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International legal standards and practices of European countries in combating domestic and gender-based violence

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Abstract

The relevance of this study lies in the need to improve the legal mechanisms for combating gender-based violence against the background of the increasing number of military conflicts in the world, which create favourable conditions for the latter. The purpose of this study was to analyse the regulatory provisions of international legislation and the practices of certain European countries in preventing manifestations of hatred based on sex and gender and combating domestic violence through criminal law measures. It was stated that legal standards defined by the regulations of international organisations, international treaties, and conventions underlie national and regional standards for combating domestic and gender-based violence. International legal principles of gender equality are defined by the regulatory framework of the United Nations, the Council of Europe, the European Union, and the Organisation for Security and Cooperation in Europe, and other global and European organisations. Human rights provisions recognised by the member states of these organisations through bilateral and multilateral treaties and implemented through ratification are the basis for the formation of national internal standards of the rights of women, children, and persons of all genders. The study concluded that national standards for guaranteeing and protecting human rights in the field of gender equality constitute an implementation of international standards and pan-European provisions, and their implementation in Ukrainian legislation can ensure sufficiently complete and effective implementation of legal measures to combat domestic and gender-based violence. The ideas formulated in this study are aimed at finding more effective criminal law means in lawmaking and law enforcement activities

Keywords:

international legal mechanism for combating gender-based violence; European standards; gender-based violence; prevention of domestic violence; restrictive measures

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Introduction

According to the latest report published by the International Institute for Strategic Studies in London (2023), there are 137 active military conflicts in the world. One of the largest and longest-lasting is the military conflict in Ukraine, which has been suffering from Russia's armed aggression since 2014, fighting for the sovereignty of the state and the freedom of Ukrainians. At the same time, along with the urgent problems of ensuring defence capability and protecting national sovereignty, the task of protecting human rights, ensuring rights for every person regardless of gender, guaranteeing equal opportunities for women's participation in all spheres of public and private life, including through the application of criminal law measures, is critical for the Ukrainian state. The war, internal displacement of numerous citizens, as well as the migration of millions of people around the world, mostly women and children, to the European Union, have provoked a considerable number of cases of gender-based violence in its most grave and dangerous manifestations. Among other things, an extremely sensitive issue has arisen of combating domestic violence, manifestations of cruelty towards children and women.

In legal science, considerable attention is paid to the establishment and development of international legal standards and national legal systems for responding to the phenomena of domestic and gender-based violence, which are perceived as negative in the public eye. Scientists analyse all possible means of prevention and counteraction consolidated in various sectors and institutions of the legal systems of individual countries. Thus, M. Naumenko (2023) addressed the issues of civil law protection of persons from domestic violence, N. Gridina (2020) focused on the problem of combating gender-based violence in terms of administrative legal regulation. O. Dmytrashchuk (2021) chose the problematic of preventing domestic violence by the National Police of Ukraine as an area of scientific research. Analysing the state and legal aspect of preventing domestic violence, O. Yevdokimova (2021) states that in Ukraine, the system of state protection of human rights and freedoms requires regulation and implementation of effective mechanisms, which can be fully agreed with.

In researching the practices of criminal law counteraction to gender-based violence and domestic violence, lawyers see a special role for further implementation of international legal standards. Therewith, O. Stepanenko *et al.* (2023) addressed the desirable areas for further development of international legal regulation of such counteraction both in Ukraine and in other countries. M. Bakayim (2021) shares an analogous opinion, emphasising the significance of considering international standards and foreign practices in combating domestic violence.

A prominent place in theoretical studies is occupied by the significance of the European Court of Human

Rights judgments in ensuring international standards for combating various manifestations of violence. Specifically, supporting the unity of international law in combating domestic violence, E. Demir (2021) addressed the increasing role of the European Court of Human Rights, which expands the possibility of protecting victims of domestic violence. V. Blaker Strand (2020) expressed an analogous position, emphasising the importance of integrating the regulatory framework of the European Court into the provisions of the European Convention on Human Rights. And such opinions are quite fair.

Researchers of the areas of legal counteraction to domestic and gender-based violence in the national criminal legislation of individual states also stress the issues of lawmaking and law enforcement that are important for analysis. Specifically, according to A-K. Wolf & M. Werner (2021), international and European conventions and treaties are important in shaping German criminal law aimed at protecting the rights of victims of gender-based sexual violence and domestic violence. However, not all problems have been overcome yet and the current German legislation does not fully follow international standards. Notably, analogous problematic provisions are inherent in Ukrainian criminal legislation.

