

EUROPEAN LAW AND PROTECTION OF WOMEN AGAINST VIOLENCE: HISTORY AND PROMOTION OF THE ISTANBUL CONVENTION

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Among gender issues, the issue of protecting women from all types and forms of violence, including domestic (family) violence, occupies a special place. At the international legal level, the most comprehensive definition of – domestic violence which includes not only physical violence, but also psychological, moral, economic coercion, the creation of various discriminatory conditions, as well as pressure, given the fact that the subject is female is enshrined in the fundamental documents, International law is actively developing tools aimed at comprehensively protecting women from all forms of discrimination and violence. However, there are many obstacles to the successful implementation of such norms in the national legislation of states. In this regard, the purpose of this article is to highlight the worldwide distribution of the most important international treaty in this area – the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence 2011 (Istanbul Convention), as well as the unfinished process of ratification of this convention in Ukraine.

Keywords: women's rights, international law, domestic violence, protection of women's rights, discrimination, gender equality, Istanbul Convention.

DREPTUL EUROPEAN ȘI PROTEJAREA FEMEILOR CONTRA VIOLENȚEI: ISTORIA ȘI PROMOVAREA CONVENȚIEI DE LA ISTANBUL

Printre problemele de gen, cea a protejării femeilor de toate genurile și formele de violență, inclusiv violența domestică (în familie) ocupă un loc important. La nivel de drept internațional, în actele fondatoare este fixată definiția cea mai largă a conceptului „violență domestică”, în care sunt incluse nu doar formele de violență fizică, dar și psihologică, morală, economică, crearea diferitelor condiții discriminatorii, și de asemenea constrângerea din motivul, că subiectul acestora este femeia. Dreptul internațional elaborează activ instrumentele, care sunt direcționate spre protejarea complexă a femeii împotriva tuturor genurilor de discriminare și violență. Dar pe calea implementării cu succes a asemenea norme apar o mulțime de obstacole. În legătură cu aceasta, scopul prezentului articol este iluminarea răspândirii mondiale a celui mai important acord internațional în acest domeniu – Convenția Consiliului Europei din anul 2011 privind prevenirea și combaterea violenței împotriva femeilor și a violenței domestice (Convenția de la Istanbul), și, de asemenea, nefinalizarea procesului de ratificare a acestui document în Ucraina.

Cuvinte-cheie: drepturile femeii, drept internațional, violență domestică, protejarea drepturilor femeii, discriminare, egalitate de gen, Convenția de la Istanbul.

LA LOI EUROPÉENNE ET LA PROTÉCTION DES FEMMES CONTRE LA VIOLENCE: HISTOIRE ET PROMOTION DE LA CONVENTION D'ISTANBUL

Parmi les questions de genre, la place particulière est occupée par la question de la protection des femmes contre tous les types et formes de violence, y compris la violence domestique (familiale). Au niveau juridique international, les documents fondamentaux consacrent la définition la plus large de la

notion de «violence domestique», comprenant non seulement les formes de violence physique, mais aussi la coercition psychologique, morale, économique, la création de diverses conditions discriminatoires, ainsi que les pressions dues au fait que le sujet est une femme. Le droit international développe vite des outils visant à une protection complète des femmes contre tous les types de discrimination et de violence. Donc, il existe de nombreux obstacles à la mise en œuvre réussie de ces normes dans la législation nationale. Alors, le but de cet article est de souligner la diffusion mondiale du traité international le plus important dans ce domaine – la Convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique 2011 (Convention d'Istanbul), ainsi que la processus inachevé de ratification de cette convention en Ukraine.

