

Problems of Implementation of the Provisions of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence in Ukraine's Legislation

How to cite this article [Chicago]: Levchenko, Kateryna, Mykola Legenkyi, Maryna Lehenka, & Roman Bogdanov. "Problems of Implementation of the Provisions of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence in Ukraine's Legislation". *Novum Jus* 18, no. 3 (2024): 155-177. <https://doi.org/10.14718/NovumJus.2024.18.3.6>

Kateryna Levchenko /
Mykola Legenkyi /
Maryna Lehenka /
Roman Bogdanov



Problems of Implementation of the Provisions of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence in Ukraine's Legislation

Kateryna Levchenko^{*}

Government Commissioner for Gender Policy (Ukraine)

Mykola Legenkyi^{**}

National Aviation University of Ukraine (Ukraine)

Maryna Lehenka^{***}

Vice-President of the NGO "La Strada-Ukraine" (Ukraine)

Roman Bogdanov^{****}

Doctoral student at Kharkiv National University of Internal Affairs (Ukraine)

Received: November 30, 2023 | **Evaluated:** February 8, 2024 | **Accepted:** April 10, 2024

Abstract

The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence is an important international instrument aimed at preventing and addressing violence against women and domestic violence. Ukraine, like other signatories of the Convention, continues to encounter basic scientific and practical challenges in implementing its provisions in national legislation in matters relating to domestic violence. This article identifies some of predicaments and impediments affecting the national laws of Ukraine making it difficult in aligning with international prescription. Ukraine continues to face numerous challenges when addressing violence against women and domestic violence, such as awareness and understanding among relevant stakeholders, insufficient funding, resistance from certain sectors of society, and weaknesses in the existing legal framework. The article concludes by suggesting some guidelines for addressing these challenges, such as emphasizing the importance of raising awareness, ensuring adequate funding, engaging with resistant sectors of society, and strengthening the legal framework. Continued efforts are necessary to fully implement the Convention and prevent violence against women and domestic violence in Ukraine.

Keywords: Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence; implementation; protection of victims of violence.

^{*} Doctor of Law, Professor, ORCID: <https://orcid.org/0000-0001-7688-455X>, e-mail: levchenkokateryna@yahoo.com

^{**} Doctor of Law, Professor, ORCID: <https://orcid.org/0000-0003-4179-1964>, e-mail: legenkyj@ukr.net

^{***} Doctor of Philosophy of Law, ORCID: <https://orcid.org/0000-0002-5413-2696>, e-mail: mlegenka@ukr.net

^{****} PhD in Law, ORCID: <https://orcid.org/0009-0004-4790-7627>, e-mail: bogdanov.roman@univd.edu.ua

Problemas en la aplicación de las disposiciones del convenio del consejo de Europa para prevenir y combatir la violencia contra la mujer y la violencia doméstica en la legislación de Ucrania

Kateryna Levchenko

Government Commissioner for Gender Policy (Ukraine)

Mykola Legenkyi

National Aviation University of Ukraine (Ukraine)

Maryna Lehenka

Vice-President of the NGO "La Strada-Ukraine" (Ukraine)

Roman Bogdanov

Doctoral student at Kharkiv National University of Internal Affairs (Ukraine)

Recibido: 30 de noviembre de 2023 | **Evaluado:** 8 de febrero de 2024 | **Aceptado:** 10 de abril de 2024

Resumen

El Convenio del Consejo de Europa sobre prevención y lucha contra la violencia hacia las mujeres y la violencia doméstica es un importante instrumento internacional destinado a prevenir y abordar la violencia contra las mujeres y la violencia doméstica. Ucrania, al igual que otros miembros de la Convención, sigue enfrentando desafíos científicos y prácticos básicos al implementar sus disposiciones en la legislación nacional en asuntos relacionados con la violencia doméstica. Este artículo identifica algunas de las dificultades e impedimentos que afectan las leyes nacionales de Ucrania, lo que dificulta su confirmación con la prescripción internacional. Ucrania sigue enfrentándose a aspectos de concienciación y comprensión entre las partes interesadas pertinentes, financiación insuficiente, resistencia de ciertos segmentos de la sociedad y deficiencias en el marco jurídico existente para abordar la violencia contra las mujeres y la violencia doméstica. El artículo concluye con recomendaciones para abordar estos desafíos, enfatizando la importancia de crear conciencia, garantizar una financiación adecuada, involucrar a los segmentos resistentes de la sociedad y fortalecer el marco legal. Es necesario continuar con los esfuerzos para implementar plenamente la Convención y prevenir la violencia contra las mujeres y la violencia doméstica en Ucrania.

Palabras clave: Convenio del Consejo de Europa para prevenir y combatir la violencia contra las mujeres y la violencia doméstica; implementación; protección de las víctimas de violencia.

Introduction

Aggrieved people in all circumstances in a society strongly desire protection against inhumane treatment. With the advent of both World Wars, a continuous recognition of the value of humanity continues to be at the center of every developed society, the control of which is the stand point of law by ensuring a peace and secure environment for everyone. The protection of human beings is not just a particular interest but an international and inherent right that every State must ensure to its citizens for a better society.¹

On 20 June 2022, the Verkhovna Rada of Ukraine ratified the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (hereinafter referred to as the Convention or the Istanbul Convention).² The Convention is an important document in the field of human rights protection and gender equality, i.e., the values on which the European Union is based. Ratification of this document was one of the conditions for Ukraine to obtain the status of candidate country for the EU and at the same time demonstrated that Ukraine shares European values and principles. The continuation of the Russian Federation's war against Ukraine and the large-scale armed invasion it ensued since February 2022 further actualized the need to ratify the Convention.

The ratification of the Council of Europe Convention marked both the completion of an important preparatory stage and the deployment of large-scale work on the implementation of European standards for preventing and combating violence against women and domestic violence, which should be based on a deep scientific understanding of this problem, which has long been the object of research in various fields of science.

