

## COUNTERING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE UNDER UKRAINE'S EUROPEAN INTEGRATION

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### INTRODUCTION

The issue of domestic violence in the family remains relevant today, despite all the achievements of civilisation. Domestic violence is still one of the most widespread forms of human rights violations, which predominantly affects the most vulnerable population groups, including children, women, disabled, and the elderly who are economically, psychologically or otherwise dependent on their husbands, partners or parents. It should be noted that the legislation that has been in force, has not effectively addressed the problem of protecting women's rights against domestic violence<sup>1</sup>.

By choosing the path of European integration, Ukraine, as a state party to international treaties, has committed itself to the respect and protection of human rights, where an integral part of these rights is the prohibition of any forms of domestic violence. It should also be noted that the Ukrainian national legislation on preventing and responding to domestic violence is based on international treaties<sup>2</sup>.

The essential ones are: 1. The Universal Declaration of Human Rights, adopted and proclaimed by UN General Assembly Resolution 217 A (III) on 10 December 1948 2. The Declaration on the Elimination of Discrimination against Women, approved by UN General Assembly Resolution No.2263 on 7 November 1967. 3. General Recommendations No. 12, 14 and 19 of the UN Committee on the Elimination of Discrimination against Women<sup>3</sup> etc.

The issue of domestic violence in the family is relevant worldwide, in every country. The international community has long been trying to develop effective

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<sup>1</sup> Запорожець А.А. Криміналізація домашнього насильства – новела кримінального законодавства України. *Вісник кримінального судочинства*. 2018. № 1. С. 148–154.

<sup>2</sup> Насильство в сім'ї та діяльність органів внутрішніх справ щодо його подолання: навчально-методичний посібник для курсантів вищих навчальних закладів МВС України /Укладачі: Запорожцев А.В., Лабунь А.В., Забрда Д.Г., Басиста І.В., Дроздова І.В., Брижик В.О., Мусієнко О.М. Київ, 2012. 246 с.

<sup>3</sup> Блага А. Б. Насильство в сім'ї (кримінологічний аналіз і запобігання): монографія. Харків : ФО-П Макаренко, 2014. 360 с.

<sup>3</sup> Насильство в сім'ї та діяльність органів внутрішніх справ щодо його подолання: навчально-методичний посібник для курсантів вищих навчальних закладів МВС України /Укладачі: Запорожцев А.В., Лабунь А.В., Забрда Д.Г., Басиста І.В., Дроздова І.В., Брижик В.О., Мусієнко О.М. Київ, 2012. 246 с.

<sup>3</sup> Блага А. Б. Насильство в сім'ї (кримінологічний аналіз і запобігання): монографія. Харків: ФО-П Макаренко, 2014. 360 с.

and universal means of countering domestic violence, one of which is the development and adoption of the appropriate legal framework.

At the national level, Ukraine recognised the existence of the above problem as early as in 2001. It was at that time that national legislation on preventing domestic violence began to emerge. Naturally, it was supposed to be based on international and European standards.

In particular, a dedicated law of the same name was adopted, and it defined the organisational and legal framework for preventing and countering domestic violence, as well as the main ways of implementing the state policy on preventing and countering domestic violence, aimed at protecting the rights and interests of the this violence victims.

Regulatory documents on preventing and combating domestic violence in Ukraine include the Law of Ukraine dated 20 June 2022 "On Ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence"; the Law of Ukraine dated 04 January 2018 (as amended) "On Preventing and combating domestic violence"; Presidential Decree No. 398/2020 dated 21 September 2020 "On urgent measures to prevent and combat domestic violence, gender-based violence, and protection of the rights of victims of such violence"<sup>4</sup>.

The Istanbul Convention ratification became the legal vector that guided the development of Ukrainian legislation to address violence against women and domestic violence.

Conventions are not an absolute means of combating, counteracting and eliminating this socially dangerous phenomenon, but this Convention ratification is an important and valuable mechanism for modernising and improving the existing techniques and methods of preventing and combating domestic violence<sup>5</sup>.

## **1. International expertise of combating violence and the features of protecting women's rights against domestic violence**

The implementation of international experience in combating violence serves as a baseline for developing national legislation.

The adoption of foreign experience and expertise in protecting women from domestic violence into the effective domestic legislation should be preceded by a comprehensive research, whereas the gained methods and knowledge require professional adaptation to national circumstances, improvement of the dedicated legal framework and the mechanism of its implementation<sup>6</sup>.

A.V. Savchenko's opinion appears to be reasonable. In particular, the researcher states that currently the development of national legislation, resolution

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<sup>4</sup> Блага А. Б. Насильство в сім'ї (кримінологічний аналіз і запобігання): монографія. Харків: ФО-П Макаренко, 2014. 360 с.

<sup>5</sup> Там само.

<sup>6</sup> Коломоєць О. Д. Адміністративно-правове регулювання відповідальності за вчинення домашнього насильства, невиконання захисного припису або непроходження корекційної програми : дис. канд. юрид. наук : 12.00.07. Запоріжжя. 2010. 223 с.

of other legal issues, exchange of legal information, development of the national legal system and its harmonisation with the legal systems of developed countries is impossible without studying and using best global practices<sup>7</sup>.

The analysis of foreign experience in protecting women from domestic violence will be carried out based on the classification of legal systems as Romano-Germanic, Anglo-American, religious, traditional and mixed.