Along with the analysis of international human rights law in general, the research of legal scholars is devoted to a wide range of issues, which are significant in terms of content and areas of regulation. Therewith, researchers analyse the national legislation of many countries that regulates criminal law measures to combat domestic and gender-based violence, addressing the need for legal protection of victims of violence. Thus, along with the opportunities offered by the introduction of criminal law measures and their undoubted demand, C. Barrington *et al.* (2022) note the desire of states to overcome economic insecurity as one of the ways to prevent violence against women. Considering the problem of protecting children as victims of domestic violence, I. Ismaidar & R. Rahmayanti (2023) point to the mandatory combination of legal, including criminal law, and social measures to counteract such violence. Particular attention is drawn to the significance of providing medical care and shelter, while respecting the confidentiality of the victim's identity.

The diversity of these areas of research and the theoretical provisions formulated by both domestic and foreign lawyers indicates the importance of the issues raised and confirm the need for further investigation on ways to counter domestic and gender-based violence. Despite the considerable number of theoretical studies and scientific publications devoted to the development of ways and forms of implementation of international legal standards, this issue requires priority attention of domestic lawyers. More efforts should be made to scientifically analyse the theoretical and practical factors that will contribute to the wider implementation

of both these standards and the positive experience of many countries in reducing the impact of domestic and gender-based violence on society in Ukraine.

The purpose of this publication was to analyse the problematic issues of implementation of international legal standards and to consider the practices of other countries in lawmaking in combating domestic and gender-based violence, with the subsequent formation of theoretically substantiated conclusions and recommendations for improving the current criminal legislation, the provisions of which prescribe liability for domestic violence and dangerous manifestations of gender-based violence.

Materials and Methods

To fulfil the purpose and solve the stated tasks, considering the specifics of the subject under study, the following methods were employed: terminological, systemic-structural, formal-logical, and comparative. The terms “domestic violence” and “gender-based violence” were studied using the terminological method. The systemic-structural method allowed for a comprehensive theoretical analysis of the legal acts of international law, Ukrainian legislation, and national legislation of a series of other countries for the purpose of consistent systematisation of such standards and legislative innovations. Using the formal-logical method, the study described the specific features of formation of criminal law provisions regulating liability for domestic and gender-based violence in the Criminal Code of Ukraine (the CCU)¹. The chosen methods created the basis for a comprehensive, logically structured analysis of the socially dangerous phenomenon of gender-based and domestic violence in terms of social response and deterrence by legal means.

The theoretical framework of this study included the findings of researchers and lawyers from Ukraine and a series of other countries. In preparing this study, the provisions of legislative acts were used – criminal law provisions that prescribe liability for gender-based violence, domestic violence in Article 126-1 of the CCU²; Laws of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men”³; “On Principles of Preventing and Combating Discrimination in Ukraine”⁴; Law of Ukraine No. 2227-VIII dated 6 December 2017⁵; Law of Ukraine No. 2229-VIII⁶ as well as a series of other regulations.

Based on the results of the study of these legislative acts, the study concludes that the above-mentioned regulations adopted over a period of almost two decades reflect the stages of a consistent legislative process of implementing international norms of human rights and freedoms protection into the national legal system of Ukraine. Their provisions provided legal regulation for the country’s state policy on ensuring equality between women and men in all spheres of political, social and economic life, preventing and combating gender-based violence, and countering any form of gender discrimination.

Results and Discussion

Gender-based violence is widespread in the world in its various forms. In Ukraine, an analogous tendency to commit such dangerous acts is observed. In 2023, the National Police of Ukraine received more than 291,000 reports of domestic violence. The number of criminal proceedings opened over these facts was almost twice as high as in 2022 (Department of Communication of the Ministry of Internal Affairs of Ukraine, 2023). According to the Ministry of Health, in 2023, 18% of women and girls aged 15 to 49 in Ukraine experienced intimate partner violence (All-Ukrainian action..., 2023). The considerable social danger of this phenomenon is also evidenced by the number of people convicted by Ukrainian courts for domestic violence. While in 2019 courts considered 227 proceedings with convictions for domestic violence, in 2023 the number of people found guilty was 1,537. In 2024, 138,745 offenders were brought to administrative responsibility under Article 173-2 of the Code of Ukraine on Administrative Offences⁷ (Judicial power of Ukraine, 2024). In 2020, 96,257 people in this category were identified, in 2021 – 104,928, which indicates a steady upward trend in recorded cases of domestic violence. Therewith, these data do not fully reflect the negative trends in domestic violence due to the impossibility of sufficiently recording socially dangerous manifestations of violence in the frontline and temporarily occupied territories, as noted by researchers at the JurFem Analytical Centre (2022).