Mots-clés: *droits des femmes, droit international, violence domestique, protection des droits des femmes, discrimination, égalité des genres, Convention d'Istanbul.*

ЕВРОПЕЙСКОЕ ПРАВО И ЗАЩИТА ЖЕНЩИН ОТ НАСИЛИЯ: ИСТОРИЯ И ПРОДВИЖЕНИЕ СТАМБУЛЬСКОЙ КОНВЕНЦИИ

В гендерной проблематике особое место занимает вопрос защиты женщин от всех видов и форм насилия, включая домашнее (семейное) насилие. В основополагающих документах на международно-правовом уровне закрепляется наиболее широкий состав определения понятия «домашнее насилие», в которое входят формы не только физического насилия, но и психологического, морального, экономического принуждения, создание различных дискриминационных условий, а также давление по причине того, что субъектом насилия является женщина. Международное право активно разрабатывает инструментарий, направленный на комплексную защиту женщин от всех видов дискриминации и насилия. Однако, на пути успешной имплементации таких норм в национальные законодательства существует немало препятствий. В связи с этим, цель представленной статьи – осветить мировое распространение важнейшего международного договора в этой области – Конвенции Совета Европы по предотвращению и борьбе с насилием в отношении женщин и насилием в семье 2011 г. (Стамбульская Конвенция), а также незавершенный процесс ратификации данного документа в Украине.

Ключевые слова: *права женщин, международное право, домашнее насилие, защита прав женщин, дискриминация, гендерное равенство, Стамбульская Конвенция.*

Introduction

Violence against women and domestic violence continues to be one of the most pervasive human rights violations worldwide. This phenomenon affects women from all walks of life in all parts of the world, regardless of cultural, religious, economic, social or geographical characteristics. According to global estimates by the World Health Organization, every third woman in the world has experienced gender-based violence at least once in her life [1]. Gender-based violence against women is violence that is directed at a woman because she is a woman, or that clearly affects women [2, p. 4], has devastating consequences, both for the victims and for society as a whole. All over the world, women are

daily subjected to psychological and physical abuse, harassment, rape, mutilation, forced marriage or forced sterilization by their families. Recognition of the scale and impact of this scourge is essential if the fight to prevent violence against women and domestic violence is to be effective. Violence against women is clearly a violation of human rights and no tradition can justify this violation. The inability and/or refusal of political leaders to take a clear position on this issue contributes to the transfer of violence into the sphere of private life, as well as its perpetuation and even justification of acts of violence against women and domestic violence. Therefore, the elimination of gender-based violence should be a task and a priority for the executive, legislature and judiciary, public and human

rights organizations, women's rights groups and other NGOs, professional organizations and trade unions, the media and the private sector, educational institutions and community groups, regional and international structures and the general public.

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter referred to as the Istanbul Convention) [3] is an innovative and legally binding international treaty aimed at eliminating violence against women and domestic violence. The Convention [3] is the legal basis for the development and adoption of advanced strategies and measures aimed at preventing and combating violence against women and domestic violence in states that have ratified it. The Convention [3] was developed in Europe, but its scope is global. Any state can accede to the Convention [3] or use it as a model for the development of national or regional legislation and policies.

The Istanbul Convention of the Council of Europe [3] is the most progressive and ambitious international human rights treaty aimed at eliminating violence against women. In 2012, the Spanish Observatory on Combating Domestic Violence and Gender-based Violence awarded the Council of Europe with the most prestigious award for its work on the elimination of gender-based violence in connection with the development of the Istanbul Convention [2, p. 13]. In 2015, the Convention received the prestigious Vision Award from the World Future Council, the Inter-Parliamentary Union and UN Women in recognition of its contribution to the fight against violence against women [2, p. 13]. The Istanbul Convention is called the “gold standard” [4] in the fight against gender-based violence.

Since the adoption of the Istanbul Convention [3] in April 2011, it has had a major po-

sitive impact on the status of women across Europe. It has contributed to the awareness of the European public of the urgent need to take action to combat violence against women and domestic violence. The Convention has served as the starting point for important progressive changes in national laws regarding gender-based violence.

However, all the standards laid down in the Istanbul Convention [3] can lead to long-term positive changes in the world only if the largest possible number of European and non-European countries sign, ratify and fully implement the convention.