¹ Serhii Ablamskyi *et al.*, "Ensuring Protection of the Rights of the Aggrieved Person in Criminal Proceedings through the Prism of Requirements of International Law Acts", *Journal of Legal, Ethical and Regulatory Issues* 23, Special Issue (2020): 1-7. Valerii Sokurenko, Oleksandr Morhunov and Serhii Ablamskyi, "Assessing the Scope of Legal Immunity in Modern Legal Science: The Need for Questioning Under Ukrainian Law", *Journal of Liberty and International Affairs* 9, no. 1 (2023): 268.

² The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) was adopted by the Committee of Ministers and opened for signature in Istanbul on 11 May 2011. The Convention entered into force on 1 August 2014 and recognizes gender-based violence against women as a violation of human rights and a form of discrimination.

The crime of domestic violence has become one of the criminal types, however, the increase in sentences and the application of punitive aggravating factors do not seem to intimidate culprits and their destructive effect on the ties of unity and affection within families.³

Methodology

The study is based on the dialectical method, which implies the need for a systematic study of the socio-psychological, political and regulatory situation that has developed in Ukraine since the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence, as well as the need to further deploy measures to implement its provisions.

In accordance with the purpose of the study, general scientific methods such as the hypothetical-deductive method, analysis and induction were used while working on this article. The hypothetical-deductive method was used to evaluate and forecast the effectiveness of measures for the implementation of the Istanbul Convention, while the analytical-synthetic and inductive methods helped to work out and summarize the ways and effectiveness of the implementation of the provisions of the Convention in European countries. In addition, special methods were also applied: Firstly, Conceptual and field-specific legal methodologies, which provided coverage of the situation regarding the ratification of this international legal document through a political and legal prism and with the use of legal terminology. Secondly, integrative cognition was employed to analyse the dialectic of normative-legal and organizational support for combating violence against women and domestic violence in the works of foreign and Ukrainian scientists.

The study used other general scientific and unique legal methods, which contributed to increase the complexity, consistency and wholeness of the study.

Theoretical Framework or Literature Review

Assessing the importance of the Istanbul Convention in terms of pan-European development, we fully agree with the scientific position of Onyshkevych (2022),⁴

³ Carlos Andrés Bernal Castro and Alfonso Daza González, “Criminal implications of the crime of domestic violence: A criminal-political study of the law 1959 of 2019”, *Novum Jus* 16, no. 2. (2022): 215–282.

⁴ Rostyslav Onyshkevych, “Issues in the Practice of Implementing the Istanbul Convention” (Conference paper, Teisinés Minties Šventė, 2022): 81-95.

who, analysing the problems of the practice of implementing the provisions of the Convention into national legislation, emphasizes the uniqueness of the experience of such implementation in each European country and calls for the analysis and generalization of such experience and its application in accordance with the characteristics of its region, people and gender situation. Onyshkevych also insists on the creation of a variety of dispositive by the Istanbul Convention, available for all member-states, which may be of use in the practical implementation of their obligations.

It should be noted that given the already mentioned urgency of the issue, as well as the uniqueness and diversity of ways to implement the Convention, the geography of such research is quite wide and covers almost all European countries.

Lange, Molter and Wittenius (2020)⁵ analyze ways to implement the Istanbul Convention in Denmark, Finland and Austria. The researchers emphasize that all three countries, fulfilling their obligations, chose to deploy a specialized and high-quality support system for women victims of various forms of violence, which is carried out by non-governmental organizations, funded and partially regulated by the state at the national, regional and even local levels. At the same time, a certain specificity is emphasized, which, in particular, is manifested in the organization of shelters for victims of domestic violence. In Finland, all shelters are coordinated, funded and controlled by the state, while in Denmark and Austria, civil society organizations take care of such shelters. All shelters in Finland and Austria are open around the clock and seven days a week, while in Denmark there are restrictions in this regard.

Stanciu's (2020)⁶ research is devoted to the analysis of measures taken by Romania in the process of harmonization of national legislation with the Istanbul Convention. The author draws attention to the systematic nature of this work, as it is regulated by the relevant National Strategy, which provides for ensuring the implementation of primary legislation through the adoption of secondary and tertiary legislation, providing quality assistance to all victims, ensuring response measures against those who committed violence, developing cooperation between all actors who

⁵ Katrin Lange, Sarah Molter and Marie Wittenius, "Violence against Women. On the implementation of the Istanbul Convention in Denmark, Finland and Austria", *Working Paper No. 21 of the Observatory for Sociopolitical Developments in Europe* (2020).

⁶ Calin Stanciu, "Transposing the Istanbul Convention Preventions into Romanian Legislation. Good Practice Examples in the Implementation of Public Policies in the DV and EO Field", *The 15th Edition of the International Conference "The European Integration Realities and Perspectives* 15, no. 1 (2020): 458-462.

must respond to violence, including non-governmental organizations, achieving the goal of “zero tolerance” to domestic violence. Coordination of these measures is entrusted to the National Agency for Equality.

The analysis of the implementation of the requirements of the Convention in the practice of combating gender-based violence in the Scandinavian countries confirmed the constructivism and harmonization of Nordic countries' policies in this area, which are based on a single approach consisting in zero tolerance for violence against women and domestic violence and the definition of freedom from violence as a necessary condition for an egalitarian society. Despite some differences in the tools and measures that predominate in different countries, their key focus area is prevention.

At the same time, Stubberud, Hovde and Aarbakke (2018)⁷ point to the existence of certain risks associated with coordination of efforts in an area where the problem actually extends to different sectors and different responsible parties. Thus, in some Scandinavian countries, the field of combating domestic violence is divided into at least three parts, with three different responsible authorities: sexual health is taken care of by the Ministry of Health, the Ministry of Justice is responsible for assessing committed violence, and prevention can largely be located in the Ministry of Education. Overcoming this fragmentation is facilitated by the development and implementation of joint plans to combat violence against women and domestic violence and plans for the implementation of the Istanbul Convention, as practiced by most Scandinavian countries.