It is fair to say that the current state policy of Ukraine in the field of prevention and containment of domestic and gender-based violence is characterised

¹ Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

² Ibidem, 2001.

³ Law of Ukraine No. 2866-IV “On Ensuring Equal Rights and Opportunities for Women and Men”. (2005, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/2866-15#Text>.

⁴ Law of Ukraine No. 5207-VI “On Principles of Prevention and Counteraction of Discrimination in Ukraine”. (2012, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/2866-15#Text>.

⁵ Law of Ukraine No. 2227-VIII “On Amendments to the Criminal and Criminal Procedural Codes of Ukraine for the Purpose of Implementing the Provisions of the Council of Europe Convention on the Prevention of Violence Against Women and Domestic Violence and Combating These Phenomena”. (2017, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/2227-19>.

⁶ Law of Ukraine No. 2229-VIII “On Prevention and Combating Domestic Violence”. (2017, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/2229-19>.

⁷ Code of Ukraine on Administrative Offences. (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80731-10#Text>.

by constant innovations and implementation of the most effective programmes and measures. The country has created a multidisciplinary legislative framework focused on this task, and the development of a system for the prevention of gender-based and domestic violence is based on international standards and international practices.

Ensuring gender equality through counteracting such forms of violence as domestic and gender-based violence is a vital area of Ukraine's state policy in its development for a significant period¹. Furthermore, it is necessary and crucial to implement state response measures to protect the rights and interests of victims of domestic violence and gender-based violence (GBV). The state aims to develop and implement a programme of social and legal response to domestic or gender-based violence to prevent and counteract these phenomena².

The process of implementing the principle of gender equality in international law was initiated by the UN Charter, which, among other fundamental principles, proclaimed the equality of men and women, stressing that there should be no restrictions on the rights of women and men to take part in the activities of all organs and structures of the UN itself³. The principle of equality between men and women was further developed in the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights of 1966⁴, as well as in other fundamental regulations of international law. International legal standards for combating domestic and gender-based violence have been further

implemented through the adoption of a considerable number of regulations aimed at combating violence against women specifically. Such is the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women⁵, the 1995 Beijing Declaration and Platform for Action⁶, the Resolution 1325, adopted by the Security Council on October 31, 2000 and a series of others^{7,8,9,10,11}. Each of these documents emphasises the critical and urgent dangers of discrimination based on sex and gender. Thus, it is emphasised that countries have obligations to take the necessary measures to eliminate discriminatory phenomena, any restrictions based on gender, and equality of women in political, economic, social, and other spheres of public life¹²; to introduce the concept of gender equality at the legislative level¹³. The UN Declaration on the Elimination of Violence against Women, adopted in 1993¹⁴, which, among other provisions, recognises that such violence is a powerful social factor that helps to keep women in a subordinate position compared to men. At the same time, it records the intensification of discriminatory processes in the societies of different countries through the introduction of legislative regulations and social norms.

The Council of Europe also carries out quite effective work in the field of human rights protection, gender equality, empowerment, and protection of women's interests, which has resulted in the adoption of a considerable number of regulations in EU member states and beyond. The European Convention for the Protection of Human Rights and Fundamental Freedoms¹⁵, as well as the European Social Charter¹⁶, the Declaration

¹ Decree of the President of Ukraine No. 722/2019 "On the Goals of Sustainable Development of Ukraine for the Period Until 2030". (2019, September). Retrieved from <https://www.president.gov.ua/documents/7222019-29825>.

² Decree of the Cabinet of Ministers of Ukraine No. 728 "The Concept of the State Social Program for the Prevention and Counteraction of Domestic Violence and Gender-Based Violence for the Period Until 2025". (2018, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/728-2018-%D1%80#Text>.

³ United Nations Charter. (1945, June). Retrieved from <https://www.un.org/ru/about-us/un-charter/full-text>.

⁴ International Covenant on Social, Economic and Cultural Rights. (1966, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_042#Text.

⁵ United Nations Convention on the Elimination of All Forms of Discrimination against Women. (1979, December). Retrieved from <https://ips.ligazakon.net/document/MU79K04R>.

