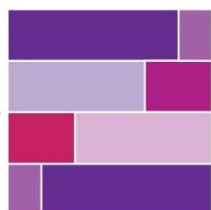


# PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE IN UKRAINE

## COMPLIANCE OF SELECTED UKRAINIAN LAWS WITH THE COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (ISTANBUL CONVENTION)

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# I. INTRODUCTION

## A. BACKGROUND

Over the last three decades, violence against women, including domestic violence, has received increasing attention by the International Community and subsequently in international law. During this period, several crucial steps have been taken: the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW hereinafter) in 1979, and the resolutions and recommendations adopted by its Committee<sup>1</sup>; the UN Declaration on the Elimination of Violence Against Women, 1993; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994; the Beijing Declaration, 1995; or the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2003; to name only a few. Hence there is a solid international legal *acquis* in the area of violence against women.

The Council of Europe has also adopted several resolutions and actions on violence against women, most notably the 1995 Action Plan, the Recommendation (2002)5 of the Committee of Ministers to Member States on the protection of women against violence and finally the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, also known as the Istanbul Convention. In fact, the Istanbul Convention is the most comprehensive and far-reaching treaty in the field, as it has benefited from previous standards and best practices. It also epitomizes modern human rights thinking, which has expanded to recognise that violence against women is a state responsibility. The Istanbul Convention entered into force on August 1<sup>st</sup> 2014 following 10 ratifications.

## B. THE VIOLENCE AGAINST WOMEN IN UKRAINE PROJECT

This report is part of the Preventing and Combating Violence against Women and Domestic Violence in Ukraine Project (the Project hereinafter). The Project, through legislative review, seeks to assist the Ukrainian authorities in improving the legal framework on violence against women and to bring it into compliance with the obligations of the Istanbul Convention.

The legislative review carried out within the Project encompassed two stages. The Ukrainian laws selected for the first stage of review were the following: 1) Criminal Code of Ukraine, April 5, 2001 (CCU); 2) Criminal Procedural Code of Ukraine, April 13, 2012, (CPCU); 3) Article 173-2 of The Code of Ukraine on Administrative Offences (including sanction and procedure) from December 7, 1984 (CUAO). Furthermore, the scope of the first review covered a law proposal closely related to the Istanbul Convention: the Draft Law on Preventing and Combating Domestic Violence (DLDV) prepared by the Ministry of Social Policy (MSP) and submitted on October 20<sup>th</sup>, 2014.

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<sup>1</sup> The most important opinion of the CEDAW Committee with regard to violence against women is *General Recommendation n° 19*, 1992.

After the first stage of legal review, the Project issued on November 1<sup>st</sup>, 2014, a preliminary report assessing compliance of these laws with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

The present report, which comprises and supplements the one issued on November 2014, extends the legislative review to the following laws and draft laws: 1) Family Code of Ukraine, January 10, 2002 (FC); 2) Civil Code of Ukraine, January 16, 2003 (CC); 3) Civil Procedural Code of Ukraine, March 18, 2004 (CivPC); 4) The Law of Ukraine on Social Services, 19 June 2003 (LSS); 5) The Law of Ukraine on Social Work with Families, Children and Youth, June 21, 2001 (LSW); 6) Regulation of the Cabinet of Ministers of Ukraine n° 896, November 21, 2013; 7) The Law of Ukraine on Free Legal Aid, June 02, 2011 (LLA); 8) The Law of Ukraine on State Statistics, September 17, 1992 (LSS); 9) The Law of Ukraine on ensuring Equal Rights and Opportunities of Women and Men, September 08, 2005 (LERO); 10) The Law of Ukraine on Education, May 23, 1991 (LE); 11) The Law of Ukraine on Legal Status of Foreigners and Stateless Persons, September 22, 2011 (LLSFSP); 12) Law of Ukraine on Refugee and Persons in need of Complementary or Temporary Protection, July 08, 2011 (LRPNATP); 13) The Law on Applying Amnesty in Ukraine, October 01, 1996 (LAA); 14) The Law of Ukraine on Advertising, July 03, 1996 (LA); 15) The Law of Ukraine of Fundamentals of Health Care, November 19, 1992 (LFHC); 16) The Law of Ukraine on Immigration, June 07, 2001 (LI); and 17) The Draft Law of Ukraine on Police and Police Activities, September 16, 2014 (submitted to the Verkhovna Rada of Ukraine on January 26, 2015, after being revised) (DLP).

This report also brings in comments and suggestions made to the preliminary report by the Project’s stakeholders, in particular the Ministry of Social Policy of Ukraine, Supreme Court of Ukraine and La Strada Ukraine.

## **C. NOTES ON METHODOLOGY**

### **1. Additional sources**

Any legal study on violence against women needs to take into account not only the Istanbul Convention but also other relevant international sources. It is important to notice that Ukraine ratified CEDAW in 1980 and its Optional Protocol in 2003. The country has also been a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms since 1997. Accordingly, this report construes the Convention’s standards in the light of relevant international norms and case law, in particular the recommendations and resolutions of the CEDAW Committee, the European Court of Human Rights (ECHR hereinafter) case law and the monitoring reports of the Recommendation (2002)5 of the Council of Europe.

Along with other international sources, this report has taken into account previous studies in the field. Civil society has been active in Ukraine and a significant amount of research has already been conducted in the area of violence against women and domestic violence. Such research acknowledges improvements and efforts but also shows enduring significant shortcomings. Accordingly, this analysis and ensuing recommendations draw on the work of other organizations in Ukraine, both national and international, such as that of the OSCE, and on research conducted

by NGOs such as La Strada Ukraine or the West Ukrainian Centre “Women’s Perspectives,” to name only a few.<sup>2</sup>

A third input came from the Istanbul Convention Working Group on Legislation Review. In fact, two meetings of the Working Group have been convened by the Project on two occasions. Firstly, during a two-day meeting in Kyiv in October 2014, which included representatives from the Ministry of Social Policy, Ministry of Justice, Supreme Court of Ukraine, Verkhovna Rada, General Prosecutor’s Office, NGO “Women’s Perspectives”, as well as a Ukrainian criminal law expert, Mr Mykola Khavronyuk.<sup>3</sup> The discussion centred on Chapters V and VI of the Convention, namely substantive criminal law and investigation. The Group analysed different proposed measures and the required changes in Ukrainian Criminal and Criminal Procedural Law.

Secondly, the Working Group on Legislation Review met in February 2015 to hold a strategic discussion on the legal and institutional framework needed to comply with the Istanbul Convention requirements. Participants included representatives of different Ukrainian ministries, the Verkhovna Rada, the Supreme Court, NGOs, and the General Prosecutor’s Office, among others.<sup>4</sup> The discussion centred on the different alternatives to implement the Istanbul Convention, given the various legislative and other measures that states parties may adopt to fulfil its requirements. In particular, the discussion focused on chapter II and the comprehensive, holistic approach the Convention requires in responding to all forms of violence against women.

The conclusions and recommendations of these meetings have been taken into account in order to translate some of the Istanbul Convention requirements into tailored recommendations for the Ukrainian context.

## **2. Recommendations**

This legal review intends to answer the following question: “What are the minimum legislative changes or additions to make Ukrainian law compatible with the Istanbul Convention?” Accordingly, this report and its ensuing recommendations have a limited scope and only intend to identify legal deficits and shortcomings, thus pointing at legal changes required by the Convention. Non-legislative measures fall outside the scope of this report. Moreover, this report focuses on non-compliance and therefore does not intend to acknowledge positive changes although there are many. Compliance with the Istanbul Convention of the laws reviewed is implicit unless otherwise stated.

Recommendations in this report are also constrained by two other reasons. On the one hand, this report covers only the above-mentioned pieces of legislation, meaning additional legal changes may be required to implement the Istanbul Convention in Ukraine. On the other hand, some required legal changes are interlocked, thus recommendations are necessarily conditional and they can only refer to the different alternatives available.

In some cases recommendations in this report are supplemented with suggestions made by the authors. These suggestions offer concrete proposals on how recommendations may be

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<sup>2</sup> The list of institutions and NGO does not intend to be exhaustive. There are several pieces of research in this area.

<sup>3</sup> See full list of participants in the appendices to the report.

<sup>4</sup> See full list of participants in the appendices to the report.

effectively implemented to correspond to obligations in the Istanbul Convention. Yet the Ukrainian authorities may apply the Istanbul Convention and this report’s recommendations in a different way. The suggestions made by the authors do not necessarily reflect the official position of the Council of Europe nor do they prejudice or affect the views of the monitoring mechanism of the Istanbul Convention.

### **3. Structure**

The Istanbul Convention follows a so-called four “p” structure: comprehensive policies, prevention, protection and prosecution. This report adopts this structure in most parts, yet in some parts the order of presentation has been changed in order to offer more comprehensive insight into relevant international obligations and their fulfilment by Ukrainian legislation.

Each section contains three parts: 1) what the Convention requires; 2) analysis of the Ukrainian legislation; and 3) Recommendations. Additional headings may be used to further explain specific issues. This report also includes two appendices with the list of experts attending each of the meetings of the Working Group on Legislation Review.

Finally, it is important to mention that the opinions expressed in this work are the responsibility of the authors and do not necessarily reflect the official position of the Council of Europe, nor does it bind in any way the future work of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) or that of the Committee of the Parties to the Istanbul Convention. Furthermore, this report has been written originally in English and is based on translations to English from Ukrainian laws. Errors from translation may result.

## II. GENERAL PRINCIPLES

### A. DEFINITIONS

#### 1. What the Convention requires

The Istanbul Convention defines its main terms in ARTICLE 3. These definitions are applicable throughout the Convention and are paramount to ensure an integrated, holistic response to violence. Whilst chapter V of the Convention lays out precise behaviours that should be criminalized, comprehensive definitions should guide policies, preventive measures and support services.

Article 3 paragraph a defines violence against women as “a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

Article 3 paragraph b states that domestic violence “shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.”

Article 3 of the Istanbul Convention also defines two other relevant terms: 1) gender, as the “*socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men*” and; 2) gender-based violence against women as “*violence that is directed against a woman because she is a woman or that affects women disproportionately*”.

#### 2. Assessment of the Ukrainian law

The current legislation of Ukraine does not contain any comprehensive or referential definitions of violence against women, gender-based violence against women or domestic violence, which has ramifications for the implementation of a comprehensive approach to these forms of violence. Ukraine would benefit from introducing clear definitions of these concepts in its legislation. It will allow its use in other interrelated laws (i.e. the laws of Ukraine on Social Services, on Social Work with Families, Children and Youth or on Education) and in relevant bylaws, guidelines and protocols. Definitions may also serve to determine the scope of action and competence of specialised institutions or units. The specific definitions may be subject to discussion among stakeholders and legal experts, although they should respect the scope of the Convention.

With regard to domestic violence, the only existing definition refers to “*family violence*” (see Article 1 of the Law on Prevention of Family Violence), which is defined as any intentional act of a physical, sexual, psychological or economic nature undertaken by a family member with respect to another family member, if this act violates constitutional rights and freedoms of this family member as a human being and a citizen, and causes him/her moral damage or harm to his/her physical or mental health. This definition does not reflect the concept of domestic violence as



contained in Article 3 paragraph b of the Istanbul Convention because it is narrower. Moreover, the scope of persons protected by the Law on Prevention of Family Violence also falls behind the standards of the Convention.

Article 1 of the Draft Law on Preventing and Combating Domestic Violence in Ukraine (DLDV hereinafter) contains a definition of domestic violence which aims to bring Ukrainian legislation in line with international standards. It includes a wide array of acts not only of physical but also of sexual, mental or economic nature. The scope of persons which would come under the remit of this new piece of legislation is also broadened (see: Article 6 DLDV). It is important to stress that although the draft Law introduces the concept of victims of “*domestic violence*” instead of “*family violence*”, the kinship it covers is not in compliance with the definition of “*family*” set out in ARTICLE 3 of the Family Code of Ukraine (2004), nor is it in line with the scope of domestic violence as defined in the Istanbul Convention.

The definitions contained in the last version of the Draft Law are overall better formulated and more inclusive than the ones contained in the law currently in force. The Office for Democratic Institutions and Human Rights of the OSCE concurs with this assessment.<sup>5</sup> However, they are still too generic and do not pinpoint the specificities of this form of violence.

### 3. Recommendations

- **Rec. 1 . Ukraine should introduce a definition of violence against women / gender-based violence in its legislation.**

*The authors of this report suggest that Ukrainian authorities decide, as a first step, in which piece of legislation they want to introduce such definition. As a result of the discussion held in February 2015, the Istanbul Convention Working Group on Legislation Review concluded that this definition would be better placed in the Law on ensuring Equal Rights and Opportunities of Women and Men.*

- **Rec. 2 . Ukraine should amend definitions of domestic violence and victims of domestic violence included in the Draft Law on Domestic Violence, in order to comply with the Istanbul Convention.**

*The authors of this report consider that definitions in the Draft Law on Domestic Violence needs to be amended at least to: 1) remove the term “intentional” from the definition of domestic violence; and 2) adapt the scope of the definition of victim to the range of relationships covered by the Convention.*

## B. GENERAL PRINCIPLES

### 1. What the Convention requires

The purposes of the Istanbul Convention are stated in Article 1, the most important ones being to protect women against all forms of violence; to prevent, prosecute and eliminate violence against women and domestic violence; and to contribute to the elimination of all forms of discrimination

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<sup>5</sup> Office for Democratic Institutions and Human Rights (ODIHR), *Opinion on the draft Law on preventing and combating domestic violence of the Republic of Ukraine*, OSCE, 2013 (hereinafter ODIHR Opinion).

against women and to promote substantive equality between women and men, including by empowering women.

Furthermore, Article 2 provides a broad and flexible scope, whereby states parties shall apply the Convention to all forms of violence against women, including domestic violence. States parties may also apply it to male victims of domestic violence. In any case, parties shall pay particular attention to women victims of gender-based violence in implementing the Convention. Paragraph 3 makes it clear that the Convention also applies in situations of armed conflict.

Articles 4 to 6 in chapter I contain human rights principles and obligations drawn from the existing European and international human rights framework. Accordingly, the Convention frames the international responsibility of states parties within three main principles:

**Human rights based approach and non-discrimination.** Article 4 places violence against women squarely as a human rights violation and so does the above mentioned definition in Article 3, part a). Accordingly, states must condemn, prohibit and combat discrimination against women. The Convention rests upon the understanding that the eradication of violence against women is firmly linked with achieving gender equality. Promoting substantive equality between women and men, including through women’s empowerment should then be an essential and integrated component of the state’s response to violence against women. As the Explanatory Report to the Istanbul Convention (Explanatory Report hereinafter) puts it, the Convention “*recognizes the structural nature of violence against women and that it is a manifestation of the historically unequal power relations between women and men. Consequently, the Preamble sets the scene for a variety of measures contained in the convention that frame the eradication of violence against women within the wider context of combating discrimination against women and achieving gender equality in law and in fact*” (Paragraph 25).

Furthermore, Article 4 paragraph 3 prohibits other grounds of discrimination in a broad antidiscrimination clause that should guide implementation. The Explanatory Report further explains that: “*The meaning of discrimination is identical to that given to it under Article 14 of the ECHR. The list of non-discrimination grounds draws on that in Article 14 ECHR as well as the list contained in Protocol No. 12 to the ECHR. It is worth pointing out that the European Court of Human Rights has applied Article 14 to discrimination grounds not explicitly mentioned in that provision*” (Paragraph 52).

**Due diligence.** Article 5 of the Convention upholds the due diligence principle, whereby states parties have the obligation to adopt positive measures to protect victims of violence and to prevent, investigate, punish and provide reparation for acts of such violence perpetrated by state and non-state actors. The due diligence principle is a long-standing and essential piece of human rights thinking and its development has triggered the inclusion of areas such as violence against women. It is important to say that it is not an obligation of result, but an obligation of means. Parties are required to organise their response to all forms of violence covered by the scope of this Convention in a way that allows relevant authorities to diligently prevent, investigate, punish and provide reparation for such acts of violence. Failure to do so entails state responsibility for an act otherwise solely attributed to a non-state actor.

**Gender perspective.** Article 6 calls upon parties to include a gender perspective in designing, applying and evaluating measures to implement the Convention. It also requires the effective implementation of policies on equality between women and men and the empowerment of

women. Thus the Convention affirms that violence against women, including domestic violence against women, is a distinctly gendered phenomenon.

## 2. Assessment of the Ukrainian law

The Istanbul Convention clearly spells out the links between a human rights based approach, non-discrimination and the eradication of violence. Accordingly, a primary obligation of Ukraine under the Convention is to enhance and protect the right to equality between women and men and to remove all legal provisions which entail discrimination.

In 2005, Ukraine took a positive step towards gender equality and the elimination of women’s discrimination by enacting the Law on ensuring Equal Rights and Opportunities of Women and Men (LERO hereinafter). Ukraine has also recently enacted, in 2012, the Law on the Foundations of Preventing and Combating Discrimination in Ukraine. However, the unique opportunity these laws offered to link the prevention of discrimination and the promotion of gender equality with the prevention and eradication of violence against women was lost as none of these laws refer to violence against women or domestic violence.

Regarding the due diligence standard, it should be noted that Ukraine lacks any specific legal or institutional framework to respond to violence against women. As stated before, the concept of violence against women is not incorporated in the legal framework of Ukraine and there are no dedicated measures or services to prevent and combat the various forms of violence covered by the Istanbul Convention except for family violence. However, partial legal frameworks such as laws on domestic violence do not suffice to meet the requirements of the Convention. This report will review relevant laws in the areas of prevention, protection and prosecution of violence against women and domestic violence and will draw attention to those aspects where legal changes or improvements are required to meet the due diligence standard.

Finally, Ukrainian legislation does not foresee any gender perspective in implementing specific measures directed to combat violence against women or domestic violence. For instance, the Law on Prevention of Family Violence, 2001, currently in force in Ukraine (Article 1), considers family violence as an action that “*violates constitutional rights and freedoms of the family member as a human being and a citizen*”, but is otherwise gender-blind. The draft Law on Preventing and Combating Domestic Violence in Ukraine (DLDV) is also gender-blind, meaning that it does not envisage a gender perspective. While states parties may undertake a gender neutral definition of domestic violence, policies and measures implementing the law need to pay particular attention to the needs of women.

## 3. Recommendations

- **Rec. 3 . Ukraine shall re-define the subjective scope of application of its laws and policies to ensure they address all forms of violence against women and domestic violence, while paying particular attention to women victims of gender-based violence.**

*The authors of this report suggest that Ukrainian authorities decide which laws and measures should be gender-specific (meaning they apply only to women victims of gender-based violence), if any, and which ones should be gender-neutral (meaning they apply to all victims of all forms of violence covered by the Istanbul Convention).*

- **Rec. 4 . Ukraine may improve its legal framework on anti-discrimination and on equality between women and men.**

*The authors of this report suggest adapting the definition of discrimination on the basis of sex in the Law on Equal Rights and Opportunities of Women and Men to ensure that all forms of discrimination against women (de jure, de facto, direct and indirect) are encompassed pursuant to Article 4 paragraph 2 of the Istanbul Convention. Furthermore, the Istanbul Convention Working Group on Legislation Review agreed that the Law on ensuring Equal Rights and Opportunities of Women and Men should be amended to recognise violence against women as a form of discrimination, thus establishing a linkage between these two policy areas.*

- **Rec. 5 . Ukraine should ensure a gender perspective in the implementation of the provisions of the Convention.**

*The authors of this report suggest amending the preamble of the DLDV to acknowledge the need for a gender perspective in implementing the law. Further, the authors also propose embedding a gender perspective in other relevant laws, such as the Laws of Ukraine on Social Services; Social Work with Families, Children and Youth; Education; Legal Status of Foreigners and stateless Persons; or Refugee and Persons in need of Complementary or Temporary Protection.*

### III. INTEGRATED POLICIES

#### A. *INTEGRATED POLICIES*

##### 1. What the Convention requires

An added value of the Istanbul Convention relates to its holistic, integrated approach to the phenomenon of violence against women, including domestic violence. The Convention organizes measures and policies around three main parts or “pillars”. It requires the PREVENTION of acts of violence against women, the PROTECTION against such acts and the PROSECUTION of perpetrators. Yet these are interlocking and interdependent pillars. An effective response system must be implemented taking into account how each part contributes to the overall structure.

Accordingly, the Convention explicitly requires the adoption and implementation of comprehensive and coordinated policies that offer a holistic response to all forms of violence against women, including domestic violence, sexual assault, forced marriage, female genital mutilation, stalking, forced sterilization, forced abortion or sexual harassment (Article 7). It requires parties to devise and implement such policies involving government agencies, the judiciary, police, social services, NGOs as well as national, regional and local parliaments and authorities (Articles 7 and 18 paragraph 2). The Convention also consistently requires states parties to provide sufficient financial and human resources (Article 8), and recognizes, encourages and supports the work of relevant non-governmental organizations and of civil society active in combating violence against women (Article 9).<sup>6</sup> Good practice examples in some states show that results are enhanced when law enforcement agencies, the judiciary, women’s non-governmental organisations, child protection agencies and other relevant partners join forces on a particular case, for example to carry out an accurate risk assessment or devise a safety plan. This type of co-operation should not rely on individuals convinced of the benefits of sharing information but requires guidelines and protocols for all agencies to follow, as well as sufficient training of professionals on their use and benefits.<sup>7</sup>

This coordinated, holistic approach to violence against women is deeply embedded in the Convention and operates in different ways, which will be spelt out in the following section. However, a key element to ensuring these requirements refers to the allocation of responsibilities within the state’s administration, meaning that the state party has to define the institutional and legal framework where policies in this area are to be integrated. The obligation to coordinate and integrate the state party response to violence against women also stems from the principle of due diligence discussed in the previous section.

As already stated, these provisions must be read in conjunction with the purposes of the Convention and the human rights principles framing them. Effective and appropriate

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<sup>6</sup> The CSW 57 Agreed conclusions on the elimination and prevention of all forms of violence against women and girls uphold the holistic response of the Istanbul Convention and its progressive understanding of violence against women and states responsibilities, p. 5 and 8.

<sup>7</sup> See also Paragraph 64, 65 of the Explanatory Report.

implementation should recognise that a combination of efforts from many sources is required for success; and that the rights of the victims should always be at the centre.

## 2. Assessment of the Ukrainian law

A major challenge for Ukraine in implementing the Istanbul Convention relates to coordinating and integrating policies on all forms of violence against women. The current situation is fragmented and focuses only on domestic violence. Victims of sexual violence, stalking, sexual harassment, forced marriage, female genital mutilation, forced abortion or forced sterilization lack an appropriate referential legal and institutional framework, meaning that there is no law ensuring the rights of these victims, nor is there any entity or branch of the Ukrainian administration in charge of coordinating policies in the area or providing support for victims. For instance, there is no legal basis for a state-wide action plan on violence against women.