The study of measures related to the ratification and implementation of the Istanbul Convention in Switzerland makes it possible to assert a systematic approach deployed in this country. Even in preparation for the ratification of the Istanbul Convention in 2011, Switzerland organized a discussion called the “pre-parliamentary consultation procedure”, which “aims to allow cantons, political parties and interested groups to participate in the formation of opinions and decision-making process of the Confederation”.⁸

⁷ Elisabeth Stubberud, Karin Hovde and Mari Helenedatter Aarbakke, “The Istanbul Convention the Nordic Way: The Nordic Countries' Implementation of a selection of paragraphs in The Council of Europe Convention on preventing and combating violence against women and domestic violence”, *Forlaget Nora*, (Norfold: KUN, 2018).

⁸ Matthieu Niederhauser, “Governmental human rights focal points in federal contexts: The implementation of the Istanbul Convention in Switzerland as a case study”, *Netherlands Quarterly of Human Rights* 39, no. 2 (2021): 140-160.

Such procedure was carried out taking into account the fact that the actions of the state related to the response to cases of domestic violence in this country are largely decentralized. In this regard, Switzerland used a two-tier network of civil servants to implement the Convention at both the federal and cantonal levels. Thus, according to the decision of the federal center, the implementation of the Convention at the cantonal level is carried out using a network of civil servants who act as government coordination centers for human rights (GHRFP) and are responsible for solving the problems of domestic violence.

Significant complications associated with the ratification of the Istanbul Convention arose in Bulgaria. Radosveta Vassileva emphasizes that the debate on this issue has taken on an epic scale and divided in half the specialists and civil society of this country. The sharpness of the controversy led to the withdrawal of the proposal in February 2018 by the Prime Minister of Bulgaria to submit a proposal to ratify this document from the Bulgarian Parliament. Moreover, 75 members of parliament have submitted a request to the Constitutional Court of Bulgaria to establish whether the Istanbul Convention complies with the Bulgarian Constitution, in particular Article 46, which defines marriage as a voluntary union between a man and a woman. As a result, the Constitutional Court ruled on the contradiction of the Convention to the Constitution of Bulgaria, which the author of the study defines as quite controversial. The arguments set out the position of judges on the wider scope of application of the Convention compared to its name, which could jeopardize the rule of law in Bulgaria and the already mentioned incompatibility of its individual provisions with the Constitution of the country. At the same time, criticizing this decision, the author referred to a separate opinion of some judges on the presence of non-legal factors of a political and socially conservative nature, which led to the publication of such a ruling, as a result of which Bulgarians are deprived of the protections they desperately need.⁹

We consider it appropriate to note that, in contrast to the analyzed, and, as established, rather controversial decision of the Constitutional Court of Bulgaria, the highest body of constitutional jurisdiction of Latvia recognized that the provisions of the Istanbul Convention correspond to the Constitution of Latvia. In particular, in the decision in case No. 2020-39-02 “On compliance with Article 3(c), Article 4(3), Article 12(1) of the Council of Europe Convention of 11 May 2011 on preventing and combating violence against women and domestic violence, it established that

⁹ Radosveta Vassileva, “Bulgaria’s Constitutional Troubles with the Istanbul Convention”, In: *Verfassungsblog: On Matters Constitutional* (Blog), 02 August 2018.

the scope of the Convention provides only for the elimination of violence against women and domestic violence and does not impose the adoption or introduction of any specific form of marriage or family. Moreover, the court concluded that gender-based violence still takes place in Latvia and mostly concerns women, therefore, the implementation of special measures against women is necessary and aimed at achieving effective equality between men and women.¹⁰

The urgency of the issue of ratification and implementation of the Istanbul Convention in Ukraine reasonably caused increased attention to this issue of researchers in the field of law. Consistently advocating the need for ratification of this international legal act by the Ukrainian Parliament, such scientists simultaneously consider ways of its further implementation and introduction into law enforcement activities.

Popov justifies the need to ratify the Convention with its relevance, focused on the protection of the rights, freedoms and duties of man and citizen, as well as the results of the study of public opinion on this matter. In addition, scientists have identified ways to introduce this document into law-making and law enforcement activities, namely, bringing procedural legislation in line with the provisions of the Convention and domestic realities, as well as deploying special training for judges, prosecutors, National Police personnel and lawyers on combating domestic violence and training specialists of the relevant specialization.¹¹

Romanyshyn (2019)¹² emphasizes the need to ensure coordination and interaction between the ministries of social policy, justice, internal affairs, education and science, health care, other bodies and institutions entrusted with the functions of carrying out measures in the field of prevention and counteraction to domestic violence and gender-based violence and ensuring quick and unimpeded access to them for all those who need help and ensure the protection of the rights of victims, reducing the scale of this phenomenon in Ukraine as a whole.

¹⁰ Information regarding the judgment of the Constitutional Court of the Republic of Latvia in case no. 2020-39-02 on the compliance of the Istanbul Convention with the Constitution of Latvia. Constitutional Court of the Republic of Latvia. Official website.

¹¹ Georgy Vladimirovich Popov, "Peculiarities of implementation of the Istanbul Convention provisions in the legislation of Ukraine", *Human Rights Protection: International and Ukrainian Experience: Materials of 1st International Scientific and Practical Conference* (Kyiv: National Academy of Public Prosecutions of Ukraine, 2019): 501-504.

¹² Natalia Yurivna Romanyshyn, "Implementation of the Istanbul Convention provisions into the national legislation of Ukraine", *Human Rights Protection: International and Ukrainian Experience: Material of 1st International Scientific and Practical Conference* (Kyiv: National Academy of Public Prosecutions of Ukraine, 2019): 539-542.