The Istanbul Convention entered into force on August 1, 2014. Since then, it has been ratified by 35 countries - Turkey, Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Finland, Estonia, France, Georgia, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Macedonia, Malta, Moldova, Monaco, Montenegro, the Netherlands, Norway, Poland, Romania, Portugal, San Marino, Serbia, Slovenia, Spain, Sweden, Switzerland [5]. The Council of Europe is the continent's leading human rights organization and actively promotes the protection of women and girls from gender-based violence. The adoption of the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) has made the Council of Europe the leading organization for promoting gender equality, protecting women's rights and preventing gender-based violence [2, p. 11]. At present, the signing of the Istanbul Convention [3] and the introduction of its basic principles into national legislation is a legally optional, but civilizational integral part of the integration of Eastern European countries into the EU.

The Istanbul Convention was signed by Ukraine back in 2011, but has not yet been ratified due to protests from churches and conservative politicians against the term

“gender” used in it. The EU and a number of international organizations have repeatedly called on Ukraine to ratify the Istanbul Convention. The last such statement was made jointly by the EU, the UK, Norway, Switzerland and a number of international organizations on their resources on the International Day to End Violence against Women in 2021 [6]. The urgent and overdue for Ukraine problem of ratification of the Istanbul Convention [3] determines the relevance of the review of the Istanbul Convention [3] as the most important tool for protecting women’s rights, its history and promotion in the world.

In this review, the author used the logical method, the method of semantic analysis, as well as the comparative legal method.

Currently, domestic violence is a constant topic in international law studies, illustrating the many ways in which this right interacts with the domestic norms of national laws. The Istanbul Convention as an instrument of EU law for the protection of women’s rights has been deeply studied by a large constellation of European and English-speaking scholars, including J. Gardam [7], Klugman [8], S. Friedman and B. Goldblatt [9] and many others. However, their view characterizes the position of the EU and the British Commonwealth, while the review presented here is a view from Ukraine.

The essence and principles of the Istanbul Convention of the Council of Europe

The Istanbul Convention [3] is Europe’s first legally binding instrument specifically addressing violence against women and marks an important step towards greater gender equality. The Istanbul Convention [3] sets high standards for the protection of women in Europe. Therefore, member states are obliged to form a national legal framework to combat all forms of violence against wo-

men, to prevent and prosecute them. In addition, the Convention [3] highlights the relationship between women’s empowerment, i.e., gender equality, and the elimination of all forms of violence against women. The objectives of the Istanbul Convention in accordance with Part 1 of article 1 of this Convention are as follows: protect women from all forms of violence and prevent, prosecute and eradicate violence against women and domestic violence; contribute to the elimination of all forms of discrimination against women and promote genuine equality between women and men, including through the empowerment of women; develop a comprehensive framework, policies and measures to protect and assist all victims of violence against women and domestic violence; promote international cooperation to eliminate violence against women and domestic violence; provide support and assistance to organizations and law enforcement agencies in implementing effective cooperation for the adoption of a comprehensive approach to the elimination of violence against women and domestic violence [3]. To achieve these goals, the Istanbul Convention [3] draws on other international legal instruments, such as the Convention for the Protection of Human Rights and Fundamental Freedoms [10], as well as the case law of the European Court of Human Rights. In addition, it develops and refines the standards enshrined in the Convention on the Elimination of all forms of discrimination against women [11]. The scope of the Istanbul Convention [3] covers all forms of violence against women, including domestic violence, which affects women the most. The cornerstones of the Istanbul Convention [3] are the prevention of violence, the protection of victims and the prosecution of perpetrators. The Istanbul Convention [3] recognizes that the fight against gender-based violence can only be effective if states

pursue a comprehensive and coordinated policy.

The main beneficiaries of the Istanbul Convention [3] are women. This follows logically from its focus on combating forms of violence that only women suffer because of their female sex (such as female genital mutilation or forced abortions), or that women experience disproportionately more than men (domestic violence, forced marriage, forced sterilization, rape and other forms of sexual abuse, sexual harassment or stalking).

