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## IMPLEMENTATION OF EUROPEAN STANDARDS IN COUNTERING CYBERBULLYING, CIVIL LAW PERSPECTIVE

### ІМПЛЕМЕНТАЦІЯ ЄВРОПЕЙСЬКИХ СТАНДАРТІВ У СФЕРІ ПРОТИДІЇ КІБЕРНАСИЛЬСТВУ, У ЦИВІЛЬНО-ПРАВОВОМУ ВИМІРІ

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Simplified access to online personal data creates conditions for human rights violations, particularly, against women. Countering violence in the digital environment remains insufficiently regulated, although progress has been made in approximating national legislation to international standards.

The transfer of violence from face-to-face to online spaces due to the widespread use of the internet, including social media, entails significant socio-economic and political consequences [2].

According to non-governmental organisations, one in ten women in Ukraine suffers from stalking. These are only registered cases, which do not include cyberstalking.

Currently, there is no clear definition in Ukrainian legislation for the categories ‘psychological violence committed on the internet and/or using

technologies’ and ‘stalking on the internet (cyberstalking) and/or stalking using technologies’. Yet, in order to criminalise these acts, Ukraine’s ratification of the Istanbul Convention requires amendments to the national legislation.

On 22<sup>nd</sup> May 2024, the Verkhovna Rada of Ukraine adopted the Law “On amendments to the Code of Ukraine on Administrative Offences in connection with the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence,” which became effective on 19<sup>th</sup> December 2024. This Law implements a number of provisions of the Istanbul Convention, namely, Articles 173-6 “Gender-based violence” and 173-7 “Sexual harassment” have been introduced, and amendments have been made to Article 173-2 “Domestic violence”. The concept of “sexual harassment” has been specified statutorily for the first time, with the possibility of its commission using electronic communications being explicitly indicated.

With regard to cyberstalking, paragraph 14 of Part 1 of the Law of Ukraine “On Preventing and Combating Domestic Violence” defines it as a form of psychological violence, whose liability is determined in Article 173-6 of the Code of Administrative Offences without distinguishing between digital and non-digital domains. However, it is only Article 173-4 of the Code of Administrative Offences (“Bullying”) that explicitly considers the possibility of persecution and harassment in the digital environment, but its scope is limited to a restricted circle of subjects – participants in the educational process [1].

National legislation contains a significant number of provisions establishing liability for psychological violence. Nevertheless, the lack of a clear distinction between acts that entail administrative liability and those that are classified as criminal offences increases the level of latency of these offences, especially those committed in the digital domain. Similar problems may be observed regarding the distinction between the categories of “gender-based violence”, “stalking as a form of psychological violence” and “psychological violence” itself. For persons without special legal training, it is extremely complicated to draw the line between lawful behaviour and actions that already constitute a violation of their personal rights.

It should be emphasised that there is no single comprehensive term in international legal practice to describe all forms of violence committed via the Internet or using digital technologies. The most common terms are “digital violence”, “cyber violence”, “violence in the digital environment” and “gender-based violence using technologies” [4].

So far, no single legal framework has been accepted in the international practice, specifically aimed at regulating issues of violence in the digital

domain. At the same time, there are trends in the policies of individual states towards developing measures to combat violence against women and domestic violence in the digital environment.

In this context, three main international legal instruments ratified by Ukraine should be highlighted. An important step was GREVIO's adoption of the final version of General Recommendation No. 1 on 20<sup>th</sup> October 2021, which emphasises that the scope of the Istanbul Convention also extends to violence against women and girls in the digital environment as a manifestation of gender-based violence. This means that all forms of such violence are subject to prosecution regardless of whether they are committed in person or online [4].

Another important binding international legal instrument that, alongside the provisions of the Istanbul Convention and the GREVIO recommendations, concerns the digital environment, is the Council of Europe Convention on Cybercrime (Budapest Convention). Although it does not directly regulate the issue of violence against women, it defines the procedural powers and mechanisms for international cooperation in the field of combating cybercrime, as well as any offences that are related to electronic evidence. Apparently, it is the combination of the provisions of the Istanbul and Budapest Conventions that can provide truly effective mechanisms for the prosecution of violence in the digital environment.

The third international legal instrument is the Lanzarote Convention (Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse), which obliges states to criminalise all forms of sexual violence and exploitation of children, including in the digital space [3].

Ukrainian legislation does not contain a definition of the term “digital environment”. In this context, GREVIO introduces into scientific and practical use the category of the “digital dimension of violence against women”, which refers to behaviour harmful to women and girls in the online domain, as well as actions carried out using digital technologies.

Therefore, until the relevant provisions are legally regulated, the terms “digital environment where violence against women occurs” and “digital dimension of violence against women” should be considered equivalent. They cover a specific field within which unlawful acts take place as harassment, sexual harassment, threats of violence via the Internet and other similar illegal practices. Still, it is essential to note that such acts committed using digital technologies or in the virtual space do not constitute a separate form of violence – so-called “digital violence” – but merely reflect the means by which it is carried out [5].

In view of the aforesaid challenges, certain conclusions may be drawn. First, the rapid development of digital technologies and the growing sense

of vulnerability among citizens requires the harmonisation of national legislation with the new conditions, as well as raising legal awareness among the population. Particular attention should be paid to the under-researched aspects of the issue, in particular, the digital dimension, as it is their proper legal regulation that may prevent new forms of gender-based violence. The legislation in force does not holistically consider the specific nature of the virtual space and the use of information and communication technologies. In this regard, it is important to adopt a special legal regulation that would comprehensively cover gender-based violence in the digital environment and establish liability for its commission [4].

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