⁶ Beijing Declaration. Adopted at the Fourth World Conference on the Status of Women. (1995, September). Retrieved from https://zakon.rada.gov.ua/laws/show/995_507#Text.

⁷ Resolution of Security Council No. 1325 "Women, Peace, Security". (2000, October). Retrieved from <https://nssu.gov.ua/genderna-rivnist/rezolyuciya-radi-bezpeki-oon-1325>.

⁸ Resolution of Security Council No. 1820. (2008, June). Retrieved from <https://regulation.gov.ua/documents/id72982/goals>.

⁹ Optional Protocol to the 1999 Convention on the Elimination of All Forms of Discrimination against Women. (1999, October). Retrieved from https://zakon.rada.gov.ua/laws/show/995_794#Text.

¹⁰ United Nations Millennium Declaration. (2000, September). Retrieved from <https://www.undp.org/sites/g/files/zskgke326/files/publications/MDGs%20Ukraine/202010/2020ukr>.

¹¹ United Nations General Assembly Resolution No. 70/1 "Transforming our world: The 2030 Agenda for Sustainable Development". (2015, September). Retrieved from <https://ips.ligazakon.net/document/MU15167>.

¹² United Nations Convention on the Elimination of All Forms of Discrimination against Women. (1979, December). Retrieved from <https://ips.ligazakon.net/document/MU79K04R>.

¹³ Beijing Declaration. Adopted at the Fourth World Conference on the Status of Women. (1995, September). Retrieved from https://zakon.rada.gov.ua/laws/show/995_507#Text.

¹⁴ The Declaration on the Elimination of Violence Against Women. (1993, December). Retrieved from <https://zakononline.com.ua/documents/show/165261-165261>.

¹⁵ Convention on the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.

¹⁶ European Social Charter (Revised). (1996, May). Retrieved from https://zakon.rada.gov.ua/laws/show/994_062#Text.

on Equality between Women and Men¹ and a series of others can be considered the fundamental regulatory document of the Council of Europe that laid the foundation for legal and social standards of equality.

The Committee of Ministers and the Parliamentary Assembly of the Council of Europe have developed and adopted numerous conventions and recommendations that promote the implementation of gender equality standards in Europe. Thanks to the implementation of these documents in the national legislation of European countries, including Ukraine, they help to combat domestic and gender-based violence. The concepts were gradually formed, the content of socially dangerous manifestations was defined, specifically, the terms “violence against women”, “gender-based violence”, “sex-based violence” were legislatively consolidated, while at the same time the above terms were distinguished.

At the same time, despite certain shortcomings in the existing legislation, specifically criminal law, Ukraine has built a fairly effective and comprehensive system of legal regulation of social relations in the area of ensuring equal rights and freedoms of Ukrainians regardless of sex and gender. It includes a set of inter-related and interconnected legislative provisions that are intended to ensure the effectiveness of state and social institutions and to fill it with binding regulations and measures of legal responsibility. The structure of the regulatory framework is based on the fundamental principles of equality of rights, freedoms, and opportunities, without any preferences, exclusions, or restrictions based on sex or gender. Equality of men and women in the political, economic, social, and cultural spheres of public life is guaranteed by Article 24 of the Constitution of Ukraine².

The practical implementation of these principles is ensured by the adoption of the above-mentioned laws of Ukraine. The basic provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention of 2017³) were implemented by the Law of Ukraine No. 2227-VIII⁴. Each of the laws consistently provides legal regulation and characterisation of such socially dangerous phenomena as discrimination and its various manifestations, gender-based discrimination

and violence, sexual harassment, and domestic violence. Thus, to implement international legal provisions, the Law of Ukraine No. 2227-VIII dated 6 December 2017⁵ amended a series of articles of the Criminal Code of Ukraine regulating liability for criminal offences against human life and health, as well as against sexual freedom and sexual inviolability. This law criminalises the manifestations of such socially dangerous phenomena as domestic violence and coercion into marriage (Articles 126-1 and 151-2 of the CCU)⁶. In addition, to prevent and counteract possible forms of violence in the family and kinship circle, including gender-based violence, all forms of violence against women, the CCU⁷ has been supplemented with provisions on the implementation of restrictive measures against perpetrators of domestic violence, as well as criminal liability for failure to comply with restrictive measures, restrictive orders, or failure to complete a programme for offenders.

