. Russian High Commissioner for Human Rights Tatiana Moskalkova announced that the number of incidents of domestic violence had increased at least twofold.[46] The Committee of the Ministry of Internal Affairs on Crime Prevention issued special instructions on how to combat and prevent "crimes within the family," addressed to all state agencies on March 31, 2020.[47] These measures included

additional support for crisis centers (or, in the absence of those, NGOs that provide support services to survivors of domestic violence), the establishment of hotlines, and a direct order to the police to "prosecute domestic violence under Article 116 of the Criminal Code." Such traditional ways of dealing with domestic violence nevertheless created a framework for crisis management that is still in place and allows for the creation of further networks to support survivors of domestic violence.

The State Duma returned to the draft law on domestic violence in May 2020. However, during these discussions, the overall majority of the deputies and senators acknowledged the importance of the law and, specifically, the introduction of protection orders.[48] Moreover, in April 2021 there was a landmark decision by the Constitutional Court that recognized the amended Article 116 from 2017 as unconstitutional and ordered the article to be revised.[49] Following this decision, the Supreme Court of the Russian Federation initiated draft legislation to cancel private prosecution, which was specified in Article 116 and required the case to start only upon an official complaint by the victim.[50] Taken together, these legal changes have paved a path for the reintroduction into the Russian parliament of the law on the prevention of domestic violence—and renewed hope for its success this time.

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Woodrow Wilson International Center for Scholars
One Woodrow Wilson Plaza
1300 Pennsylvania Avenue NW
Washington, DC 20004-3027

www.wilsoncenter.org / gbv.wilsoncenter.org
wwics@wilsoncenter.org
facebook.com/woodrowwilsoncenter
@thewilsoncenter
202.691.4000