Since herein it is impossible to comprehensively study the legal norms of all foreign countries that provide for the protection of women from domestic violence, we will consider several representatives (states) from each type (family) of global legal systems: Romano-Germanic (Italy, Federal Republic of Germany, France); Anglo-American (United Kingdom of Great Britain and Northern Ireland, USA, Canada); religious (India, UAE); traditional (Japan, China), and mixed (Jordan, Ghana).

The combat against domestic violence dates back to 2001 Italy, where the work on legislation began, and in July 2019, the so-called "codicerosso" or the "red code"<sup>8</sup>, was adopted. It made the punishment for existing crimes related to violence against women and domestic violence stricter, for example, for abusers who committed violence, sexual violence and stalking, and expanded the list of new crimes related to violence against women, criminalising forced marriage, acid attacks, revenge porn and violations of removal orders. Aggravating circumstances were envisaged if the offence was committed by a current or former partner and shared through social media. The Italian Criminal Code criminalised "stalking", i.e. the repeated use of threats or harassment, to raise fear or anxiety in the persecuted person for their own personal safety or that of their close person. The stalking is punishable by five to seven years of imprisonment<sup>9</sup>. The Italian police were obliged to immediately notify the prosecutor's office of domestic violence cases, inter alia, verbal ones, while the victim was entitled to be heard by a magistrate within three days of registering the offence<sup>10</sup>. In December 2021, Italy's Council of Ministers approved a package of new measures that grant greater protection to women and toughen penalties for men who commit domestic violence. The most important developments include: the prospect of immediate arrest for threats, violence and stalking; the use of electronic bracelets by men abusing or threatening women, with imprisonment for perpetrators tampering the device; tougher penalties for beatings, injuries, threats, trespassing and damage; immediate economic assistance to women who suffered violence during the investigation phase<sup>11</sup>.

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<sup>7</sup> Савченко А. В. Кримінальне законодавство України та федеральне кримінальне законодавство Сполучених Штатів Америки: комплексне порівняльно-правове дослідження : монографія. Київ : КНТ, 2007. 596 с.

<sup>8</sup> Codered: Italy passes new domestic violence law. URL: <http://surl.li/bnibs>.

<sup>9</sup> Violence against Women: Psychological violence and coercive control. URL: <http://surl.li/bnjfn>.

<sup>10</sup> Violenza sulle donne, il codice rosso è legge: c'è il sì del Senato. URL: <http://surl.li/bniby>.

<sup>11</sup> Italy unveils new bill to combat violence against women. URL: <http://surl.li/bniej>.

Currently, Italy has set up the Parliamentary Commission of inquiry into femicide and all forms of gender-based violence (Commissione parlamentare di inchiesta sul femminicidio, nonché su ogni forma di violenza di gener), which investigates the cases of violence against women in Italy and monitors the compliance with the Istanbul Convention.

The United States has considerable experience in combating domestic violence both at the federal and state levels, where they use a variety of mechanisms to respond to domestic violence, including the institute of protective orders and that of specialised courts (over 200 facilities) that hear cases on violence. To prevent violence, the United States has implemented a mandatory response strategy, which means that healthcare facilities are obliged to report any incidents of violence to the police<sup>12</sup>. Over 30 states have their own legislation that prohibits or restricts the residence of those convicted of sexual offences near the places visited by children. Additionally, there is the minimum specific distance to be kept by the supervised persons from a protected facility. Punishment for committing domestic violence in the United States varies from several months to 3-5 years of imprisonment. The punishment severity therewith depends on: 1) the subject of the crime (US citizen, alien, stateless person, a person with dual citizenship); 2) the amount of damage caused; and 3) the state where the incident occurred<sup>13</sup>.

It is indicative to see how the US government responded to the national-scale issue of domestic and sexual violence in 1994 by passing the Violence Against Women Act (VAWA), which was designed to improve both support of victims and the detention and prosecution of abusers. The law has improved the response to domestic and sexual violence (involving the criminal justice system, social services and NGOs), established a national domestic violence hotline, and facilitated the allocation of substantial funds for a range of initiatives and programmes, including shelters and other services for women who suffered battering, judicial education and training programmes<sup>14</sup>.

To date, the rights of female victims of domestic violence are protected through civil and criminal proceedings. Civil protection is based on a motion to the court to apply a restraining order to the abuser. The victim has the right to withdraw her complaint.

Most states (Alabama, Arizona, Arkansas, Indiana, Kentucky, Maine, Minnesota, Nevada, New York, North Carolina, and Florida) provide for two types of measures to combat domestic violence: a temporary no-contact order and a restraining order against the abuser, while some states (California, Kansas, Colorado, Louisiana, and Massachusetts) distinguish between three types of

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<sup>12</sup> Садонцева Л. К. Кримінальна відповідальність за домашнє насильство в Україні та зарубіжному праві: порівняльний аналіз. *Молодий вчений*. 2019. № 4. С. 149–157.

<sup>13</sup> Харламова Д. В., Іноземцев М. Д. Боротьба проти домашнього насильства в Україні та світова практика. *«YoungScientist»*. № 5 (93). May, 2021. С. 341–347.

<sup>14</sup> Garrine P. Laney. Violence Against Women Act: History and Federal Funding (2005). URL: <http://surl.li/bocnp>.

measures against the abuser – an emergency no-contact order, a temporary no-contact order, and a restraining order.