Furthermore, legislators in Ukraine are focusing on the implementation of a series of other crucial international legal acts, such as UN Security Council Resolution 1325 on Women, Peace, and Security, based on which the National Action Plan was developed and approved⁸. The document sets out to protect citizens from any form of violence and discrimination based on gender, and to ensure effective social and legal practices to prevent domestic and gender-based violence. The decision taken by Ukrainian legislators to introduce the National Plan, as well as a considerable number of others, clearly confirm the practice of interpenetration of various elements of the criminal legal system of Ukraine and its supplementation with provisions and requirements of international legal standards, as well as the practices of lawmaking in other countries.

Along with the analysis of international legislation, the provisions of which have created the basis for the implementation of an effective domestic system of legislative provisions to combat gender-based and domestic violence, it is necessary to investigate the terms used to describe these socially dangerous phenomena. The definition, characterisation, and interpretation of the terms “gender-based violence” and “domestic violence” according to international standards and in their regulatory descriptions deserve theoretical reflection. The

¹ Declaration of the Committee of Ministers of the Council of Europe on the Equality of Women and Men. (1988, November). Retrieved from https://zakon.rada.gov.ua/laws/show/994_903#Text.

² Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/>.

³ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence. (2022, June). Retrieved from https://zakon.rada.gov.ua/laws/show/994_001-11#Text.

⁴ Law of Ukraine No. 2227-VIII “On Amendments to the Criminal and Criminal Procedural Codes of Ukraine for the Purpose of Implementing the Provisions of the Council of Europe Convention on the Prevention of Violence Against Women and Domestic Violence and Combating these Phenomena”. (2017, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/2227-19>.

⁵ Ibidem, 2017.

⁶ Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

⁷ Ibidem, 2001.

⁸ Resolution of Security Council No. 1325 “Women, Peace, Security”. (2000, October). Retrieved from <https://nssu.gov.ua/genderna-rivnist/rezolyuciya-radi-bezpeki-on-1325>.

Council of Europe Convention (Istanbul Convention)¹ identifies the following forms of violence against women: domestic violence, various forms of sexual violence, rape, and forced marriage. This Convention has become the basis for criminalising a series of socially dangerous acts that are manifestations of gender-based violence. Gender-based violence is also defined in the Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action (Inter-Agency Standing Committee, 2015).

In describing gender-based violence, researchers refer to the concepts prescribed in the above-mentioned international regulatory documents and scientific publications. Lawyers in Ukraine have analysed the content and features of the legal concepts of “domestic violence” and “gender-based violence”. M. Kachynska (2020) points out that gender-based violence is any form of violence that is motivated and conditioned by the interpersonal relations between men and women based on their gender. O. Dudorov & M. Havronyuk (2019) define this type of violence through such types of its manifestations as domestic violence, rape, sexual harassment. It is worth supporting the opinion of M. Repan & L. Panchenko (2022) that in defining the content of this violence, it is necessary to speak of violence as violence committed against a person because of their gender. Admittedly, gender-based violence is manifested in the offender's socially dangerous behaviour towards persons of a different gender or gender identity from the offender. T. Pertseva *et al.* (2021) offer a description of the content of psychological violence as a sign of domestic violence. The researchers consider threats of non-physical punishment, humiliation of human dignity, and deliberate devaluation of the victim's role and place in the relationship with the abuser to be its most common manifestations. Therewith, researchers suggest that psychological violence is more common in the behaviour of women, who in such circumstances act as abusers towards their husbands, partners, and children, parents, and other family members.

While not defining a generalised concept or characterisation of the phenomenon, the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)² lists a variety of dangerous acts that can be considered forms of gender-based violence in their various manifestations. The articles of the Convention define them in general terms as: physical violence;

psychological; sexual; economic; and domestic violence. In different circumstances, and in different ways, gender-based violence is fulfilled through the commission of socially dangerous acts, which are formalised as follows: persecution; rape; sexual harassment; female genital mutilation; forced sterilisation; forced abortion; forced marriage. Cases of sexual harassment, when committed through threats or intimidation, can also be considered a manifestation of gender-based violence³.

According to the results of the study of concrete areas of Ukrainian law enforcement and their compliance with international and European legal standards for combating these types of violence, it should be noted that there is no such term as “gender-based violence” in the criminal legislation of Ukraine. The terms “domestic violence”, “family violence”, and “sex-based violence” are used in criminal law. Also, the terms “physical and mental violence” are commonly used. With the supplementation of the Code of Ukraine on Administrative Offences with norms in Parts 1.15, 39-1 and 173-2, the term “gender-based violence” was introduced into the legal vocabulary⁴.