Moreover, the limited legislative frameworks that exist in the area covered by the Convention are disconnected from each other. For instance, as already pointed out in previous sections, the Law on ensuring Equal Rights and Opportunities of Women and Men fails to provide linkages with any form of violence against women or with the Law on Family Violence and its institutional apparatus.

Institutional action in the field of domestic violence is more developed, but still with shortcomings. The ODIHR Opinion finds it positive that a wide range of entities are listed, including private companies, NGOs, individuals as well as institutions or other organizations, and that roles and responsibilities of such bodies are described in separate provisions<sup>8</sup>. Nevertheless it is still necessary to clarify the division of tasks between various categories of public bodies, the ways of multi-agency cooperation and the scope of powers of each of them in the final version of the Draft Law.

Finally, the Law on Social Services and the Law on Social Work with Families, Children and the Youth have an important role to play to cater for the needs of women and child victims and witnesses of all forms of violence covered by the Istanbul Convention. Institutions and entities involved in the delivery of social services shall be included in this multiagency cooperation system and their place in a comprehensive referral system shall be defined.

## 3. Recommendations

- **Rec. 6 . Ukraine should ensure an integrated and coordinated approach to all forms of violence against women. Accordingly, Ukraine should define an appropriate referential legal and institutional framework for all forms of violence against women and not only for domestic violence.**

*Ukrainian authorities have different legislative alternatives in implementing this recommendation. The Istanbul Convention Working Group on Legislation Review agreed that it is not advisable at this moment to develop a new law or new entities. The Working Group also considers it inappropriate to extend the current Law on Prevention of Family Violence or the draft Law on Domestic Violence to encompass other forms of violence against women. The Working Group deems preferable to use*

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<sup>8</sup> ODIHR Opinion, Paragraph 1 (c), 50-67.

*existing laws, such as the Law on ensuring Equal Rights and Opportunities of Women and Men or the Law on Social Services, to ensure the required integrated and coordinated approach to all forms of violence against women. Furthermore, the authors of this report believe that Ukraine should allocate clear responsibilities within its territorial administrations regarding measures and policies on violence against women and domestic violence. In particular, Ukraine should determine which administration units are responsible for allocating appropriate financial and human resources for these measures and policies, while taking into account the ongoing decentralization process.*

*The authors also suggest that Ukraine should ensure an appropriate linkage between policies on domestic violence, on violence against women and on the promotion of gender equality and non-discrimination.*

*On the other hand, the authors consider action plans as a useful tool to coordinate and implement measures and policies to combat violence against women and domestic violence. Accordingly, the authors suggest introducing a legal basis for adopting state-wide periodic action plans.*

- **Rec. 7 . Ukraine should establish a legal basis for the co-operation with relevant non-governmental organisations and of civil society active in combating violence against women.**
- **Rec. 8 . Ukraine may improve regulation of the institutional framework envisaged in the Draft Law on Domestic Violence.**

The authors of this report suggest that the DLDV should establish principles and means for effective cooperation and communication between state-bodies authorised to prevent and combat domestic violence. Moreover, bodies at the national and local level, relevant NGOs and civil society active in combating violence against women should be able to coordinate.

The authors also suggest that the DLDV must explicitly clarify which bodies (institutions) are empowered to accept victims' claims and what their further actions are. The draft law should also spell out the protective and supportive measures each body or institution should or will be empowered to provide to victims of domestic violence and who is responsible for the coordination of co-operation of relevant institutions.

## **B. COORDINATING BODY**

### **1. What the Convention requires**

Article 10 of the Istanbul Convention requires that the state party designates or establishes one or more official bodies responsible for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by the Convention. This body has a paramount role in securing the holistic approach discussed in the previous section.

Under Article 10 states should set up new official bodies or mandate bodies already in existence with these tasks. The term “*official body*” is to be understood as any entity or institution within government. Size, staffing and funding are to be decided by the state party, as well as its location



within the Administration (see Paragraph 70 of the Explanatory Report to the Istanbul Convention).

Tasks of the coordinating body include co-ordinating, implementing, monitoring and evaluating the policies and measures which the state party has devised to prevent and combat all forms of violence covered by the Istanbul Convention. Primarily, this body should ensure that such measures are well co-ordinated and lead to a concerted effort of all agencies and all sectors of government at the national and/or regional and local level. Bodies created under Article 10 of the Convention are also assigned with the task of co-ordinating the collection of the necessary data and to analyse and disseminate its results (see also next section on data collection).

Parties shall ensure that coordinating bodies in the field of domestic violence and violence against women have the capacity to communicate directly and foster relations with their counterparts in other states parties.

## **2. Assessment of the Ukrainian law**

The current legislation of Ukraine does not comply with the requirements of the Istanbul Convention as there is no coordinating body in the field of violence against women. The Law on Equal Rights and Opportunities of Women and Men establishes the Specially Authorized Central Executive Body on Ensuring Equal Rights and Opportunities of Women and Men (Article 7 LERO), which shall “*coordinate measures of ministries and other central executive bodies aimed at introducing gender equality*” (Article 11). According to the Regulation on the Ministry of Social Policy of Ukraine, 06.04.2011 № 389/2011, the Ministry of Social Policy of Ukraine is currently serving as such a body. However, it is not expressly entitled to play a role of catalyser of violence against women and domestic violence prevention and elimination policies.

With regard to domestic violence, Article 5 of the current Law of Ukraine on Family Violence defines the powers of the Specially Authorized Executive Agency for Family Violence Prevention, which does not fully comply with the tasks listed in Article 10 of the Convention. It should be noted that according to the Regulation on the Ministry of Social Policy of Ukraine № 389/2011, 06.04.2011, the coordinating body for family violence prevention is also the Ministry of Social Policy of Ukraine.

In the DLDV, Article 7 lists the special authorised agencies for preventing and combating domestic violence: the central executive authority with the competence to develop and implement a public policy on preventing and combating domestic violence; the central executive authority in Crimea, structural units of local state administrations and local governments with the competence to implement the public policy on preventing and combating domestic violence; and the offices of children's affairs. However, the draft Law does not clearly allocate coordination responsibilities nor does it indicate properly how the relevant activities at the local level should be coordinated.

## **3. Recommendations**

- **Rec. 9 . Ukraine shall designate or establish one or more official coordinating bodies on violence against women and domestic violence.**



*The authors of this report suggest that Ukraine ensures coordination and cooperation of all bodies established or designated to coordinate policies on violence against women, on domestic violence and on the promotion of gender equality. Further, the authors also recommend that local and regional authorities, relevant NGOs and civil society be able to participate in the monitoring and evaluating of policies.*

*On the other hand, the authors suggest establishing a mechanism for relevant agencies to share information with the coordinating body or bodies and to regularly report to it/them. Relevant bylaws or protocols should be amended accordingly.*

## **C. DATA COLLECTION AND RESEARCH**

### **1. What the Convention requires**

Preventing and combating violence against women and domestic violence requires evidence-based policy-making. Article 11 of the Convention contains the obligation to *regularly collect representative and comparable data*. The nature of this obligation is twofold. First, in order to design and implement evidence-based policies and assess whether they meet the needs of those exposed to violence, Article 11 requires states parties to collect *disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the Convention*. Relevant statistical data may include administrative data collected from statistics compiled by healthcare services and social welfare services, law enforcement agencies and NGOs, as well as judicial data recorded by judicial authorities, including public prosecutors (see: Paragraph 75 Explanatory Report).

Accordingly, public authorities such as the judiciary, the police and social welfare services will need to set up data systems that go beyond the internal recording needs of the agency. In order to show if there has been any progress or setbacks, relevant statistical administrative and judicial data should be collected at *regular intervals*. The usefulness and relevance of such data depend above all on the quality of its recording. The Convention leaves to the state party the choice of data categories used but there are minimum requirements that the Explanatory Report spells out: 1) data on victim and perpetrator should be *disaggregated* by sex, age, type of violence as well as the relationship of the perpetrator to the victim, geographical location, as well as other factors such as disability; 2) recorded data should also contain information on conviction rates of perpetrators of all forms of violence covered by the Convention, including the number of protection orders issued (Paragraph 75 and 76 Explanatory Report).<sup>9</sup>

On the other hand, Article 11 also establishes the obligation to support *research* in the field of all forms of violence covered by the Convention. This provision requires states to support research efforts in order to pursue further knowledge of the root causes and effects of the problem, incidences and conviction rates, as well as of the efficiency of measures taken (Paragraph 77 Explanatory Report). It is important to highlight the distinction between population-based surveys and statistical administrative and judicial data, as they serve different purposes and answer different questions. Using both types of data collection methods in conjunction can help gain an in-depth picture of the problem (Para 79 Explanatory Report).

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<sup>9</sup> See also the Council of Europe study on administrative data collection. Ruuskanen, E and Aromaa, K, *Administrative data collection on domestic violence in Council of Europe member states*, Council of Europe, 2008.

Finally, paragraph 4 of Article 11 contains the obligation to ensure that the information collected is available to the public. It is however left to the state party to determine the form and means, as well as the type of information that is to be made available. In making information collected pursuant to Article 11 available to the public, the state party shall pay special attention to the privacy rights of persons affected (Paragraph 82 Explanatory Report).

## 2. Assessment of the Ukrainian law

The Law of Ukraine on State Statistics (LS hereinafter) is the basic document in this field. It defines “*statistical information (data)*” as official state information which describes mass phenomena and processes occurring in the economic, social and other spheres of life of Ukraine and its regions (Article 1 LS). This law names a list of respondents and among them are legal persons, their branches, divisions, representative offices and other separate structural units (state and local authorities are included) as well as natural persons residing in Ukraine irrespective of their citizenship and groupings of such persons (Article 4 LS). However, the law does not establish a clear mandate to collect data on violence against women or domestic violence.

It is important to note that the Law on Statistics provides stable grounds for implementation of international standards in the field of statistics:

- Article 2, “*The legal basis of the state statistical activity,*” includes a reference to *Ukraine’s international agreements in the statistical sphere mandatory status of which was approved by the Parliament of Ukraine.*
- Article 3, “*State statistical policy,*” points out that state statistical policy is directed at establishing an integrated system of recording and statistics at the entire territory of Ukraine and *its adaptation to international standards and methodology.*
- Article 8, “*Statistical methodology,*” indicates that statistical methodology is based on results of scientific research, *international recommendations* taking into account specific national and historical aspects of the country.
- Article 26, “*International agreements,*” states that if binding consent is given by the Parliament of Ukraine to regulations that establish international agreements, *the regulations of international agreements have precedence over those set forth in this Law.*

Furthermore, the *Regulation of the Cabinet of Ministers of Ukraine # 145-p “On the Strategy of development of state Statistics for the period to 2017”, 20.03.2013*, is fully directed to incorporate international and European standards and requirements into the Ukrainian system of state statistics.

This legislative framework provides an opportunity to incorporate all requirements of the Convention into the current and future *plans of state statistical observations* endorsed by the Cabinet of Ministers of Ukraine (Article 9 LS). Currently, the *draft Plan of state Statistical Observations for 2014-2015*<sup>10</sup> does not encompass any dedicated data on the issues of domestic violence or violence against women (see i.e. the chapter on justice and criminality). Also it says nothing about the requirements for data collection and its disaggregated elements. On the whole, the Law on Statistics (as well as other pieces of legislation in the field of statistics) does not contain a gender perspective and consequently does not stress any issues concerning gender

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<sup>10</sup> The draft Plan of state Statistical Observations to the 2014-2015 <http://ukrstat.org/uk/menu/dkpl.htm>

equality or gender-based violence.

Finally, the Law on Statistics ensures regulation on public access to information which is in compliance with the relevant international standards and requirements of the Istanbul Convention (see: Chapter VI on the Right to Statistical Information and Access to it).

### **3. Recommendations**

- **Rec. 10 . Ukraine should ensure the collection of disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the Istanbul Convention.**

*The authors of this report suggest amending Article 3 of the Law on Statistics to fulfil this recommendation. The authors also suggest ensuring that this recommendation is incorporated into every "state statistical planning".*

- **Rec. 11 . Ukraine should support research in the field of violence against women and domestic violence.**

## IV. PREVENTION

### A. GENERAL PRINCIPLES

#### 1. What the Convention requires

Chapter III of the Istanbul Convention contains a variety of provisions that come under the heading of prevention in the wide sense of the term. Preventing violence against women and domestic violence requires far-reaching changes in attitudes of the public at large, overcoming gender stereotypes and raising awareness. Local and regional authorities can be essential actors in implementing these measures by adapting them to specific realities (Paragraph 83 Explanatory Report).

Article 12 of the Convention establishes a far-reaching framework of general obligations which stem both from the understanding of violence against women as *“one of the crucial social mechanism by which women are forced into a subordinate position compared with men”* and from the principle of due diligence. States parties shall prevent all forms of violence and encourage all members of the society to contribute actively to preventing them. In particular, parties shall *“promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.”*

States parties shall also ensure that culture, custom, religion, tradition or so-called “honour” is not invoked to justify any act of violence covered by the scope of the Istanbul Convention. For instance, the Explanatory Report specifies that *“this obligation extends to the prevention of any official statements, reports or proclamations that condone violence on the basis of the mentioned value systems”*.

Furthermore, states parties shall promote programmes and activities for the empowerment of women and take the necessary measures to encourage all members of society, especially men and boys, to contribute actively to preventing violence against women.

Preventive measures and policies shall also address the specific needs of persons made vulnerable by particular circumstances, like for instance pregnant women, women with small children, persons with disabilities, migrants and refugees or persons of national or ethnic minorities.

The Council of Europe has recently produced a paper on Article 12 that offers a theoretical framework on preventive measures together with practical examples.<sup>11</sup> The paper also contains recommendations to implement effective preventive measures that work to challenge gender stereotypes, involve men and boys, address the needs of vulnerable groups and empower women, as contained in Article 12 of the Istanbul Convention.

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<sup>11</sup> Hester, M, and Lilley, S, Preventing violence against women: article 12 of the Istanbul Convention, Council of Europe, 2014.

## 2. Assessment of the Ukrainian law

The only legislation addressing the need to tackle the structural roots of violence against women is the Law on ensuring Equal Rights and Opportunities of Women and Men. LERO sets out obligations to promote gender equality but does not expressly acknowledge the obligation of Ukrainian state institutions, executive bodies or local institutions to promote changes in patriarchal conceptions and behaviours and the elimination of gender stereotypes.

Moreover, LERO does not include measures to prevent violence against women or domestic violence. Accordingly, state programmes on equality and prevention of discrimination do not encompass violence against women within its purview. For instance, the Regulation of the Cabinet of Ministers of Ukraine # 717, 26.09.2013, the current *state programme on ensuring equal rights and opportunities of women and men*, includes detailed tasks, concrete plans of action in the field of gender equality as well as expected results. However, gender-based violence (named “gender violence” and “violence on the basis of sex”) is mentioned only twice in the section dedicated to the mechanism of fulfilling the right to protection from discrimination on the ground of sex and undertaking necessary measures in cases of such discrimination (Section X of the state programme).

For some time Ukraine has attempted to develop legislation aimed at preventing discrimination and other interrelated social problems. For instance, the Law on the Foundations of Preventing and Combating of Discrimination in Ukraine, 2012, prescribes the list of preventive measures to eliminate discrimination in Ukrainian society and provides the instrument of antidiscrimination expertise to ensure the compliance of Ukrainian legislation with the principle of non-discrimination. However, as stated above, domestic violence and violence against women are not covered by the scope of this law; therefore the measures preventing discrimination provided for therein do not fulfil the requirements of the Istanbul Convention.

On the other hand, the dedicated legal framework on domestic violence includes some preventive measures. The Law on Prevention of Family Violence, 2001, currently in force in Ukraine, defines “*family violence prevention*” as “*a system of social and special measures aimed at eliminating the causes and conditions that facilitate family violence; stopping family violence that is being prepared or is already in progress; bringing perpetrators of family violence to justice; as well as offering medical and social rehabilitation to victims of family violence*”. This definition includes preventive measures and measures for prosecution and reparation of violence, thus prevention is just understood as a synonym for the whole response system.

The Action Plan on Conducting the National Campaign “Stop Violence!,” 2011-2015, adopted by the Regulation of the Cabinet of Ministers of Ukraine # 2154-p, 01.12.2010, includes a list of preventive measures which mostly comply with the Convention’s standards. However, the Action Plan is dedicated only to domestic violence and ignores other forms of violence against women. Only paragraph 6 of the Action Plan mentions “*conducting of trainings and round-tables with mass-media in order to develop the culture of gender-equality*”.

The DLDV also provides a definition of “prevention of domestic violence”, which is understood as “the system of measures taken to raise public awareness of types of domestic violence and its consequences for victims of domestic violence, foster a zero tolerance approach of the public to violent relations and rehabilitate victims of domestic violence.” Such an approach is closer to the standards of the Convention. The DLDV also includes a dedicated Article (Article 11) on measures of prevention.

From the foregoing it follows that Ukrainian legislation does not offer an integral framework to prevent all forms of violence against women.<sup>12</sup> Measures are scattered across different laws and there is no explicit or implicit linkage between equality policies and the prevention of the forms of violence covered by the Convention. It is also important to note that preventive measures should be available to victims of all forms of violence against women. Partial legal frameworks such as laws on domestic violence will not suffice to comply with the Istanbul Convention.

### 3. Recommendations

- **Rec. 12 . Ukraine should provide an integrated legal framework for the prevention of all forms of violence covered by the Istanbul Convention.**

*The authors of this report suggest that Ukrainian authorities should introduce in its legislation specific and integrated preventive measures covering domestic violence, sexual violence, stalking, sexual harassment, forced marriage, FGM, forced abortion and forced sterilization.*

*In accordance with agreements on recommendations 1 and 6, the Istanbul Convention Working Group on Legislation Review considers that the appropriate legal framework to provide for preventive measures on violence against women is the Law on ensuring Equal Rights and Opportunities of Women and Men. Consequently, the Working Group deems advisable to expand the scope of action of the Specially Authorized Central Executive Body on Ensuring Equal Rights and Opportunities of Women and Men established in LERO to include the promotion of changes in the social and cultural behaviour of women and men with a view to eradicating prejudices, customs, traditions and other harmful practices which are based on the inferiority of women and on stereotyped roles for women and men.*

*Finally, the authors of this report strongly suggest that Ukrainian authorities take into account the paper produce by the Council of Europe on preventing violence against women.<sup>13</sup>*

- **Rec. 13 . The DLDV should extend the list of measures to prevent domestic violence in accordance with the Istanbul Convention.**

*The authors of this report suggest that the DLDV dedicates a whole section to prevention.*

## B. AWARENESS RAISING

### 1. What the Convention requires

Regarding awareness-raising, Article 13 of the Convention requires parties to support and fund periodic public awareness-raising campaigns on violence against women, including general campaigns sensitizing the population to violence against women as a manifestation of inequality

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<sup>12</sup> A good example of “preventive” legislation is the Law of Ukraine on combating of trafficking of people, 20.11.2011, which was developed with substantial support from European human rights institutions. It includes a dedicated chapter on “Prevention of trafficking of people” that may be taken into consideration in implementing the Istanbul Convention.

<sup>13</sup> See supra. note 11.

and a violation of women’s human rights. The Explanatory Report states that *“awareness raising activities should include the dissemination of information on equality between men and women, non-stereotyped gender roles, and non-violent conflict resolution in interpersonal relationships”* (Paragraph 91). The Explanatory Report also points out that campaigns shall also highlight *“the harmful consequences for children which violence against women and domestic violence may have in its direct or indirect form”* (Paragraph 92).

The Convention also requires specific awareness-raising campaigns designed to heighten knowledge of laws enacted to address violence against women and the remedies they contain and to disseminate information about available services offered to victims, including helplines and shelters. Cooperation with human rights institutions, equality bodies and NGOS is encouraged (Paragraph 92 Explanatory Report).

## **2. Assessment of the Ukrainian law**

There is no legal basis in Ukraine for awareness raising campaigns on violence against women nor is there any institution in charge of conducting or funding such campaigns. As mentioned above, the current Law on ensuring Equal Rights and Opportunities of Women and Men does not expressly address violence against women and domestic violence. Nonetheless, the obligation of the central executive body for equality policies to *“conduct public awareness campaigns through mass media and organize educational activities on issues of ensuring gender equality”* (Article 11) grants the opportunity to run awareness raising activities to promote equality. In any case, this provision does not fulfil the requirements of the Convention.

Article 13 paragraph 2 of the Istanbul Convention requires states parties to ensure the wide dissemination among the general public of information on measures available to prevent acts of violence against women and domestic violence. The Law of Ukraine on Advertising, 03.07.1996, (LA hereinafter) may provide an effective tool for this purpose, which is “social advertising”. Social advertising means, according to the LA, *“the information of any type disseminated in any form for generally useful purposes and the dissemination of which does not aim at gaining profit”* (Article 1). Social advertising has a wide range of possibilities (even broader than commercial advertising) as it allows for the dissemination of information in the premises of state authorities and bodies of local self-government, of primary, secondary general and specialized educational establishments (Article 17. “Internal Advertising”); through radio or other sound broadcasting systems for passengers’ notification in public transport, at metro and railway stations, ports and airports (Article 18 “Advertising on Transport”); etc. Article 12 LA regulates social advertising but it does not include any provision which specifies the content or the purpose of such advertising.

On the other hand, social services and other state agencies dedicated to prevent or mitigate social hardship may also play an active role in raising awareness of the different forms of violence against women and their consequences. Ukraine shall encourage social services providers and social workers to include in their intervention work activities to raise awareness about the forms of violence covered by the Convention, gender equality and to inform on available services to protect and support victims.

Special legislation of Ukraine in the field of domestic violence refers to awareness raising campaigns. The DLDV lists this measure as a preventive tool, yet it does not confer powers to carry out such campaigns. In any case, awareness raising campaigns solely dedicated to domestic violence cannot meet the requirements of the Istanbul Convention.



Finally, all measures regarding awareness raising campaigns or programmes should ensure appropriate participation of civil society and non-governmental organizations, especially women’s organizations. None of the abovementioned laws foresees this possibility.

