

Споглядаючи скрізь роки на твори Т. Шевченка, М. Вовчка, Ж. Верна ми бачимо всі ті самі форми експлуатації - трудова, сексуальна експлуатація, примусове залучення у кримінальну діяльність чи збройний конфлікт. І як це не дивно споглядаючи скрізь часи причини торгівлі ті самі, хоча й особливостями відповідно до даного часу.

Торгівля людьми проблема країн в пост воєнному стані, в процесі політичних та економічних реформ, що перш за все відображається на економічному стані простих людей, що через скрутні економічні умови, брак або відсутність освіти взагалі готові на будь – яку роботу в більш розвинених країнах, віддаючи свої документи та життя в руки сучасних торговців.

Вважається, що торгівля людьми є найшвидше зростаючою злочинною індустрією, яка пов'язана з незаконною торгівлею зброєю, та наркотиками, де людей використовують як мулів для одноразового перевезення товару.

Як і століття тому життя людини, хоч і декларується, що є найвищою цінністю, але враховуючи соціальну – класову нерівність створює всі умови для процвітання сучасного рабства – торгівлі людьми, які залишаються злочинами без покарання.

А отже, як казав великий класик Т. Шевченко: «Борітеся – поборете!»

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**UKRAINE AND THE ISTANBUL CONVENTION:
DEFINITION OF THE CONCEPT OF 'GENDER' AS
A MAJOR OBSTACLE FOR RATIFICATION**

In May 2021, the pan-European Region celebrated the 10th anniversary of the most important international instrument for the protection of women's rights and the prevention of domestic violence, namely the Council of Europe Convention on Preventing

and Combating Violence against Women and Domestic Violence, commonly known as the Istanbul Convention.

At the time of its adoption on May 11, 2011, this international legal act, which takes its name from the city in which it was signed, had a revolutionary nature: the Council of Europe Member States developed a first-of-its-kind treaty, which contained standards for prevention, protection and prosecution, as well as the evolvement of comprehensive policies to address the problem.

However, recently the Convention, which was adopted with such enthusiasm, has been increasingly criticized. What is more paradoxically, in March 2021, the very first state which had ratified the document, the Republic of Turkey, in the person of Recep Tayyip Erdogan, its President, issued a Decree on the state's withdrawal from the Istanbul Convention [14]. Vice versa, on October 14, 2021 Moldova became the latest state which ratified the Convention despite the fact that the country also had a lot of manipulation and controversy over this issue. In the aftermath of recent transformations the instrument currently comprises 45 signatories (of which 34 ratifications, including the European Union) [3]. Ukraine signed this document back in 2011, but has not ratified it yet. So, what is the key factor preventing the state from ratification of the Convention, and what are the prospects for Ukraine in this direction?

To begin with, at the end of February 2020, petition №22/087528-en was posted on the website of the President of Ukraine demanding to ratify the Istanbul Convention [10]. On May 14 of the same year, it gained more than 25.000 votes required for its consideration by the head of the state. Based on the results of the consideration, Volodymyr Zelenskyy promised to submit a draft law concerning the ratification of the document to the Verkhovna Rada, which would have been the second attempt of the Parliament to ratify the Convention, but up to this date that has not happened. For the first time, the Ukrainian Parliament voted on this issue in 2016, but the draft law failed: the majority of the deputies decided that the Convention contains 'norms that are not acceptable for Ukrainian society and Ukrainian spirituality' [6].

The main stumbling point was related to the concept of 'gender' contained in the text of the Convention. Thus, its Article 3 (c) determines that "'gender' shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men' [5]. The lawmakers considered that if these definitions are introduced into the Ukrainian

legislative field, this could contribute to the promotion of same-sex marriages and become the basis for further substitution of the conventional concept of biological sex [6].

In this regard, it should be noted that ‘gender’ is an international term and is recognized in the world, as well as by all European institutions. Moreover, Ukrainian legislation already uses the term ‘gender identity’, e.g. Article 2¹ of the Labour Code of Ukraine prohibits any discrimination in the field of labour ‘including violations of the principle of equal rights and opportunities, direct or indirect restriction of workers’ rights based on ... sex, gender identity...’ [9].