Mazepa (2021)¹³ draws attention to the need to introduce a comprehensive approach to combating violence against women, which is the main task of the Istanbul Convention, monitoring and studying international practice, while focusing on the repressive nature of criminal justice and positioning the criminalization of acts as the last way of influence of the legislator.

Petrov (2021)¹⁴ draws attention to the requirements of the Convention in terms of preventing domestic violence against children, proposing, in particular, the development and implementation of appropriate large-scale preventive measures, the deployment of a system of professional training for specialists working with children in programs related to domestic violence, strengthening the protection and support of children who have witnessed or victims of violence, as well as a scientific study of the problems of domestic violence and justified adequate measures aimed at its prevention.

Investigating the problem of bringing the criminal legislation of Ukraine in line with the requirements of the Istanbul and Lanzarote Conventions (Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse), Davydovych and Zadoia (2019)¹⁵ state significant inconsistencies of the provisions of Ukrainian criminal legislation with the requirements of these international documents and propose to make appropriate amendments to the provisions of Chapter IV of the Special Part of the Criminal Code Ukraine. The authors believe that the laws of Ukraine No. 2227-VIII (2017), which amended the Criminal and Criminal Procedure Codes of Ukraine in order to implement the provisions of the Istanbul Convention, as well as No. 2334 -VIII (2018), which provides for amendments to the Criminal Code of Ukraine regarding the protection of children from sexual abuse and sexual exploitation, the approximation of the criminal legislation of Ukraine to the requirements of the Istanbul Convention and certain requirements of the Lanzarote Convention is not fully ensured. In

¹³ Svitlana Mazepa, "On the issue of implementation of the provisions of the Istanbul Convention into the criminal legislation of Ukraine", *State Policy on Combating Human Trafficking: Ukraine and the World: The International Scientific and Practical Conference*, (Lviv: Lviv State University of Internal Affairs, 2021): 118-121.

¹⁴ Volodymyr Vasylovych Petrov, "Some issues of implementation of the provisions of the Istanbul Convention on the protection of children's rights from domestic violence to the national criminal legislation", *Topical Issues and Prospects for the Development of Criminal Law, Criminology and Judicial Proceedings, Dedicated to the 186th Anniversary of the Birth Of Professor Cesare Lombroso: The Ukrainian Scientific and Practical Conference* (Kyiv: State University of Infrastructure and Technologies, 2021): 50-52.

¹⁵ I. I. Davydovych and K. P. Zadoia, "Problems of bringing the criminal legislation of Ukraine in line with the requirements of the Istanbul and Lanzarote Conventions", *South Ukrainian Legal Journal* 4, (2019): 93-97.

particular, it is emphasized that the wording "natural or unnatural sexual relations" in the current wording of part 1 of Article 155 of the Criminal Code does not cover all situations defined by the concept of "sexual activity with a child"; criminal liability for mutilation of female genitalia is provided to a lesser extent than is required by the Istanbul Convention; the criminal legislation of Ukraine does not cover all variants of the so-called sexual penetration without the person's consent, the criminalization of which is required by the Istanbul Convention; the criminalization of sexual violence, which is not characterized by sexual penetration; liability for persecution as a separate type of behavior is not provided for; etc. Due to the technical and legal defects of Article 153 of the Criminal Code, the current implementation of the Convention's provisions seems incomplete. It is worth noting that certain proposed provisions have already been implemented in the national legislation of Ukraine, such as changes to Article 155 of the Criminal Code, at the same time, changes regarding the criminalization of persecution remain relevant.

Kornienko and Berendeeva (2021)¹⁶, state the existence of a significant number of unregulated or insufficiently regulated issues in Ukrainian legislation on the protection of women from violence, emphasizing that it is the ratification of the Istanbul Convention that will remove these issues and bring national legislation in line with international standards, ensuring Ukraine's European integration movement and increasing its international standing and credibility.

The study of the issues of administrative and legal response to the commission of domestic violence by Legenka (2019)¹⁷ provided grounds for the researcher to fully justify the provision on the relevance and necessity of Ukraine's ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence. The content of this combat is based on the principles of international experience in preventing and combating violence against women and domestic violence and involves the deployment of a system for protecting women from all forms of violence, preventing their persecution, combating and eradicating domestic violence and violence against women, ensuring protection and assistance to all victims of such violence, facilitating, supporting and assisting all organizations and law enforcement agencies in their interaction and deployment of a comprehensive integrated approach to accomplish the eradication of this phe-

¹⁶ M. V. Kornienko and A. I. Berendeeva, "The Importance of Ratification of the Istanbul Convention for the Successful Fight Against Gender-Based and Domestic Violence in Ukraine", *Scientific notes of TNU named after V.I. Vernadsky. Series: Legal Sciences* 6, 32 (71), (2021): 64-69.

¹⁷ Maryna Lehenka, "Subjects of administrative and legal response to the commission of domestic violence and their powers", *Entrepreneurship, Economy and Law*, 3, (2019): 153-159.

nomenon, as well as promoting international cooperation in this area, which can be effectively used as a legal and strategic basis for the formation and development of relevant national legislation.

Azarova et al. (2021)¹⁸ raises the importance of implementing, developing and forming of gender policy in Ukraine in general and the fight against domestic violence in particular. In addition to purely political and organizational measures, the scientist substantiates the relevance for Ukraine of ratification of the Convention, exposing and proving the essence of the existing manipulations on this issue.

Results and Discussion

Domestic violence continues to occupy a place in today's contemporary society irrespective of the growth and evolution of civilization. This violence has caused notable effects on the status occupied by certain people in society such as children, women and other vulnerable groups which are specially exposed to the effects of domestic violence. The State of Ukraine, like other countries organized by the rule of law, is not exempted in issues of domestic violence, especially within the crisis that is plaguing the country. Domestic violence in the country remains a significant threat to fundamental human rights, with rampant violations that have diminished the value and dignity of individuals in society, despite the existence of numerous legal texts condemning such acts. This problem must be redress by the State by reinforcing its legal measures and ensuring adequate sanctions for all the perpetrators of this unprecedented pandemic which raids Ukrainian society.¹⁹

When preparing the ratification draft law by the Government of Ukraine, in order to counteract possible manipulations, an application to the ratification draft law was proposed, which was prepared considering the experience of Croatia and other Council of Europe countries that have already ratified the Convention.