It should be noted that the Council of Europe has recently published a paper dedicated to awareness raising campaigns which provides extensive background and practical advice on the implementation of the requirements of Article 13 of the Convention.<sup>14</sup>

### 3. Recommendations

- **Rec. 14 . Ukraine should promote or conduct, on a regular basis and at all levels awareness-raising campaigns or programmes in accordance with the aims of the Istanbul Convention. Such campaigns and activities shall allow for the appropriate participation of civil society and non-governmental organizations, especially women’s organizations**

*The authors of this report suggest designating an official body or institution responsible for conducting and/or funding such campaigns. According to the agreements of the Istanbul Convention Working Group on Legislation Review on recommendation 12, the authors of this report suggest establishing a legal basis to fulfil this obligation in the Law on ensuring Equal Rights and Opportunities of Women and Men.*

*On the other hand, the authors suggest amending the definition of “social advertising” in the Law of Ukraine on Advertising to encompass the prevention and prohibition of any form of violence, the promotion of fundamental human rights and anti-discrimination.*

- **Rec. 15 . The DLDV should include awareness-raising campaigns and sensitization of the media as specific preventive measures, in co-ordination with human rights and equality state bodies and civil society and non-governmental organizations, especially women’s organizations.**
- **Rec. 16 . Ukraine may ensure that social services providers and social workers conduct awareness raising activities on all forms of violence against women, including domestic violence and gender equality and provide information about available services to protect and support victims.**

## C. EDUCATION

### 1. What the Convention requires

Article 14 of the Convention requires states parties to introduce at all levels of education and in formal curricula, teaching materials on violence against women, prevention of conflict and on gender equality, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships and the right to personal integrity. Paragraph 2 of Article 14 extends

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<sup>14</sup> Heiseckeand, K, *Raising awareness of violence against women: article 13 of the Istanbul Convention*, Council of Europe, 2014.



these goals to the areas of informal education as well as to sports, after-school and leisure activities and to the media.

## 2. Assessment of the Ukrainian legislation

The Law of Ukraine on ensuring Equal Rights and Opportunities of Women and Men states that educational institutions shall ensure that textbooks and study guides are free of stereotypical notions of the role of women and men and shall develop “*a culture of gender equality and equal division of professional and family responsibilities*” (Article 21 LERO). According to the same provision, a central executive body in education and science shall provide for “*the examination of educational programmes, textbooks and study guides for educational institutions for their compliance with the principle of ensuring equal rights and opportunities of women and men*”. Furthermore, the last paragraph of Article 21 LERO states: “*Educational programs of higher educational institutions and refresher courses shall include courses on ensuring equal rights and opportunities of women and men, as well as the optional study of the legal grounds of gender equality on the basis of (sic) the harmonization of national legislation with international law.*”

Although sports, cultural and leisure facilities and the media are not mentioned, this provision fits in well with the obligations contained in Article 14 of the Convention. However, it does not provide a legal basis to introduce teaching materials on these issues at all levels of education. Finally, this report already noted that LERO does not encompass violence against women within its purview; therefore this law cannot meet some of the requirements of Article 14 of the Convention.

On the other hand, the Law of Ukraine on Education, 23.05.1991, (LE hereinafter) does not specify any provisions with regard to the prevention of domestic violence or violence against women (i.e. training of teachers, curricula, etc.).

The draft Law on Domestic Violence includes the educational sector as “*special authorised agencies for preventing and combating domestic violence*”. Article 8.4 of the DLDV lists its powers, including the power to “*conduct educational work with participants of the educational process with regard to preventing and combating domestic violence and liability for domestic violence.*” Whilst such provision fits in with the obligations required by the Convention, it is not clear how it will be implemented. Moreover, the rule is quite succinct and does not lay out the principles and main content that this educational work should encompass. Finally, as this report consistently states, partial legal frameworks such as laws on domestic violence will not suffice to comply with the Istanbul Convention, which requires a broader scope.

## 3. Recommendations

- **Rec. 17 . Ukraine should include teaching materials in formal curricula and at all levels of education aiming at preventing all forms of violence against women and promoting equality between women and men in accordance with the Istanbul Convention.**

*The required teaching materials should aim at instilling a sense of non-stereotyped gender roles and mutual respect, developing non-violent conflict resolution skills, and should aim to increase awareness and understanding of the various forms of gender-based violence against women and the right to personal integrity. According to the agreements of the Istanbul Convention Working Group on Legislation Review on recommendation 12, the authors of this report suggest establishing a legal*

*basis to fulfil this obligation in the Law on ensuring Equal Rights and Opportunities of Women and Men.*

- **Rec. 18 . Ukraine should promote the involvement of sports, cultural and leisure facilities and the media in preventing gender-based violence against women and in fostering the principles of non-stereotyped gender roles, mutual respect and non-violent conflict resolution.**

The *authors of this report* suggest implementing this obligation in accordance with the previous one.

- **Rec. 19 . Ukraine may extend the list of preventive measures included in the Draft Law on Domestic Violence in order to emphasise the need for contents related to domestic violence as a form of discrimination and violation of human rights in the school syllabus at all levels of education.**

## **D. TRAINING OF PROFESSIONALS**

### **1. What the Convention requires**

Article 15 of the Convention introduces a key obligation for states parties that involves the provision of training for all relevant professionals dealing with victims or perpetrators of violence against women and domestic violence. In fact the Convention underlines the need for trained professionals throughout the four pillars. A deep knowledge and gender-sensitive understanding of violence against women and domestic violence is necessary to prevent, protect, prosecute and develop comprehensive policies related to violence against women in a timely, effective and appropriate manner, and to avoid secondary victimization in the course of social services delivery.

The Explanatory Report spells out the content of such training (detection of violence, equality between women and men, rights of victims, etc.), its main objectives (fostering sensitivity and skills to respond appropriately and effectively to cases of violence), the required forms of training (initial vocational training and on-going in service-training) and the professionals that should be trained (teachers, healthcare personnel, social workers, lawyers, judges, prosecutors, police officers, etc).

The Explanatory Report also suggests that “relevant training should be supported and reinforced by clear protocols and guidelines that set the standards staff are expected to follow in their respective fields.” Protocols are therefore very useful measures deeply tied with training. These protocols shall be regularly monitored and reviewed.

Training should include training on coordinated multi-agency cooperation and should enable professionals from a wide range of fields to work in coordination. The Explanatory Report notes that multi-agency coordination involving gender observatories, academic gender departments and civil society organizations specialized in assisting victims of violence may constitute an enriching source of exchange of knowledge at national, regional and local levels.

## 2. Assessment of the Ukrainian law

The Law of Ukraine on ensuring Equal Rights and Opportunities of Women and Men establishes that employees of central and local executive bodies and local authorities shall be trained on gender issues and problems (Article 13 LERO).

On the other hand, both the Law on Social Services and the Law on Social Work with Families, Children and the Youth assume that social services shall not only assist people and families in adverse life circumstances, but also prevent such circumstances from occurring or deteriorating. Social service providers are in direct contact with victims, people at risk and perpetrators, and are often the most appropriate entities and professionals to reach out to families to detect violence and prevent its repetition. This legal framework attaches importance to the qualification and skills of social services and social work providers (Article 17 LSS and Article 18 LSW), but it does not mention the need for specialized initial and vocational training and capacity-building on gender roles, stereotypes and relations, prevention and detection of violence against women including domestic violence and sexual violence, victims’ syndromes, needs and rights, and prevention of secondary victimization.

Similarly, healthcare professionals are at the frontline in combating violence against women and domestic violence. However, the Ukrainian legislation in the field, namely the Law on Fundamentals of Healthcare, does not provide for any kind of training of these professionals.

Finally, the DLDV makes it clear that training of professionals is fundamental in the prevention of domestic violence, as it is included in Article 11. Furthermore, Article 7 authorises the organization of training for a number of agencies. However, the draft Law does not specify the kind of professionals that should be trained, except for those running treatment programmes, and does not refer to the content of such trainings. Finally, the draft Law does not contain references to protocols of intervention or professional guidelines.

In any case, the Istanbul Convention requires training of all relevant professionals dealing with victims or perpetrators of all forms of violence against women and requires training on the prevention and detection of all forms of violence against women. Partial legal frameworks such as laws on domestic violence will not suffice to comply with the Istanbul Convention.

## 3. Recommendations

- **Rec. 20 . Ukraine should guarantee that all relevant professionals dealing with violence against women and domestic violence receive appropriate and gender-sensitive training on the prevention and detection of such violence.**

*The authors of this report suggest that at least the following professionals should receive initial vocational training and on-going in service-training: teachers, healthcare personnel, social workers, judges, prosecutors and police officers. The authors suggest implementing this obligation by introducing an appropriate legal basis to provide such training in the dedicated laws that regulate the particular areas of professional activities (i.e. the Law of Ukraine of Fundamentals of Health Care, the Law of Ukraine on Police (and the relevant Draft Law); the Law of Ukraine on Education; etc.) The authors of this report also suggest that training should be provided in close cooperation with civil society and non-governmental organizations, especially women’s organizations, and should be supported with specific protocols and/or guidelines, thus promoting multi-agency cooperation.*

## **E. PREVENTIVE INTERVENTION AND TREATMENT PROGRAMMES**

### **1. What the Convention requires**

Under Article 16 parties have to set up two different types of programmes for perpetrators of violence against women. Article 16, paragraph 1, requires programmes to prevent further violence by teaching perpetrators of domestic violence to change violent behavioural patterns. On the other hand, Article 16, paragraph 2, mandates the setting up of programmes aimed at preventing sex offenders from re-offending.

The Convention also establishes minimum standards for such programmes. Third indent of Article 16 requires that the safety of victims and their rights should be the primary concern of any of these programmes. Finally, the Convention does not require states parties to run these programmes, as they can also support such programmes run by NGOs or other actors.

### **2. Assessment of the Ukrainian law**

The Ukrainian current legal framework on Family Violence relies significantly on so-called “correctional programmes”, as they are one of the primary measures for perpetrators. “Correctional programmes” are defined in Article 1 of the DLDV as “*actions to correct violent behaviour of a domestic violence perpetrator and develop in him/her new psychological behavioural patterns and responsible attitude to his/her acts and their consequences*”. Article 17 on introducing “correctional programmes” summarizes entities empowered to run these programmes and to report on the level of compliance of perpetrators ordered to attend such programmes. The draft law does not go into detail as to the content or the requirements of such programmes.

Despite differences in terminology, “correctional programmes” foreseen in the DLDV are generally in line with the aims of the treatment programmes mandated by Article 16 of the Convention. Nevertheless, Ukrainian authorities should ensure that such programmes are designed and implemented in accordance with the requirements of the Istanbul Convention. In assisting states parties to do so, the Council of Europe has recently produced a paper on domestic and sexual violence perpetrator programmes, which contains extensive information and useful examples.<sup>15</sup>

With respect to sex offender programmes, the Ukrainian legislation does not envisage them. Accordingly, there is no court-ordered treatment programme for perpetrators of sexual assault, yet there may be programmes available on a voluntary basis and without a legal basis, which fall outside the scope of this report.

### **3. Recommendations**

- **Rec. 21 DLDV. Ukraine may improve the current legal framework on domestic violence perpetrator programmes.**

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<sup>15</sup> Hester, M and Lilley, S, *Domestic and sexual violence perpetrator programmes: article 16 of the Istanbul Convention*, Council of Europe, 2014.

*The authors of this report suggest developing relevant protocols and standards for perpetrator programmes based on best international practices and the Council of Europe paper on this issue.<sup>16</sup> On the other hand, the authors suggest harmonizing legislation on domestic violence with criminal and administrative law if court-ordered programmes are to be introduced.*

- **Rec. 22 . Ukraine should ensure that intervention and treatment programmes are available for perpetrators of sexual offences.**

*The authors of this report suggest establishing a legal basis for these programmes either in an existing law (i.e. the Law on Social Services) or in a new law. The authors also suggest that courts should be empowered to order attendance of these programmes.*

## **F. PARTICIPATION OF THE PRIVATE SECTOR AND THE MEDIA**

### **1. What the Convention requires**

Article 17 of the Istanbul Convention conveys the participation of the private sector and the media in the prevention of gender-based violence against women. States parties shall encourage them to: 1) participate in the elaboration and implementation of policies; and 2) to set guidelines and self-regulatory standards to prevent violence against women and enhance respect for women's dignity.

The Explanatory Report suggests promoting the following goals through self-regulatory standards: 1) private companies shall adopt protocols or guidelines on how to deal with sexual harassment at the work-place; 2) the media shall adopt self-regulatory standards to refrain from harmful gender stereotyping; and 3) the media shall establish ethical codes of conduct for a rights-based, gender-sensitive and non-sensationalist media coverage of violence against women.

Article 17.2 of the Istanbul Convention also requires parties to develop and promote, in co-operation with private sector actors, skills among children, parents and educators on how to deal with the information and communications environment that provides access to degrading content of a sexual or violent nature which might be harmful.

### **2. Assessment of the Ukrainian law**

The Law of Ukraine on ensuring Equal Rights and Opportunities of Women and Men dedicates one section on ensuring the rights and opportunities of women and men in social and economic spheres (Title IV), the implementation of which rests mostly with employers. In Article 17, LERO requires employers to “*take measures to avoid incidents of sexual harassment*”, but no provision calls for the setting up of a specific mechanism to file complaints in cases of sexual harassment, to protect women victims of this kind of violence or to impose sanctions on the perpetrator.

The above-mentioned law refers to the media as a tool to conduct awareness campaigns on gender equality (Article 11), but it does not encourage the media to refrain from harmful gender

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<sup>16</sup> See supra. note 15.

stereotyping and from using images of women that are degrading or that incite to violence against women, including sexual assault and rape.

Furthermore, in Ukraine there is no legal basis for the media or other private entities to adopt ethical codes to ensure a gender-sensitive and rights-based media coverage of violence against women. For instance, the Code of Professional Ethics of Ukrainian Journalists (April 2002) does not refer specifically to the issues covered by the Istanbul Convention, nor does it call for a rights-based, gender-sensitive and non-sensationalist media coverage of cases of violence against women.

The Law of Ukraine on Advertising (Article 7) specifies the principles of advertising. It states that “the basic principles of advertising shall be the legality, accuracy, authenticity, use of forms and means which do not cause damage to advertising consumers, etc. Advertising shall not contain information or images violating ethic, humanistic and moral norms and decencies. Advertising shall take into consideration the particular sensitivities of children and shall not cause damage to them”. At the same time it says nothing about the prevention of any form of violence or about the respect for the dignity and human rights of individuals.

Article 8 LA provides general requirements for advertising and prohibits, inter alia:

- “To set forth statements which discriminate against a person’s origin, social and property status, race and nationality, sex, education, political conviction, religious beliefs, language, occupation, place of residence as well as statements which discredit the goods of other persons”;
- “To submit data or urge to actions which may result in the breach of legislation, which cause or may cause damage to people’s health or life and/or environment as well as induce to disregard of safety measures” (sic) ;
- “To disseminate advertising (including advertising for films) which contain elements of cruelty, violence, pornography, cynicism, denigration of human honour and dignity.”

Such provisions are aimed to prohibit any form of discrimination in advertising. However, it does not directly prohibit the degrading of women or the promotion of stereotypes. By way of comparison, the Spanish Organic Act on Gender Violence prohibits *“advertisements depicting women in a degrading manner, either by directly using their bodies or parts of the same as a mere object unrelated to the product being promoted, or by associating their image to stereotyped roles anti-ethical to the principles of our law, thus contributing to the violence referred to in the Organic Act on Integrated Protection Measures against Gender Violence”*.<sup>17</sup>

### 3. Recommendations

- **Rec. 23 . Ukraine should encourage the media to adopt ethical codes against discriminatory and degrading messages and images towards women, and to address all forms of violence against women from a gender and victims’ rights based perspective.**

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<sup>17</sup> Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence. Sixth additional provision: Amendment of Article 3, letter a) of General Advertising Act 34/1988 of 11 November.

- **Rec. 24 . Ukraine may amend the Law on Advertising to prohibit advertisements that degrade women, promote gender stereotypes or sexism, or violent patterns of conduct.**

*The authors of this report suggest amending Article 8 LA to implement this recommendation. The authors also suggest considering a specific mechanism to deal with complaints.*



## V. PROTECTION

### A. GENERAL PRINCIPLES

#### 1. What the Convention requires

Chapter IV of the Istanbul Convention encompasses measures to protect, support and inform the victim, who must always be at the centre of all laws and policies in this area. Under the obligation to support victims to overcome the consequences of violence, states parties should grant victims access to general public services such as public health services, and set up specialised counselling and support services for victims of the different forms of violence against women covered by the Istanbul Convention. Finally, states parties should provide adequate and useful information on resources available to victims. It is important to note that the afore-mentioned obligations can be framed as victims’ rights, which reinforces the approach of the Convention to protection and support measures.

The holistic approach of the Istanbul Convention also entails the existence of mechanisms that provide for effective inter-agency cooperation, and the availability of a range of protection and support services ideally located on the same premises. Accordingly, obligations in this chapter should be read in conjunction with those established under chapter II on integrated policies.

Article 18 paragraph 1 of the Convention specifically mandates parties to protect victims from further acts of violence, which means that states parties should adopt all measures to prevent repetition of the abuse or escalation in the degree of violence. Protection of victims is a central international human rights obligation and several international bodies such as the CEDAW Committee or the European Court of Human Rights have held states parties responsible for failure in this regard.

In line with the Convention’s emphasis on co-operation and multi-agency approach to combating violence, Article 18 paragraph 2 requires parties to establish “*appropriate mechanisms to provide for effective co-operation between all relevant state agencies*”. The Istanbul Convention includes a non-exhaustive list of such agencies, which also mentions NGOs. In line with Article 9, the Convention considers NGOs to be a key player in protecting and supporting victims. It is important to note, as the Explanatory Report does, that the term “*mechanism*” refers to any formal or informal structure such as protocols, round tables or any other method that enables a number of professionals to co-operate in a standardised manner. The Istanbul Convention remains flexible with regard to the implementation of this obligation and does not require the setting up of an official body or institution for the purpose of ensuring multi-agency cooperation.

Measures undertaken to protect and support victims must be framed within the general principles of the Convention. According to Article 18 paragraph 3, states parties must in particular embrace a gendered understanding of violence against women and an integrated approach to it, thus taking into account the relationship between victim and perpetrator or having regard to the specific needs of women. The Istanbul Convention also lays particular emphasis on the availability of protection and support services to persons vulnerable by particular circumstances, whom are defined in the Explanatory Report as persons with disabilities, including those with mental or cognitive impairments, persons living in rural or remote areas, substance abusers, prostitutes,



persons of national or ethnic minority background, migrants – including undocumented migrants and refugees, gay men, lesbian women, bi-sexual and transgender persons as well as HIV-positive persons, homeless persons, children and the elderly. Moreover, parties shall ensure that access to crisis services do not depend on the victim’s economic capacity or place of residence.

Article 18 paragraph 3 also recommends integrating or grouping services together. The Explanatory Report refers to so-called one-stop-shops; facilities where victims may receive all necessary information and counselling, including the possibility of filing official complaints with the police. These integrated services are considered internationally as best practices.

Moreover, the Convention mandates states parties to place the victim at the centre of all laws and policies to protect and support her. Accordingly, the provision of services shall not depend on the willingness of the victim to press charges or testify against the perpetrator. Besides, all measures shall avoid secondary victimization, take on victims’ views and needs and aim at the empowerment and economic independence of victims.

Finally, it is important to note that protection measures and support services should be available to victims of all forms of violence against women. Hence partial legal frameworks such as laws on domestic violence will not suffice to comply with the Istanbul Convention.

## **2. Assessment of the Ukrainian law**

The Draft Law on Domestic Violence provides a fairly comprehensive legal framework for the protection and support of victims of domestic violence. However, other victims of violence against women such as sexual violence, for example, also require specific measures in this area and these measures are currently absent from the Ukrainian legislation. Besides the lack of an integral legal framework to protect victims of all forms of violence against women, the laws that regulate protection and support services and agencies, such as police, social services or healthcare, do not specifically include these forms of violence within their purview. Accordingly, Ukraine fails to meet the standards for the protection of victims of all forms of violence against women established in Article 18 of the Convention.

Moreover, Ukraine does not have mechanisms or referral systems dedicated to ensure a coordinated response in protecting and supporting victims and witnesses of all forms of violence covered by the Convention, as required in Article 18 paragraph 2. Only the Draft Law on Domestic Violence foresees some form of coordination, yet its functioning is not very clear. Moreover, there is no reference to this coordination mechanism on domestic violence in the laws regulating the specific support services or the bodies and agencies involved in combating domestic violence.

The Law of Ukraine on Social Services (2003) (LSS hereinafter) provides for a wide range of highly relevant services under a rights-based approach. Nevertheless, it does not ensure that those services are gender-sensitive, as required by Article 4 and 18.3 of the Convention. The aforementioned law does not address the specific needs of women victims of violence, who are not mentioned in the law.

Articles 13 and 18 of LSS foresee the collaboration with other agents at local level and the coordination of social services by central and regional executive bodies, but these provisions do not suffice to meet the requirement of *“effective cooperation between all relevant state agencies, including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities as well as non-governmental organisations and other relevant organisations and entities, in*

*protecting and supporting victims and witnesses of all forms of violence, including by referring to general and specialist support services” (Article 18.2 of the Convention).*

The LSS acknowledges the role of NGOs and other civil organization in providing social services (Article 12, 13 LSS). Accordingly, Article 13 establishes general terms and conditions for these entities when receiving funds from the government. In order to encourage specialized support services for victims of violence against women and domestic violence, specific funds could be allocated to such services.

The Law of Ukraine on Social Work with Families, Children and the Youth (2001) (LSW hereinafter), which complements the LSS, might play an important role in providing appropriate support to victims and witnesses of all forms of violence covered by the Istanbul Convention. However, just like the LSS, it is not based on a gendered understanding of violence against women and domestic violence. Violence is only mentioned as affecting child victims and witnesses. Thus a wide scope of domestic violence rooted in gender inequality and gender stereotypes is not addressed. Moreover, no mention is made of the different forms of violence that may occur within and outside of the family, like sexual violence, forced marriage, sexual harassment, stalking, etc. The language used is vague and does not allow determining which behaviours are deemed as “*immoral*”, “*socially dangerous diseases*” or “*moral health in the family*” (Article 1 LSW).

Moreover, the LSW does not include any references to co-ordination mechanisms. As stated above, from a legislative perspective, an integral, holistic approach to domestic violence will require some kind of harmonization of measures and coordination mechanisms established in the Law on Domestic Violence and in the Law on Social Work with Families.

The healthcare system constitutes a key component of any overarching system of protection for victims of all forms of violence covered by the Convention. Doctors, nurses and health workers are frequently the most appropriate to detect hidden cases of domestic and sexual violence or other forms of violence against women and to provide appropriate support and effective protection to victims. Thus, a review of the Law of Ukraine of Fundamentals of Health Care (1992) (LFHC hereinafter) is also highly recommended to ensure its compliance with the standards of the Istanbul Convention.

The LFHC acknowledges citizens’ right to “*legal protection against any illegal forms of health-related discrimination*” (Article 6) and places the equality of citizens and the priority of humanity above any other criteria in the provision of healthcare. Nonetheless, the LFHC would better meet international standards if it referred expressly to gender equality and discrimination based on sex. The Law also fails to address the needs of victims of violence made especially vulnerable by their status as migrant, refugee or asylum-seeker.

Finally, it should also be noted that co-ordination mechanisms are not regulated in the LFHC. Although an integrated, multi-agency approach might be achieved through non-regulated mechanisms, the framework legislation should introduce, at least, the obligation to co-operate in cases of violence and the obligation on the appropriate authority to enact by-laws or protocols to define such co-operation mechanisms.