At the same time, the parties to the Istanbul Convention [3] are encouraged to extend its application to all who are at risk of or suffer from domestic violence, including men, children and the elderly. Thus, it is recognized that men are also subjected to some of the forms of violence covered by the Istanbul Convention, albeit less frequently and generally in less severe forms.

The Istanbul Convention consists of 81 articles, which are grouped into 12 chapters [3].

Article 3 of the Istanbul Convention defines the main terms used in the Istanbul Convention: “violence against women” is understood as a violation of human rights and a form of discrimination against women and means all acts of gender-based violence that lead or may lead to physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether in public or private life; “domestic violence” means all acts of physical, sexual, psychological or economic violence that take place within the family or at home or between former or current spouses or partners, whether or not the perpetrator lives in the same place that and the victim; “gender” means the socially fixed roles, behaviors, activities and characteristics that a particular society considers to be appropriate for women and men; “gen-

der-based violence against women” means violence that is directed at a woman because she is a woman or that affects women disproportionately; “victim” means any individual who is subjected to violence against women or domestic violence; “women” includes girls and teen girls under the age of 18 [3]. A detailed analysis of the definitions of these key concepts for the meaning of the convention proves that the convention is aimed at protecting women on the basis of gender, i.e., their belonging to women and recognizes as a woman a person who was born a woman; in the case of domestic violence, the circle of protected persons expands and includes children both sexes, sometimes disabled. Part 2 of the article 4 of the Istanbul Convention focuses on the need to prevent discrimination against women in the form of: enshrining in their national constitutions or other relevant legislation the principle of equality between women and men and ensuring the practical observance of this principle; prohibition of discrimination against women, including the use of sanctions where appropriate; repeal of laws and practices that discriminate against women [3]. Part 3 of the article 4 of the Istanbul Convention clarifies that compliance with the provisions of the Istanbul Convention by the Parties, in particular by taking measures to protect the rights of victims, must be ensured without any discrimination on the basis of sex, race, color, language, religion, political or other opinions, national or social origin, belonging to national minorities, property status, birth, sexual orientation, gender identity, age, health status, disability, marital status, migrant or refugee status, or other grounds [3]. This part is often the subject of speculation and is interpreted by opponents of this Convention as a desire to spread the ideas of sexual minorities, although in fact these provisions actually duplicate article 14 of the Convention for the Protection of Human Ri-

ghts and Fundamental Freedoms [10], as well as paragraph “a” of article 5 of the Convention on the elimination of all forms of discrimination against women, according to which States Parties must take all measures to change the social and cultural patterns of behavior of men and women in order to achieve the eradication of prejudices and the abolition of customs and all other practices that are based on the idea inferiority or superiority of one of the sexes or stereotypical roles of men and women [11]. The desire for equality between men and women is confirmed by Art. 6 of the Istanbul Convention, which requires the use of a gender approach to achieve equality between men and women [3]. Article 12 of the Istanbul Convention obliges its participants to take all necessary measures to introduce changes in the social and cultural patterns of behavior of women and men in order to eradicate prejudices, customs, traditions and any other practice that are based on the idea of inferiority of women or stereotyped ideas about the role of women and men, and encourages the active contribution of men and boys to the prevention of all forms of violence falling within the scope of this Convention [3].

The four fundamental principles of the Istanbul Convention [3] are: prevention; protection; prosecution; comprehensive policy. They are embodied in the concrete practical guidelines of the Istanbul Convention [3] on qualifying and combating forms of gender-based violence and domestic violence.

