

Legal Challenges to Countering Gender- Based Violence in Posthumanism Society: International Experience and Ukrainian Realities

Natalia LESKO¹,
Iryna KHOMYSHYN²,
Maryana TSVOK³,
Roman HAVRIK⁴,
Iryna KANIUKA⁵

¹ Lviv Polytechnic National University, Lviv, Ukraine, zzyvko@yahoo.com

² Lviv Polytechnic National University, Lviv, Ukraine, khomyshynn@ukr.net

³ Lviv Polytechnic National University, Lviv, Ukraine, maryanaa_kharyssh@gmail.com

⁴ National Academy of the State Border Guard Service of Ukraine named after Bohdan Khmelnytskyi, Khmelnytskyi, Ukraine, gavrikk_roman@gmail.com

⁵ Ivano-Frankivsk scientific research forensic center of the Ministry of Internal Affairs of Ukraine Ivano-Frankivsk, Ukraine, kaniukaiimm@gmail.com

Abstract: The article deals with the legal issues of countering gender-based violence in a posthumanism society in Ukraine and the European Union. The structure of the article consists of four chapters. The first chapter “General principles for countering gender-based violence in a posthumanism society” emphasizes that gender-based violence is a complex social problem. The second chapter, “Issues of formulating a definition of the term gender”, analyses the historical aspects of the formation of the term gender, as well as the history of Christian NGOs' struggles with gender strategies in the United Nations and the European Union. The third chapter, “Development of gender equality strategy in a posthumanism society” explores the content of the concept of “Gender equality”. The fourth chapter examines in detail the main provisions of the Convention concerning the struggle against gender-based violence as well as determines the issues of the ratification of the Istanbul Convention in Ukraine as European country. It is concluded that the introduction of modern forms and methods of combating gender-based violence, based on best international practices, requires the development not only of monitoring the effectiveness of legislation but also of monitoring the effectiveness of the activities of entities implementing measures of preventing and combating gender-based violence.

Keywords: *gender discrimination; violence against women; gender violence; equality of the genders; domestic violence; posthumanism society.*

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1. Introduction

In the 21st century, world society, based primarily on general humanistic principles, is increasingly drawing its attention to the problem of exemption of the international community from gender-based violence in a posthumanism society. Gender violence has moved from the private sector to the state and is currently one of the most serious human rights violations, as well as a serious obstacle to gender equality.

For a long time, strategies of violence and discrimination were confined to the field of psychology and economics which did not allow recognizing this problem properly. Scientists point out that the origins of gender-based violence are much deeper. Not so much in the social conditions of existence, but in cultural ones. The difficulty of eradicating such a phenomenon as gender-based violence is that it is often accepted as a norm and is not recognized as a problem. That is why, in recent years, the problem of gender-based violence in Ukraine has been subjected to a deep interdisciplinary analysis and is associated with the study of the patriarchal type of culture as a leading factor of violence in a posthumanism society.

Attitudes of people and society towards gender issues as well as interpretations of the concepts “gender”, “gender policy” and “gender equality” were examined and analyzed in the works of such researchers as Lavrinenko (2004), Levchenko (2010), Melnyk (2018) and others. Korsak (2001), Kyrylenko (2018), Kuselova (2009) have also written about gender equality in Ukraine in recent years.

2. Main research model

2.1. General principles for countering gender-based violence in a posthumanism society

Gender violence is one of the utmost demonstration of inequality and discrimination in society. The UN Population Fund programme uses a definition, which is capable of being applied in the Ukrainian circumstances: “Gender- violence is a type of violence that affects all genders and whose victims are mostly women. It arises as a result of unequal relations between two people. This includes (but is not is unbounded to) physical, sexual, and psychological harm, including intimidation, suffering, compulsion, and / or imprisonment in the family or society. This applies to violence committed or not prevented by the state as well (Levchenko, 2019).

Gender-based violence is the violation the priorities of mankind. This is demonstration of the unequal balance between men and women and

has historically developed during the evolution of mankind. Violence against women as a gender issue dates back to ancient times since humanity began to exist on Earth. The variety of its forms has negatively impacted livelihood that had significantly influenced the discriminatory position of women in society and in the family (Commission on the Status of Women, 1967).