### 3. Recommendations

- **Rec. 25 . Ukraine shall establish appropriate mechanisms to provide for effective co-operation between all relevant state agencies and non-governmental organisations involved in protecting and supporting victims and witnesses of all forms of violence covered by the Convention. These mechanisms should include referral procedures.**

*The authors of this report suggest that such mechanisms be established in the statutory norms regulating each relevant state agency (i.e. the Law on Police, the Law on Fundamentals of Healthcare or the Law on Social Services) and in any legal framework Ukraine may establish in the area of violence against women pursuant to recommendation 6.*

- **Rec. 26 . Ukraine shall ensure that support services respond sensitively and appropriately to the needs of victims of all forms of violence covered by the Istanbul Convention. In particular, Ukraine shall ensure that such services avoid secondary victimization and are based on an integrated approach and a gendered understanding of these forms of violence.**

*The authors of this report suggest that this recommendation be implemented in accordance with the previous one. Furthermore, the authors suggest embedding these standards in the statutory norms regulating relevant services, social services and healthcare. In particular, the authors of this report suggest that social service and healthcare providers receive specific and harmonized procedures (by-laws, protocols, guidelines, etc.) to identify, counsel and/or refer victims of all forms of violence against women and domestic violence in a timely, coordinated and adequate manner. Procedures should be developed in coordination with NGOs, authorised agencies on equality and other stakeholders. Procedures on domestic violence should be issued according to the future Law on Domestic Violence. Procedures on other forms of violence such as sexual violence and rape, stalking, sexual harassment, forced marriage, female genital mutilation, forced sterilisation or forced abortion may require a new legal basis. The authors are also of the view that procedures in the area of healthcare shall encompass emergency medical aid and comprehensive treatment and rehabilitation, which shall be provided in a supportive, gender-sensitive and victim-centred manner, being effectively protected from the perpetrator.*

*In any case, all procedures or protocols on support and protection services for women victims of all forms of violence covered by the Istanbul Convention should be coordinated.*

- **Rec. 27 . Ukraine shall ensure in its legislative framework a gendered understanding of domestic violence, thus preventing secondary victimisation and providing services aimed at the empowerment and economic independence of women.**

*With regard to domestic violence, the authors of this report consider that the DLDV may fulfil the obligation to protect and support victims, although it requires changes to comply with the standards listed in Article 18.3 of the Convention. In particular, a gender-sensitive understanding of domestic violence shall be taken into account in the provision of social work with families, children and youth. Interests of the family shall not prevail over the rights of victims of domestic violence.*

- **Rec. 28 . Ukraine shall seek to provide sufficient funding for NGOs supporting victims of violence against women and domestic violence.**

*The authors of this report suggest that competitions for governmental funding to social service providers may include specific funding for non-governmental specialized support services for victims of violence against women and domestic violence.*

## **B. RIGHT TO INFORMATION**

### **1. What the Convention requires**

Article 19 of the Convention mandates parties to ensure that victims receive “*adequate and timely information on available services and legal measures.*” It is left to the states parties to decide which information is adequate, but it should sufficiently fill the victim’s need. The Explanatory Report spells out this requirement, “*This could include, for example, providing not just the name of a support service organisation, but handing out a leaflet that contains its contact details, opening hours and information on the exact services it offers*” (Paragraph 124). Moreover, under Article 19, information should be provided in a language that victims understand.

On the other hand, Article 21 introduces a very innovative provision regarding international complaint mechanisms. The Convention requires states parties to ensure that victims have information on and access to applicable regional and international individual/collective complaints mechanisms, such as, for instance, the CEDAW Committee or the European Court of Human Rights. The Explanatory Report spells out this obligation: “*By ensuring that victims have information on and access to these mechanisms, the drafters wished to stress that victims should be provided with information on the admissibility rules and procedural requirements relating to the applicable regional and international complaint mechanisms, and that, upon exhaustion of national remedies, parties should not impede in any way access to these mechanisms*” (Paragraph 129).

### **2. Assessment of the Ukrainian law**

The current Law on Prevention of Family Violence does not envisage any right to information for victims. However, the draft Law on Preventing and Combating Domestic Violence includes in its Article 18 on the rights of victims a recognition of their right to receive complete information about their rights and possibilities to get support. Neither the current law nor the draft introduces any reference to international complaint mechanisms.

The Law on Social Services recognizes the recipient’s right to receive information pertaining to his/her rights, responsibilities and service delivery procedure, but does not require it to be supplied in a language he or she understands. Moreover, there is no reference to specific information on violence against women. The Law on Social Work with Families, Children and the Youth also lacks any reference to this kind of information.

Similarly, in the Law of Ukraine of Fundamentals of Health Care there is no mention of the information that shall be provided at an early stage by the health workers, doctors or nurses in healthcare premises to victims or suspected victims of the forms of violence covered by the Istanbul Convention.

Ukraine should ensure that social services providers, healthcare professionals and police officers offer, at the earliest opportunity, information on the rights, protection and general and specialized support available to women victims of violence. Information should be provided in a

supportive way and in a language that the victim understands. Dedicated rules and procedures may help to guarantee the right to information that is to be provided by support and care services which the recommendations in the following section refer to also.

### 3. Recommendations

- **Rec. 29 . Ukraine should ensure that social services, healthcare providers and police officers inform victims or suspected victims of violence against women and domestic violence about their rights and available services in a language they understand and refer them to the appropriate services and counselling.**

*The authors of this report suggest amending the Law on Social Services and the Law of Fundamentals of Health Care to introduce this duty.*

- **Rec. 30 . Ukraine should stipulate the obligation of special authorities and institutions entrusted with the implementation of measures to prevent and combat violence against women and domestic violence to explain to victims their rights and the services available to them at first contact in a language they understand.**

*Currently Ukraine does not have any special authority or institution dedicated to violence against women other than those provided for in the DLDV. The authors of this report suggest that the right to information should be introduced within the mandate of any authority or institution established in this field.*

*Furthermore, the authors of this report suggest that the Ukrainian authorities adopt at the regulatory level a standard form of information on the rights of victims of the different forms of violence against women and domestic violence, including social services, counselling and support services available, as well as a list of competent authorities, institutions and entities providing such services and their contact details.*

- **Rec. 31 . Ukraine should provide information on applicable regional and international individual/collective complaints mechanisms and offer assistance to victims in presenting any such complaints.**

*The authors of this report suggest introducing such obligations in the Draft Law on Domestic Violence. Similar provisions may also be introduced in the relevant legal framework addressing other forms of violence against women in Ukraine pursuant to recommendation no. 6.*

## C. RIGHT TO ACCESS GENERAL SERVICES

### 1. What the Convention requires

Article 20 of the Istanbul Convention mandates states parties to ensure victims' access to "services facilitating their recovery from violence" which provide long-term help and serve the public at large. This obligation refers to public welfare services offered by the state which are meant to be complemented by specialist services for victims of the different forms of violence against women and domestic violence that are often run by NGOs and civil society. This provision

includes at least services such as public healthcare and social services, legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment. The Convention places special emphasis on guaranteeing access to healthcare and social services.

General support services, especially in the fields of healthcare and social work, play a key role in the detection of violence against women and domestic violence and in the protection against further acts of violence. They are also expected to provide adequate services without secondary victimization, which is particularly important in cases of sexual violence referred to in Article 25. The Explanatory Report makes it clear in Paragraph 127, where it says, *“Health and social services are often the first to come in contact with victims. Paragraph 2 seeks to ensure that these services are adequately resourced to respond to their long-term needs. Furthermore, it places an emphasis on the importance of training staff members on the different forms of violence, the specific needs of victims and how to respond to them in a supportive manner.”*

The Study of the UN Secretary General Ending violence against women: From words to action (2006)<sup>18</sup> pointed out “promising practices” like “protocols for health-care providers; integration of victim service centres within the health-care system; and the establishment of referral systems that link relevant sectors”.

## **2. Assessment of the Ukrainian law**

Ukraine does not contain any specific legal provision ensuring that victims of all forms of violence covered by the Convention have access to all the required services facilitating their recovery. However, the Law on Social Services foresees a wide range of social services, thus encompassing most of the required recovery services.

Article 5 LSS lists *“types of social services and the modes of delivery”* and includes psychological counselling, material aid or financial assistance, employment service, education services and legal services, among others. Nonetheless, this Article does not mention housing support, which constitutes a key measure for women victims of violence, especially those who are economically dependent on the perpetrator. More importantly, as stated in the previous section, the LSS does not specifically foresee victims of violence against women or domestic violence as specific beneficiaries. Article 1 LSS considers *“violence”* as an *“adverse life circumstance”* and Article 6 clearly states that; *“The right to social service enjoyment is granted to the citizens of Ukraine, aliens and expatriates, including refugees residing in Ukraine on a legitimate basis and undergoing adverse life circumstances.”* However, a generic reference to violence does not ensure that victims of all forms of violence covered by the Convention have access to such services. Furthermore, the LSS does not offer any specialized services nor does it provide for a holistic approach to the needs of these victims.

Moreover, by stating that the *“prospective recipient shall submit appropriate written request to the regional executive or local self-governing body”* (Article 9 of LSS), the procedure for the enjoyment of social services established by the LSS does not take into consideration the traumatic situation of victims of violence and their need for urgent assistance. It does not allow for proactive intervention when cases of violence are detected. A referral system and/or a protocol should be

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<sup>18</sup> UN Secretary-General, *Ending violence against women: From words to action*. UN Publications, 2006.



set up authorizing social services providers, healthcare centres, helplines, the police, the judiciary, NGOs and other professionals to refer victims to the appropriate services.

Furthermore, the Law on Social Work with Families, Children and Youth and the Law of Ukraine of Fundamentals of Health Care do not take into consideration the special needs of women victims of violence neither do they envisage the traumatic situation and specific syndromes victims usually endure.

Finally, the LSS, LSW and LFHC disregard the states parties' obligation acknowledged by the Istanbul Convention to provide specialized training on all forms of violence against women, supported by harmonized protocols or guidelines, to the staff involved in the delivery of such general support services. Nevertheless, in this realm we refer to recommendations made above in the section on training of professionals.

From the foregoing it follows that Ukraine offers all but one of the services (housing) listed in Article 20 of the Convention to victims of violence against women and domestic violence. Yet, the procedure to gain access to most of these services, in particular those provided under the LSS framework, do not meet the needs of victims of violence against women and may lead to secondary victimization. Further, as already stated, the reviewed legal framework in this realm (LSS, LSW and LFHC) does not comply with the standards put forward in Article 18.3 of the Convention.

On the other hand, the DLDV provides for a set of rights of victims that includes legal and psychological counselling. Furthermore, healthcare institutions and social services are listed as authorised entities and Articles 7 and 8 spell out their powers. However, some services are missing. The draft Law does not contain any reference to housing, financial assistance or help in seeking employment. Besides, the rights of victims do not always correlate with the powers of the authorised entities and it is not clear who is responsible for which part of the process of protecting and supporting the victim. Generally, this piece of legislation seeks to provide general support services in a manner consistent with the holistic, specialized approach the Istanbul Convention undertakes, which improves the aforementioned legal framework. Yet it is limited to victims of domestic violence and does not serve as a legal basis for support for victims of all other forms of violence against women covered by the Istanbul Convention.

### 3. Recommendations

- **Rec. 32 . Ukraine shall ensure access to legal and psychological counselling, financial assistance, housing, education and training and assistance in seeking employment to all victims of domestic violence, sexual violence and rape, stalking, sexual harassment, forced marriage, female genital mutilation, forced sterilisation and forced abortion. Accordingly, Ukraine shall identify and remove barriers that may hinder victims' access to these general support services.**

*The authors of this report suggest that the Law on Social Services should clearly identify victims of all forms of violence covered by the Convention as beneficiaries.*

*The authors also recommend reviewing the procedure in place to grant access to social services in cases of violence against women and domestic violence. In particular, the authors suggest that the LSS should allow for the referral to the appropriate social service providers by authorized entities*

*such as the police, the judiciary or the healthcare services, pursuant to official protocols on support and protection services for women victims of all forms of violence covered by the Istanbul Convention.*

- **Rec. 33 . Ukraine shall ensure that women victims of all forms of violence covered by the Istanbul Convention have access to housing services.**

*The authors of this report suggest that this service be included in the Law on Social Services. It may also be included in the Draft Law on Domestic Violence.*

## **D. SPECIALIST SUPPORT SERVICES**

### **1. What the Convention requires**

Along with general services, Article 22 of the Convention demands specialist support services available to all victims of all forms of violence against women, including domestic violence. Such services should cater to the victims’ needs, have an adequate geographical distribution and offer immediate, short- and long-term support. The second paragraph of Article 22 also requires states parties to set up specialist support services for all women victims of violence and their children.

The Convention acknowledges that general services cannot be expected to meet the multiple needs of victims of gender-based violence in an integrated way, as specialist services are tailored to do. The Explanatory Report suggests that such services are best provided by NGOs or local authorities, yet the most important recommendation is to staff these services with specialized and experienced personnel, with in-depth knowledge of gender-based violence. Moreover, these services need to be able to address the different types of violence against women and provide support to all groups of victims, including hard-to-reach groups.

The dedicated services that states parties need to offer include “providing shelter and safe accommodation, immediate medical support, the collection of forensic medical evidence in cases of rape and sexual assault, short and long-term psychological counselling, trauma care, legal counselling, advocacy and outreach services, telephone help lines to direct the victims to the right type of service and specific services for children as victims or witnesses” (Paragraph 132, Explanatory Report).

Articles 23 to 26 develop the obligations of states parties related to the provision of especially relevant services for the protection and support of women and child victims and witnesses of violence.

## **SHELTERS**

Article 23 requires states parties to offer safe urgent housing services in sufficient numbers. Shelters are a key resource to ensure the protection of victims, but may also provide other types of support and empowerment, such as counselling or trauma care, including for children.

The Explanatory Report underscores that individual security plans and effective cooperation with the police are needed to ensure security and safety of women and children in these shelters. It



also reminds states parties that, according to the *Final Activity Report of the Council of Europe Task Force to combat Violence against Women, including Domestic Violence* (2008), safe accommodation in specialized women’s shelters shall be made available in every region, with one family place per 10,000 head of population.

Shelters for refugees are understood to be specialized services, thus general state-housing facilities such as those for the homeless do not comply with the Convention’s standard. Shelters are primarily a temporary safety and accommodation service for women with or without children escaping the threat of intimate partner or domestic abuse, although women might go there to be safe from stalking or other threats. The Convention does not limit the scope of this service, but acknowledges that each type of violence requires a different kind of support and protection, thus encourages specialization (see: Paragraphs 133 and 135 of the Explanatory Report).

### **TELEPHONE HELPLINES**

Article 24 mandates to set up a 7/24, free of charge, state-wide telephone helpline that provides counselling and referral to face-to-face services in relation to all forms of violence covered by the scope of the Istanbul Convention. The Explanatory Report recommends this service to be provided in all relevant languages and to ensure “*confidentially if callers so wish*” (Paragraph 137).

### **RAPE CRISIS AND SEXUAL VIOLENCE CENTRES**

Under Article 25 the Convention calls for specialized centres to provide support to victims of sexual violence such as medical care, trauma support and psychological help, collection of evidence and others. The Convention names such services *Rape crisis centres* and *Sexual violence referral centres*.

While the former offer long-term support and counselling, sexual violence referral centres, which can be hosted in hospitals, shall provide immediate support to victims, including medical checks, forensic examination and referral to specialized organizations. Although the Convention distinguishes both kinds of services, implementation is flexible.

The Explanatory Report points out as “a good practice to carry out forensic examinations regardless of whether the matter will be reported to the police, and offer the possibility of having samples taken and stored so that the decision as to whether or not to report the rape can be taken at a later stage” ( Paragraph 141).

These services shall be provided by trained and specialized staff, in an appropriate manner. They shall be easily accessible and available in rural areas as much as in cities, pursuant to the rate of one centre per every 200,000 inhabitants.

## **2. Assessment of the Ukrainian law**

The Ukrainian legislation only provides specialized support services to victims of domestic violence. Accordingly, Ukraine should develop a legal and an institutional framework on specialist services for victims of sexual violence and rape, stalking, sexual harassment, forced marriage, female genital mutilation, forced sterilisation or forced abortion. Ukraine might enact a specific law to regulate protection and support services to these victims or use existing legislation, although none of the reviewed laws provide a clear legal basis for filling this gap.

Under Article 7 of the draft Law on Domestic Violence, local state administrations and local governments with competence to implement public policies on domestic violence are authorised to launch and maintain hotlines on the prevention of domestic violence. However, the language used is vague and the fact that such administrations are authorised does not mean they have the obligation to do so, which is actually the required standard. Moreover, the provision does not refer to the minimum standards of these services as required by Article 24 of the Istanbul Convention.

With regard to shelters, the DLDV refers to “centres for victims of domestic violence.” According to Article 9 DLDV, these facilities may provide safe housing to victims of domestic violence, along with other services. However, the regulation of shelters in the draft law should be significantly improved in order to meet best international standards.

Most importantly, as already stated, shelters and hotlines must be available to victims of all forms of violence covered by the Convention, not only to victims of domestic violence. Ukraine does not comply with the Istanbul Convention in this regard.

On the other hand, Ukrainian legislation does not contemplate any kind of specialized service to provide support to victims of sexual violence and rape. Although the Ukraine Demographic and Health Survey 2007 exposed that 5% of Ukrainian women have experienced sexual violence at least once in their life, the non-governmental network Women Against Violence Europe (WAVE Network) highlighted the absence of “centres for survivors of sexual violence that operate continuously and are solely dedicated to and specialized in this type of services”<sup>19</sup>. Thus, there is an urgent need in Ukraine to provide specialized services for victims of sexual violence and rape as required in Article 25 of the Convention.

The Law on Fundamentals of Healthcare (LFHC) foresees forensic medical or psychiatric examination (Article 71 LFHC), yet it has to be ordered by an investigator, prosecutor or court in order to “solve issues that require special knowledge in the area of forensic medicine or psychiatry”. This requirement may preclude a timely forensic examination of victims of sexual and domestic violence pursuant to Istanbul Convention standards. It may also contravene Article 18(4) of the Convention whereby the provision of services shall not depend on the victim’s willingness to press charges or testify against any perpetrator.

### 3. Recommendations

- **Rec. 34 . Ukraine should ensure specialist support services for victims of sexual violence, stalking, sexual harassment, forced marriage, female genital mutilation, forced sterilisation and forced abortion. These services should be available in sufficient numbers and in an adequate geographical distribution. In particular, Ukraine should ensure specialist support services to all women victims of violence and their children.**

*The authors of this report note that this recommendation needs to reflect the fact that such services shall be set up according to the actual need, which may not be the same for all forms of violence.*

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<sup>19</sup> WAVE, *Country Report Ukraine 2013, Reality Check on European Services for Women and Children Survivors of violence. 2013*

*The authors of this report suggest that Ukraine attempts to locate specialized protection and support services on the same premises. In particular, the authors suggest establishing specialized social services units or centres dedicated to providing all required services to victims of all forms of violence against women covered by the Convention. Moreover, the authors suggest that public services offered by the state be complemented by specialist services offered by a well-resourced NGO sector.*

- **Rec. 35 . Ukraine shall improve the regulation on protection and support services available for victims of domestic violence.**

*The authors of this report suggest amending the DLDV to indicate clearly the list of services and the way they should operate.*

- **Rec. 36 . Ukraine should set up appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for victims of all forms of violence covered by the Istanbul Convention.**

*The authors of this report suggest that shelters for victims of violence against women other than domestic violence could be regulated in a special new law. Alternatively, these shelters may be included in the Law on Social Services. The authors also suggest that the Draft Law on Domestic Violence should be amended to ensure that shelters for victims of domestic violence comply with Article 23 of the Istanbul Convention and with international best practices.*

- **Rec. 37 . Ukraine should set up a state-wide telephone helpline to provide advice in relation to all forms of violence covered by the Convention. This service should operate round-the-clock and be confidential and free of charge.**

*The authors of this report suggest that the telephone helpline could be regulated in a special new law. Alternatively, it could be included in the Law on Social Services. The authors also suggest that the Draft Law on Domestic Violence should be amended to ensure that the telephone helpline it provides for complies with Article 24 of the Istanbul Convention and with international best practices.*

- **Rec. 38 . Ukraine shall set up easily accessible rape crisis or sexual violence referral centres that provide victims of sexual violence with trauma support, counselling, medical checks and forensic examinations including when victims do not want to press charges against the perpetrator.**

*The authors of this report suggest that this obligation could be implemented in a special new law. Alternatively, it could be included in the Law on Social Services and in the Law on Fundamentals of Healthcare*

*The authors also suggest amending the LFHC and other relevant legal acts to ensure that forensic and medical examination is available even when victims do not want to press charges against the perpetrator.*

## **E. CHILD WITNESSES**

### **1. What the Convention requires**

The preamble of the Istanbul Convention recognizes that children may also be victims of domestic violence, including as witnesses of violence in the family and states that parties shall take into account the rights and needs of these victims. Article 26 of the Convention makes this obligation clear and requires that measures to protect and support child victims and witnesses shall be age-appropriate and shall give due regard to the best interests of the child. This provision calls for a sensitive response to child victims by all services, which can only be assured by trained professionals and appropriate intervention protocols.

### **2. Assessment of the Ukrainian law**

The Draft Law on Preventing and Combating Domestic Violence (Article 17, 18 of the Draft Law) provides for various rights for victims of domestic violence and pays special attention to the rights of children, which is a welcome improvement compared to the 2001 Law.<sup>20</sup> Child witnesses of other forms of violence covered by the Convention are not protected or supported under any law.

The Law on Social Services refers to children and youth undergoing adverse life circumstances due to “disability, disease, orphanage, destitution, indigence, conflicts and family cruelty” as entitled to social services free of charge. However, their needs as witnesses of violence are not specifically addressed. On the other hand, the Law on Social Work with Families, Children and Youth places the rights and interests of families, children and youth at the core of social work intervention, yet there is no specific reference to the rights and needs of child witnesses of violence. Furthermore, the principle of the best interest of the child is absent in both laws (Article 26(2) of the Convention).

### **3. Recommendations**

- **Rec. 39 . Ukraine shall ensure that while providing protection and support services to victims of violence against women and domestic violence, due regard is paid to the specific needs of child witnesses of such violence.**

*The authors of this report suggest that relevant laws in this area recognise child witnesses as victims for the purposes of ensuring their rights. For instance, the authors suggest that the DLDV should be amended to take the rights and needs of child witnesses into account.*

- **Rec. 40 . Ukraine shall introduce the principle of the best interest of the child in the laws dealing with protection and support of victims of violence against women and domestic violence.**

*The authors of this report suggest introducing the best interests of the child as a main principle in the DLDV. The authors suggest introducing similar amendments to the legal framework on social services.*

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<sup>20</sup> See OSCE Opinion *supra*. note 5, Para 47-49.