Chapter V of the Istanbul Convention describes those forms of violence against women that this Convention aims to combat and which must be criminalized in national legislation in order to fulfill obligations under the Istanbul Convention: psychological violence is intentional behavior that leads to serious damage to the psychological integrity of a person as a result of coercion or threats; stalking - intentional behavior in the form

of repeated threatening behavior directed at another person that causes her or him to fear for their safety; physical violence is intentional behavior, in the form of committing acts of physical violence against another person; sexual assault is the commission, without consent, of vaginal, anal or oral penetration of a sexual nature into the body of another person using any part of the body or object, or the commission of other acts of a sexual nature with a person without consent, or forcing another person to perform an act of a sexual nature, without consent, with a third party, forced marriage is the intentional conduct of forcing an adult or child into marriage; female genital mutilation; forced abortion; forced sterilization [3]. All of the above forms of violence must be criminalized and prosecuted, which does not exclude the protection of all victims from any further acts of violence in parallel with the criminal prosecution of the aggressors. Article 43 of the Istanbul Convention emphasizes that liability for offenses established in accordance with this Convention must occur regardless of the nature of the relationship between the victim and the person who committed the relevant acts of violence [3].

Chapter IV of the Istanbul Convention describes the necessary legislative or other measures to protect all victims from any further acts of violence, which consist in the establishment of general support services, specialized support services for any victims who are subjected to any form of violence falling within the scope of this Convention, the creation of appropriate, easily accessible enough shelters to provide safe accommodation for victims, especially women; the establishment of public, toll-free, 24-hour telephone hotlines to provide advice to applicants, confidentially or with due respect for their anonymity, in relation to all forms of violence falling within the scope of this Convention; setting

up adequate, easily accessible centers for victims of rape or sexual violence in sufficient numbers to provide medical and forensic examination, trauma support and counseling for victims; psychosocial counseling for children witnessing all forms of violence; providing victims with appropriate means of civil legal protection in relation to the person committing violent acts [3].

Article 49 of this Convention emphasizes that in investigations and trials in relation to all forms of violence falling under the scope of the Istanbul Convention, the rights of the victim should be a priority at all stages of criminal proceedings [3]. Article 50 of this Convention obliges the Parties to take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence falling within the scope of this Convention promptly and properly, by providing adequate and prompt protection to victims, and that responsible law enforcement agencies shall, promptly and appropriately, carry out prevention and protection against all forms of violence falling within the scope of this Convention, including the application of preventive operational measures and the collection of evidence [3].

Article 60 of the Istanbul Convention gives women the right to refugee status within the meaning of article 1, A (2) of the 1951 Refugee Convention in the event of gender-based violence against women [3].

Chapter IX of the Istanbul Convention establishes a mechanism for monitoring the implementation of the Convention by the Parties, which is carried out by an expert group on action against violence against women and domestic violence (hereinafter referred to as “GREVIO”) [3]. GREVIO is composed of a minimum of 10 members and a maximum of 15 members, taking into account gender and geographical balance, as well as multidisci-

plinary expertise. Its members are elected by the Committee of the Parties from candidates nominated by the Parties for a term of 4 years, renewable once, and are selected from among the citizens of the Parties [3]. GREVIO determines the appropriate means to carry out this monitoring procedure by approving a questionnaire for each assessment cycle, which will serve as the basis for the procedure for assessing the implementation of the Convention by the Parties. This questionnaire is sent to all Parties and they respond to it and to any other requests for information from GREVIO. The Parties shall submit to the Secretary General of the Council of Europe a report, based on a questionnaire, on legislative and other measures to give effect to the provisions of this Convention, for consideration by GREVIO. GREVIO considers the above-mentioned report and, based on all the information received and comments of the Parties, approves its report and conclusions on the measures taken by the Party concerned to implement the provisions of the Istanbul Convention, sends them to the Party concerned and the Committee of the Parties. The report and conclusions of GREVIO are published from the moment they are adopted, together with possible comments from the Party concerned [12]. The Parties submit GREVIO reports to their national parliaments. The Parliamentary Assembly of the Council of Europe regularly sums up the implementation of the Istanbul Convention [3].

