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TAZYIQ VA ZO'RAVONLIKDAN JABRLANGAN XOTIN-QIZLARGA
BEPUL HUQUQIY YORDAM KO'RSATISH KAFOLATLARI

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Annotatsiya. Tezida tazyiq va zo'ravonlikdan jabrlangan xotin-qizlarga bepul huquqiy yordam ko'rsatishning xalqaro-huquqiy kafolatlari, ularning mazmuni va milliy qonunchilikdagi ifodasi tahlil qilinadi. Bepul huquqiy yordam adolatli sudlovdan foydalanish huquqining ajralmas sharti sifatida asoslanadi hamda qonunchilik va amaliyotni takomillashtirishga qaratilgan takliflar beriladi.

Kalit so'zlar: gender asosidagi zo'ravonlik, bepul yuridik yordam, tegishli e'tibor (*due diligence*), himoya orderi, reviktimizatsiya, adolatli sudlovdan foydalanish.

Abstract. The paper examines the international legal guarantees of free legal aid for women who are victims of harassment and violence, their content and their reflection in national legislation. Free legal aid is substantiated as an indispensable condition of access to justice, and proposals for improving legislation and practice are put forward.

Keywords: gender-based violence, free legal aid, due diligence, protection order, revictimization, access to justice.

Xotin-qizlarga nisbatan tazyiq va zo'ravonlik bugungi kunda inson huquqlarining eng keng tarqalgan buzilish shakllaridan biri bo'lib qolmoqda. Jahon sog'liqni saqlash tashkilotining 2021-yilda e'lon qilingan hisobotiga ko'ra, dunyo bo'yicha har uch ayoldan biri umri davomida jismoniy yoki jinsiy zo'ravonlikka duch keladi.¹⁴ Bu ko'rsatkichlar jabrlanuvchilarning huquqiy himoyadan foydalana olmasligi iqtisodiy qaramlik, qayta jabrlanish xavfi va yuridik xizmatlarning qimmatligi bilan chambarchas bog'liqligini ko'rsatadi. Shu sababli bepul huquqiy yordam yordamchi xizmat emas, balki jabrlanuvchining boshqa barcha huquqlarini amalda ro'yobga chiqarish imkonini beruvchi dastlabki shart sifatida qaralishi lozim.

Bu qarashning huquqiy asosi xalqaro huquqning umumiy tamoyillaridan boshlanadi. Xotin-qizlarni kamsitishning barcha shakllariga barham berish to'g'risidagi konvensiya (CEDAW, 1979) ishtirokchi davlatlarga tenglik tamoyilini milliy qonunchilikka kiritish va sudlar hamda boshqa davlat institutlari orqali ayollarni kamsitishdan samarali himoya qilishni ta'minlash majburiyatini yuklaydi (2-modda).¹⁵ Konvensiyada zo'ravonlik masalasi alohida tilga olinmagan bo'lsa-da, CEDAW Qo'mitasining 1992-yildagi 19-sonli va 2017-

¹⁴ World Health Organization. Violence against women prevalence estimates, 2018. Geneva: WHO, 2021. URL: <https://www.who.int/publications/i/item/9789240022256>

¹⁵ Convention on the Elimination of All Forms of Discrimination against Women, 1979. Art. 2(c), 2(e). URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

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yildagi 35-sonli umumiy tavsiyalari gender asosidagi zo'ravonlikni kamsitishning bir ko'rinishi deb tan olib, uni konvensiya doirasiga kiritdi hamda davlatlardan zo'ravonlikning oldini olish, tergov qilish, aybdorlarni jazolash va jabrlanuvchilarga tovon to'lanishini ta'minlashni talab qildi.¹⁶ Huquqshunos olim A. Edvards ta'kidlaganidek, xotin-qizlarga nisbatan zo'ravonlik xalqaro huquqda dastlab "shaxsiy" masala sifatida qaralgan bo'lsa, bugungi kunda u davlatning ijobiy majburiyatlarini keltirib chiqaruvchi inson huquqlari buzilishi sifatida e'tirof etiladi.¹⁷ Bu qarash 1993-yildagi BMT Bosh Assambleyasining Xotin-qizlarga nisbatan zo'ravonlikka barham berish to'g'risidagi deklaratsiyasida ham o'z ifodasini topgan: unga ko'ra, davlatlar zo'ravonlikka barham berish majburiyatidan bo'yin tovlash uchun hech qanday urf-odat, an'ana yoki diniy qarashga tayana olmaydi hamda zo'ravonlikning oldini olish, tergov qilish va jazolashda "yetarli chora" (due diligence) ko'rsatishi shart.¹⁸