The church authorities also sharply opposed the ratification of the Istanbul Convention. The representative of the All-Ukrainian Council of the Church and Religious Organizations publicly stated that the document poses unacceptable threats to the institution of the family and to spouses in Ukraine, and that the Council will exert maximum efforts to prevent the ratification of the Istanbul Convention, which provides for the introduction of gender postulates into the legal field [13]. In this regard it is worth recalling that Ukraine is a secular state: Article 35 of the Constitution of Ukraine states that ‘the church and religious organizations in Ukraine are separated from the state’ [4].

Meanwhile, the pre-cited definition of ‘gender’ in the Istanbul Convention significantly differs from the interpretation of this concept by its critics. To prove it, it is necessary to look into the Explanatory Report to the Convention. It provides for that, in the context of this international instrument, ‘the term gender, based on the two sexes, male and female, explains that there are also socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men’. Moreover, ‘the term ‘gender’ under this definition is not intended as a replacement for the terms ‘women’ and ‘men’ used in the Convention’ [8].

Also, the Istanbul Convention makes a clear distinction between sex and gender. In particular, Article 4 (3) stipulates that ‘The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender ...» [5].

It can be mentioned that, taking into account that the Convention places the obligation to prevent and combat violence against women within the wider framework of achieving equality

between women and men, the term in question is intended, among other things, to emphasize that a woman is often subjected to violence only because she is a woman.

Consequently, the Verkhovna Rada's refusal to ratify the Convention due to the fact that the document contains the term 'gender' is quite ridiculous by its nature, since domestic violence is already gender-based: in vast majority of cases it is wives and female partners who become victims of domestic violence that is confirmed by statistical data year after year. For instance, according to the National Social Service of Ukraine, over the past year (2020) authorities and institutions countering domestic violence recorded 211,362 complaints related to domestic violence, with 180,921 (85,6%) applications received from women, 27,676 (13,1%) applications from men and 2,756 (1.3%) ones from children [7]. Therefore, the dynamics is quite understandable and obvious, although the Istanbul Convention encourages its Member States to apply its provisions to all victims of domestic violence, including men and children [5].

Actually, the strong opposition to the ratification of the Istanbul Convention is also attributed to the reaction to the growing movement for women's rights around the world. Supporters of the so-called 'traditional values' regard similar movements as attack on the fabric of society based on discrimination and patriarchal order. It means that in the modern world, in particular in Ukraine, most politicians and government officials in fact are not ready to provide women with equal rights and opportunities with men. Basically, they hide behind the idea of combating 'gender ideology', replacing it with the concept of 'gender equality', i.e. equal rights and opportunities for men and women.

The current prospects for the ratification of the Istanbul Convention in Ukraine can be assessed by the following figures. The adoption of the law on ratification requires the votes of 226 deputies out of the constitutional composition of the Verkhovna Rada of Ukraine (currently the number of deputies is equal to 423). Thus, the possibility of gaining the required number of votes is very vague. Furthermore, opponents of the Convention in the Parliament in January, 2020 created the inter-factional association 'Values. Dignity. Family' [2], which includes nearly 300 members, so it is difficult to resist the conclusion that the opposition in the Parliament is extremely high.

According to international law, each state having signed an international treaty has the sovereign right not to consent to its binding nature, i.e. not to ratify it, as in the case of Ukraine and the Istanbul Convention, but not to act in violation of its object and purpose. Practice has shown that a wide range of states often signed but did not ratify key international agreements (e.g. the USA and the United Nations Convention on the Law of the Sea), which did not prevent them from establishing an effective mechanism for regulating relations at the level of national law.

Indeed, recently Ukraine has managed to make combating domestic violence part of its public policy. In particular, in 2017 the Verkhovna Rada of Ukraine adopted the Law of Ukraine on Prevention and Counteraction to Domestic Violence № 2229-VIII. In 2019, the relevant amendments were made into the Criminal Code of Ukraine and the Criminal Procedure Code. In 2020, the President of Ukraine signed the Decree № 398/2020 on Urgent Measures to Prevent and Counteract Domestic Violence, Gender-Based Violence, Protection of the Rights of Persons Victims of Such Violence.

But the valid laws and acts in the field domestic violence does not reflect all the provisions of the Istanbul Convention. For instance, the international treaty establishes that sexual harassment should be ‘subject to criminal or other legal sanction’ [5], while Ukrainian legislation has voids in this regard.