The history of the adoption and dissemination of the Istanbul Convention in the world

In 2002, the recommendations of the Committee of Ministers of the Council of Europe on the protection of women from violence were adopted [13]. In 2006, a group of parliamentarians created the Women Without Violence Parliamentary Network with the aim

of actively engaging parliamentarians at all levels across Europe and beyond in raising awareness of this serious violation of human rights, as well as initiating, encouraging and advancing legislative and political changes to end gender-based violence. In 2006-2008 a pan-European campaign to combat violence against women, including domestic violence [14]. During its implementation, the need for harmonized legal standards to ensure that victims enjoy the same level of protection across Europe became apparent. In December 2008, the Committee of Ministers established a group of experts mandated to prepare a draft convention. For just over two years, this group, called CAHVIO (Committee for preventing and combating violence against women and domestic violence), has been developing a draft text. The Assembly of the Council of Europe actively participated in the discussion and development of the Istanbul Convention [15]. The final draft of the convention was prepared in December 2010. On April 7, 2011, the Istanbul Convention was adopted by the Committee of Ministers of the Council of Europe. On May 11, 2011, the Istanbul Convention was opened for signature on the occasion of the 121st session of the Committee of Ministers in Istanbul. On August 1, 2014, the Istanbul Convention entered into force after ratifications by 10 countries, eight of which were supposed to be members of the Council of Europe [5]. During the period from 2012 to 2021, 46 countries and the EU as a whole signed the Istanbul Convention, it was ratified by 34 of them, the first of them was Turkey in 2012, the last ratification by the Republic of Moldova on 10/14/2021 [16]. In 2018 alone, this convention entered into force in nine countries (Croatia, Cyprus, Germany, Estonia, Greece, Iceland, Luxembourg, North Macedonia and Switzerland), and in 2019 Ireland ratified the treaty [5]. To the great re-

gret of the world community, in March 2021, Turkey announced its withdrawal from the Istanbul Convention [5], which, most likely, was the result of another EU refusal to admit Turkey to the EU. Although opponents of the Istanbul Convention accuse it of destroying “traditional values”, part 5 of article 12 of this Convention reveals to us the true reason for all forms and types of opposition to the adoption and dissemination of this Convention - this is the requirement to reject the use of culture, customs, religion, traditions and so-called “reasons of honor” as a justification for any act of violence falling within the scope of this Convention [3].

Of particular interest is the impact of the standards of the Istanbul Convention [3] on the national legislation of the countries that have ratified it. In essence, the Istanbul Convention [3] imposes detailed obligations on states to introduce legislative responses to violence against women, in contrast to the much more general obligations placed on states by the European Court of Human Rights. The process of implementing the standards of the Istanbul Convention on the Protection of Women from Gender-Based Violence and Domestic Violence in national legislation is carried out under periodic monitoring by GREVIO and is guided by GREVIO recommendations in accordance with Art. Art. 66, 67, 68, 70 of the Istanbul Convention [3].

To provide information on legislative and other measures to implement all the standards of the Istanbul Convention in legislation and law enforcement practice, the participating States use the list of questions compiled by GREVIO [17]. Based on information received from the State, as well as informal reports from NGOs or national human rights institutions, GREVIO conducts a comprehensive assessment of the implementation of the Convention. The control process is based on a dialogue between the oversight body and

a wide range of national partners, including national parliaments [2, p. 25].

The Istanbul Convention also provides for an urgent investigation procedure that allows urgent action to be taken “to prevent serious, massive or persistent acts of violence covered by the Convention” [18]. If GREVIO decides that the situation requires immediate attention, it may initiate an investigation procedure and require the State concerned to urgently submit a special report. In addition, GREVIO can adopt recommendations that are not specific to any particular country, but are related to issues of interest to all participating States [3]. This procedure allows GREVIO to explain the key themes and concepts of the Istanbul Convention [3] for the effective implementation of its provisions in practice.

GREVIO evaluations have shown that many governments have failed to provide the necessary funding to fulfill their commitments to combat gender-based violence. In some countries, cutbacks in police funding have led to a reduction in the number of specialized units to deal with domestic violence or sexual crimes. In other countries, public funding for shelters and services needed for women and children to recover from abuse remains insufficient. Significant reductions in government funding for women’s rights organizations and other human rights NGOs limit their ability to provide assistance to victims. This entails not only disastrous consequences for the victims, who literally die, but is also a short-sighted policy. Studies have shown that gender-based violence has a long-term negative impact on the economy (in terms of health care costs, missed work days and other very tangible costs) and, therefore, on society as a whole [2, p. 45].