The procedure of issuing a temporary no-contact order and a restraining order is quite similar across all states, with minor differences, such as the duration of a temporary no-contact order (Nevada – 45 days, North Carolina – 10 days after issuance or 7 days after service, Kentucky – 14 days), and the duration of a restraining order (North Carolina – 1 year, Nevada, Maine, Indiana – 2 years, and Kentucky – 3 years). The victim can ask a local law enforcement officer to issue an emergency no-contact order when they need immediate protection while the court is closed. The order is signed by the district court judge in charge. An emergency no-contact order is valid until 5 p.m. on the next working day of the court. During this time, the victim can file an action for protection from domestic violence by issuing a restraining order. A temporary no-contact order may be issued without a prior notice to the abuser and without a court hearing. A restraining order is issued following a court hearing, where the abuser and the victim are heard and evidence is examined. The order may be granted for up to one year, but it may be extended for one year, two years or even indefinitely.

The US system of preventing and combating domestic violence includes a range of measures and activities. The judicial coordination of domestic violence cases is carried out by the Office on Violence Against Women (OVW) at the US Department of Justice<sup>15</sup>

The network of the US federal agencies responsible for countering domestic and family violence is extensive. These organisations include: units of the Department of Defence (military family affairs, sexual assault prevention and control, and outreach departments)<sup>16</sup>; units of the Department of Education (Offices of Safe and Drug-Free Schools)<sup>17</sup>; units of the Department of Health and Human Services (units of children and family, women's health, injury prevention, etc.); Citizenship and Immigration Services at the Department of Homeland Security; Women's Bureau at the Department of Labor etc<sup>18</sup>.

The activities of special DVRUs (Domestic Violence Response Units) in local police agencies in the United States are aimed at lowering the level of domestic violence and facilitating detailed investigation of family conflicts. According to American researchers D. Butzer, L.M. Bronfman and B. Stipak<sup>19</sup>, these units are the outcome of a new approach to ensuring public safety in the activities of police agencies based on the local community interests. The immediate tasks of these police units include investigating individual cases of domestic violence, promoting their prevention and cessation, providing assistance to victims, breaking the cycle

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<sup>15</sup> National Hotlines and Help for Victims. URL: <http://surl.li/bockh>.

<sup>16</sup> The Office of Safe and Drug-Free Schools (OSDFS). URL: <http://surl.li/bockt>.

<sup>17</sup> National Hotlines and Help for Victims. URL: <http://surl.li/bockh>.

<sup>18</sup> Галай А. О., Галай В. О., Головко Л. О., Муранова В. В. та ін. Міжнародний досвід попередження та протидії домашньому насильству : монографія. Київ: КНТ, 2014. 160 с.

<sup>19</sup> Butzer D., Bronfman L.M., Stipak B. The Role of Police in combating Domestic Violence in the United States: a Casestudy of the Domestic Violence reduction unit, Portl and Police Bureau. URL: <http://surl.li/bockw>.

of violence and its passing down from generation to generation, as well as providing professional support to local and regional initiatives focused on responding to domestic violence.

The UAE response to domestic violence began relatively recently, in 2019, when the UAE government published the Family Protection Policy for the Prevention of Domestic Violence, which seeks to address domestic violence by strengthening family ties, raising awareness of domestic violence, and training the workforce to recognise and intervene in potential threats<sup>20 21</sup>.

The UAE law stipulates six forms of domestic violence, including physical, sexual, psychological, economic, verbal violence and negligence. While the first four forms are well-known in jurisprudence, verbal violence and negligence need more detailed analysis.

Thus, verbal violence is understood as any offensive lexis used to humiliate, embarrass or threaten the victim, for example, calling the victim an unpleasant and inappropriate name, swearing, shouting and raising one's voice, threatening with words or signs, using offensive and socially, culturally or religiously inappropriate language, socially, culturally or religiously inappropriate language, name-calling to humiliate, telling the person that they are worthless, reminding the person of past mistakes and failures, continually blaming the person, expressing distrust, using intimidating language that causes fear, talking cruelly to the person about death<sup>22</sup>.

Negligence (or neglect) is understood as an obvious and persistent act of omission, clearly manifested in the failure to provide basic material, psychological, medical or educational needs, or the failure to take precautions and measures to prevent harm that threatens the safety of any family member and entitles them to protection and care.

The types of negligence include: neglecting to deal with victim's identity documents; failure to use mandatory safety measures at home or in a vehicle; allowing a child under the legal age to drive a vehicle; ignoring or neglecting to provide for daily needs, which causes harm, such as improper nutrition; failure to provide adequate housing; failure to provide a healthy environment, such as smoking in front of the victim and in limited spaces (in a vehicle and a room); abusing drugs and alcohol in front of the family members – sons, daughters, wife; medical negligence; negligence of children's vaccination or mandatory medical check-ups; purchase or use of dangerous children's toys; leaving children unattended or with unknown people; allowing children to use electronic harmful games that are inappropriate to their age<sup>23</sup>.

Thus, the UAE law embraces a wide spectrum of actions and omissions, unlike a number of other countries that suffer from violence.

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<sup>20</sup> 198 Family Protection Policy. URL: <http://surl.li/bmzoq>.

<sup>21</sup> Domestic Violence in the UAE: A Guide to Legal Measures if You Face Violence. URL: <http://surl.li/bmzop>.

<sup>22</sup> Family Protection Guide. URL: <http://surl.li/bmzoq>.

<sup>23</sup> Ibid.

The UAE family protection judicial policy is focused primarily on women, children, and the elderly. A number of initiatives have been launched as part of this policy, including: a unified database linking national-level institutions involved in family protection; the introduction of family protection courses in higher education institutions; the development of a standardised reporting and complaints system at the national level, standards for the primary prevention of domestic violence; and the publication of the family protection law and strategy. The Federal Law "On Protection from Domestic Violence", adopted in August 2019, complemented the judicial policy on family protection countering domestic violence. This law empowers the prosecutor's office to issue a protection order on its initiative or upon the victim's application in order to prevent violent acts and protect the victim, their well-being and economic status<sup>24</sup>. The list of measures that the prosecutor's office is entitled to apply in the protective order is not exhaustive. Therefore, these may include any procedures that will be considered to be appropriate by the prosecutor's office to ensure effective protection of the personal rights violations.