Ukraine recognizes that the purpose of the Convention is to protect women from all forms of violence, prevention, criminal prosecution and elimination of violence

¹⁸ Azarova, V. et al. "Strategic communications in a hybrid war: a view from a volunteer to a scientist". Kompanitseva, L. (Ed.). Kyiv: National Academy of Security Service of Ukraine. (2021): 500.

¹⁹ Vlada Husieva, Serhii Lukash, Viacheslav Krykun, Oleksandr Morhunov and Kateryna Shapoval, "Conditions conducive to the domestic violence against the elderly based on the judicial and investigative practice of Ukraine", *Amazonia Investiga* 10, 46 (2021): 118-127; Voitsikhovskiy, A., Bakumov, O. Ustyomenko, and Lohvynenko Y. "The Role of International Organizations in the Protection of Human Right in Ukraine". *Novum Jus* 16, no. 2. (2022): 305-40. <https://doi.org/10.14718/NovumJus.2022.16.2.12>; Serhii Ablamskyi et al. "Reassessing views on preventing and combating domestic violence: theoretical and legal research". *Lex Humana* 15, no. 2. (2023): 228-243.

against women and domestic violence, which was also been committed against men and children (boys and girls). Ukraine does not consider any of the provisions of the Convention as obliging it to amend the Constitution of Ukraine and the Family Code, other laws of Ukraine on the institutions of marriage, marriage and adoption, as well as interfering with the right of parents to raise their children in accordance with their own beliefs. Ukraine notes that according to the Constitution of Ukraine, no ideology is recognized by the state as mandatory and not subject to implementation. Ukraine declares that it will apply the Convention in accordance with the values, principles and norms defined by the Constitution of Ukraine, in particular on the protection of human rights and fundamental freedoms, equality of rights and opportunities for women and men, gender identity, the formation of responsible motherhood and fatherhood, support for the family and the protection of childhood. Ukraine declares that as a result of the large-scale armed aggression of the Russian Federation, Ukraine's fulfillment of its obligations under the Convention in the temporarily occupied territories, in the Autonomous Republic of Crimea and the city of Sevastopol is not guaranteed until the full restoration of Ukraine's constitutional order in these territories. Any [Institutions] and their officials in the temporarily occupied territories, in the Autonomous Republic of Crimea and the city of Sevastopol are illegitimate and their activities are illegal if these bodies are created or persons are elected or appointed in a manner not provided for by the Constitution and the laws of Ukraine, and any acts (decisions, documents) adopted by them are invalid and do not create any legal consequences.²⁰

The path to ratification of the Convention began with its signing by Ukraine in November 2011 without any external pressure that became the consent to its ratification. Further, in accordance with the Constitution of Ukraine and the Law "On International Treaties", national legislation was brought into line with it, which should precede the ratification of the international treaty.

This stage of work is well known to practitioners because it was open, inclusive and performed in cooperation with the Government, MPs, international and public organizations. As a result, the Law "On Prevention and Counteraction to Domestic Violence" was adopted (to replace the Law "On Prevention of Domestic Violence", 2001), amendments were made to the Criminal and Criminal Procedure Codes, and the regulatory framework for their implementation was developed. It is also described in detail in the works of scientists in various fields of law, analyzed by

²⁰ Law of Ukraine No. 2319-IX (2022). "On Ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence". [in Ukrainian].

independent experts. The teams of authors have prepared two scientific and practical comments – one to the Law "On Prevention and Counteraction to Domestic Violence",²¹ the second one - to the Criminal and Criminal Procedure Legislation.²²

The practical implementation of the Convention took place through the enactment of the above-mentioned laws and the bylaws developed for their implementation. It included the criminalization of violence and ensuring the punishment of offenders, training specialists of all subjects of interaction in cases of domestic violence and gender-based violence, the development of services to assist victims, the creation of the Government hotline 1547 for the prevention of domestic violence and human trafficking, the opening of shelters, a subvention from the State Budget of Ukraine 2021 for the creation and development of assistance services for victims of violence, which was received by 124 communities, etc., conducting information campaigns and debunking myths around the Convention. Unfortunately, much of what has been done is now destroyed by Russian troops in Ukraine after Russia's large-scale invasion of Ukraine in 2022.

At the same time, understanding the importance of further implementation of the provisions of the Convention into legislation and practice will remain relevant. To ensure systematic work in this direction, the Government, together with partners from international and public organizations, has developed a Plan (roadmap) for the implementation of the provisions, standards and principles of the Istanbul Convention into the legislation and practice of its application. At the same time, special attention was paid to activities aimed at combating various forms of violence against women, as the legislation on combating domestic violence is quite developed in Ukraine. The aspects the implementation that require attention are those provisions of the Convention which relate to the formation of states' obligations to respond to violence against women in particular (rape, forced marriage, forced abortion, forced sterilization, mutilation of female genital organs, crimes for the sake of so-called "honour", persecution, sexual harassment). Practical steps in the activities to improve the legislation were the following:

²¹ Kateryna Levchenko, Mykola Legenkyi, Marina Legenka & Olha Dunebabinam, "Scientific and Practical Problems of Implementation of the Provisions of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence in the National Legislation Of Ukraine", *Scientific Works of National Aviation University. Series: Law Journal "Air and Space Law"*, Vol. 2 No. 71 (2024): 58-69.

²² O.O. Dudorov and M.I. Havroniuk (Ed.), *Responsibility for domestic violence and gender-based violence (scientific and practical commentary on the novelties of the Criminal Code of Ukraine)* (Kyiv: Vaite, 2019), 288.