In 2017, GREVIO submitted to Austria its report on Austria’s implementation of the provisions of the Istanbul Convention.

GREVIO called on the Austrian authorities to ensure that the long-term needs of all female victims and their children are met by ensuring an adequate level and stability of funding (proposal 28, paragraph 111 of the GREVIO report on Austria’s implementation of the provisions of the Istanbul Convention) [19]. In April 2019, a proposal was submitted to the legal committee of the Austrian National Council to develop a long-term strategy to combat all forms of violence against women, following the recommendation of GREVIO to develop a long-term plan or strategy that would give the necessary attention to all forms of violence defined by the Istanbul Convention, and which would provide for permanent long-term financing of sustainable and comprehensive measures in this direction [2, p. 33].

Between 2016 and 2019, Danish parliamentarians made about 200 inquiries on issues related to violence against women, eleven of which related specifically to the Istanbul Convention. Some of the requests related to the Government’s follow-up to the GREVIO Assessment Report on Denmark, including one to the Minister for Children and Social Affairs, who was asked to clarify the government’s position in response to the criticism expressed by GREVIO that the procedures necessary for making decisions on guardianship, Denmark does not provide adequate protection for women and children who have been subjected to domestic violence by a spouse or father [2, p. 34].

The role of the legislature in the implementation of the Istanbul Convention is also important. Parliamentarians, along with the executive branch, are responsible for bringing national norms in line with the norms of international treaties, including the Istanbul Convention [3]. For example, not all of the states that ratified the Istanbul Convention have brought their laws into line with

the standards of the Istanbul Convention [3] regarding rape - in some countries, the legislative definition of rape is based not on the absence of voluntary consent, but on the presence of coercion and the use of force, and this despite that psychologists have long known that a traumatic event can plunge a person into a state of shock, in which the victim will not resist out of fear that the perpetrator might kill her. Obviously, the outdated definition of rape is contrary to Art. 36 of the Istanbul Convention [3]. In other countries, there is an urgent need to end impunity and to abolish lenient sentences on the grounds that the perpetrator acted out of respect for their culture, traditions, religion or customs, or defended their “honor”. It is important to remember that instead of mitigating punishment, the Convention actually requires judges to increase the punishment if the crime is committed by a family member or by two or more persons acting in concert [2, p. 35].

The need for a legal definition of rape based on lack of consent is a recognized international human rights standard in Article 36 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and an obligation for parties to that Convention [20].

One of the most important achievements of this Convention was that many signatory states, including Germany, Sweden, Denmark, Croatia and Greece, eventually changed the interpretation of the term “rape” enshrined in national legislation. In 2018, the Swedish Parliament, in accordance with the provisions of the Istanbul Convention, passed a law recognizing that sex without consent is rape. This means that sex must be consensual, otherwise it is against the law. According to the new law, rape victims are no longer required to prove that the perpetrator used violence, threatened or took advantage of the vulnerable position of the victim [2, p. 37].

In general, the dissemination of the Istanbul Convention [3] in the world, its adoption and ratification by an increasing number of states should lead to legal “diffusion”, i.e. the spread of gender standards of non-discrimination and protection of women from all clearly defined, and possibly permissible, forms of violence, their transition from the international legal and constitutional levels to the level of the law enforcer represented not only by state authorities, but also by addressees in various social strata, including the family. This is the main goal-setting of the Istanbul Convention [3] as a new regulator specialized in women’s rights in comparison with the existing international legal regulators in this area.

Current Status and Prospects of the Istanbul Convention in Ukraine

The Istanbul Convention [3] was signed by Ukraine back in 2011, but has not yet been ratified due to a combination of various reasons, from protests of churches and conservative politicians against the term “gender” used in it to statements by more moderate politicians that in Ukrainian legislation has enough tools to protect women from domestic violence.