Most of the acts mentioned in the Istanbul Convention are criminalised by Ukrainian criminal legislation. Thus, the consolidation of coercion to marry in Article 151-2 of the CCU⁵ as an independent component of coercion to marry, as well as a series of others, is the result of the implementation of the provisions of Council of Europe Convention No. 2319-IX of 2022⁶. Furthermore, the Convention addresses the prevalence in different countries of such a socially dangerous phenomenon as forced marriage, which is primarily associated with discriminatory attitudes towards women and disregard for women's interests and rights in society. G.G. Zhukovska *et al.* (2020) highlighted coercion into marriage and marital relations, including deprivation of liberty in the family in the content of gender-based violence, considering women as victims of such coercion. Along with the significance of legal measures to counteract any form of gender-based violence, the researchers also point to the urgent need to build public rejection of violent models of family and cohabitation relationships. I. Vasylykivska (2022) considers such negative socially dangerous phenomena as gender inequality and gender discrimination as the basis for gender-based violence, specifically, forced marriage.

Gender-based violence is counteracted by implementing a system of necessary preventive measures

¹ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence. (2022, June). Retrieved from https://zakon.rada.gov.ua/laws/show/994_001-11#Text.

² Ibidem, 2022.

³ Law of Ukraine No. 2866-IV “On Ensuring Equal Rights and Opportunities for Women and Men”. (2005, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/2866-15#Text>.

⁴ Law of Ukraine No. 1604-IX “On Amendments to the Code of Ukraine on Administrative Offenses Regarding Strengthening Liability for Domestic Violence and Gender-Based Violence”. (2021, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1604-20#Text>.

⁵ Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

⁶ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence. (2022, June). Retrieved from https://zakon.rada.gov.ua/laws/show/994_001-11#Text.

that have been defined in the legislation of a series of European countries and Ukraine. States are looking for their own ways to minimise the negative impact of various manifestations of gender-based and domestic violence on society. And these innovations are becoming the subject of scientific research. Thus, O. Dmytrashchuk (2020) addressed the introduction of a rule on the right of Austrian law enforcement officers to forcibly evict offenders from their place of residence together with victims of violence, and to impose a ban on approaching this place. L. Ostapchuk (2023) noted that Belgian legislation prescribes a temporary ban on the abuser's residence in the same apartment as the victim of domestic violence as a restrictive measure, which justifiably results in the need to implement the positive practices of other countries in Ukrainian legislation and law enforcement practice. It is worth agreeing with the opinion of U. Mytnyk (2019), O. Lomakina (2020), V. Ladychenko *et al.* (2021) that the practices of countering legal measures, introduction of restrictive measures in the legislation of the United Kingdom, Greece, Spain, Germany, the Republic of Poland, and other European countries is also interesting for legislators and law enforcement agencies of Ukraine.

At the beginning of the first decade of the 21st century, a series of European countries introduced qualitative innovations in legislation aimed at ensuring gender equality and protecting women's rights from all forms of discrimination. These are the amendments to the legislation of the Republic of Lithuania that have been introduced to implement the above principle. Thus, a new wording of the Law of the Republic of Lithuania "On Equal Opportunities" was adopted¹. And changes and amendments to it continue to be introduced constantly.

The process of lawmaking is tireless. At any stage of development of social processes, there is both criminalisation and decriminalisation of various phenomena and acts, which is determined by the dynamics of socially dangerous acts and the intensity of their occurrence in the behaviour of citizens. The team of lawyers who worked on the draft of the new Criminal Code of Ukraine (Draft of the new Criminal Code of Ukraine, 2024) proposes to transfer concrete criminal offences from the current CCU to the future one, which prescribe liability for various manifestations of gender-based violence. These are, specifically, the proposed Article 4.5.4. Rape, 4.5.5. Acts of a sexual nature without sexual penetration, 4.6.4. Domestic violence. A new interpretation of the criminal offence is proposed by Article 4.5.7. of the Draft "Inducement of a child aged 14 to 18 to engage in sexual activity with a third party".