(1) Updating the conformity assessment of the national legislation of Ukraine with the provisions of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the previous one was made in 2019 by the national expert Kozub). Moreover, such an updated assessment includes legislation adopted in 2017, which has been operating for almost 5 years and there is a need to determine which of the current norms are effective and which are not. For example, the idea of the Register of Victims of Domestic Violence and Gender-Based Violence, both in itself and in the form formed in the regulatory documents,²³ contradicts the principles of the Istanbul Convention, in particular confidentiality, anonymity and ensuring the interests of victims, and which provides for the need to collect generalized information, not personal data of victims. "The main threat is that the Register contains information on the personal data of victims, witnesses, people who have informed about the crime, and a significant number of people have access to the Register – from officials of the rural, district, city and regional levels – to the minister. This creates a potential danger of disclosure of information about personal data, which may adversely affect the fate of people".²⁴ This is contrary to the General Data Protection Regulation, according to which the confidentiality and non-distribution of such data must be guaranteed. Personal data should be stored using pseudonyms in order to avoid identification of a person without obtaining additional information.²⁵

The updated assessment was carried out at the request of the Government of Ukraine and with the support of UN-Women by scientists under the guidance of Cherniavsky and an expert group under the coordination of Legenka.

(2) Development of proposals for specific steps to further improve the legislation. This work is coordinated by Deputy Prime Minister for European and Euro-Atlantic Integration O. Stefanishyna, who is the Chairman of the Commission for coordination of interaction between executive authorities to ensure equal rights and opportunities for women and men. In particular, proposals such as anticipating the possibility of applying restrictive measures to those who commit violence against women, and not just domestic violence, are currently being considered; criminalization of gender-based violence and stalking (harassment); changing the disposition of the article regarding genital surgery; improvement of Articles 152, 154 of the Criminal Code; elimination of legal conflicts between Articles 152 and 155, 156 of the

²³ Resolution of the Cabinet of Ministers of Ukraine No. 234 (2019). "The procedure for the formation, maintenance and access to the Unified State Register of Cases of Domestic Violence and Gender-Based Violence". [in Ukrainian].

²⁴ Dudorov and Havroniuk (Ed.), *Responsibility for domestic violence*, 288.

²⁵ *Ibid.*

Criminal Code; inclusion of representatives of the executive service (public and private executors), specialists of consular institutions of Ukraine abroad in the circle of subjects in the field of prevention and counteraction to domestic violence; amending the legislation on local self-government; improving the dispositions of existing articles based on the practice of their application; paying attention to the issues of combating sexual violence during armed conflicts, which is especially important in the context of crimes committed by the Russian military in Ukraine, etc.

Another important area of further work is the implementation of scientific research on the extraterritoriality of the Convention and the resolution of issues related to the expansion of Ukraine's jurisdictions to situations of violence against Ukrainian citizens abroad, which is especially important in the situation of forced migration from Ukraine of citizens, among whom the absolute majority are women and children.

Ensuring the implementation of comprehensive changes to the legislation is possible by creating a joint working group with the involvement of interested Central executive bodies, other state structures and local self-government bodies, people's deputies, scientific institutions and scientists, development partners, international and public organizations under the coordination of the above-mentioned Commission on interaction of executive authorities to ensure equal rights and opportunities for women and men.

Further attention should be paid to bringing the national practice of combating all forms of violence in line with the standards of the Istanbul Convention. As the content of the Convention revolves around four main pillars: protection of victims of violence, punishment of offenders, proper warning and coordination, they need to be given new attention taking into account modern security threats and the continuation of the Russian Federation's large-scale war against Ukraine, Among these:

- Providing social assistance to all victims of violence and developing a network of shelters, monitoring and analyzing their operation and compliance with the principles of the Istanbul Convention. Further development of the redirection system.
- Increasing attention to the prevention and combating of all forms of violence against children.
- Continuing the localization process of the Istanbul Convention.
- Collaborating with communities to enhance local implementation efforts.

- Strengthening bilateral cooperation with countries hosting Ukrainian internally displaced persons.
- Implementing joint measures with nations that have ratified the Istanbul Convention.
- Regularly exchanging best practices for implementing the provisions of the Istanbul Convention, particularly in relation to Ukrainian migrants.
- Developing and introducing a new paradigm for working with offenders, as the current correctional system is ineffective.
- Addressing the needs of military personnel, veterans, and their families, as was prioritized during 2015–2016.
- Providing assistance to internally displaced persons.
- Updating training programs for specialists at all levels, incorporating topics related to various aspects of the Istanbul Convention beyond traditional training methods.
- Including in specialists' job descriptions, across all relevant sectors, requirements for knowledge and practical application of the Convention's provisions and corresponding national legislation, in alignment with the Law "On Prevention and Counteraction to Domestic Violence."
- Lastly, implementation of information campaigns must be deployed, aimed both at clarifying the provisions of the Istanbul Convention and countering manipulations around it. The latter direction of informing does not lose its relevance, as demonstrated by the speeches of some people's deputies during the discussion of the ratification of the Istanbul Convention, which showed that attempts to discredit it will continue.²⁶ According to Dunebabina (2022),²⁷ researcher of the issue of Russian manipulations around human rights and gender issues, "most of these manipulations are identical with the narratives of the Russian anti-gender and anti-democratic movement, which Russia distributed not only in Ukraine, but also in other European countries, in particular Bulgaria, Armenia, Lithuania, Latvia and Hungary, Georgia, Moldova".

²⁶ Transcript of the meeting of the Verkhovna Rada of Ukraine 20 June 2022. Discussion of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence. [in Ukrainian].

²⁷ Olha Dunebabina, "Istanbul Convention: manipulations around the ratification process and future implementation", in *The Current State and Prospects for the Development of the System of Prevention and Counteraction to Domestic Violence and Gender-Based Violence in the Context Of Global Challenges of Today: The International Scientific and Practical Conference* (Odesa: Helvetika, 2022), 15-17.