The domestic violence law enables settlements between parties. The law also refers to the UAE Criminal Code, which authorises the court to double the above punishment, if the offender commits another act of violence within a year after committing the previous one.

In July 2007, a Dubai Foundation for Women and Children, the first non-profit organisation that provides shelter and other necessary services to women and children who suffered from domestic violence, was established.

Despite important UAE reforms in the area of women's rights, a woman may lose the right to financial support from her husband if she refuses to have sexual relations with him without a "legitimate reason". A judge may also find a woman in breach of her family obligations if she leaves the house or takes up a job that is incompliant with "law, custom or necessity" or if the judge considers it to be against her family interests. Thus, according to legal experts, the protection of women from domestic violence in the UAE currently requires further improvement.

The problem of violence against women in China, as a representative of the traditional legal system, is vast and multifaceted, similarly to other countries around the world. It is deeply intertwined with the traditional prejudice that regards women as being inferior and the property of their male partners, and requires women to be obedient and sacrifice their needs to serve men. On 27 December 2015, the PRC passed the Law on Combating Domestic Violence, which came into effect on 1 March 2016, and significantly helped female victims to defend their rights responding to this phenomenon. Following this law, various national level agencies issued their own policies to support the combat of domestic violence. At the local level, at least 12 provinces have adopted relevant regulations<sup>25</sup>.

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<sup>24</sup> Family Protection Guide. URL: <http://surl.li/bmzoq>.

<sup>25</sup> Cai Yiwen. China's Anti-Domestic Violence Law at the Five-Year Mark. URL: <http://surl.li/boaec>.

The Law on Combating Domestic Violence calls for the radio, television, newspapers and the Internet to promote family values and counteract domestic violence, and for schools and kindergartens to provide dedicated education. Medical facilities are required to keep records of the diagnosis and treatment of domestic violence victims.

Upon receipt of a report of domestic violence, the public security authority shall immediately send the police to stop domestic violence. If the personal safety of the domestic violence victim is threatened or in a dangerous condition, the public security body shall report thereof and assist the civil affairs department in placing the suffering person in a temporary shelter, rescue service or social welfare service.

Chinese restraining orders are of two types: a warning letter to the abuser and a protective order. The warning letter must contain the abuser's details, a statement of domestic violence facts and a ban for the abuser to commit domestic violence. The public security body serves the warning letter to the abuser and the victim, and informs the local residents' and village committee. If the victim is suffering from domestic violence or is in actual danger of domestic violence, he or she can apply to the court for a protective order. This application is normally submitted in writing, but verbal applications are not prohibited. In this case, the public court records this verbal application in the minutes. After accepting the application, the court may issue or refuse to issue a protective order within 72 hours. Should the situation be urgent, the law establishes a shorter time limit for considering the application, namely, 24 hours.

The protective order may include measures listed below<sup>26</sup>:

- 1) a ban on the abuser from committing domestic violence;
- 2) a ban on the abuser from stalking, contacting the victim and their close relatives;
- 3) a requirement to the abuser to vacate the place of common residence with the victim.

It can be seen that domestic violence occurs across all countries, but its incidence varies greatly worldwide and even in sub-Saharan Africa<sup>27</sup>.

For example, Ghana has established a Domestic Violence and Victim Support Unit at Ghana Police Service, known as the Women and Juvenile Unit, two specialised gender-based violence courts, and shelters for domestic violence survivors. The mission of the Women and Juvenile Unit is to prevent, protect, detain and prosecute domestic violence and child abusers. The unit provides crime prevention counselling in schools, churches and markets across the country, receives complaints, renders free services to the public, informs victims of their complaint and the investigation outcomes, as well as refers victims to

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<sup>26</sup> Anti-domestic Violence Law of the People's Republic of China. URL: <http://surl.li/boaab>.

<sup>27</sup> Andersson N, Ho-Foster A, Mitchell S, Scheepers E, Goldstein S. Risk factors for domestic physical violence: national cross-section alhouse hold survey sineight southern African countries. BMC Womens Health. 2007. № 7 (1). 27 p.

medical support<sup>28</sup>. In order to protect victims' interests, the court may issue a temporary protective order and a final protective order. A temporary protective order is issued for a period of up to three months to protect the victim's interests while the case for a final protective order is being considered. If the abuser fails to appear at the court hearing, the temporary protective order becomes final. According to the protective order, the abuser may be obliged to observe good behaviour, seek counselling or other rehabilitation services from an appropriate institution, be ordered to move and continue to pay rent and mortgage payments, give up the victim's property and reimburse the victim for the damage caused by domestic violence<sup>29</sup>.

Drawing on international experience, the protection of women, as a significant part of society that suffers most from domestic violence, is still an urgent problem for many countries, regardless of the type (family) of global legal systems. The solution of the issue of violence against women worldwide and, in a particular country, is a system of factors of the political, economic and cultural nature. Moreover, it is related to the specifics of the chosen legal vector of public influence. The study of international legal standards and international experience contributes to the improvement of pure and applied foundations for our legislation.