The provision proposed in the Draft Criminal Code on liability for "forcing or inducing a woman to remove or mutilate her genitals" (Article 4.5.9 of the Draft CCU) may be an innovation for the criminal legislation of Ukraine. This innovation raises a lot of questions. Thus, criminalised dangerous conduct is quite common in certain countries and among some peoples. This practice is mainly recorded in the countries of the African continent. However, it is necessary to answer the question of whether these phenomena are relevant or widespread in Ukrainian society. There are no such cases in the culture of Ukrainian society or in the worldview of Ukrainians, which calls into question the appropriateness of this rule. On the contrary, there are grounds to state that the proposed criminalisation of this act cannot be considered a positive step in ensuring effective counteraction to gender-based violence, as not all forms of such violence prescribed in international legal acts require criminalisation in Ukrainian legislation.

It is also important to address the shortcomings of lawmaking practice that can be observed in the work of Ukrainian legislators. An example of such a shortcoming is the merely partial resolution of the issue of implementing the recommendations made on 2 June 2017 by the European Commission against Racism and Intolerance (ECRI). In its recommendations, the ECRI suggested that Ukraine should include in the CCU, as an aggravating circumstance, the motive for committing an unlawful act related to a person's sexual orientation or gender identity (Conclusions of the Commission against Racism..., 2020). On 2 June 2020, the ECRI stated that the CCU² does not contain provisions that would establish liability for incitement to hatred or violence motivated by intolerance of a person's sexual orientation or gender identity.

Admittedly, Item 3 of Part 1 of Article 67 of the CCU³ recognises the commission of a criminal offence on the grounds of sexuality as an aggravating circumstance. This is the only circumstance in the article of the General Part of the CCU that can be considered as indicating the commission of an unlawful act because of a person's gender, and thus increases criminal liability. However, it cannot be argued that there is no other legal protection for a person based on their sexual orientation or gender identity in the CCU. And the opinion of the researcher L. Matveeva (2020), who believes that the Ukrainian legislator has ignored the above recommendations of the European Commission, is only partially agreed with.

To confirm this opinion, it is worth referring to a series of articles of the Special Part of the CCU. Thus, Part 2 of Article 127 of the CCU⁴ refers to torture

¹ Law of the Republic of Lithuania No. VIII-947 "On Equal Opportunities for Women and Men". (1998, December). Retrieved from <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/488fe061a7c611e59010bea026bdb259#:~:text=Article%201.&text=of%20the%20Law-,1.,to%20marital%20or%20family%20status>.

² Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

³ Ibidem, 2001.

⁴ Ibidem, 2001.

committed for the purpose of discrimination. The provision singles out the commission of such an act for reasons of racial, national, or religious intolerance¹. The norm does not include other motives or disclosure of motivation based on affiliation, specifically, gender or sexual orientation. At the same time, the content of motivation on the grounds of discrimination involves any form or method of restricting human rights, freedoms, and opportunities, including on the grounds of sex, sexual orientation, or gender identity. Criminal liability for discriminatory acts can be discussed in the context of the norm that defines liability for violation of equality of citizens based on their race, nationality, region, religious beliefs, disability, and other characteristics. Part 1 of Article 161 of the CCU² describes various forms of restriction of rights, as well as different privileges based on gender and, what is notable, on other grounds, as a sign of the objective side of this criminal offence. The content of such signs that lead to any restriction of the rights, freedoms, or interests of a person based on their sexual orientation or gender identity may constitute the offences under consideration.

Researchers' remarks are also observed in the analysis of domestic violence in terms of the characteristics of the criminal offence. Thus, V. Melyankov & G. Usatiy (2020) believe that domestic violence, when committed through economic violence, cannot in all cases be classified as criminal offences that infringe on the life and integrity of a person. At the same time, they propose criminalising domestic violence as an independent criminal offence when committed against a child. While there is some support for the legal opinion that the victim of violence should be defined as an object of economic interest, the proposal to include an independent offence in the CCU cannot be supported. This legislative innovation seems unnecessary and insufficiently substantiated. It would be more logical and necessary to add a qualifying feature to Article 126-1 of the CCU – commission of an act against a child. It would be appropriate to supplement this article with Part 2 – “Domestic violence against a minor under the age of 14 to 18” and Part 3 – “Domestic violence against a minor under the age of 14”.

Thus, the analysis of international legal acts shows their significant impact on determining the vectors of legal policy in Ukraine to achieve the goal of gender equality, on the formation of legal standards in lawmaking and law enforcement to effectively combat domestic and gender-based violence. A comparison of the legislative provisions of Ukraine and some European countries on the prevention of domestic violence shows that Ukrainian legislators have successfully implemented criminal law measures.