A year after the ratification of the Convention, the Council of Europe will begin monitoring the state of its implementation, which is carried out by the monitoring body of the GREVIO Convention – the Council of Europe Group of Experts on the Prevention of Violence against Women. Preparation for the first monitoring round includes training sessions for representatives of all responsible actors with the participation of GREVIO members and national and international experts.

Conclusions

Ukraine's ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence has become an important step in ensuring the counteraction to domestic violence and gender-based violence and the inclusion of our society in European values and standards. The member states of the Convention have gained considerable experience in this direction, the analysis and application of which can increase the effectiveness of public policy in Ukraine. Numerous scientific research results of Ukrainian scientists are devoted to substantiating the necessity and expediency of ratification of this document, as well as determining ways to ensure its implementation in law-making and law enforcement practice contributed to both the ratification itself and the definition of further steps in this direction.

This article is actually the first scientific attempt to summarize the scientific work of European and Ukrainian scientists after Ukraine's ratification of the Istanbul Convention, which was used to prepare for ratification and can be the basis for the implementation of further deployment of state-legal and socio-political measures for its implementation. Taking into account these theoretical provisions, specific ways of introducing the Convention have been proposed, namely, monitoring the already adopted legislation on combating domestic violence and improving it in view of compliance with the standards of the Convention; improving practices for protecting victims of violence and punishing offenders; increasing attention to preventing and combating all types of violence against children; strengthening bilateral cooperation with the countries in which Ukrainian citizens are located, as well as well as internally displaced persons in order to combat violence; updating training programs for relevant specialists and, lastly, launching an information campaign aimed at explaining the provisions of the Istanbul Convention and countering manipulation around it.

References

- Ablamskyi, Serhii, Valentyna Drozd, Oleksii Muzychenko and Olena Stativka. “Reassessing views on preventing and combating domestic violence: theoretical and legal research”. *Lex Humana* 15 no. 2 (2023): 228–243.
<https://seer.ucp.br/seer/index.php/LexHumana/article/view/2480>
- Ablamskyi, Serhii, Hennadii Hlobenko, Ruslan Chycha, Olena Martovytska and Iryna Burlaka. “Ensuring Protection of the Rights of the Aggrieved Person in Criminal Proceedings through the Prism of Requirements of International Law Acts.” *Journal of Legal, Ethical and Regulatory Issues* 23, Special Issue (2020): 1-7.
<https://www.abacademies.org/articles/Ensuring-protection-of-the-rights-of-the-aggrieved-person-1544-0044-25-SI-540.pdf>
- Azarova, V. et al. “Strategic communications in a hybrid war: a view from a volunteer to a scientist”. Kompantseva, L. (Ed.). Kyiv: National Academy of Security Service of Ukraine. (2021): 500.
http://http://fes.kiev.ua/n/cms/fileadmin/upload2/Book_28-06-2022_web-3.pdf
- Bernal Castro, Carlos Andrés and Alfonso Daza González. “Criminal implications of the crime of domestic violence: A criminal-political study of the law 1959 of 2019”. *Novum Jus* 16, no. 2 (2022): 215–282. <https://doi.org/10.14718/NovumJus.2022.16.2.10>.
- Davydovych, I. I. and K. P. Zadoia. “Problems of bringing the criminal legislation of Ukraine in line with the requirements of the Istanbul and Lanzarote Conventions”. *South Ukrainian Legal Journal* 4, (2019): 93-97. <https://doi.org/10.32850/sulj.2019.4.1.20>
- Dudorov, O.O. and M.I. Havroniuk (Ed.). *Responsibility for domestic violence and gender-based violence (scientific and practical commentary on the novelties of the Criminal Code of Ukraine)*. Kyiv: Vaite, 2019.
https://ukraine.unfpa.org/sites/default/files/pub-pdf/FNOON_Kommentar_A5.pdf
- Dunebabina, Olha. “Istanbul Convention: manipulations around the ratification process and future implementation”. In *The Current State and Prospects For The Development of the System of Prevention and Counteraction to Domestic Violence and Gender-Based Violence in the Context of Global Challenges of Today: The International Scientific and Practical Conference*, 15-17. Odesa: Helvetika, 2022, <http://surl.li/dhfpf>.
- Stubberud, Elisabeth, Karin Hovde and Mari Helenedatter Aarbakke. “The Istanbul Convention the Nordic Way. The Nordic Countries’ Implementation of a selection of paragraphs in The Council of Europe Convention on preventing and combating violence against women and domestic violence”. In *Forlaget Nora*. Norfolk: KUN, 2018, https://ntnuopen.ntnu.no/ntnu-xmlui/bitstream/handle/11250/2633543/stubberud_hovde_and_aarbakke_-the_istanbul_convention_the_nordic_way_2018.pdf?sequence=2