*Furthermore, the authors suggest that Ukraine ensures the provision of age-specific and gender-sensitive psychosocial interventions to protect and support girls, boys and teenagers victims and witnesses of all forms of violence covered by the Convention.*

## **F. REPORTING**

### **1. What the Convention requires**

Article 27 of the Convention calls on parties to encourage any person to report acts of violence against women and domestic violence they become aware of; states parties shall determine the competent authorities to which suspected cases or concerns may be reported. States parties shall determine the competent authorities to which suspected cases or concerns may be reported. Moreover, Article 28 requires ensuring that professionals bound by confidentiality rules have the possibility to report acts of violence under appropriate conditions. It is important to note that neither provision obliges to report, as the Convention only requires for it to be possible or for it to be encouraged. On the other hand, reporting by professionals is subject to two cumulative requirements: 1) reasonable belief that there has been a serious act of violence and; 2) violence is likely to happen again. Even then, it does not introduce an obligation to report, but to enable professionals to do so under well-defined circumstances.

The Explanatory Report clarifies that the term “*under appropriate conditions*” means that “*parties may determine the situations or cases to which this provision applies*” (Paragraph 148). Moreover, the Explanatory Report also spells out the term “certain professionals”, which is intended “*to cover any number of professionals whose functions involve contact with women, men and children who may be victims*” (Paragraph 148).

### **2. Assessment of the Ukrainian law**

The Draft Law on Preventing and Combating Domestic Violence (Article 8, part 1 of the Draft Law) includes a provision regarding the reception of reports of acts of domestic violence committed by any person or by any of the “*authorized bodies and institutions*” in the field of domestic violence prevention and response. Such an approach is too broad and does not clearly spell out concrete follow-up to such reports.

The Law on Social Services and the Law on Fundamentals of Healthcare underscores the importance of respect for the confidentiality and secrecy of the personal information of service recipients gathered while providing social services, which aims at protecting their rights to personal data and private life. However, it should take into consideration the need to detect domestic violence and violence against women as a first step to protect victims and allow professionals to break the silence that often closes in around violence, which can be deadly for these kinds of victims.

### **3. Recommendations**

- **Rec. 41 . Ukraine should encourage any person witness to the commission of acts of violence covered by the Convention or who has reasonable grounds to believe that**

**such an act may be committed or expected, to report this to the competent authorities.**

*The authors of this report suggest that the DLDV and any future legislation dealing with violence against women should indicate which authorities are competent to accept these reports.*

*Furthermore, the authors suggest that awareness-raising campaigns launched under Article 13 of the Convention include messages on the importance of reporting violence.*

- **Rec. 42 . Ukraine should ensure that confidentiality rules do not preclude professionals from reporting cases of any form of violence covered by the Istanbul Convention to competent authorities when they have reasonable grounds to believe that such an act has been committed and further serious acts of violence are to be expected.**
- *The authors of this report suggest that social workers and healthcare professionals should be able to report cases of violence against women and domestic violence in well defined circumstances without violating their confidentiality rules.*

## VI. CIVIL REMEDIES

### A. CIVIL REMEDIES AND COMPENSATION

#### 1. What the Convention requires

Chapter V mandates states parties to ensure penal sanctions, civil remedies and compensatory provisions to combat violence against women and domestic violence. The first four Articles of this chapter establish key civil and administrative legal remedies that should be available to victims.

Pursuant to Article 29, states parties shall ensure that victims have access to “adequate civil remedies” both against the perpetrator and the state authority that fails its duty of due diligence. The Convention does not specify which remedies are “adequate” but the Explanatory Report refers to civil injunctions (to order a person to stop a particular conduct, refrain from a particular conduct or to take a particular action) or remedies against defamation and libel (See Paragraphs 157-159). A distinct and essential civil remedy, compensation, is subject to dedicated regulation in Article 30.

The second paragraph of Article 29 establishes remedies against the state party in cases where any of its agents failed in their duty to take the necessary preventive or protective measures. This obligation should be read in conjunction with the principle of due diligence acknowledged in Article 5 and “*the general principles of international law*”, as referred to in the Article itself.

Finally, as the Explanatory Report underscores, these remedies shall be accessible to the victim’s descendants in the event of death.

As pointed out, Article 30 lays out a two-tier compensation scheme which enables the victim to claim compensation first and foremost from the perpetrator, but also subsidiary compensation from the state party in serious cases. The subsidiary responsibility of the state party is thus limited to cases where the victim has sustained serious bodily injury or impairment of health. It is left to the parties to define such serious harm, but as the Explanatory Report puts it, “*the term “bodily injury” includes injuries which have caused the death of the victim, and that “impairment of health” encompasses serious psychological damages*”. However, nothing in the Convention prevents a more generous compensation scheme. The state party is also entitled to claim regress from the perpetrator, as long as due regard is paid to the safety of the victim.

The second paragraph of Article 30 concords with the standards set forth in the European Convention on the Compensation of Victims of Violent Crimes, which Ukraine has signed but not yet ratified. Nevertheless, this provision is open for reservation pursuant to Article 78.

Finally, the third paragraph of Article 30 calls upon states parties to pay compensation within a reasonable time.

#### 2. Assessment of the Ukrainian law

The Ukrainian legal system is based on Roman law. In 1996 the country adopted a new Constitution and the Civil Code was reformed accordingly. The Code came into force in 2004 and



abides by European standards. Accordingly, the Civil Code of Ukraine (CC hereinafter) offers adequate civil remedies. Its Article 16 lists civil remedies, including injunctions or claiming compensation. Moreover, the Article mentions as a civil remedy the *“recognition of decisions, actions or inactivity of the state power authority, the power authority of the Autonomous Republic of Crimea or the local self-government body as well as of their officials and employees to be unlawful.”* Article 21 regulates such remedy.

On the other hand, Article 3 of the Civil Procedural Code of Ukraine acknowledges the universal right to *“apply to the court for the protection of their violated, unrecognized or disputed rights, freedoms and legitimate interests”*.

With regard to compensation, the CC recognizes *“indemnification for losses and property damage”* (Article 22 CC) and *“indemnification for moral damage”* (Article 23 CC). Furthermore, Article 280 states the right of natural persons to claim compensation for violations of personal non-property rights. Chapter 82 CC regulates civil compensation, including a wide range of grounds, including damage suffered from crimes (Article 1177 CC) or inflicted by state agents (Arts. 1173-1176). However, the Civil Code does not include any subsidiary responsibility of the state for the violation of such rights.

The Criminal Procedural Code of Ukraine does contain a chapter on reparation and compensation for damages in criminal proceedings (chapter 9). Further, Article 127 CPCU, third indent, states: *“Damage caused to the victim by criminal offence shall be repaired to him from the state Budget of Ukraine as prescribed by law.”* The scope of this report does not include the law on state budget or the Ukrainian legislation on administrative claims. However, the Ministry of Justice commented on Article 30 of the Convention that *“today Ukrainian laws do not provide for mandatory state compensation for any harm to health caused by a crime. Therefore, it is advisable to make reservations for non-application of Article 30, paragraph 2 of the Convention”*.<sup>21</sup>

### 3. Recommendations

- **Rec. 43** Ukraine shall introduce a state compensation scheme that offers subsidiary compensation to victims of violence against women and domestic violence, at least to those who have sustained serious bodily injury or impairment of health. Alternatively, Ukraine may make a reservation to this obligation.

#### B. CUSTODY AND VISITATION RIGHTS

##### 1. What the Convention requires

Article 31 stems from the understanding that awarding custody or contact rights to a perpetrator of violence against women or domestic violence may pose a danger to both the victim and the child. Research in the area of domestic violence shows that ongoing contact to comply with court-ordered custody and visitation arrangements after separation is often used by the perpetrator to

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<sup>21</sup> Various ministerial departments, *Suggestions submitted by central executive authorities to amend current laws in connection with preparation of the Council of Europe Convention on preventing and combating violence against women and domestic violence*, 2014, p. 2.

continue the abuse. As the Explanatory Report puts it: “*For many victims and their children, complying with contact orders can present a serious safety risk because it often means meeting the perpetrator face-to-face*” (Paragraph 176). The Istanbul Convention’s provision on custody and visitation rights puts the safety of the victim and her children first and aims at managing the risk that the perpetrator uses his family rights as an opportunity to harm the survivor and/or her child.

Accordingly, Article 31 mandates a careful screening of all custody and visitation cases so as to determine whether there is a history of violence or a risk to the child or its non-abusive parent. Custody and visitation rights should be then restricted to ensure the safety of the victim and her children. In this regard, the CEDAW Committee has established an important rule whereby the rights of the perpetrator cannot supersede the rights of the victims, including rights to life and physical and mental integrity.<sup>22</sup> The European Court of Human Rights has also taken up this principle in its judgement *Opuz v. Turkey*.<sup>23</sup>

The UN Handbook for legislation on violence against women (UN Handbook on violence against women hereinafter)<sup>24</sup> establishes that family law should guarantee, inter alia: a legal presumption against awarding child custody to a perpetrator; availability, in appropriate cases, of professionally run supervised visitation centres; a survivor of violence who has acted in self-defence, or fled in order to avoid further violence, should not be classified as a perpetrator, or have a negative inference drawn against her, in custody and visitation decisions; and child abuse and neglect proceedings should target the perpetrators of violence and recognize that the protection of children is often best achieved by protecting their mothers.

## 2. Assessment of the Ukrainian law

The Family Code (FC hereinafter) came into force on January 1, 2004, and established new rules in areas such as rights and responsibilities of parents or dissolution of marriage. Section III of the Family Code of Ukraine establishes the rights and responsibilities of the mother, the father and the child; however, neither this section nor any other provision in this law refers to domestic violence or violence against women. The Convention requires that cases of violence be taken into account, thus the Family Code should include such possibility. It should be noted that the Family Code refers to the “cruel conduct with a child” as a ground to deprive parental rights or remove a child from the family without the deprivation of parental rights (Articles 164, 170 of FC).

## 3. Recommendations

- **Rec. 44 Ukraine should ensure that its regulation on parental rights requires judges and the Custody and Care Authority to take into consideration any evidence of any of the forms of violence against women covered by the Convention.**

*The authors of this report suggest amending the Family Code to ensure that judicial and administrative resolutions on parental rights do not jeopardise the safety of victims or their children.*

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<sup>22</sup> CEDAW Committee, *AT v. Hungary*, Communication n° 2/2003. See also *Goekce v. Austria* (2007) and *Yildrin v. Austria* (2007).

<sup>23</sup> *Opuz v. Turkey*, n° 33401/02 Paragraph 132, European Court of Human Rights, 2009.

<sup>24</sup> *UN Handbook for Legislation on Violence Against Women*. DAW/DESA, 2009, p. 55.

*The authors also suggest that evidence of violence against a child or his/her mother or father should be considered a ground to deprive the violent parent of parental rights or access to the child.*

## **C. DISOLUTION OF FORCED MARRIAGE**

### **1. What the Convention requires**

Article 32 also pertains to family law and aims at ensuring that forced marriages may be “voidable, annulled or dissolved”. The Convention uses different terms in order to adapt to the varying concepts provided for in each party’s family law. The provision also requires states parties to provide this remedy without undue financial or administrative burden. The Explanatory Report spells out this requirement: *“This means that any procedures set up for the annulment or dissolution of a forced marriage shall not present insurmountable difficulties or indirectly lead to financial hardship on the part of the victim. Furthermore, the form of ending the marriage should not affect the rights of the victim of forced marriage”* (Paragraph 178).<sup>25</sup>

### **2. Assessment of the Ukrainian law**

The Family Code of Ukraine requires consent to marry. Article 24 explicitly states that: *“A marriage shall be based on the free consent of a woman and a man. Forcing a woman and a man into a marriage is not permitted”* (sic). Absence of consent renders a marriage voidable (Article 38 FC). Accordingly, Article 40 stipulates that *“a marriage is found invalid judicially if it has been registered without free consent of the woman and man”*. Moreover, the provision defines several presumptions of lack of consent, in particular if the marriage *“has been registered as a result of physical or mental violence”* (sic).

On the other hand, chapter 10 FC covers the termination of a marriage and includes provisions on mutual dissolution and the right to take legal action for marriage dissolution otherwise (Article 110 FC). In this regard Ukraine complies with the Istanbul Convention.

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<sup>25</sup> See: Council of Europe, *Report on forced marriage*, 2005.

## VII. PROSECUTION OF VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

### A. GENERAL PRINCIPLES

Violence against women and domestic violence require vigorous and comprehensive, but also effective and diligent investigation and prosecution. This is essential to end impunity and instil an attitude of zero tolerance in society. On many occasions, difficulties in bringing perpetrators to justice stem from gaps in legal definitions of offences or procedural barriers which prevent an effective judicial response.

The Convention has a strong emphasis on criminal law. One of its main achievements consists in defining and criminalizing the various forms of violence against women laid down in the treaty. Drafters aimed at the most detailed and comprehensive description possible of the behaviours that states parties have to penalize. However, the Convention does not impose specific wording of the criminal offences it covers. It is left to the states parties how to frame and phrase each type of offence.<sup>26</sup>

Article 3.3 of the Criminal Code of Ukraine reflects the established principle of criminal legality: “The criminality of any act and also its punishability and other criminal consequences shall be determined exclusively by this Code.” Therefore only the CCU can fulfil the obligations of Ukraine under the Convention to criminalize certain behaviours. However, along with the CCU this section also reviews the relevant provisions of the Code of Ukraine on Administrative Offences.

### B. PHYSICAL VIOLENCE

#### 1. What the Convention requires

Article 35 requires parties to ensure that, “*the intentional conduct of committing acts of physical violence against another person is criminalised.*” This generic provision criminalizes any infliction of bodily harm caused by the application of immediate and unlawful physical force. The Explanatory Report emphasises that the offence applies, “*whatever the consequences*” (Paragraph 189), thus including injuries of a minor, serious or fatal nature.

Criminalizing physical violence does not entail significant technical problems, notwithstanding the ineffective implementation in cases of violence against women, which, however, falls outside the scope of a legal review. Indeed, most criminal statutes around the world already prohibit and sanction most forms of physical violence, taking into account the result: death or different degrees of bodily injuries.

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<sup>26</sup> In that sense, the Explanatory Report to the Istanbul Convention says, “*The obligations contained in Articles 33 to 39 require parties to the convention to ensure that a particular intentional conduct is criminalised. The drafters agreed on this wording to oblige parties to criminalise the conduct in question. However, the convention does not oblige parties to necessarily introduce specific provisions criminalising the conduct described by the convention*” (Paragraph 155).

## 2. Prosecution of domestic violence

Here we shall refer to domestic violence, which entails physical but also sexual, psychological or economic violence according to Article 3 paragraph b. This report will address each of them separately in the following sections.

The Istanbul Convention does not explicitly require a dedicated offence on domestic violence, just as it does not demand one on murder nor on many other specific criminal behaviour. Still, it does mandate states parties to ensure that all forms of violence are effectively addressed and both murder and minor injuries as a result of domestic violence are within the purview of the Convention.

Notwithstanding the wide-spread criminalization of physical violence, criminal law tends to focus on individual acts, thus usually failing to capture many cases of domestic violence involving patterns of behaviour where isolated acts do not reach the criminal threshold. The Convention requires particularly tailored criminal measures able to provide an effective response to violence as a course of conduct. For instance, Article 46, subparagraph b, calls on states parties to take into consideration as aggravating circumstances *“the offence, or related offences, where committed repeatedly.”*

On the other hand, states parties shall allow for aggravated offences if violence is committed within the household or against a close person, current or ex-partner. Certainly, Article 46, subparagraph a), of the Convention establishes the following aggravating circumstance: *“the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority.”*

## 3. Assessment of the law in Ukraine

### Criminal Code of Ukraine

The Criminal Code establishes a wide range of offences encompassing different forms of physical violence. In particular, chapter II of the Special part of the CCU is dedicated to *“crimes against life and health of a person.”* This chapter offers a comprehensive criminal response to all forms of physical violence irrespective of the consequences, ranging from murder to minor bodily injuries.

However, the Criminal Code of Ukraine does not include any specific provisions on domestic violence, nor does it explicitly acknowledge intimate or family relationship as a legally relevant context.<sup>27</sup> Although the CCU does establish the repetition of an offence as a circumstance that may aggravate punishment (Article 67.1.1), the regulation as a whole fails to capture the course of conduct that characterises most cases of domestic violence. The Ukrainian legal response to violence relies on a traditional perception of the criminal action, focused on isolated events causally related to consequences. This approach makes it very difficult to effectively prosecute behaviours such as those comprised in the definition of domestic violence.

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<sup>27</sup>The only possible exception identified in the area of physical violence is infanticide (Article 117) which refers specifically to the mother of the victim. Whilst the analysis of this provision falls outside the scope of our study, it seems that the rationale of the offence is pegged with the mitigating circumstance established in Article 66.1(4) for pregnancy.

The opinion on the draft Law of Ukraine on Domestic Violence issued by the Office for Democratic Institutions and Human Rights of the OSCE reached the same conclusion: *“The Criminal Code of Ukraine currently does not appear to contain specific criminal offences for acts of domestic violence (...). The circumstance of having committed a criminal act within a domestic setting is not included as an aggravating circumstance”*.<sup>28</sup>

Finally, also with regard to domestic violence, the Criminal Code does not provide for the possibility of withdrawal of parental/custody/visitation rights. Article 51 CCU lists the types of punishment envisaged in the CCU and there is no reference to this measure.

### **Code of Ukraine on Administrative Offences**

In Ukraine “family violence” is still considered an administrative offence under Article 173-2 of the Code of Ukraine on Administrative Offences (CUAO), which prohibits *“Committing violence in the family, failure to follow a protective order or failure to complete a correctional programme”*. This Article provides for administrative sanctions in case of *“wilful acts of physical, psychological or economic nature”* and includes a non-exhaustive list of such acts, including physical violence without causing physical pain and bodily injuries.

On the other hand, the definition of family members that qualifies for domestic violence is in the Law of Ukraine on Preventing Violence in the Family (2001), which currently states: *“family members: persons married to each other; persons living as family but not married to each other; their children; persons under guardianship or care; direct or indirect relatives living together”*.

## **4. Recommendations**

- **Rec. 45 . Ukraine should introduce a dedicated criminal offence on domestic violence.**

*With regard to the issue of an adequate criminal response to domestic violence, the Istanbul Convention Working Group on Legislation Review agreed at its meeting held in October 2014 that there should be a dedicated offence on domestic violence. The Working Group considered that the current legal framework dealing with domestic violence is insufficient and therefore a specific offence, which will also carry a symbolic value, should be adopted.*<sup>29</sup>

*Participants of the Working Group on Legislation Review held in October 2014 concluded that the new offence should tackle systematic acts of physical violence, along with forms of psychological, economic and sexual violence that will be discussed below. The new offence will cover severe cases, in order to be compatible with existing administrative offences or, if legal reform provides for it, criminal misdemeanours. Moreover, the new offence should be a distinctive one, thus it may be cumulative to other forms of violence, such as bodily injuries, murder, rape, etc. Consequently, the response to domestic violence will be the following: 1) Single acts of violence causing no injuries: administrative offence/criminal misdemeanour; 2) Systematic acts of violence (with or without injuries, with or without pain): new criminal offence on domestic violence; 3) Single acts of violence*

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<sup>28</sup> See supra. note 5, Paragraph 96.

<sup>29</sup> Along the same lines, the ODIHR Opinion also recommended the Government of Ukraine to enact a specific provision on domestic violence and argued for it: *“Provided that it is accompanied by strong penalties, such a new provision would clearly demonstrate the state’s “zero tolerance” attitude towards domestic violence offences.”*



*causing injuries or death: existing criminal offences depending on the gravity of the injury or other result. Liability for injuries or death should be cumulative with the offence of domestic violence if its elements also concur.*

- **Rec. 46 . Ukraine should introduce an aggravating circumstance based on the intimate or family relationship between the victim and the perpetrator.**

*The Istanbul Convention Working Group on Legislation Review agreed that the CCU should include an aggravating circumstance qualifying forms of violence against a spouse or ex-spouse, even without cohabitation, or against partners or ex-partners bound by a similar relationship, even without cohabitation. Such an aggravating circumstance aims to protect family values and the presumed security afforded to the domestic sphere, thus aggravating crimes when such protected rights are infringed. The aggravating circumstance will also complement existing aggravating circumstances that protect children and dependent persons.*

- **Rec. 47 . Ukraine should ensure a coherent legal framework to sanction domestic violence.**

*Given the potential overlap between the existing administrative offence on domestic violence and the recommended criminal offence on domestic violence or other existing criminal offences, legislators should ensure legal certainty. This report does not recommend removing the existing administrative offence from the law. Rather, there is an ongoing process of introducing a Code on Misdemeanours in Ukraine, which would benefit from a discussion of this issue. In order to ensure coherence within the legal framework, administrative offences or criminal misdemeanours on domestic violence should cover less severe cases or single acts, but repetition or severe violence should amount to a crime of domestic violence.*

- **Rec. 48 . Ukraine may allow for the termination or suspension of parental/custody/visitation rights as a result of criminal offences related to the domestic sphere.**

*Under Article 45 of the Istanbul Convention states parties may adopt other measures in relation to perpetrators, such as the withdrawal of parental rights, if the best interests of the child which may include the safety of the victim, cannot be guaranteed in any other way. The authors of this report suggest introducing this possibility in the Criminal Code of Ukraine.*

## **C. PSYCHOLOGICAL VIOLENCE**

### **1. What the Convention requires**

Article 33 of the Convention requires parties to criminalize psychological violence, which is described as the intentional conduct of seriously impairing a person’s psychological integrity through coercion or threats. Psychological violence responds to a controlling behaviour which may develop in a wide range of forms, be it the victims’ intimidation through insults, humiliation, and threats of any kind; isolation from their inner circle/ immediate family; or restriction of financial resources as well as those related to employment, education or medical care.



Therefore, all behaviours that amount to the serious impairment of a person’s psychological integrity should be criminalized. The Istanbul Convention does not define the notion of “*serious impairment*,” but as the Explanatory Report spells out, “*This provision refers to a course of conduct rather than a single event. It is intended to capture the criminal nature of an abusive pattern of behaviour occurring over time – within or outside the family*” (Paragraph 181).

Pursuant to Article 78 paragraph 3, the Convention allows parties to reserve the right to provide for non-criminal sanctions, instead of criminal sanctions in relation to psychological violence. It is important to note that the system of reservations under the Istanbul Convention seeks to work towards the gradual lifting of reservations over time by introducing a time limit to all reservations. Reservations are only valid for a period of five years upon which the party seeking to uphold its reservations: “...shall provide, before its renewal or upon request, an explanation to the GREVIO [the monitoring mechanism], on the grounds justifying its continuance” (Article 79.3).