"Due diligence" tamoyilining ildizlari Amerikalarda inson huquqlari sudining "Velaskes Rodriguez Gonduras davlatiga qarshi" ishidagi qarori bilan bog'liq bo'lib, unda davlat nodavlat shaxslar sodir etgan huquqbuzarlikning oldini olish va tergov qilishda yetarli choralar ko'rmasa, o'zi mas'ul bo'lishi belgilab berilgan edi.¹⁹ Mazkur yondashuvni R. Kuk xotin-qizlar huquqlari sohasiga tatbiq etib, davlat javobgarligi faqat o'z organlarining harakatlari bilan emas, oilaviy doirada sodir bo'lgan zo'ravonlikka befarq munosabati bilan ham yuzaga kelishini asoslab berdi.²⁰ H. Charlzvolt va Ch. Chinkin esa bunday majburiyatning samarali bo'lishi uchun huquqiy himoya vositalari jabrlanuvchi uchun amalda mavjud bo'lishi shartligini ko'rsatadi.²¹ Aynan shu nuqtada bepul huquqiy yordam masalasi "due diligence" majburiyatining tarkibiy qismiga aylanadi: jabrlanuvchi himoya vositalaridan foydalana olmasa, davlat o'z majburiyatini bajargan hisoblanmaydi.

Adolatli sudlovdan foydalanish huquqi bilan bog'liq holda CEDAW Qo'mitasining 2015-yildagi 33-sonli umumiy tavsiyasi sudlov imkoniyatining olti tarkibiy elementini,

¹⁶ CEDAW Committee. General Recommendation No. 19 (1992). URL: <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>; General recommendation No. 35 (2017), CEDAW/C/GC/35. URL: <https://docs.un.org/en/CEDAW/C/GC/35>

¹⁷ Edwards A. Violence against Women under International Human Rights Law. Cambridge: Cambridge University Press, 2011. P. 1–30.

¹⁸ UN General Assembly. Declaration on the Elimination of Violence against Women, Res. 48/104 of 20 December 1993. Art. 4(c). URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women>

¹⁹ Inter-American Court of Human Rights. Velásquez Rodríguez v. Honduras. Judgment of 29 July 1988. Series C No. 4. URL: https://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf

²⁰ Cook R. J. State Responsibility for Violations of Women's Human Rights // Harvard Human Rights Journal. 1994. Vol. 7. P. 125-175.

²¹ Charlesworth H., Chinkin C. The Boundaries of International Law: A Feminist Analysis. Manchester: Manchester University Press, 2000.

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jumladan, uning mavjudligi, qulayligi va sifatini belgilab, kam ta'minlangan ayollar uchun yuridik yordam hamda sud xarajatlaridan ozod qilish zarurligini alohida ta'kidlaydi.²² 1995-yildagi Pekin Harakatlar platformasining 125(a) bandi esa hukumatlardan zo'ravonlikka uchragan xotin-qizlar uchun yetarli moliyalashtiriladigan boshpanalar, tibbiy va psixologik maslahat xizmatlari hamda zarur hollarda bepul yoki arzon yuridik yordam ajratishni talab qiladi.²³ Bu talab Yevropa Kengashining Istanbul konvensiyasida (2011) yanada aniq normativ shaklga keltirilgan: 57-moddaga muvofiq tomonlar jabrlanuvchilarning yuridik maslahat va bepul yuridik yordam olish huquqini ta'minlashi, 23-moddaga ko'ra esa yetarli miqdorda xavfsiz boshpanalar tashkil etishi shart; 52 va 53-moddalar esa shoshilinch chiqarib yuborish hamda himoya orderlari mexanizmini nazarda tutadi.²⁴ Shu tariqa xalqaro standartlar bepul huquqiy yordamni yagona, o'zaro bog'liq himoya tizimining bir qismi sifatida ko'radi.

Ushbu standartlarni tahlil qilish bepul huquqiy yordamning amaliy kafolatlari mazmunini aniqlash imkonini beradi. Birinchidan, jabrlanuvchi ariza berishdan tortib politsiya, prokuratura va sud bosqichlarigacha bepul malakali vakillikka ega bo'lishi kerak; aks holda kam ta'minlangan ayol rasmiy huquqiga ega bo'lsa-da, uni amalda ishlata olmaydi. Ikkinchidan, huquqiy yordam maxfiylik kafolati bilan ta'minlanishi, jabrlanuvchining roziligisiz uning shaxsiy ma'lumotlari uchinchi shaxslarga oshkor etilmasligi lozim, chunki oshkor bo'lish xavfi ko'pincha ayolni murojaat qilishdan to'xtatadi. Uchinchidan, ish yuritish jarayonida reviktimizatsiyaga yo'l qo'ymaslik, ya'ni jabrlanuvchiga nisbatan ayblovchi munosabatning oldini olish va huquqni muhofaza qiluvchi organlar xodimlarini gender jihatdan sezgir yondashuvga o'qitish talab etiladi. To'rtinchidan, jabrlanuvchi oila yoki jamiyat bosimi ostida arizasini qaytarib olgan taqdirda ham jazosizlikka yo'l qo'ymaslik uchun nodavlat notijorat tashkilotlariga jabrlanuvchi manfaatlarini himoya qilish vakolatini berish samarali mexanizm sifatida e'tirof etiladi. Nihoyat, huquqiy yordam alohida xizmat sifatida emas, balki boshpana, tibbiy va psixologik yordam bilan uyg'unlashtirilgan holda ko'rsatilgandagina haqiqiy himoya vazifasini bajaradi.