- Husieva, Vlada, Serhii Lukash, Viacheslav Krykun, Oleksandr Morhunov and Kateryna Shapoval. "Conditions conducive to the domestic violence against the elderly based on the judicial and investigative practice of Ukraine". *Amazonia Investiga* 10, no. 46 (2021): 118-127. <https://doi.org/10.34069/AI/2021.46.10.11>
- Information regarding the judgment of the Constitutional Court of the Republic of Latvia in case no. 2020-39-02 on the compliance of the Istanbul Convention with the Constitution of Latvia. Constitutional Court of the Republic of Latvia. Official website. <https://www.satv.tiesa.gov.lv/en/press-release/information-regarding-the-judgment-of-the-constitutional-court-of-the-republic-of-latvia-in-case-no-2020-39-02-on-the-compliance-of-the-istanbul-convention-with-the-constitution-of-latvia/>
- Korniienko, M. V. and A. I. Berendieieva. "The Importance of Ratification of The Istanbul Convention for the Successful Fight Against Gender-Based and Domestic Violence in Ukraine". *Scientific notes of TNU named after V.I. Vernadsky. Series: Legal Sciences* 6, Vol. 32 (71). (2021): 64-69. <https://doi.org/10.32838/TNU-2707-0581/2021.6/10>
- Lange, Katrin, Sarah Molter and Marie Wittenius. "Violence against Women. On the implementation of the Istanbul Convention in Denmark, Finland and Austria". *Working Paper No. 21 of the Observatory for Sociopolitical Developments in Europe* (2020). <https://beobachtungsstelle-gesellschaftspolitik.de/f/7abcbd5163.pdf>
- Law of Ukraine No. 2319-IX (2022). "On Ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence". [in Ukrainian]. <https://zakon.rada.gov.ua/laws/show/2319-20#Text>
- Lehenka, Maryna. "Subjects of administrative and legal response to the commission of domestic violence and their powers". *Entrepreneurship, Economy and Law*, 3 (2019): 153-159. http://dspace.univd.edu.ua/xmlui/bitstream/handle/123456789/8606/Subiekty%20administratyvno_Lehenka_2019.pdf?sequence=1&isAllowed=y
- Levchenko, Kateryna, Mykola Legenkyi, Marina Legenka & Olha Dunebabina. 2024. "Scientific and Practical Problems of Implementation of the Provisions of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence in the National Legislation of Ukraine". *Scientific Works of National Aviation University. Series: Law Journal "Air and Space Law"* 2 (71):58-69. <https://doi.org/10.18372/2307-9061.71.18790>
- Mazepa, Svitlana. "On the issue of implementation of the provisions of the Istanbul Convention into the criminal legislation of Ukraine". In: *State Policy on Combating Human Trafficking: Ukraine and the World: The International Scientific and Practical Conference*, 118-121. Lviv: Lviv State University of Internal Affairs, 2021. http://dspace.lvduvs.edu.ua/bitstream/1234567890/4147/1/08_10_2021.pdf#page=118

- Niederhauser, Matthieu. "Governmental human rights focal points in federal contexts: The implementation of the Istanbul Convention in Switzerland as a case study". *Netherlands Quarterly of Human Rights* 39, no. 2 (2021): 140-160.
<https://doi.org/10.1177/09240519211016947>.
- Onyshkevych, Rostyslav. "Issues in the Practice of Implementing the Istanbul Convention". Conference paper, *Teisinės Minties Šventė*, 2022: 81-95.
https://repository.mruni.eu/bitstream/handle/007/18310/Teisines_minties_svente-82-96.pdf?sequence=1&isAllowed=y
- Petrov, Volodymyr Vasylovych. "Some issues of implementation of the provisions of the Istanbul Convention on the protection of children's rights from domestic violence to the national criminal legislation". In: *Topical Issues and Prospects for the Development of Criminal Law, Criminology and Judicial Proceedings, Dedicated to the 186th Anniversary of the Birth of Professor Cesare Lombroso: The Ukrainian Scientific and Practical Conference*, 50-52. Kyiv: State University of Infrastructure and Technologies, 2021.
https://files.duit.edu.ua/uploads/%D0%A1%D0%B0%D0%B9%D1%82/3_%D0%9D%D0%90%D0%A3%D0%9A%D0%90/all-ukrainian-internet-conferences/all-ukrainian-conference-14-05-2021-new.pdf#page=50
- Popov, Georgy Vladimirovich. "Peculiarities of implementation of the Istanbul Convention provisions in the legislation of Ukraine". In: *Human Rights Protection: International and Ukrainian Experience: Materials of 1st International Scientific and Practical Conference*, 501-504. Kyiv: National Academy of Public Prosecutions of Ukraine, 2019.
https://dspace.uzhnu.edu.ua/jspui/bitstream/lib/31306/1/zahust_prav_ludunu.pdf
- Resolution of the Cabinet of Ministers of Ukraine No. 234 (2019). "The procedure for the formation, maintenance and access to the Unified State Register of Cases of Domestic Violence and Gender-Based Violence". [in Ukrainian]. <https://zakon.rada.gov.ua/laws/show>
- Romanyshyn, Natalia Yurivna. "Implementation of the Istanbul Convention provisions into the national legislation of Ukraine". In: *Human Rights Protection: International and Ukrainian Experience: Material of 1st International Scientific and Practical Conference*, 539-542. Kyiv: National Academy of Public Prosecutions of Ukraine, 2019.
https://dspace.uzhnu.edu.ua/jspui/bitstream/lib/31306/1/zahust_prav_ludunu.pdf
- Sokurenko, Valerii, Oleksandr Morhunov and Serhii Ablamskyi. "Assessing the Scope of Legal Immunity in Modern Legal Science: The Need for Questioning Under Ukrainian Law". *Journal of Liberty and International Affairs* 9, no. 1 (2023): 268.
<https://doi.org/10.47305/JLIA2391270s>
- Stanciu, Calin. "Transposing the Istanbul Convention Preventions into Romanian Legislation. Good Practice Examples in the Implementation of Public Policies in the DV and EO Field". *The 15th Edition of the International Conference "The European Integration Realities and Perspectives*, Vol. 15 no. 1 (2020): 458-462.
<https://dp.univ-danubius.ro/index.php/EIRP/article/view/54>

Transcript of the meeting of the Verkhovna Rada of Ukraine 20 June 2022. Discussion of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence. [in Ukrainian].

<https://www.rada.gov.ua/meeting/stenogr/show/8012.html>

Vassileva, Radosveta. "Bulgaria's Constitutional Troubles with the Istanbul Convention".

In: *Verfassungsblog: On Matters Constitutional* (Blog). 02 August 2018.

<https://nbn-resolving.org/urn:nbn:de:0301-20180803-101531-7>.

Voitsikhovskiy, A., Bakumov, O. Ustymenko, and Lohvynenko Y. "The Role of International Organizations in the Protection of Human Right in Ukraine". *Novum Jus* 16, no. 2. (2022): 305-40. <https://doi.org/10.14718/NovumJus.2022.16.2.12>