## 2. Assessment of the law in Ukraine

### Criminal Code of Ukraine

The Criminal Code of Ukraine does not include any specific offence on psychological violence or on other related behaviours such as coercion, duress or threat, with two possible exceptions: 1) Article 120 criminalizes inciting a person to commit suicide by means of cruel treatment, blackmail, coercion or humiliation; and 2) Article 129 CCU penalizes the “threat to kill”.

In our view, the current legal framework of Ukraine does not comply with the requirement of the Istanbul Convention with regard to psychological violence. The regulation contained in Articles 120 and 129 fails to capture to their full extent the behaviours described in Article 33 of the Convention.

Concurring with this assessment, the ODIHR Opinion noted: “In the Criminal Code of Ukraine, ‘psychological violence’ is not expressly referred to as a criminal offence, even if some aspects may partially be covered by existing criminal provisions. Stakeholders are urged to debate whether it may be useful to include this concept into the Ukrainian Criminal Code, in particular as Ukraine has not made any reservation to the Istanbul Convention in that respect” (Paragraph 31).

### Code of Ukraine on Administrative Offences

The CUAO covers psychological and economic domestic violence in Article 173-2. The provision includes examples of prohibited behaviours, such as “*threats insulting or stalking, deprivation of housing, food, clothes, other property or money to which a victim has a right given to him by law.*”

## 3. Recommendations

- **Rec. 49 . Ukraine should expand its definition of threat in the CCU.**

The Istanbul Convention Working Group on Legislation Review agreed that the current provision on “threat to kill” contained in Article 129 CCU should be expanded to cover other forms of threat.

- **Rec. 50 . Ukraine should introduce an offence on coercion.**

*The Istanbul Convention Working Group on Legislation Review agreed that the CCU should include a crime on coercion in order to supplement the offence on threat. It is important to note that the draft Law on Misdemeanours currently under discussion in Ukraine already includes an offence on coercion.*

- **Rec. 51 CCU. The proposed crime on domestic violence should cover psychological and economic violence.**

*As already stated, the Istanbul Convention Working Group on Legislation Review agreed that the definition of domestic violence in the CCU should cover psychological and economic violence. The Working Group agreed that this new provision should cover cases of systematic psychological and economic violence, where the perpetrator aims to control the behaviour of the victim.*

## **D. STALKING**

### **1. What the Convention requires**

Article 34 of the Convention requires parties to criminalise the “*repeated threatening conduct directed at another person, causing her or him to fear for her or his safety.*” The definition of this offence is along the lines of existing criminal law definitions in most European countries and intends to cover a course of conduct, rather than isolated acts. As the Explanatory Report puts it, “*It is intended to capture the criminal nature of a pattern of behaviour whose individual elements, if taken on their own, do not always amount to criminal conduct*” (Paragraph 185).

The Convention leaves to national laws the definition of the threatening conduct that may amount to stalking, whereas the Explanatory Report gives some examples, such as “*repeatedly following another person, engaging in unwanted communication with another person or letting another person know that he or she is being observed. This includes physically going after the victim, appearing at her or his place of work, sports or education facilities, as well as following the victim in the virtual world (...) vandalising the property of another person, leaving subtle traces of contact with a person’s personal items, targeting a person’s pet, or setting up false identities or spreading untruthful information online*” (Paragraphs 182 and 183).

Like with psychological violence, the Istanbul Convention allows for a reservation to the criminalization of stalking under Article 78.3, thereby comments on the regulation of such reservations conveyed in the previous section also apply here.

### **2. Assessment of the law in Ukraine**

#### **Criminal Code of Ukraine**

Ukraine does not have any specific law on stalking, nor does it have any criminal provision addressing any of the elements of the offence. While some generic offences such as assault, damage of property or threats to life may target some threatening behaviours captured under stalking, they fail to grasp the full extent of it and have proven to be ineffective. Accordingly, in our view, the current legal framework of Ukraine does not comply with the requirement of the Istanbul Convention with regard to stalking.

## **Code of Ukraine on Administrative Offences**

Article 173-2 covers “domestic” stalking, although neither the CUAO nor the Law on Prevention of Family Violence provide a definition of stalking. Nevertheless, stalking outside the family is not sanctioned. Hence, even if Ukraine reserves its right to provide for non-criminal sanctions, it still does not fully comply with the Istanbul Convention requirements.

### **3. Recommendations**

- **Rec. 52. Ukraine should enact criminal legal measures prohibiting and sanctioning conducts of stalking.**

*The Istanbul Convention Working Group on Legislation Review agreed that stalking should be prohibited under Ukrainian criminal law, although subject to private prosecution only. Any future definition of stalking should not be restricted to the domestic sphere or other kinship. The Working Group on Legislation Review also agreed that restraining orders should be available for victims of stalking.*

## **E. SEXUAL VIOLENCE AND SEXUAL HARASSMENT**

### **1. What the Convention requires**

#### **a) Sexual violence and rape**

Article 36 of the Istanbul Convention mandates parties to criminalise all forms of non-consensual acts of a sexual nature, including rape. This fairly long Article is the most detailed criminal law provision in the Convention and provides a “catch all” definition for sexual violence. Its first subparagraph defines the targeted conducts. The first indent includes acts commonly referred to as rape. The Istanbul Convention provides a broad definition that includes all forms of penetration of bodily parts carried out with bodily parts or objects. Under paragraph b), the Article makes it clear that all other non-consensual sexual acts falling short of rape should also be criminalized. The Convention also criminalizes causing another person to undergo the previous acts with a third person. On the other hand, Article 43 of the Convention requires that sexual crimes apply irrespective of the relationship between perpetrator and victim (i.e. includes marital rape).

The Explanatory Report refers to the notion of acts of a “sexual nature” as a boundary of the scope of the offence, which is left to the parties to define: “*The term ‘of a sexual nature’ describes an act that has a sexual connotation. It does not apply to acts which lack such connotation or undertone*” (Paragraph 190). The key element in the way the Convention frames sexual violence is consent. Both the definition of rape and the provision on other forms of sexual violence revolve around the lack of consent.

Legislation should ensure that gender stereotypes do not taint judicial decisions. Moreover, with regard to rules of evidence, the Istanbul Convention includes yet another relevant provision. Article 54 requires parties to ensure that evidence relating to the sexual history and conduct of the victim “*shall be permitted only when it is relevant and necessary.*”

#### **b) Sexual harassment**

Article 40 of the Convention prohibits sexual harassment, which is a type of behaviour that intersects with both sexual and psychological violence. Unlike the other criminal law provisions, this one authorises sanctions other than criminal penalties, whose type and nature the parties are free to determine.

The Convention defines sexual harassment as “unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction”.

## 2. Assessment of the law in Ukraine

### Criminal Code of Ukraine

The CCU contains a chapter dedicated to sexual violence. Chapter IV, entitled “*Crimes against sexual freedom and sexual inviolability of a person*” recognises five categories of sexual crimes: Article 152 defines rape, although it only covers vaginal penetration with the penis; Article 153 pertaining to “*violent unnatural gratification of sexual desire*” sanctions most other types of sexual violence; Article 154 pertains to the “*compulsion to sexual intercourse*”; Article 155 covers “*sexual intercourse with a sexually immature person*”; and Article 156 deals with debauchery of minors, which falls outside our analysis as explained in the introduction of this section.

All crimes against the sexual integrity of the person are crafted around the element of force or threat and there is no reference to the consent of the victim. The CCU does not include rules on evidence to ascertain how courts interpret and apply this requirement, but in any case the Ukrainian approach to sexual violence lags behind best international practices.

On the other hand, Ukrainian criminal law does not specifically disallow marital rape or any other form of sexual assault in the context of an intimate or family relationship. Furthermore, Article 56 of the Family Code of Ukraine forbids coercion into sexual relations by physical or psychological violence. However, the West Ukrainian Centre Report states the following, “*Legislation does not contain the restriction that rape can occur only outside marriage, that is, rape can also occur between married people (victim and perpetrator may be in the registered or actual marriage). But in practice there are no marital rape cases investigated and prosecuted. Due to the existing stereotypes, attitudes regarding the position of women in the family, and non-awareness of their rights, women do not bring complaints because of shame and because they are sure of a biased response of law enforcement representatives*” (sic).<sup>30</sup>

Finally, the CCU covers only partially the conduct described in Article 36.1.c) of the Convention. In fact, the Ukrainian authorities themselves acknowledged, while providing information to the Council of Europe within the framework of the 4<sup>th</sup> monitoring round of Council of Europe Recommendation(2002)5 on the protection of women against violence, that its criminal legislation does not cover all forms of sexual violence. In particular, Ukraine stated that the

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<sup>30</sup> H. Fedkovych, I. Trokhym, M. Chumalo, *Combating Domestic Violence: Ukrainian and International Experience*, The West Ukrainian Centre “Women’s Perspectives,” Lviv Publishing House of Lviv Polytechnic National University 2007 (hereinafter *West Ukrainian Centre Report*).

following acts of violence are not criminalised: “All forms of sexual assault to spouses, regular or occasional partners and cohabitants” and “All sexual acts against non-consenting persons.”<sup>31</sup>

### **Code of Ukraine on Administrative Offences**

Article 173 of the Code of Ukraine on Administrative Offences provides sanctions for “petty crimes”, including conducts of sexual harassment.

### **Law on ensuring Equal Rights and Opportunities of Women and Men**

Article 1 LERO defines sexual harassment as “verbally expressed sexual actions (threats, intimidation, scurrilities) or physical actions (touching, patting) which humiliate or offend persons in a state of subordination at work, service, material or any other type of subordination”. Moreover, Article 22 LERO establishes the right of victims of sexual harassment to file complaints with “the Commissioner for Human Rights, the specially authorized central executive body on ensuring equal rights and opportunities of women and men, authorized persons/coordinators on ensuring equal rights and opportunities of women and men in executive bodies and local authorities, as well as state law enforcement bodies and courts.”

Article 23 LERO also establishes compensation for pecuniary and non-pecuniary damage caused by sexual discrimination or sexual harassment. However, it is not clear whether the procedure to obtain such compensation is already in place.

## **3. Recommendations**

- **Rec. 53. Ukraine should amend its Criminal Code of Ukraine in order to improve its regulation on sexual violence.**

*The Working Group on Legislative Review agreed during its meeting in October 2014 that criminal law on sexual violence should be amended. Participating experts are of the view that at least the following changes should be introduced: 1) expanding the definition of rape to cover other forms of non-consensual penetration, including with objects; 2) criminalising the act of coercing another person to engage in non-consensual acts of a sexual nature with a third person; 3) amending the reference to unnatural gratification of sexual desire in Article 153; 4) introducing a definition of consent and/or possible coercive circumstances.*

## **F. FORCED MARRIAGE**

### **1. What the Convention requires**

Article 37 of the Istanbul Convention requires the criminalisation of two types of conduct: 1) “forcing” a person, by use of physical or psychological pressure, constraint or duress, to enter into marriage; and 2) “luring” a person to a foreign country with a view to forcing her or him to enter

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<sup>31</sup> Hagemann-White, C., *Analytical study of the results of the fourth round of monitoring the implementation of Recommendation Rec(2002)5 on the protection of women against violence in Council of Europe member states*, CoE, 2014, p. 14 (hereinafter *Analytical study of Rec(2002)5*), p. 56.

into a marriage (whether or not the marriage is actually concluded). Further, legislation has to provide mechanisms to determine the validity of consent among both parties. For instance, the Explanatory Report explains that consent is absent when family members use “*coercive methods such as pressure of various kinds, emotional blackmail, physical duress, violence, abduction, confinement and confiscation of official papers.*”

Article 37 of the Istanbul Convention also explicitly requires criminalising forced marriage of a child. With regard to the age, the Convention on the Rights of the Child states that a child is anyone under 18 years of age, unless the law states that majority is reached earlier (Article 1).

## **2. Assessment of the law in Ukraine**

There is no provision in the CCU covering forced marriage. Indeed, in the Analytical study of Rec(2002)5, Ukraine recognized that forcing an adult or a child to enter into a marriage is not a specific crime in Ukraine.<sup>32</sup> Furthermore, Ukraine does not have a general provision on coercion. Accordingly, forced marriage cannot be prosecuted under the Ukrainian criminal law. Moreover, it is important to bear in mind that Ukraine is a party to the Convention on the Rights of the Child.

The current legal framework of Ukraine on forced marriage does not comply with the minimum requirements of the Istanbul Convention. As already stated, the Convention does not require a dedicated offence on forced marriage, yet the CCU has no other generic provision that covers the described conducts. Despite civil law regulation, Article 37 of the Convention on forced marriage obliges states parties to criminalise the conduct described above and reservations are not allowed.

## **3. Recommendations**

- **Rec. 54 . Ukraine should criminalise forced marriage.**

*The Working Group on Legislative Review agreed that forced marriage should be criminalized. Experts participating in the October 2014 meeting concluded that forced marriage could be introduced in the Criminal Code of Ukraine as a specific form of coercion.*

## **G. FEMALE GENITAL MUTILATION**

### **1. What the Convention requires**

Article 38 of the Istanbul Convention requires criminalisation of the practice of cutting away or otherwise damaging certain parts of the female genitalia and the fact of “coercing” a woman or girl or “inciting” a girl to undergo this practice. Although these acts fall within the scope of crimes against the person such as bodily injury or torture, the Convention specifically calls for its prohibition.

The Explanatory Report also spells out the terms used in the definition of female genital mutilation (FGM): “*The term ‘excising’ refers to the partial or total removal of the clitoris and the*

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<sup>32</sup> Id. p. 59.

*labia majora*. ‘Infibulating,’ on the other hand, covers the closure of the labia majora by partially sewing together the outer lips of the vulva in order to narrow the vaginal opening. The term ‘performing any other mutilation’ refers to all other physical alterations of the female genitals” (Paragraph 199). This description seeks to capture all possible actions under the concept of FGM.

Furthermore, legislation on FGM should ensure that parents and other family members of victims are among those subject to criminal liability. It should also be irrelevant whether it is performed by a medical or non-medical practitioner. As forced marriage, FGM usually involves a cross-border conduct as perpetrators may seek to remove the child from the jurisdiction of the country of residence for the purposes of FGM. The rules of the Convention on jurisdiction will be discussed briefly below.

## **2. Assessment of the law in Ukraine**

The CCU does not contain any specific offence covering FGM. However, provisions on physical assault resulting in bodily injury (Arts. 121, 122 or 125) apply to most cases of FGM. One identified shortcoming refers to the fact that the CCU does not criminalise coercion or threats other than threats to life. Thus, some actions described in Article 38 sub-paragraphs b and c of the Convention are not covered by the Ukrainian legislation.

## **3. Recommendations**

- **Rec. 55 . Ukraine should amend the CCU in order to fully prohibit all actions included in the definition of FGM as contained in the Istanbul Convention.**

## **H. FORCED ABORTION AND FORCED STERILIZATION**

### **1. What the Convention requires**

Article 39 of the Convention requires criminalisation of two types of acts: 1) terminating the pregnancy of a woman without her prior and informed consent, by whatever means; 2) carrying out any procedure aimed at terminating a woman’s capacity to reproduce naturally, without her consent.

The Explanatory Report explains the acts within the remit of this Article. With regard to the termination of pregnancy, the Explanatory Report makes it clear that it “*covers any of the various procedures that result in the expulsion of all the products of conception*” (Paragraph 204). Further, the term “sterilisation” refers to “*any procedure which results in the loss of the ability to naturally reproduce*” (Paragraph 205).

### **2. Assessment of the law in Ukraine**

Under Article 121, acts of forced abortion or forced sterilization may be classified as intended grievous bodily injury. Despite the absence of any dedicated offence, both criminal behaviours described in Article 38 of the Convention fall under generic offences of bodily assault.



### 3. Recommendations

- **Rec. 56 .** Ukraine may consider introducing a dedicated offence on any of the prohibited behaviours in Article 39 of the Convention or specifying the application of existing offences to forced sterilization and forced abortion.

#### I. **UNACCEPTABLE JUSTIFICATIONS**

##### 1. What the Convention requires

Article 42 of the Convention includes a clear prohibition of historically used justifications for acts of violence against women and domestic violence. States parties will need to ensure that culture, tradition or so-called honour is not regarded as a justification for any of the criminalised courses of conduct. Within the remit of this provision also fall justifications around the model of loss of self-control in cases of murder, rape, etc. The Convention requires states parties to exclude the possibility of justifying violence on the grounds of a moral assessment of the victim’s behaviour.

##### 2. Assessment of the law in Ukraine

The Criminal Code of Ukraine does not allow for justifications on the grounds of so-called honour or religion, but it does include mitigating circumstances referred to the provocative behaviour of the victim. Article 66 on “*Circumstances mitigating punishment*” include in sub-paragraph 1, indent (7), the following mitigating circumstance: “*the commission of an offense under influence of strong excitement raised by improper or immoral actions of the victim.*” This mitigating circumstance should be deemed a prohibited justification that clearly infringes both the spirit and the wording of the first paragraph of Article 42 of the Convention.

Furthermore, Article 116 describes a distinct form of murder committed “*in the heat of passion.*” The same element qualifies a form of bodily injury in Article 123. Both Articles reduce the punishment by more than half when the crime committed “*in the heat of passion suddenly provoked by unlawful violence, systematic harassment or grievous insult of the victim.*” This last reference to “*grievous insults of the victim*” also contravenes Article 42 for the reasons stated above. As for the other elements constituting Articles 116 and 123, references to unlawful violence or systematic harassment should be understood as already covered by general rules on liability and culpability. As to this regulation, it is important to notice that the CCU contains a general requirement of sanity of perpetrators for criminal liability (Arts. 19 and 20) and a broad definition of “*necessary defence*” (Article 36).

### 3. Recommendations

- **Rec. 57 .** Ukraine should amend the mitigating circumstance established in Article 66.1(7) CCU.

*The Istanbul Convention Working Group on Legislation Review agreed that the reference to the immoral behaviour on the part of the victim should be removed.*

- **Rec. 58 . Ukraine should amend Articles 116 and 123 in order to comply with Article 42 of the Convention.**

*The Istanbul Convention Working Group on Legislation Review concluded that the reference to grievous insults of the victim should be suppressed both in Articles 116 and 123 CCU.*

- **Rec. 59 . Ukraine should consider the possibility of introducing a general provision disallowing any kind of justification on the grounds of religion, tradition, customary rules, honour or inappropriate behaviour of the victim.**

## **J. OTHER CRIMINAL LAW PROVISIONS**

### **1. What the Convention requires**

Articles 43 to 48 of the Istanbul Convention include provisions to ensure: the application of criminal offences irrespective of the relationship between victim and perpetrator; extraterritorial jurisdiction in certain cases; effective, proportionate and dissuasive punishment of offences of violence against women and domestic violence; due regard to sentences passed by another state party; availability of certain aggravating circumstances; and prohibition of mandatory alternative dispute resolution mechanisms.

### **2. Assessment of the law in Ukraine**

Most of the aforementioned obligations have already been discussed. In any case, the Ukrainian law fulfils most of them.

With regard to territorial jurisdiction, the CCU (Articles 6 to 8) provides rules that are broad enough to meet the standards of the Istanbul Convention.

Article 67 CCU encompasses most aggravating circumstances provided for in Article 45 of the Convention. Only the aggravation of offences committed against partners or ex-partners is missing in the CCU and this report already recommended its inclusion.

Article 9 CCU allows for consideration of sentences passed by a foreign state, therefore Ukraine meets the standard embodied in Article 47 of the Convention.

Finally, with regard to alternative dispute resolution processes, both the Criminal Code and the Criminal Procedural Code of Ukraine allow for conciliation, yet such procedures are not mandatory. Nevertheless, it should be noted that Article 111 of the Family Code of Ukraine requires civil courts to take the “*necessary action to reconcile spouses unless this is contrary to morals of the society*” in judicial proceedings for dissolution of marriage. The notion of “morals of the society” is very vague and the way courts interpret this provision may infringe the Convention.

It is worth mentioning here the Law on Applying Amnesty in Ukraine, 01.10.1996, (LAA hereinafter). The law defines amnesty as the “*full or partial release from punishment of the persons found guilty of committing a crime or those whose criminal cases have been considered by the court*”

*with the verdicts still not in force*”. According to this law, amnesty shall not apply to the persons specified by Article 4 where there are no specific provisions on crimes related to domestic violence or violence against women. In this regard, the LAA may be amended in order to generally exclude from amnesty perpetrators of these types of crimes.

### **3. Recommendations**

- **Rec. 6o . Ukraine should prohibit mandatory alternative dispute resolution processes in relation to all forms of violence covered by the Convention.**

*The authors of this report suggest expressly excluding cases of domestic violence from the scope of Article 111 of the Family Code.*

*Besides, the authors suggest amending the Law on Applying Amnesty in Ukraine in order to exclude amnesty in serious cases of violence against women and domestic violence, although this falls outside the notion of “alternative dispute resolution processes.”*

## VIII. INVESTIGATION OF VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

### A. DUE DILIGENCE

#### 1. What the Convention requires

Chapter VI focuses on the provisions to be taken by the states parties for the adequate investigation of offences and the protection of victims. Its provisions specify the application of the standard of due diligence to the investigation and prosecution of offences of violence against women and domestic violence. In particular, Articles 49 and 50 of the Convention identify the following obligations:

1) **Undue delay.** Accordingly, Article 49 indicates that parties have the obligation to ensure that investigations and judicial proceedings are carried out without undue delay.

2) **Effectiveness.** An effective investigation and prosecution means, as the Explanatory Report puts it, *“establishing the relevant facts, interviewing all available witnesses and conducting forensic examinations, based on a multi-disciplinary approach and using state-of-the-art criminal investigative methodology to ensure a comprehensive analysis of the case.”*

3) **Respect of the rights of the victim based on a gendered understanding of the violence.**

Parties should try to avoid, as far as possible, aggravating any harm experienced by victims during investigations and judicial proceedings. Further, states parties are required to provide assistance and support to victims during criminal proceedings. Respect for victims’ rights must also embrace a gender perspective, which means, for instance, ensuring that a same-sex forensic specialist is available to examine the victim.

4) **Prompt and appropriate response.** Under Article 50 states should ensure that enforcement agencies respond to all forms of violence against women promptly and appropriately by offering adequate and immediate protection to victims.

5) **Preventive operational measures and the collection of evidence.** Such mechanisms should be part of an appropriate response.

The criminal justice system of states parties to the Convention must be able to meet these standards. Prosecutors, police, judges and other agents involved should discharge their duties in combating violence against women and domestic violence in a manner consistent with the due diligence principle.

#### 2. Assessment of the Ukrainian law

The current Criminal Procedural Code of Ukraine (CPCU) entered into force in January 2013 and made a breakthrough in the regulation of criminal proceedings. The new law has enhanced procedural guarantees, improved access to justice and developed the role of victims in criminal proceedings, among other things. Accordingly, the CPCU fulfils most international standards on

due process and provides enough tools for a diligent investigation and prosecution of all offences. However, the CPCU does not contain a specific procedure for cases of violence against women or domestic violence, nor does it include any dedicated measures to protect these victims.