The research into foreign experience of protecting women against domestic violence allows us to make certain conclusions: – all countries, without exception, regardless of their legal system, are actively combating domestic violence, showing intolerance to any of its manifestations; – in countries with Anglo-American, Romano-Germanic, mixed legal systems, it is common to establish specialised units within the system of public administration to combat domestic violence, for example, specialised courts (USA, Ghana) and specialised police units (Ghana); – in all the above mentioned countries the protection of women who suffered from domestic violence is carried out by issuing protective orders; – it is prospective to attend to the newly singled out forms of violence, such as verbal violence and negligence (UAE).

The potentially effective instruments to be applied in Ukraine from the analysed perspective are: the establishment of a dedicated position of a Commissioner for Domestic Violence and an expansion of the behaviour patterns and actions that are qualified as domestic violence acts; the application of special electronic GPS-bracelets, which allow the police to trace and promptly respond to the abuser's approach to the victim (USA, Italy); the adoption of the system of preventive educational programmes that are in force in the USA.

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<sup>28</sup> Ghana: Domestic violence, including protection, services and recourse available to victims. URL: <http://surl.li/bnola>.

<sup>29</sup> Domestic violence act. 2007 act 732. URL: <http://surl.li/bnojg>.

## **2. Priority ways in optimising women's rights legal protection against domestic violence within the context of Ukraine's European integration process**

The development of Ukrainian state, the return of its society to the ideas of humanism and justice, the search for the ways of its democratic development activates the use and democratic content replenishment of the legal regulation key principles for the system of women's protection against domestic violence. Women's protection against the acts of violence is not a merely governmental but also a socio-political task. Consequently, legal regulation of women's protection against domestic violence will not allow for achieving expected results without a well-balanced public policy, aimed at protecting democratic foundations and, accordingly, the interests of an individual and a citizen.

Legal regulation of women's protection against domestic violence should be defined as the process of creating and supporting, as necessary, the constructive functional-and-organisational features of the system of women's protection against domestic violence using the normative impact of regulatory means. The legal regulation system for protecting women against domestic violence comprises the totality of multi-level legal regulatory documents that shape the legal regulation environment for effecting women's protection against domestic violence and their purpose fulfilment.

The priority way of optimising the legal regulation of protecting women against domestic violence in Ukraine is the ratification by the Verkhovna Rada of the Istanbul Convention. The very Law was passed by the Parliament on 20 June 2022, and signed by the President of Ukraine on 21 June 2022 [26]. Ukraine thus joined the 34 countries, had which already ratified the Istanbul Convention, out of the 47 countries that signed it. The Convention was ratified with remarks on the failure to pay public compensations to the victims of violence before the completion of the harmonisation of the national legislation with the Convention. Although Ukraine participated in the preparation of the Istanbul Convention as a member of the Council of Europe and further signed it in 2011, its path to the ratification took over 10 years. The All-Ukrainian council of churches and religious organisations expressed their opinion against the Convention ratification, justifying it by the fact that the Istanbul Convention does not stipulate any possibilities for remarks regarding some of its provisions that refer to the concept of "gender" within the context of male and female sexes, which is an unacceptable threat for the existence of the institute of family and marriage in Ukraine<sup>30</sup>. To our mind, these statements are imaginary because the use of the term "gender" in the Istanbul Convention does not in any way replace either biological understanding of the "gender", or terms "women" and "men", and exclusively shows how inequality, stereotypes and, in turn, violence are not derived from biological differences but rather

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<sup>30</sup> The Istanbul Convention ratification is the issue of our belonging to the European community. Ukrainian crisis media center website. URL: <http://surl.li/csbbv>.

from the social structure, in particular, from the beliefs and opinions on what men and women should be like in the society<sup>31</sup>.

The concepts of “gender” and “gender equality” are not considered to be new or incompatible with the Ukrainian legislation. The valid Law of Ukraine “On Provision of Equal Rights and Opportunities for Women and Men”, adopted in Ukraine in 2005, has been operating the concept of “gender equality” as the equal legal status of women and men as well as equal opportunities for its exercise, which allows both sexes to equally participate in all and any forms of public life<sup>32</sup>.

We regard as reasonable the position of experts Ye. Kuzmenko and N. Holub, where they claim that we should see the aim of the Istanbul Convention in regulating family life and structure, since it does not contain the definition of the term “family” and it does not establish a certain specific type of family relations. The Istanbul Convention aims at preventing violence against women and domestic violence on the whole<sup>33</sup>.

From our viewpoint, the Istanbul Convention ratification is necessary to improve the combat against domestic violence. With the adoption of the Istanbul Convention the prevention and combating domestic violence will become legally binding for the country according to the international law, and it will not be limited to the issue of the political will availability in the government. Further, the Istanbul Convention clearly states that violence against women and domestic violence may not be considered a private matter any longer, and the state must stand its ground and take measures to prevent violence, protect victims and punish abusers. The Convention ratification will also lead to data exchange between countries on the practice and approaches to countering domestic violence. The Council of Europe experts will supervise the implementation of the Istanbul Convention and will be able to advise on the best ways to prevent violence, protect victims and criminal persecution of the offenders. In turn, Ukraine may demand to toughen responsibility for abusers of our female citizens abroad by initiating the legal proceedings against abusers of Ukrainians, who temporarily fled from Ukraine.

The existing administrative responsibility for physical and psychological violence in Ukraine does not contradict the Istanbul Convention in terms of the mandatory criminalisation of these acts. Article 33 of this international legal instrument provides for the criminalisation of only deliberate behaviour that causes severe mental distress by means of coercion or threats<sup>34</sup>. The analysis of this article enables us to conclude that if intentional behaviour causes a minor violation of mental integrity, it does not entail criminal liability, but may lead to an administrative penalty. The fundamental condition for the criminalisation of

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<sup>31</sup> Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention). URL: <http://surl.li/bfccq>.