Since the emergence of the Istanbul Convention, Ukraine has been opposed to its ratification by the All-Ukrainian Council of Churches. In 2016, an attempt at the initiative of P. Poroshenko to ratify the Istanbul Convention ended in failure. In May 2020, a petition was created on the website of the President of Ukraine calling for the ratification of the Istanbul Convention, which received more than 25,000 votes [21]. President of Ukraine Volodymyr Zelensky, in response to this petition, said that he would submit a draft law on the ratification of the Istanbul Convention to the Verkhovna Rada after the Ministry of Foreign Affairs submits a corres-

ponding proposal [22]. In July 2020, the government of Ukraine announced that it was ready to submit a bill on the ratification of the Istanbul Convention to the Parliament. In March 2021, women's marches will be held in Kyiv, Kherson, Kharkiv, Zaporozhye, Poltava, Kramatorsk, Lviv, Ivano-Frankivsk, one of the main demands of the participants in the marches is the ratification of the Istanbul Convention. In June 2021, the head of the Ukrainian delegation to PACE, People's Deputy of Ukraine Maria Mezentseva announced that she expects the ratification of the Istanbul Convention by the Ukrainian parliament after the summer holidays in 2021 [21]. However, the situation with the ratification of the Istanbul Convention [3] by the Ukrainian parliament has frozen in one place and is far from over. It is necessary to analyze the reasons for the delay of the Ukrainian parliament with ratification.

The misconceptions caused by the misinterpretation of the terminology used in the Istanbul Convention [3] by conservative politicians were analyzed and dispelled by the author in the previous sections of this article. Obviously, the Istanbul Convention [3] is not among the European legal acts that protect the rights of LGBT people and focuses on the rights of women, although there are special acts that protect the rights of LGBT people. The fears of conservative politicians in this regard are nothing more than populism.

Much more interesting is the objection that Ukraine does not need the Istanbul Convention [3], because Ukrainian legislation has enough tools to protect women from domestic violence. Such a tool means the Law of Ukraine “On Amendments to the Criminal and Criminal Procedure Codes of Ukraine in order to implement the provisions of the Council of Europe Convention on Preventing and Combating Violence against

Women and Domestic Violence” dated 06.12.2017. No. 2227-VIII [23]. This law came into force on January 11, 2019, and in accordance with it, domestic violence is criminalized under Art. 126-1 of the Criminal Code of Ukraine, special programs for domestic rapists were introduced for domestic rapists and special services were created for people who suffered from domestic violence [23].

But so far, the practical result of these actions is more than modest: according to the statistics of the Ministry of Internal Affairs of Ukraine for 2019, 141,814 complaints about domestic violence were received, for 8 months of 2020 - 138,984 complaints about domestic violence, for 8 months of 2021 - 203,724 complaints about domestic violence, i.e., the growth dynamics of domestic violence +47% over the three years of the above-mentioned law [24]. Ukrainian law enforcers explain this by the difficult situation of isolation of individual families from society due to quarantine and the extremely scarce funding of programs to combat domestic violence by the Ukrainian government [24]. It is obvious that Ukraine in the fight against violence against women and domestic violence lacks European experience and practical developments of the main world expert on this issue - GREVIO. To receive GREVIO consultations, Ukraine must have the status of a country that has ratified the Istanbul Convention [3].

Conclusions

Obviously, having our own laws to combat gender-based violence against women and domestic violence is a good start, but clearly not enough to combat this evil. Firstly, the Istanbul Convention [3] covers those areas of Ukrainian legislation that need to be improved, for example, the organization of shelters, the socialization of victims, the

collection of statistics, etc. Secondly, by ratifying the Istanbul Convention [3], Ukraine will join those countries the situation in which is assessed by external experts who monitor the implementation of the Istanbul Convention [3] and can provide recommendations and practical developments for solving problems. Thirdly, by ratifying the Istanbul Convention [3], Ukraine will confirm its adherence to European values.

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