On the other hand, Ukraine is currently undergoing an intense reform process in the area of police and policing. Resulting from these efforts, a new Law on Police is being drafted with the participation of, among others, the Council of Europe. Legal reform in the area of policing should take into account European human rights standards, including specific standards such as those established in the Istanbul Convention.

Police are at the frontline of the criminal justice system and they are often the first ones called upon to intervene when an act of violence takes place. Police’s attitude and response have a dramatic impact on ensuing developments, including success in prosecution and prevention of future violent acts. The Draft Law on Domestic Violence includes the police as an authorized agency and provides for its general responsibilities in the area. However, the Draft Law on Police (DLP) does not contain any specific references to violence against women or domestic violence. The DLP nonetheless presents a good opportunity to expressly mandate the police to play an effective role in violence against women prevention and response. According to this mandate, the DLP should require Ukrainian police authorities to define specific mechanisms, including rules, protocols and guidelines, to enable the police to discharge their duties to prevent and combat violence against women, including domestic violence, in accordance with international human rights standards.

The UN Handbook on violence against women suggests a number of necessary steps the police should take upon receiving a complaint, including conducting a coordinated risk assessment, interviewing the parties and witnesses in separate rooms or advising the victim of her rights and available services. Many of these are also requirements under the Istanbul Convention, which means a comprehensive set of measures for effective policing in cases of violence against women and domestic violence is available. Also, the UN Office on Drugs and Crime issued in 2010 a Handbook on effective police responses to violence against women, which contains a comprehensive explanation of applicable international standards and good practices to guide police intervention<sup>33</sup>. Its chapter V entitled Responding to violence against women: the role of the police includes detailed intervention protocols.

In order to strengthen and improve the role of the police in this area, the creation of specialised units or personnel within the police is widely considered a good practice to deal with cases of violence against women and domestic violence. For instance, the Spanish Organic Act on Gender Violence mandates the establishment of *"dedicated units within the national law enforcement and security agencies specialising in the prevention of gender violence and supervising the enforcement of the legal measures adopted."*<sup>34</sup>

Finally, a key element on succeeding in effectively prosecuting violence against women and protecting its victims is police training. We refer to the specific recommendations above in the relevant section.

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<sup>33</sup> United Nations Office on Drugs and Crime, *Handbook on Effective Police Responses to Violence Against Women*, Criminal Justice Handbook Series, UN, 2010.

<sup>34</sup> See *supra*. note 17.

### 3. Recommendations

- **Rec. 61. Ukraine may consider introducing legal measures to facilitate and expedite cases of violence against women, including domestic violence (i.e. specialised courts, special procedures, specific protection measures, etc.).**

No proposed amendments are provided as this recommendation would require organizational reforms within the justice system.

- **Rec. 62. Ukraine should consider adopting a protocol on handling the intervention and coordination of different actors involved in combating violence against women and domestic violence.**
- **Rec. 63. The new Draft Law on Police should establish a clear mandate for the Police to act promptly and effectively in all cases of violence against women and domestic violence and should contain an obligation on the appropriate authorities to develop specific intervention mechanisms and tools in these cases.**

The authors of this report suggest introducing a clear mandate for the Police to act in cases of violence against women and domestic violence.

The authors also consider that the DLP should strengthen the protective and preventive role of the police and should explicitly mention victims of crime and persons at risk of becoming victims as subjects entitled to police protection. For instance, indent 4 of paragraph 2, Article 2 DLP, spells out the police functions in the area of protection by listing subjects of protection. Although it mentions “*parties in criminal proceedings*”, there is no reference to victims of crimes or persons at risk, which may not necessarily be a party in the criminal proceeding according to the Criminal Procedural Code of Ukraine.

Finally, the authors of this report suggest creating specific police units specialised in violence against women and on domestic violence. Such units may be created only within the Criminal police or also within the Administrative and Local police. The procedure shall follow rules established for structural organization of each branch, as provided for in chapter 1 DLP.

## B. RISK ASSESSMENT AND MANAGEMENT

### 1. What the Convention requires

Article 51 establishes the obligation to assess and manage the risk for survivors of violence against women and domestic violence. This provision aims at avoiding any repetition of the abuse, or escalation in the degree of the violence. It also allows law enforcement authorities to adopt appropriate protection measures in each case and therefore helps maximizing resources. Pursuant to this Article, parties should specifically take into account the possession or access to firearms by perpetrators.

The Explanatory Report elaborates on the purpose of this provision by requiring states parties to “*ensure that an effective multi-agency network of professionals is set up to protect high-risk victims. The risk assessment must therefore be carried out with a view to managing the identified risk by*

*devising a safety plan for the victim in question in order to provide co-ordinated safety and support if necessary.”*

## 2. Assessment of the Ukrainian law

### Criminal Procedural Code of Ukraine

The CPCU does not contain a specific obligation to assess the risk to victims in cases of violence against women, but it does enclose the obligation to take into account the risk when deciding on restraining measures (Article 179 and 177 CPCU).

The CPCU does not take into account whether the perpetrator possesses or has access to firearms or other kind of weapons. It is neither a circumstance for mandatory consideration of the investigating judicial authority under Article 178 CPCU, nor is there a dedicated measure to withdraw such weapon or impede access to it.

### Draft Law on Domestic Violence

Neither the current law nor the Draft on domestic violence include provisions on risk assessment or risk management. Such assessments are vital in determining the risk to the victim of further injury or homicide, and should play an important role in the state’s response to each case and, in particular, in issuing protection orders. Moreover, risk assessment is critical in cases of domestic violence, where repetition rates and escalation of violence are a well-established pattern. Experience shows that most cases of violence against women are committed by a person known to the victim.

### Draft Law on Police

The DLP does not contain any reference to the role of the police in the assessment and management of criminal risk. For the same reasons stated above, it would be desirable that the new law encompassed an explicit mandate for the police to conduct risk assessments in all cases of violence against women, especially in cases of domestic violence.

Best practices show that police risk assessment and management may greatly benefit from standardized risk assessment models. Further, the effective exchange of information in this field has proven to be crucial.

## 3. Recommendations

- **Rec. 64 . Ukraine should ensure that all relevant authorities carry out a risk assessment in cases of violence against women and domestic violence in order to manage such risks if necessary.**

*The authors of this report believe that risk assessment and risk management should be a key part of the police intervention in cases of violence against women and domestic violence. On the other hand, in order to manage risk in all criminal cases, it might be useful to establish a database on persons who are under police protection or at risk of suffering criminal violence.*



*On the other hand, the Criminal Procedural Code of Ukraine already requires judges to take the risk of repetition of violence into account (i.e. as a ground “for enforcement of measures of restraint” (sic) Article 177 CPCU). However, the authors believe that such risk assessment should be coordinated with the assessment of the police and allow support services to provide their views. The authors suggest adopting a protocol on risk assessment and management in cases of violence against women and domestic violence in order to exchange information and coordinate responses between the judiciary, the police and support services.*

- **Rec. 65 . Ukraine should ensure that risk assessments conducted in cases of violence against women and domestic violence take into account the fact that the perpetrator possesses or has access to firearms.**

*The authors of this report suggest adding the fact that the suspect or accused possesses or has access to firearms to the list of circumstances pertaining to the existing measures of restraint. Moreover, in order to provide for an adequate management of the risk, the authors suggest extending the scope of Article 148 CPCU on General provisions relating to temporary restriction of the enjoyment of a special right and temporary seizure of documents confirming the special right, to introduce the right to possess or carry firearms. On the other hand, the authors of this report suggest amending the CPCU to expressly enable the provisional seizure of firearms under Article 167 CPCU.*

## **C.      RESTRAINING OR PROTECTION ORDERS**

### **1.    What the Convention requires**

Articles 52 and 53 introduce the obligation for states parties to establish so-called restraining or protection orders. This is a rapidly expanding measure, as best practices show its impact on keeping the victim safe, especially in cases of domestic violence. In particular, the Convention includes the obligation to introduce two types of orders: emergency barring orders and restraining orders. Other international bodies also recommend using this instrument. The UN Handbook on violence against women makes it very clear (section 3-10-1): “*Protection orders are among the most effective legal remedies available to complainants/survivors of violence against women.*”

**Emergency barring orders.** Pursuant to Article 52, parties shall set up emergency barring orders to achieve physical distance between the victim and the perpetrator in cases of domestic violence. This measure equips competent authorities with the power to evict the perpetrator from the common residence for a short period of time, as in many cases of domestic violence the immediate and necessary remedy requires one of the parties to leave the common home.

**Restraining (protection) orders.** Article 53 of the Convention obliges states parties to introduce restraining or protection orders with regard to all forms of violence against women, including domestic violence, in their legislation. The Explanatory Report spells out their content: “*prohibiting, restraining or prescribing a certain behaviour by the perpetrator.*” This measure seeks to prevent the commission of violence and its ultimate purpose is to protect the victim. Moreover, as they are usually long-term measures, they give the victim some time to recover from violence and take further actions.

To ensure compliance with such orders, the Istanbul Convention requires breaches of these orders to be sanctioned.

## 2. Assessment of the Ukrainian law

### Criminal Procedural Code of Ukraine

The CPCU foresees neither emergency barring orders nor protection orders. However, chapter 18 of the CPCU regulates measures of restraint, which includes in Article 176: 1) personal commitment; 2) personal warranty; 3) bail; 4) house arrest; 5) custody. According to Article 177 CPCU, the purpose of such measures is primarily *"to ensure the compliance of the suspect or accused, with procedural obligations imposed on him"*, but also to prevent unlawful influence on other parties, including the victim, or to prevent the commission of similar or the same criminal offence.

Paragraph 5 of Article 194 CPCU allows the judge to impose other measures of restraint in addition to those provided for in Article 176 CPCU. Such additional measures include the obligation to *"abstain from communicating with any individual specified by investigating judge/court or communicate with such person on conditions imposed by investigating judge/court"*; and *"do not visit places specified by investigating judge/court."* These measures have an extendable duration of 2 months.

Measures of restraint regulated in the CPCU cover part of the purposes and contents of the obligation under the Istanbul Convention on protection orders. However, measures of restraint in the CPCU are neither victim-centred nor focused on their protection. The standard of proof is quite high, and the procedure requires a motion with limited standing. Moreover, the available measures of restraint in the CPCU fall short of the wider scope of protection orders. For instance, important prohibitions are not explicitly possible, such as eviction from the residence or enforcing a security distance to the victim.

### Draft Law on Domestic Violence

The special legal framework on domestic violence in Ukraine foresees measures which fall within the realm of protection orders. The current Law on Prevention of Family Violence includes in Article 13 the possibility to enforce “protective orders” against perpetrators of family violence that have been previously warned. These orders are long-term protection measures issued by the police (“militia” or criminal juvenile service) with the approval of the public prosecutor. Measures that can be adopted under this provision, however, are insufficient as they only cover cases where the victim leaves his/her residence to avoid contact with the perpetrator.

The last English version of the draft Law on Domestic Violence encompasses two types of protection orders. Article 14 DLDV provides for so-called “prompt response measures”, which include a warning to the perpetrator that “domestic violence is unacceptable” and a prohibition to take *“particular actions in regard to a victim of domestic violence”* (sic). However, the list of available “prohibitions” does not include eviction from the common residence, thus these measures cannot fulfil the requirements of Article 52 of the Convention.<sup>35</sup>

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<sup>35</sup> In any case, this article has been excluded from the most recent version of the DLDV, although it is not yet available in English.

Under Article 15 on “*Temporary restriction of the rights of domestic violence perpetrators*” the DLDV establishes the possibility “to file a petition with the court to restrict the rights of the domestic violence perpetrator (...) and to order the domestic violence perpetrator to participate in a correctional programme” (sic). The proposed set of measures to protect victims of domestic violence improves previous regulations, but it is quite unclear how it will function in practice and which court (criminal or civil) will be competent to hear these proceedings. Moreover, it is not clear what the role of the victim is in issuing these measures, if initiating criminal proceedings is required or if it is possible to grant them ex-parte. Moreover, these measures only protect victims of domestic violence, while the Istanbul Convention requires a broader scope, covering victims of all forms of violence against women.

### **Criminal Code of Ukraine**

The CCU does not specifically provide for criminalization of breaches of restraining (protection) orders. However, Article 382 of CCU sanctions violations of court decisions.

### **Code of Ukraine on Administrative Offences**

Article 173-2 of the CUAO sanctions breaches of protection orders. According to the CUAO these sanctions are issued by the court. The case must be examined within 24 hours.

### **Draft Law on Police**

Should Ukraine introduce emergency barring orders in the Draft Law on Domestic Violence, the police could be the authorised issuing agency. If that is the case, the new Law on Police should include such powers, in accordance with regulations in the Criminal Procedural Code of Ukraine and in the Law on Domestic Violence. For instance, Article 21 DLP lists general police mandates and the power to evict a perpetrator from his/her home is not clearly included in any of them.

### **Civil Law**

Under Article 16 of the Civil Code, any person is entitled to civil remedies to protect his/her rights. The list of remedies includes, among others, the right to apply for injunctions. However, the Civil Procedural Code of Ukraine does not foresee any special or urgent proceeding to grant these remedies. There are no procedural mechanisms to request and obtain an injunction or any other form of civil court protection that fulfils the requirements of Article 53.2 of the Convention.

## **3. Recommendations**

- **Rec. 66 . Ukraine should introduce in the legislation emergency barring orders in compliance with the Istanbul Convention.**

*The Draft Law on Domestic Violence should ensure an adequate prompt response in situations of immediate danger. Accordingly, the authors of this report suggest granting the police the authority to “order a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk.” The authors also suggest that the Draft Law on Police also refers to this police power.*

- **Rec. 67 . Ukraine should introduce in its legislation restraining or protection orders in compliance with the Istanbul Convention.**

*Neither the measures of restraint provided for in the Criminal Procedural Law nor the “temporary restriction of rights” regulated in the Draft Law on Domestic Violence meet the requirements of the Istanbul Convention. Accordingly, the Istanbul Convention Working Group on Legislation Review, during its meeting in February 2015, concluded that Ukraine should improve the current regulation in the Criminal Procedural Code of Ukraine. Moreover, the Working Group agreed that protection or restraining orders should be introduced in the Civil Procedural Code of Ukraine and be made available to other victims of violence against women, not only to victims of domestic violence. These orders should also be available if no criminal proceedings are initiated. .*

*Finally, the authors of this report believe that Ukraine may benefit from introducing in its criminal law the so-called security measures or post-trial restraining measures. These measures are not specifically required in the Istanbul Convention but allow for a coherent enforcement of criminal law protection orders.*

- **Rec. 68 . Ukraine should sanction breaches of emergency barring orders and protection orders.**

*The authors of this report suggest explicitly criminalizing breaches of emergency barring orders and protection orders.*

## **D. EX OFFICIO PROSECUTION**

### **1. What the Convention requires**

Pursuant to Article 55, parties undertake the obligation to allow investigations into or prosecutions of the more severe forms of violence to go ahead without a report or complaint filed by the victim, and to enable proceedings to continue in the event of withdrawal of such a complaint. This rule aims at sparing victims the sole responsibility for initiating prosecution. As the Explanatory Report puts it (Paragraph 279), *“The aim of this provision is therefore to enable criminal investigations and proceedings to be carried out without placing the onus of initiating such proceedings and securing convictions on the victim.”*

The provision covers only some offences, thus in cases of psychological violence (Article 33), stalking (Article 34) or sexual harassment (Article 40) ex officio investigation and prosecution are not mandatory. With regard to all other forms of violence against women, the Explanatory Report clarifies, *“law enforcement authorities should investigate in a proactive way in order to gather evidence such as substantial evidence, testimonies of witnesses, medical expertise, etc., in order to make sure that the proceedings may be carried out even if the victim withdraws her or his statement or complaint at least with regard to serious offences, such as physical violence resulting in death or bodily harm”* (Paragraph 280).

Article 78.2 of the Convention indicates that paragraph 1 of Article 55 is open to reservation, yet only in respect of minor offences under Article 35 (physical violence).

Pursuant to the second paragraph of Article 55, the Convention requires parties to allow governmental and non-governmental organizations and domestic violence counsellors to assist and support victims during investigations and judicial proceedings. This measure intends to make it possible for other stakeholders to provide assistance and support to victims, thus empowering them and facilitating their access to justice.<sup>36</sup> Furthermore, this provision does not only cover legal assistance but also psychological and other kinds of support.

## 2. Assessment of the Ukrainian law

### Criminal Procedural Code of Ukraine

Article 26.4 CPCU establishes the following: *“Criminal proceedings in the form of public-private prosecution shall be initiated only upon request of the individual concerned. Dropping charges by the victim, his representative in cases specified in the present Code is the unconditional ground for closing criminal proceedings.”* Accordingly, the Criminal Procedural Code of Ukraine requires a previous application filed by the victim in order to allow for state involvement in the prosecution of many forms of violence against women, meaning that this requirement applies to offences subject to private prosecution (Article 477.1.1 CPCU). Furthermore, the CPCU explicitly “downgrades” to private prosecution most offences if committed, inter alia, by the spouse of the victim. (Article 477.1, indents 2 and 3 CPCU). On the other hand, Article 284.1(7) mandates closing criminal proceedings if the victim or her/his representative withdraws charges in criminal proceedings conducted as private prosecution.

The new Criminal Procedural Code of Ukraine, on the one hand, has improved the regulation on private prosecution. On the other hand it has significantly enlarged the list of offences subject to private prosecution. However, it still does not comply with the requirements of the Istanbul Convention. The legal requirement of a victim’s application coupled with the mandatory closing of proceedings if charges are withdrawn clearly infringes Article 55 of the Convention, at least in cases of physical violence (Articles 122, 125, 126 of the CCU) and sexual violence (Articles 152 and 154 CCU). Moreover, such additional requirement on the grounds of a marital relationship may violate Article 43 of the Convention, whereby offences of violence against women shall apply irrespective of the nature of the relationship between victim and perpetrator.

## 3. Recommendations

- **Rec. 69 . Ukraine should consider serious cases of physical and sexual violence, forced marriage, female genital mutilation and forced sterilisation and forced abortion as public offences.**
- **Rec. 70 CPCU. Ukraine should eliminate referral to private prosecution on the grounds of a marital relationship between the victim and the perpetrator.**

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<sup>36</sup> As the Explanatory Report recalls, “Good practice examples have shown that victims who are supported or assisted by a specialist support service during investigations and proceedings are more likely to file a complaint and testify and are better equipped to take on the emotionally challenging task of actively contributing to the outcome of proceedings.”

- **Rec. 71 CPCU.** Ukraine should allow criminal proceedings to continue in the event of a victim’s withdrawal of the complaint under certain circumstances.
- **Rec. 72 CPCU.** Ukraine should consider introducing legal measures to ensure institutional and non-governmental assistance and support to victims of violence against women and domestic violence in criminal proceedings.

## **E. SUPPORT AND PROTECTION OF VICTIMS**

### **1. What the Convention requires**

Article 56 of the Convention contains a non-exhaustive list of procedures designed to protect victims during proceedings, such as the obligation to inform the victim when the perpetrator is released, the obligation to ensure the victim’s privacy and procedural rights, or the right to testify without being present at the hearing (e.g. via audiovisual recording of hearings or video-conferencing).

The obligation to protect and assist the *victim* “requires exploring the connections between human rights and victims’ rights.”<sup>37</sup> Legal proceedings often re-victimize survivors; therefore, it is important to ensure that legal proceedings are conducted in a manner that protects their safety and dignity.

### **2. Assessment of the Ukrainian law**

#### **Criminal Procedural Code of Ukraine**

Section 4 of chapter 3 of the Criminal Procedural Code of Ukraine regulates the status and rights of victims in criminal proceedings. Article 55 defines who may be a victim and there are a number of provisions throughout the Code to ensure the rights of victims.

Although there is no specific reference to victims of violence against women or domestic violence, the new CPCU significantly enhances the procedural rights of all victims of crime. The regulation meets international standards in most areas and includes specific measures on the use of technical means to guarantee victims’ rights.

Furthermore, victims have extended rights to participate in all stages of criminal proceedings and legally established access to all relevant information (Article 56 CPCU). That includes appropriate access to translation and interpretation.

By way of conclusion, the legal framework of Ukraine complies with the minimum standard required by Article 56 of the Istanbul Convention.

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<sup>37</sup> European Commission, *Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on gender violence and violence against children*, Publication Office of the European Union, 2010; p. 26.

## **F. LEGAL AID**

### **1. What the Convention requires**

Article 57 requires parties to “provide for the right to legal assistance and to free legal aid for victims under the conditions provided by their internal law”. The wording makes it clear that the right afforded to victims is subjected to internal law. The Explanatory Report further spells out that: “Article 57 does not give the victim an automatic right to free legal aid. It is for each party to decide the requirements for obtaining such aid” (Paragraph 295).

On the other hand, the Explanatory Report refers to the standards set forth by Article 6 ECHR and the case-law of the European Court of Human Rights with regard to free legal assistance (i.e. *Airey v. Ireland*, judgment of 9 October 1979; *Golder v. the United Kingdom*, judgment of 21 February 1975). Accordingly, the right to free legal aid shall not be limited to criminal proceedings.

### **2. Assessment of the Ukrainian law**

Ukraine adopted a new Law on Legal Aid in 2011 (LLA hereinafter), although its provisions are still under development. The law establishes a two-tier system: free primary legal aid and free secondary legal aid. The first type of service includes legal assistance and information, including drafting requests, complaints and other legal documents (except procedural documents) (Article 7 LLA). The government is under the obligation to provide this service to all persons under the jurisdiction of Ukraine free-of-charge. This service is comprehensive enough as to meet the requirements of the Convention. The system even allows for specialized institutions to provide free primary legal aid (Article 9 and Article 12 LLA). However, it is not clear in the law whether non-governmental organizations count as “specialized institutions” in Article 9 LLA. Furthermore, there is no reference in the law to any kind of specialized free primary legal aid in the area of violence against women or domestic violence.

Free secondary legal aid includes legal defence against prosecution, representation before the court or other institutions and drafting court documents. It is understood from the wording of this Article that free secondary legal aid is not limited to criminal proceedings but includes legal representation before any court. It is also understood that in criminal proceedings not only the defendant is entitled to free legal aid but also the victim. Further, it is not clear whether secondary free legal aid covers the costs of legal proceedings. In Ukraine, for instance, civil proceedings require parties to cover different costs (court fees and others; see section 1, chapter 8, of the Civil Procedural Code of Ukraine). The law may benefit from clarification on these issues.

Beneficiaries of free secondary legal aid are generally limited to persons with minimum family income, although there are multiple groups of people entitled to it (Article 13 LLA). The law does not specifically consider victims of crime, although they are included in the general category of low income individuals. It is worth noting that the income threshold to access free legal aid refers to family income, rather than personal income. This approach may hamper access to justice to victims of domestic violence if the perpetrator is the main or sole source of income for the family.