<sup>32</sup> Law of Ukraine “On Provision of Equal Rights and Opportunities for Women and Men”, adopted on 08 September 2005. URL: <http://surl.li/cmgr>.

<sup>33</sup> Міфи і факти про Стамбульську конвенцію. URL: <http://surl.li/cscsp>.

<sup>34</sup> Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence. URL: <http://surl.li/bfccq>.

physical violence is the commission of physical violence against another person. It means that the Council of Europe focused on the quantitative criterion of the cases of physical violence that trigger criminal liability. Given this, the existence of administrative responsibility for domestic violence in Ukraine facilitates combating abusers in case their actions do not constitute the objective side of the domestic violence crime.

The adoption of the domestic violence law, criminalisation of committing domestic violence and amending legal regulations to stipulate the issues related to domestic violence, is a positive step in countering this harmful phenomenon. Yet, a significant number of issues remain unsettled. For instance, the development of the risk evaluation form, in case of recurrent domestic violence commission, similarly to what was done for the police officers should they issue the initial emergency no contact order.

After receiving a court notice on its decision to issuing or extending a restraining order, a national police unit must register the abuser in the prevention register, ensure abuser's behaviour control and work preventively with the abuser to stop any further domestic violence. However, at the legislative level, there is no definition of what the control is regarding abuser's behaviour. The same refers to the preventive work with the abuser and its procedure, which questions practical meeting these requirements. Therefore, at the legislative level, it would be reasonable to stipulate and define what the abuser's behaviour control is, what the police preventive work with the abuser is and in how it is to be performed, since in the absence of the due legal regulation of this issue this special means of countering domestic violence is merely declarative.

In addition, there is a problem of enforcing court decisions on issuing a restraining order, as the state execution service and private enforcers are not listed in Article 6 of the Domestic Violence Law among the entities that carry out preventive and countermeasures against domestic violence. In practice, this has led to the cases of refusal to initiate executive proceedings to enforce restraining order court decisions. Obviously, the court subsequently defended the collector and cancelled such decisions of the executors, but the gap in this area exists and needs to be adequately addressed by law. The objective of administrative responsibility, in particular, in protecting women against domestic violence, is directly related to specific administrative penalties, the effectiveness of which depends on the type of administrative penalty and the sufficiency of its impact on the abuser's legal consciousness and other persons in order to prevent new or recurrent administrative offences.

Hence, there arises the issue of determining the effectiveness of administrative sanctions for committing an administrative offence under Article 1732 of the Administrative Code. Currently, the article stipulates and sanctions a fine of ten to twenty non-taxable minimum incomes, or community service for a period of thirty to forty hours, or administrative arrest for up to ten days. N. Lesko argues that administrative liability is not a fully effective means of combating domestic violence and its recurrence. In addition, the penalties set out in Article 1732 of the Administrative Code have low preventive effect. We are convinced that it is necessary to increase the amount of the fine imposed on

the abuser by law, since a fine of 10 to 20 tax-free minimum incomes, which actually amounts to UAH170.00 to 340.00, is unlikely to influence the correction of the abuser, prevent a new or recurrent commission of the offence. Besides, there is a need to change the period of administrative arrest: instead of the current "up to 10 days", it should be "10 days". However, the application of such an increased fine would be appropriate in cases where the abuser is not a husband or a person with whom the victim lives in the same family but is not married, since otherwise it would affect the joint family budget and, accordingly, the victim's property rights. In addition, fine payments from the family budget may result in the victim being reluctant to apply to the authorities in case of recurrent violence against her or her children, due to the fear of suffering adverse financial consequences.

Scholars note that community service is the type of administrative penalty that is most appropriate to be used in cases of committing an offence under Article 1732 of the Administrative Code. This is due to the fact that community service is not considered a penalty that restricts a person's property rights, and this is also related to the domestic violence victim's motivation to apply to the respective law enforcement agency. Moreover, the imposition of this type of work has an educational effect, since, as proven in practice, the most common work assigned by local governments is cleaning up public places<sup>35 36</sup>.

Some scholars believe that the use of administrative detention as an administrative penalty is not effective enough. For example, O. Kovaleva argues that the use of administrative detention allows a victim of domestic violence to take a break from the aggression of the abuser for a certain period of time while the latter is under administrative detention. However, when the abuser returns home, he is even more aggressive, as he blames his victim for forcing him to serve administrative detention. When the next incident of violence occurs in the family, the victim is not likely to report the offence to law enforcement agencies, as she may suffer further abuse<sup>37</sup>.

Pursuant to Article 391 of the Administrative Code, in case of committing an act of domestic violence, the court while deciding on imposing a penalty or referring the abuser to taking an abuser corrective programme. Thus, the referral of the abuser to the programme is a right but not the obligation of the court. Yet, the issue of referring the abuser to the programme is settled by the court while considering the penalty imposition. That way, the legislator did not address the case of settling the issue of referring the abuser to the programme, when the court terminates the proceedings due to the termination of the administrative penalty time limit. It is the referral of the abuser to the programme that may encourage abuser's better behaviour, recognition of the illegality of his committed action and prevention of this action recurrence.