O'zbekiston Respublikasida mazkur kafolatlarning huquqiy asoslari izchil shakllantirilmoqda. Respublika CEDAW konvensiyasiga 1995-yilda qo'shilgan,²⁵

²² CEDAW Committee. General recommendation No. 33 on women's access to justice (2015), CEDAW/C/GC/33. URL: <https://docs.un.org/en/CEDAW/C/GC/33>

²³ Beijing Declaration and Platform for Action, 1995. Para. 125(a). URL: <https://www.un.org/womenwatch/daw/beijing/platform/violence.htm>

²⁴ Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), CETS No. 210, 2011. Art. 23, 52, 53, 57. URL: <https://rm.coe.int/168008482e>

²⁵ United Nations Treaty Collection. CEDAW: Status of ratification (O'zbekiston, 1995). URL: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4

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Konstitutsiyada esa har kimning malakali yuridik yordam olish huquqi mustahkamlangan.²⁶ Alohida ahamiyatga ega bo'lgan "Xotin-qizlarni tazyiq va zo'ravonlikdan himoya qilish to'g'risida"gi 2019-yil 2-sentabrdagi O'RQ-561-sonli Qonun tazyiq va zo'ravonlikdan himoyalash hamda ularning oldini olish tizimini belgilab, himoya orderi institutini joriy etdi, shuningdek, jabrlanuvchilarga ijtimoiy-huquqiy va psixologik yordam ko'rsatuvchi reabilitatsiya hamda moslashtirish markazlari faoliyatiga asos yaratdi.²⁷ Bu qonun himoya orderi va boshpana mexanizmlari bo'yicha xalqaro standartlarga, jumladan Istanbul konvensiyasi talablariga yaqinlashishni ko'rsatadi. Shu bilan birga, bepul yuridik yordamni tazyiq va zo'ravonlik jabrlanuvchilari uchun alohida va batafsil tartibga solish, maxfiylik kafolatlarini kuchaytirish, nodavlat tashkilotlarning jabrlanuvchi manfaatlarini sudda himoya qilish vakolatlarini aniqlashtirish, shuningdek, mutaxassislar malakasi va boshpanalarning moliyaviy barqarorligini ta'minlash zarurati saqlanib qolmoqda.

Shunday qilib, olib borilgan tahlil quyidagi xulosalarga asos bo'ladi. Birinchidan, bepul huquqiy yordam xotin-qizlarni zo'ravonlikdan himoya qilish bo'yicha davlatning "due diligence" majburiyatining ajralmas tarkibiy qismi bo'lib, adolatli sudlovdan foydalanish huquqini ta'minlashning shartidir. Ikkinchidan, uning samaradorligi huquqiy vakillik, maxfiylik, reviktimizatsiyadan himoya, nodavlat tashkilotlarning ishtiroki hamda boshpana va tibbiy-psixologik yordam bilan integratsiya kabi o'zaro bog'liq kafolatlar majmuasiga bog'liq. Uchinchidan, milliy qonunchilik va amaliyotni takomillashtirish uchun quyidagilar maqsadga muvofiq: jabrlanuvchilarga davlat hisobidan malakali yuridik yordam va advokat ajratish tartibini qonun darajasida aniq belgilash; boshpana va markazlar tarmog'ini barqaror moliyalashtirish hamda nodavlat boshpanalarini tashkil etish tartibini soddalashtirish; sud, prokuratura, ichki ishlar va sog'liqni saqlash xodimlari uchun gender sezgirligi bo'yicha muntazam o'quv dasturlarini joriy etish; idoralararo hamkorlikni yagona axborot tizimi asosida yo'lga qo'yish; aholi, ayniqsa yoshlar o'rtasida zo'ravonlikka murosasizlik muhitini shakllantiruvchi profilaktika kampaniyalarini kengaytirish.

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