On the other hand, the Ministry of Social Policy and the Ministry of Justice already agreed to amend the Law on Legal Aid to ensure free secondary legal aid to victims of violence against women and domestic violence.<sup>38</sup>

The law sets up Centres for secondary free legal aid as the key institution in the system. The law also institutes a Register of Lawyers Providing Free Secondary Legal Aid. Yet there is no reference to specialization or specialized institutions. Ukraine may thus consider extending the entities rendering secondary legal aid.

### 3. Recommendations

- **Rec. 73 . Ukraine may foster the role of civil society and non-governmental organisations in providing legal services to victims of violence against women.**

*Although participation of NGOs in providing legal aid is not mandated by the Convention, the authors of this report consider it to be a good practice that Ukraine may adopt. Accordingly, the LLA may explicitly recognize NGOs as entities allowed to provide free primary and secondary legal aid.*

- **Rec. 74 . Ukraine may improve its regulation on free secondary legal aid with regard to victims of domestic violence.**

*The authors of this report suggest introducing a specific criterion to calculate the income of victims of domestic violence.*

## G. STATUTE OF LIMITATIONS

### 1. What the Convention requires

Article 58 of the Convention calls on states parties to define a statute of limitation that allows child victims enough time to initiate proceedings after reaching the age of majority. The provision refers to sexual violence and harmful practices (forced marriage, FGM and forced abortion or sterilization) and requires the gravity of these offences to be taken into account when deciding on their statute of limitation. Moreover, Article 78 permits reservations with regard to all forms of violence but sexual.

### 2. Assessment of the Ukrainian law

Article 49 CCU regulates the “*discharge from criminal liability due to limitation period.*” Among the different rules provided for in this Article there are no specific references to child victims. On the other hand, the chapter on sexual violence does not contain any reference to the statute of limitations.

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<sup>38</sup> Various ministerial departments, *Suggestions submitted by central executive authorities to amend current laws in connection with preparation of the Council of Europe Convention on preventing and combating violence against women and domestic violence*, 2014, p. 16.

The time limits provided for in Article 49 for grave and special grave offences are quite long (15 and 20 years each). Such periods cover rape, assault and other serious forms of violence, therefore in most cases child victims will have enough time to bring action against perpetrators after the age of majority. However, there is no legal guarantee that this will apply in all cases. For instance, cases of sexual crimes against young children, other forms of violence or other less serious forms of sexual violence may fall outside the scope of the Ukrainian statute of limitations. Thus, in order to comply with the minimum requirements of the Convention Ukraine may need to amend Article 49 CCU or reserve the application of Article 58 to some forms of violence.

### **3. Recommendations**

- **Rec. 75 . Ukraine should bring its rules governing the statute of limitations in line with Article 58 of the Istanbul Convention.**

## IX. MIGRATION AND ASYLUM

### A. GENERAL PRINCIPLES

Chapter VII of the Istanbul Convention (Article 59 “Residence status”, Article 60 “Gender-based asylum claims”, Article 61 “Non-refoulement”) focuses on migration and asylum issues. According to the Explanatory Report, migrant women, including undocumented migrant women, and women asylum-seekers, form “*two subcategories of women that are particularly vulnerable to gender-based violence*”. Despite their difference in legal status, reasons for leaving their home country and living conditions, both groups are, on the one hand, at increased risk of experiencing violence against women and, on the other hand, face similar difficulties and structural barriers in overcoming violence. The Convention contains a number of obligations that aim at lifting such structural barriers and granting specific protection to these victims.

This chapter should be read in conjunction with chapter I on general principles and Article 4 in particular, whereby the rights created by the convention are for all victims, including those with migrant or other status.

### B. RESIDENCE STATUS

#### 1. What the Convention requires

Research has shown that fear of deportation or loss of residence status is a very powerful tool used by perpetrators to prevent victims of violence against women and domestic violence from seeking help from authorities or from separating from the perpetrator. Most Council of Europe member states require spouses or partners to remain married or in a relationship for a period ranging from one to three years for the spouse or partner to be granted an autonomous residence status. As a result, many victims whose residence status is dependent on that of the perpetrator stay in relationships where they are forced to endure situations of abuse and violence for long periods of time (see: Paragraph 301 Explanatory Report).

Article 59 of the Convention establishes a set of complex protection measures to allow migrant women with a dependent or irregular status to escape a violent relationship or marriage.

Paragraph 1 of Article 59 of the Istanbul Convention introduces the possibility of granting migrant women who are victims of gender-based violence an independent residence status, irrespective of the duration of the marriage. The Convention refers to “*particularly difficult circumstances*” as a general ground for granting this benefit. The Explanatory Report spells out that: “*parties should consider being a victim of the forms of violence covered by the scope of this Convention committed by the spouse or partner or condoned by the spouse or partner as a particularly difficult circumstance*” (Paragraph 303).

Furthermore, the second paragraph allows for the suspension of expulsion proceedings against victims if the reasons for such proceedings lie with their violent spouse. As the Explanatory Report puts it, this provision refers to victims who face repatriation because of expulsion proceedings initiated against their abusive and violent spouse or partner (see Paragraph 306). The purpose is

to prevent victims from being expelled together with their perpetrator. The provision does not constitute grounds for a residence permit.

Under paragraph 3, states parties shall also issue a renewable residence permit to undocumented victims in one of the two following situations, or in both: a) where the competent authority considers that their stay is necessary owing to their personal situation; b) where the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.

Finally, paragraph 4 requires states parties to ensure that victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, may regain this status.

It should be noted that according to Article 78.2 states parties may reserve their right not to apply or to apply only in specific cases or conditions the provisions laid down in Article 59

## **2. Assessment of the Ukrainian law**

The Law of Ukraine on the Legal Status of Foreigners and Stateless Persons 22.09.2011 (LLSFSP hereinafter), defines the legal status of foreigners and stateless persons who stay in Ukraine, and establishes the rules for their entry and exit. The Law of Ukraine on Immigration 07.06.2001, (LI hereinafter), determines conditions and procedures under which aliens and stateless individuals may immigrate into Ukraine.

None of these laws fulfil any of the requirements of the Istanbul Convention. Each of them, for different purposes, regulate family reunification and take into account kinship to grant immigration permits (Article 4 LI) or entry and temporary or permanent residence (Article 1 and 4 LLSFSP). However, there is no reference to cases of violence against women or domestic violence. Neither piece of legislation covers in any way the situation of foreigners or stateless persons who are victims of any form of violence covered by the Convention, nor is there any provision establishing the possibility to apply for an independent residence permit. Furthermore, existing rules on expulsion do not contain any exception to protect the spouse of a perpetrator who is being expelled. The aforementioned laws do not include any provision that provides a legal basis to issue residence permits to victims because of their personal situation or because they are cooperating with the authorities in criminal investigations. Finally, there is no procedure for victims of forced marriage to regain their status if lost as a consequence of the forced marriage.

## **3. Recommendations**

- **Rec. 76 . Ukraine should ensure protection to foreign or stateless victims of violence against women and domestic violence who are temporary or permanently residing in Ukraine or undocumented, in accordance with the requirements of the Convention. Alternatively, Ukraine may make a reservation to all or some of the obligations established in Article 59 of the Convention.**

*Given the absence of any reference to the situations under consideration in Article 59 of the Convention, the authors of this report suggest introducing a new Article in the Law of Ukraine on the Legal Status of Foreigners and Stateless Persons dedicated to implementing these obligations. The Law on Immigration should also be amended accordingly.*

## C. INTERNATIONAL PROTECTION

### 1. What the Convention requires

The provisions laid out in Articles 60 and 61 of the Istanbul Convention aim at recognising violence against women as a form of gender-related persecution that merits international protection. Accordingly, they are intended to be read in conjunction with the 1951 Convention relating to the Status of Refugees and Article 3 of the European Convention of Human Rights as interpreted by the European Court of Human Rights.

Paragraph 1 of Article 60 requires states parties to ensure that “gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, a (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.”

This obligation conforms to current international practice in many cases and implies recognising that a woman may be persecuted because of her gender. On the other hand, the Explanatory Report makes it clear that: *“it is not the intention of this paragraph to overrule the provisions of the 1951 Convention, in particular with regard to the conditions of granting refugee status imposed by Article 1 of this Convention”* (Paragraph 311).

The second paragraph of Article 60 complements the previous one and seeks to ensure a gender-sensitive interpretation of each of the 1951 Convention grounds. The Explanatory Report points out that states parties may refer to the UNHCR Guidelines on International Protection: Gender-Related Persecution and/or to the 1967 Protocol relating to the Status of Refugees (May, 2002). The Explanatory Report also notes that states parties: *“may if they wish extend the interpretation to individuals who are gay, lesbian, bisexual or transgender, who may also face particular forms of gender-related persecution and violence”* (Paragraph 312).

Finally, paragraph 3 mandates states parties to develop gender-sensitive reception procedures. The Explanatory Report illustrates this requirement with some examples of gender-sensitive reception procedures: *“the identification of victims of violence against women as early in the process as possible; the separate accommodation of single men and women; separate toilet facilities, or at a minimum, different timetables established and monitored for their use by males and females; rooms that can be locked by their occupants; adequate lighting throughout the reception centre; guard protection, including female guards, trained on the gender-specific needs of residents; training of reception centre staff; code of conduct applying also to private service providers; formal arrangements for intervention and protection in instances of gender-based violence; and provision of information to women and girls on gender-based violence and available assistance services”* (Paragraph 314).

This provision also requires states parties to develop support services for asylum-seekers that provide assistance in a gender-sensitive manner and that cater to their particular needs. These services may include providing additional psycho-social and crisis counselling, as well as medical care for survivors of trauma (see Explanatory Report Paragraph 315).

Besides, Article 60.3 of the Convention also calls upon states parties to develop gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection. The Explanatory Report also provides some examples of gender-sensitive asylum procedures: *“the provision to women of information on asylum procedures; the*

*opportunity for women dependents to have a personal interview separately and without the presence of family members; the opportunity for women to raise independent needs for protection and gender-specific grounds leading to a separate application for international protection; the elaboration of gender guidelines on the adjudication of asylum claims, and training. It also encompasses gender-sensitive interviews led by an interviewer, and assisted by an interpreter when necessary; the possibility for the applicant to express a preference for the sex of their interviewer and interpreter which the parties will accommodate where it is reasonable to do so; and the respect of confidentiality of the information gathered through interviews.”(Paragraph 317)*

On the other hand, Article 61 requires states parties to respect the principle of non-refoulement in accordance with existing obligations under international law. States parties shall ensure that victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.

## **2. Assessment of the Ukrainian law**

The Law of Ukraine on Refugees and Persons in need of Complementary or Temporary Protection in Ukraine, 08.07.2011, (hereinafter LRPCTP) determines the procedures and requirements in the sphere of recognition of a person as refugee and as a person in need of complementary or temporary protection. The law also covers the loss and deprivation of this status.

Article 1 LRPCTP defines the main terms such as “refugee” (Paragraph 1 Article 1 L RPCTP), “*person in need of complementary protection*” (Paragraph 13 Article 1 LRPCTP), and “*persons in need of temporary protection*” (Paragraph 14 Article 1 L RPCTP). Such definitions are in compliance with international and regional standards. However, neither in these definitions nor in any other provision does the law refer to gender-based violence as a form of persecution or as a serious harm. The LRPCTP does not incorporate a gender perspective and does not specify any gender-related ground for international protection, nor does it provide for a gender-sensitive interpretation of existing grounds.

Furthermore, nothing in the law provides a legal basis for gender-sensitive reception procedures, specialized support services for asylum-seekers, gender guidelines or gender-sensitive asylum procedures.

As a result, the LRPCTP is in need of several amendments in order to comply with the Istanbul Convention.

With regard to the obligation of non-refoulement, the Law on Refugees prohibits the expulsion or forced return of a refugee or a person in need of complementary or temporary protection to the country they came from and where their life or freedom are endangered (Article 3 LRPCTP). More importantly, Article 31 of the Law on Legal Status of Foreigners and Stateless Persons also prohibits the forced return or forced expulsion, extradition or transfer of foreigners and stateless persons to countries: a) where their life or freedom would be threatened due to discrimination by race, religion, nationality, citizenship (nationality), membership of a particular social group or political opinion; b) where they face the death penalty or execution, torture, cruel, inhuman or degrading treatment or punishment; c) where their life, health, safety or freedom are threatened because of wide-spread violence in situations of international or internal armed conflict or systematic violations of human rights or natural or man-made disasters, or lack of medical

treatment or care that provides life support; d) where they face expulsion or forcible return to countries where the above cases may arise.

This provision of Ukrainian legislation is in compliance with the requirements of Article 61 of the Istanbul Convention as it proclaims that victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment. Nevertheless, the aforementioned provisions may benefit from a gender-sensitive interpretation.

### **3. Recommendations**

- **Rec. 77 . Ukraine should ensure that gender-based violence against women may be recognised as a form of persecution or serious harm giving rise to refugee status or other international protection.**
- **Rec. 78 . Ukraine should ensure a gender-sensitive interpretation of each ground of persecution. Similar amendments should be introduced into all relevant provisions regarding the status of refugees or persons in need of complementary or temporary protection.**
- **Rec. 79 . Ukraine should develop gender-sensitive reception procedures, specialized support services for asylum-seekers, gender guidelines and gender-sensitive asylum procedures.**

*The authors of this report suggest introducing a legal basis for these measures in the LRPCTP. Furthermore, the authors also suggest that while developing these procedures, services and guidelines, Ukrainian authorities take into account the views and roles of specialized international and national NGOs.*



## X. APPENDIX I

# PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE IN UKRAINE

- Project funded by SIDA  
and implemented by the Council of Europe -

## ISTANBUL CONVENTION WORKING GROUP MEETING ON LEGISLATION REVIEW

**1-2 October 2014, 9:00-17:30 (each day)**

**Venue:** Hotel “Grand Admiral Club”,  
16 Radyanska Str., Irpin (Kyiv Oblast)

### LIST OF ATTENDEES

№	Institution	Participant	Position
1.	Ministry of Social Policy of Ukraine	Kozub Lidiya <i>Replaced by Ms Natalia Sobkalova</i>	Head of Unit of Social Prevention of Family Distress, Department of Family and Children
2.	Supreme Court of Ukraine	Taran Tetyana <i>Present</i>	Judge of the Criminal Chamber of the Supreme Court of Ukraine
3.	Ministry of Justice of Ukraine	Yaichuk Andriy <i>Present</i>	Deputy Head of the Department of Criminal and Criminal Procedural Law
4.		Alekseenko Galyna <i>Present</i>	Chief Specialist on legislation on Information Management of Social, Labor and Humanitarian law
5.	Verkhovna Rada of Ukraine	Makiychuk Tetyana <i>Present</i>	Head of Scientific-Expert Department of the Verkhovna Rada of Ukraine
6.	General Prosecutor Office of Ukraine	Varshavska Inna <i>Present</i>	Senior Prosecutor of the General Directorate of rights and freedoms
7.	International Women’s right center “La Strada-Ukraine”	Levchenko Kateryna <i>Absent</i>	Head of International Women’s right center “La Strada-Ukraine”
8.	West Ukrainian Center “Women’s Perspectives”	Fedkovych Galyna <i>Present</i>	Lawyer, WUC “Women’s Perspectives” chief consultant
<b>Council of Europe</b>			
9.	Council of Europe	Truchero Javier <i>Present</i>	International expert

10.	Council of Europe	Khrystova Ganna <i>Present</i>	Local expert
11.	Council of Europe	Khavronyuk Mykola <i>Present</i>	Local expert in criminal law
12.	Project “Preventing and combating violence against women and domestic violence in Ukraine”	Urrutia-Enciso Ana <i>Present</i>	Project Manager
13.		Svavolya Iryna <i>Present</i>	Project Officer
14.		Volkova Nadiya <i>Present</i>	Project Assistant
<b>Linguistic Center Rozmai</b>			
15.	Linguistic Center “Rozmai”	Gulidov Oleksandr <i>Replaced by Vadym Kasteli</i>	Interpreter
16.		Monahova Nataliya <i>Present</i>	Interpreter
17.		Bryuhanov Igor <i>Present</i>	Interpreter

## XI. APPENDIX II

# PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE IN UKRAINE

- Project funded by SIDA  
and implemented by the Council of Europe -

## STRATEGIC DISCUSSION: IMPLEMENTATION OF COMPREHENSIVE POLICIES

**25 February 2015, 8:45-16:45**

**Venue:** Office of Ukrainian Parliament Commissioner for Human Rights,  
Main conference room,  
21/8 Instytutska St., Kyiv

### LIST OF ATTENDEES

№	Institution	Participant	Position
1.	Ministry of Social Policy of Ukraine	Ustymenko Sergiy <i>Absent</i>	Vice Minister of Ministry of Social Policy of Ukraine
2.		Fedorovych Nataliya <i>Present</i>	Head of Department on family, gender policy and human trafficking
3.		Farymets Olena <i>Present</i>	Deputy Head of Department on Family, Gender Policy and Human Trafficking, Head of Unit on Human Trafficking
4.		Bogdanova Natalya <i>Absent</i>	Head of Unit on Gender Policy
5.		Stalna Olga <i>Absent</i>	Senior Specialist of Law Department and Legal Expertise
6.	Ukrainian Parliament Commissioner for Human Rights	Filipishyna Aksana <i>Present</i>	Representative of Ukrainian Parliament Commissioner for Human Rights, Head of Department on children rights, non-discrimination and gender equality
7.		Ponomaryov Sergiy <i>Absent</i>	Head of Unit on non-discrimination and equal opportunities for woman and men, Department on children rights, non-discrimination and gender equality
8.		Dihtyar Myroslava <i>Present</i>	Head of sector on gender equality

9.	Ministry of Foreign Affairs of Ukraine	Shakuro Nataliya <i>Present</i>	Head of Unit of Human Rights, Council of Europe, Department of International Organisations
10.	Ministry of Interior Affairs	Polishchuk Oleg <i>Present</i>	Deputy Head of Department on District police officers
11.		Labun Andrew <i>Present</i>	Senior Inspector of Unit on District police officers
12.	Supreme Court of Ukraine	Taran Tetyana <i>Present</i>	Judge of Criminal Chamber
13.		Lyashchenko Natalya <i>Absent</i>	Judge of Civil Chamber
14.	Verkhovna Rada of Ukraine	Makiychuk Tetyana <i>Absent</i>	Chief Scientific Adviser at the Division on social and labour issues
15.		Chygryn Alla <i>Absent</i>	Deputy Head of the Secretariat of the VRU Committee on human rights, national minorities and international relation
16.	Ministry of Justice of Ukraine	Zarudna Olena <i>Replaced by Ms Halyna Alieksienko</i>	Head of Department on social, labour and humanitarian law
17.		Verkhovska Olga <i>Absent</i>	Head of Unit on Civil Law, Deputy Head of Department on civil law and entrepreneurship
18.	Ministry of Health of Ukraine	Kolomeichuk Valentyna <i>Absent</i>	Head of Unit of motherhood and childhood, Deputy Head of Department on reform and development of health care
19.		Chybis Iryna <i>Absent</i>	Senior Specialist of motherhood and childhood, Deputy Head of Department on reform and development of health care
20.		Kuzminska Tetyana <i>Absent</i>	Head of Unit on Legal Expertise of Law Department
21.		Belanova Lubov <i>Absent</i>	Senior Specialist of Unit on Legal expertise of Law Department
22.	General Prosecutor Office of Ukraine	Lytvynchuk Olga <i>Present</i>	Head of Unit on Legal Expertise of Law Department
23.		Tomilina Yana <i>Present</i>	Senior prosecutor of Department on children rights and freedoms
24.	Kirovograd Oblast Council (pilot region)	Atamanchuk Vita <i>Present</i>	Deputy Head of Kirovograd Oblast Council
25.	Free Legal Aid	Lavrinok Myroslav <i>Present</i>	Deputy Head of Free Legal Aid
26.	West Ukrainian Center «Women’s Perspectives»	Fedkovych Galyna <i>Absent</i>	Lawyer, WUC “Women’s Perspectives” chief consultant
27.	International Women’s Right Center “LaStrada-Ukraine”	Levchenko Kateryna <i>Absent</i>	Head of International Women’s Right Center “LaStrada-Ukraine”
28.	Women’s Information Consultative Center	Suslova Olena <i>Absent</i>	Head of Women’s Information Consultative Center

29.	International Charitable Fund “Ukrainian Women's Fund”	Bondar Olesya <i>Replaced by Ms Liudmyla Lehkostup</i>	Deputy President of International Charitable Fund "Ukrainian Women's Fund"
30.	Ukrainian Foundation for Public Health	Pylypas Yulia <i>Present</i>	Project Coordinator
31.	Swedish International Development Cooperation Agency (Sida)	Fyrk Sophie <i>Present</i>	Second Secretary, Swedish Embassy to Ukraine/ Programme Manager – Development Cooperation
32.	United Nations Population Found	Osaulenko Olga <i>Absent</i>	Programme Officer
33.	Organization for Security and Co-operation in Europe	Rudenko Tetyana <i>Absent</i>	National Project manager
34.		Medun Tetyana <i>Absent</i>	National Project Officer
35.	Gender Responsing Budgeting in Ukraine	Bosnic Maja <i>Present</i>	Team Leader
36.	General Prosecutor Office of Ukraine	Varshavska Inna <i>Present</i>	Senior Prosecutor of the General Directorate of rights and freedoms
37.	Ministry of Social Policy of Ukraine	Sotanova Natalia <i>Present</i>	
38.	Verkhovna Rada of Ukraine	Korchmar Oksana <i>Present</i>	
39.		Kryshtefovych Orest <i>Present</i>	
40.	Centre “Rozrada”	Bondarovska Valentyna <i>Present</i>	
41.	All-Ukrainian NGO “Centre for the Development of Democracy”	Kozub Lidiia <i>Present</i>	
<b>Council of Europe Office</b>			
42.	Council of Europe	Lytvyneko Olena <i>Absent</i>	Deputy Head of the Office
43.		Nelles Johana <i>Absent</i>	Head of Unit on Violence against Women, DGII Directorate General of Democracy
44.		Urrutia-Enciso Ana <i>Present</i>	Project Manager “Preventing and combating violence against women and domestic violence in Ukraine”
45.		Svavolya Iryna <i>Present</i>	Project Officer “Preventing and combating violence against women and domestic violence in Ukraine”
46.		Nechyporuk Oksana <i>Present</i>	Project Assistant “Preventing and combating violence against women and domestic violence in Ukraine”

47.		Truchero Javier <i>Present</i>	International expert of the Council of Europe
48.		Khrystova Ganna <i>Present</i>	National expert of the Council of Europe
<b>Linguistic Center Rozmai</b>			
49.	Linguistic Center Rozmai	Monahova Nataliya <i>Present</i>	Interpreter
50.		Stembkovska Anna <i>Present</i>	Interpreter
51.		Bryuhanov Igor <i>Present</i>	Technician
52.		Boienko Anna <i>Present</i>	Technician