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<sup>35</sup> Ковальова О. В. Діяльність служби дільничних інспекторів міліції щодо попередження насильства в сім'ї: дис. на здобуття наук. ступеня канд. юр. наук: 12.00.07. Х. 2008. 238 с.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

The phenomenon of cyber-violence, a distinct type of violence that has become widespread in the twenty-first century due to the development of the online environment and virtual communication, requires its specific legal regulation. In its judgment of 11 February 2020 in the case of *Buturuga v. Romania*, the ECHR stated that domestic violence should not be viewed exclusively as a physical phenomenon, as it can manifest itself in various forms, including unauthorised access to the victim's computer, distribution and manipulation of photos, videos, personal documents, access, illegal monitoring or storage of partner correspondence. In this case, the ECHR found the actions of the claimant's ex-husband to be a manifestation of cyber-violence, as the man inspected the woman's personal Facebook page, listened to private conversations, copied her photos and documents<sup>38</sup>. The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) developed General recommendations No. 1 regarding the digital dimension of violence against women, which runs that the concept of cyber-violence against girls and women include the distribution of videos or photos, enforcement and threats, including sexual assault and other manifestations of intimidation, online sexual harassment, threats of raping, stalking on the Internet, misrepresenting themselves as another person, psychological violence and economic damage, caused due to the use of digital technologies<sup>39</sup>. We believe that "cyber violence against women" stands for performing deliberate systematic insulting or threatening actions using the means of electronic communication, which undermine the woman's feeling of safety and raise anxiety, fear or panic. These actions include: electronic mailing, text messages (SMS) or other instant text messages that are insulting or threatening; placement of insulting comments as to the person on the Internet; distribution of intimate photos or videos using electronic communication means.

V. Rufanova identifies several types of cyber-violence: 1) dissemination of misinformation about a person; 2) hacking an email or a social media page; 3) using and changing people's accounts with other people's passwords; 4) sending and disseminating other people's photos for mockery and discussion; 5) posting intimate photos for bullying or stigmatising a person; 6) extortion of private information via electronic communication for dissemination purposes; 7) copying and using private information by hacking or accessing in an unauthorised way another person's social media account; 8) discussing a person in social media or chat rooms for the purpose of defamation or discrediting<sup>40</sup>.

A review of judicial practice shows that Ukrainian courts, despite the conflict of law, recognise violence committed through electronic communications or on

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<sup>38</sup> Дроздов О., Бабанли Р., Дроздова О., Тарасенко О. Огляд практики Європейського суду з прав людини з 1 січня до 15 червня 2020 р. Київ. 2020. 43 с. URL: <https://www.echr.com.ua/wp-content/uploads/2020/08/ogliad-rishen-espl-2020-1.pdf>.

<sup>39</sup> GREVIO General recommendations No. 1 as to the digital dimension of violence against women, 20 October 2021. URL: <http://surl.li/cakwj>.

<sup>40</sup> Руфанова В. Гендерно зумовлене кібернасильство в світлі практики Європейського суду з прав людини. *Knowledge, Education, Law, Management*. 2021. № 6 (42). С. 209–213.

the Internet as a form of psychological violence (the decision of the Zolotonosha town-district court of Cherkasy region of 15 July 2022 on case No.695/1510/22)<sup>41</sup>;

– sending messages via social media network Viber with text and photos, video images with obscene content, insulting words with obscenities (decision of the Slavuta town-district court of Khmelnytskyi region of 30 June 2022 on case No.682/900/22)<sup>42</sup>;

– insulting with obscenities, humiliating in the correspondence in social media (decision of the Berdychiv town-district court of Zhytomyr region on case No.274/7263/21)<sup>43</sup>.

In order to adapt Ukrainian legislation on combating domestic violence to the Istanbul Convention provisions, which condemn all forms of domestic violence, we believe that the definitions of “psychological violence” and “sexual violence” given in the Law on Domestic Violence should be further refined by specifying the possibility of committing these types of violence using electronic communications<sup>44</sup>.

The Family Code of Ukraine promotes the principle of voluntary marriage, however, Article 110 of the Code stipulates that a claim for divorce may not be submitted during wife’s pregnancy and for one year after the birth of the child<sup>45</sup>. This limitation causes the violation of rights of those suffering from domestic violence, deprives of the right to protection from abuse, since it does not allow for the marriage termination even when a pregnant woman or the one with an infant suffers from domestic violence from her husband. It is possible to solve this problem provided the Verkhovna Rada of Ukraine passes the registered bill on “Changes to articles 110 and 111 of the Family Code of Ukraine” (reg. No.5492 of 14.05.2021), which terminates the provision prohibiting the application for divorce during the pregnancy or until a child is one year old, and also complements the law with the provision that the court may not apply settlement measures for the families, when the cause of divorce involves the signs of committing domestic violence, regardless of the results of considering civil, administrative, or criminal cases on domestic violence<sup>46</sup>.

We support the need of passing the above mentioned bill and believe that the commission of domestic violence must provide a woman with wider guarantees in family legal relations. For example, it refers to identifying the place of mother’s and child’s residence. Evidently, in case the child’s father commits

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<sup>41</sup> Decision of the Zolotonosha town-district court of Cherkasy region of 15 July 2022 on case No.695/1510/22. URL: <http://surl.li/cxhuv>.

<sup>42</sup> Decision of the Slavuta town-district court of Khmelnytskyi region of 30 June 2022 on case No.682/900/22. URL: <http://surl.li/cxhvm>.

<sup>43</sup> Decision of the Berdychiv town-district court of Zhytomyr region on case No.274/7263/21/

<sup>44</sup> Medvedska V. Theoretical and legal aspect of cyberviolence against women. *Law. Human. Environment*. 2022. № 13 (2). С. 25–31.

<sup>45</sup> Family Code of Ukraine of 10 January 2002 No. 2947-III. URL: <http://surl.li/oczd>.