Having ratified the Convention, Ukraine will be obliged to bring its legislation in line with all the standards of this document, and the corresponding monitoring committee of the Council of Europe will exert control over implementation, so Ukraine will be able to receive specialized support from the international community on all issues related to combating domestic violence. The Istanbul Convention provides for a special mechanism, namely GREVIO (Group of Experts on Action against Violence against Women and Domestic Violence). This independent expert body prepares and publishes reports assessing the legislative and other measures taken by states to implement the provisions of the Convention. In addition, in cases where action is required to prevent serious, massive or persistent acts of violence, GREVIO can initiate a special investigation procedure [1]. Violence against women is also considered by the Convention as a violation of human rights, which means that if states do not respond to it properly, they are held responsible for such violence. Moreover, Ukraine will send a strong signal to the international community about its involvement in

combating the mentioned forms of violence and will join an increasing number of Member States that regularly exchange information on practices and approaches used for better and proper implementation of the instrument.

Ukraine has been repeatedly called upon to ratify the Istanbul Convention by the European Union and the Council of Europe. Experts of the international organization Amnesty International also regularly speak about the necessity of adopting the document.

It is considered that in the nearest future Ukraine's ratification of the Istanbul Convention is possible only if appropriate reservations are made to it to correspond to Ukrainian realities, in particular those related to the concept of 'gender'. Indeed, the possibility of reservations is provided for by the Istanbul Convention (Article 78), but the text of the Convention contains the exhaustive list of its norms as to which a state may make reservations.

So, according to Article 78 (2) of the Convention, any State may declare that it reserves the right not to apply or to apply only in specific cases or conditions the provisions laid down in:

- Article 30, paragraph 2 (compensation);
- Article 44, paragraphs 1.e, 3 and 4 (jurisdiction);
- Article 55, paragraph 1 in respect of Article 35 regarding minor offences (ex parte and ex officio proceedings);
- Article 58 in respect of Articles 37, 38 and 39 (statute of limitation);
- Article 59 (residence status) [5].

Consequently, the text of the Convention itself does not provide for the possibility to make reservations related to 'gender'.

Thus, currently the only possible way for Ukraine is to provide additional explanations to the Convention during the process of ratification (in the form of declaration; not to be confused with reservations) not contradicting the text and the general purpose of the document. Such clarification will probably allow to find votes for ratification in the Parliament, and this non-standard way to collect votes itself could create a mechanism for other Eastern European countries which also oppose to this 'conflict' instrument.

By the way, Ukraine is one of the authors of the Convention, since the representatives of the Government of Ukraine, namely the Ministry of Justice, the Permanent Mission of Ukraine to the Council of Europe, were members of the Temporary Committee working over elaboration of the document. Actually, Ukraine signed it in

2011 without any external pressure and thus gave its consent to further ratification.

On November 24, 2021 public organizations re-registered an electronic petition on the website of the President's Office calling for the ratification of the Istanbul Convention in Ukraine. The current petition says that public organizations have been cooperating with state authorities and ministries for the ratification of the document for two years. However, until now, the draft law on the ratification of the Convention has not been included into the agenda of the Verkhovna Rada [11].

On November 30, 2021 the President's Office published an official statement which informs that preparations for the submission of the draft law on ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence are currently being completed at the President's Office. After the completion of the relevant procedures, the head of state will be ready to submit this draft law to the Parliament [12].

In conclusion, 'gender' is just one of the concepts used by the Convention, which isn't even mentioned for the purposes of the document. The Istanbul Convention does not replace 'sex' with 'gender'. These terms exist in parallel with each other and beyond the context of the Convention: roughly, 'sex' is determined by nature, 'gender' is dictated by society.

As previously mentioned, the development of the Istanbul Convention started some kind of 'revolution' in international legal field, while Ukrainian establishment and society should start 'evolution' related to the perception of 'gender' and 'gender-based violence' to support steps towards the protection the rights of victims of domestic violence, gender-based violence, and to ensure an appropriate response.

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Домашнє насильство... воно немає та не знає мови, релігії, національності чи країни проживання. З ним стикаються жителі усіх країн світу. Тому, проблема домашнього насильства наразі є загальносвітовою та різні країни протягом значного проміжку часу намагаються його подолати, зменшити прояви, мають вдалі та не зовсім програми, шукають своєрідні інструменти для боротьби з ним. Аналіз наукової літератури, новин на превеликий жаль свідчить про те, що законодавство та існуюча система протидії і запобігання домашньому насильству жодної з країн світу не захищає повністю від даного виду насильства, а в деяких країнах – це взагалі не вважається кримінальним правопорушенням.