Conclusions

The results of the analysis of international legal acts, certain acts of legislation of European countries, and provisions of Ukrainian legislation on preventing and combating gender-based and domestic violence allow concluding that this task stays one of the critical ones in Ukraine today. The state policy in the field of combating the social phenomenon of domestic violence is implemented through the introduction of legislative provisions and regulatory requirements to overcome social problems that give rise to domestic and gender-based violence. One of the key objectives of such a policy is to introduce effective criminal and other types of legal liability, apply restrictive measures, restraining orders, and develop effective programmes for offenders. The implementation of these areas of state policy is ensured by the implementation of international legislation, the adoption of positive foreign practices through the development by Ukrainian legislators and the use by Ukrainian law enforcement officers of the most effective and efficient legal measures and social and public influence. Legal response measures play an essential role in the implementation of the modern paradigm of combating gender-based and domestic violence. The most repressive among them are the measures of criminal legal influence provided for in the norms of both the General and Special Parts of the Criminal Code of Ukraine.

A comparison of the legislation of Ukraine and a series of European countries on the prevention of domestic violence suggests that Ukrainian legislators have a positive practice of implementing regulatory measures of a criminal law nature, restrictive civil law orders, and social programmes for offenders. It is noteworthy that the criminal legislation of Ukraine includes a series of restrictive measures for perpetrators of domestic violence, which are analogous to the special measures to combat domestic violence widely used in European countries, such as a ban on cohabitation in places where victims of domestic violence are staying; a ban on approaching the victims within a controlled distance, as well as a ban on any form of communication (correspondence, telephone calls, and other means of establishing contact), etc. It was stated that an effective measure to prevent domestic violence in most European countries is the application of restrictive measures against the offender, specifically, the forced removal of the offender from the victims' place of residence, a ban on communication, and the establishment of any contact between the offender and the victims.

The scientific analysis of the legal means of eradicating gender-based and domestic violence in terms of implementation of international legal standards and introduction of modern European practices in overcoming

¹ Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

² Ibidem, 2001.

these socially negative phenomena confirms the need for prompt improvement of the provisions of Ukrainian criminal legislation regulating liability for domestic violence and gender-based violence, which will facilitate their effective and efficient application in law enforcement practice.

Further scientific research is warranted by the ongoing process of lawmaking in the paradigm of international legal regulation and the constant search by

Ukrainian legislators and lawyers of other European countries for ways to overcome the socially dangerous phenomena highlighted above.

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Conflict of Interest

None.

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Міжнародні правові стандарти й досвід європейських країн протидії домашньому та гендерно зумовленому насильству

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Анотація

Актуальність дослідження полягає в необхідності вдосконалення правових механізмів боротьби з гендерно зумовленим насильством на тлі збільшення кількості військових конфліктів у світі, що створюють сприятливі умови для останнього. Мета статті – здійснення аналізу нормативних положень міжнародного законодавства, досвіду окремих європейських країн із запобігання виявам ненависті за ознаками статі й гендера, протидії домашньому насильству із застосуванням заходів кримінально-правового характеру. Було констатовано, що правові стандарти, визначені нормативними актами міжнародних організацій, міжнародними договорами й конвенціями, є базисом для національних і регіональних стандартів протидії домашньому та гендерно зумовленому насильству. Міжнародні правові постулати гендерної рівності є визначеними нормативною базою Організації Об'єднаних Націй, Ради Європи, Європейського Союзу та Організації з безпеки та співробітництва в Європі, інших світових і європейських організацій положення щодо прав людини, визнані державами-учасницями цих організацій шляхом укладання двосторонніх та багатосторонніх договорів, імplementовані через ратифікацію, є основою для формування національних внутрішніх стандартів прав жінок, дітей, особи незалежно від статі. Сформульовано висновок, що національні стандарти гарантування та захисту прав людини у сфері гендерної рівності є впровадженням міжнародних стандартів і загальноєвропейських положень, їх упровадження в українське законодавство може достатньо повно й ефективно забезпечувати реалізацію правових заходів протидії домашньому та гендерно зумовленому насильству. Сформульовані в статті ідеї спрямовані на пошук дієвіших засобів кримінально-правового характеру в законотворчості та правозастосовній діяльності

Ключові слова:

міжнародно-правовий механізм протидії насильству за ознакою статі; загальноєвропейські стандарти; насильство за ознакою статі; запобігання домашньому насильству; обмежувальні заходи