<sup>46</sup> Проект Закону України «Про внесення змін до статей 110 та 111 Сімейного кодексу України» від 14 травня 2021 р. № 5492. URL: <http://surl.li/czerb>.

domestic violence against the child's mother or the child, and his guilt is confirmed by the court decision, the case on determining the place of child's residence must be considered according to the simplified procedure by the respective order. It is obvious that in these cases the court must be assured that the mother can provide the child with the correspondent residence conditions. Nevertheless, the child's father must not be considered as a person with whom the child may be ordered to reside. In fact, it is sufficient for a woman to collect such documents as the opinion of the guard and care agency on inspecting the living conditions, a statement of income, a certificate of passing a preventive narcologic check-up and a medical certificate on the mandatory preliminary and regular psychiatric examinations to submit them to the court for consideration. If these documents are properly executed, the court will determine the child's place of residence with the mother. The above procedure will allow the court to consider the issue of determining the child's place of residence more quickly and will protect the child from unauthorised "abduction" by the father. The reason for the above suggestions is that until the child's place of residence is determined, both parents have equal rights and responsibilities with respect to their child, and it is not uncommon for a father to "abduct" a child without permission, which is not then considered a crime.

Taking into account the US, Canada and other international experience, Ukrainian researcher K.V.Dovhun suggested establishing specialised domestic violence courts<sup>47</sup>. We do not support this initiative and suppose that it will be more feasible to introduce in all local courts specialisation in family cases and increase the number of judges. This way will apparently allow to relieve currently overloaded courts and ensure timely consideration of cases as well as restoration of violated citizen's rights.

Thus, The priority areas for optimising the regulatory and legal support to protect women's rights against domestic violence in Ukraine, given the Istanbul Convention provisions, are: criminalisation of stalking, tightening administrative responsibility for domestic violence by increasing the amounts of fines, reviewing administrative penalties for domestic violence against the abuser and the timeframe for processing an administrative case on domestic violence, improving the procedure of notifying a person of the administrative case hearing, and criminal liability for the failure to comply with the court decision, which involves a restraining order, legal regulation of cyber-violence against women.

## CONCLUSION

An important indicator of the civilised nature of any society and state is the extent to which vulnerable groups are protected.

The experience of foreign countries is undoubtedly positive and valuable, it may be necessary to ensure and improve the ways and means of preventing domestic violence in our country.

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<sup>47</sup> Довгунь К. В. Адміністративно-правові засади діяльності суб'єктів, що здійснюють заходи у сфері запобігання та протидії домашньому насильству» : дис. на здобуття наук. ступеня канд. юрид. наук : 12.00.07. Київ. 2021. 202 с.

In general, we can state that currently there are positive developments in improving the existing mechanisms for combating domestic violence, which are focused, though somewhat arbitrarily, on democratic and legal principles, as well as the recognition of human rights. Yet, the practice of violence incidence in the family environment demonstrates the need for a detailed study of the activities of the actors whose functional powers are aimed at combating this phenomenon.

We are convinced that this Convention ratification is not an absolute means of eliminating, countering and combating this socially dangerous phenomenon of domestic violence, since, following a thorough analysis of the Convention, it can be stated that women and children are recognised as the main subjects of domestic violence. The Convention ratification is an important and useful mechanism for modernising and improving the existing means and methods of preventing and combating domestic violence.

While working on this chapter of the monograph, the legal framework for combating domestic violence as a system of international and national legislation, including their individual provisions that directly or indirectly regulate the issues of combating this anti-social phenomenon, in particular, determine the responsibility for committing acts of physical, sexual, psychological or economic violence by a family member against another, was summarised. Thus, it may be stated that at the national level, the fundamental document on combating domestic violence is the Constitution of Ukraine. Although it does not explicitly deny, the Constitution implies the denial any manifestations of domestic violence or indicate the protection of citizens, suffering from this phenomenon.

The experience of all the analysed practices of combating domestic violence, Western countries provide for the broad involvement of non-governmental organisations in countering domestic violence.

State commissioning is practiced and significant state funding is provided for public initiatives to address the issues of domestic violence, provide support to victims of domestic violence, and educate society, especially young people, on new humanistic principles.

The Ukrainian state should also adopt this experience. If the state budget funds are limited, international charitable institutions can be involved in solving this social problem. We are confident that if the authorised Ukrainian state bodies apply to them with this request, the problem of financially supporting the initiatives to combat domestic violence may be solved.

Therefore, despite numerous scientific developments aimed at researching the prevention and combating of domestic violence, the legal framework for protecting women from domestic violence has not received adequate scholarly attention. In addition, there is a need to adapt Ukrainian legislation on domestic violence to the requirements of the Istanbul Convention, given the ratification of the latter by the Verkhovna Rada of Ukraine. Abuse, its impact on family relations and the exercise of personal non-property rights, also requires further research. It is also necessary to broaden the definition of violence, considering the UAE experience.

## ABSTRACT

The chapter offers a consistent analysis of the domestic violence prohibition principle from the perspective of introducing European and international standards of countering violence in the family. The need of implementing comprehensive measures to prevent and combat gender-based violence was highlighted. A special focus was made on the international experience of violence countering based on the examples of Italy, USA, UAE, PRC and Ghana. The priority paths of optimising the legal regulation of women's rights protection against domestic violence were established within the context of ratifying the Council of Europe Convention. The practice of introducing the obligations of domestic violence preventive mechanisms was discussed, including those of analysing the activities of different services in Ukraine as well as the national and regional domestic violence statistics.

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