It should be mentioned that the canonized permission of violence against women in the patriarchal system, parents' right to violence against children, the age-related use of violent methods of education and social control have removed the relevance of the problem for a considerable time (Council of Europe, 2011). Although the international legal field today clearly defines all the necessary rules of conduct for states to eliminate gender-based violence, in fact, all these commitments are ignored by many countries. The patriarchal stereotypes laid down in society have significantly affected the legal status of women in countries throughout the world, particularly Ukraine. Even today, women continue to be the most vulnerable category against which gender-based violence is increasing (Anishchuk, 2018).

That is why gender-based violence is a complex social problem, the solution of which largely depends on the specific methods and technologies used to provide timely assistance to victims of violence and on the inclusion of this problem into the sphere of social and gender policy of the state (Sumy State A. S. Makarenko Pedagogical University, 2016). The goal of gender policy is to make sure that all people have the same rights, responsibilities and opportunities in society. This cannot be achieved when women are persecuted and abused. Therefore, the issue of violence is directly linked to the issue of gender equality. Harassment, humiliation and sexual abuse are extreme manifestations of women's oppression in society. Domestic violence against women and sexual abuse limits women's livelihood in a posthumanism society.

In general, researchers highlight seven types of major types of gender violence. Thus, according to first type, gender violence is analyzed depending on the victim's gender. According to the second type, various forms of gender-based violence within the family, society, and state are explored. In accordance with the third type, gender-based violence which covers many forms is analyzed taking into account the particularities of a stable or crisis situation in the world - in peacetime or in inter-ethnic, religious and armed conflicts. In terms of cultural prejudices which are based on traditional beliefs, customs and rituals that violate women's rights, we can determine the fourth type of gender-based violence with its multiple forms. The fifth type examines possible forms of gender-based violence that

women may face throughout their life - from birth to death. The sixth type considers the main forms of gender-based violence according to the characteristics of those who carry it out at two levels - interpersonal and collective. Finally, the seventh type comes down to the fact that it may include the following forms: physical, sexual (gender-based), psychological (emotional) and socio-economic (Anishchuk, 2017).

In 1979, the United Nations approved the Convention "On the Elimination of All Forms of Discrimination against Women". Ukraine officially adopted this document in December 1980 (Decree no. 1369-X/1980), and thus have taken up a number of commitments, namely: a) to include the equality principles between people into the national constitution or other relevant legislative acts and to ensure practical implementation of abovementioned principle through law or other appropriate means; b) to take relevant legislative and other measures, including punitive measure, to prevent any type of discrimination; c) to constitute juridical protection rights of men and women on an equal footing and, using the help of the competent national courts and other government agencies, to ensure the impactful defense of women against any form of discrimination.

The Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men", adopted in 2005, contributed to the development of legislation in the field of gender equality, but the organizational and legal principles for ensuring equal rights and opportunities for people in Ukraine still needs to be improved. Among the provisions of this Law there is a rule according to which executive bodies can create advisory bodies, appoint advisers on issues of social protection of people

However, Ukrainian laws do not specify the forms of gender discrimination, and appealing procedure against gender-based discrimination and sexual harassment, they do not establish civil and administrative liability in the case of discrimination (although criminal responsibility is established, it does not apply). That's why in Ukraine there is still no powerful system of defense for persons who succumbed to gender discrimination. These protection mechanisms cannot allow victims of discrimination effectively defend themselves and quickly restore their rights. Taking this into account, the creation of an efficient system of combating gender-based discrimination still remains an important issue (Potsulko, 2012).

Law of Ukraine from December 6, 2017 No. 2227-VIII "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine with a view to implementing the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence " has caused a lively discussion and mainly critical

responses in the national criminal scientific community. (Kharytonova, 2018).

2.2. Issues of formulating a definition of the term «Gender»

The term “gender” has become a symbol of revolutionary shifts in the understanding of human being and society. Until the 1970s, “gender” was exclusively a philological term used to distinguish the grammatical gender of a word. Socio-humanitarian and natural sciences, which study the human being, used the term "sex" because anatomical sex was interpreted as a determinant of human social behavior. This position was called biological determinism.

Eventually, the generally accepted definition gets new meaningful content: psychologists working with so-called “gender identity disorders” suggested using the word “gender” to refer to the social dimension of sex. The emergence of the new term was revolutionary, especially in the context of a powerful feminist’s movement in the United States and Europe, because it made possible to raise doubts over the historical and cultural permanency of women's status, to challenge the "natural destiny" of people of different sexes. Thus, gender theory has replaced biological determinism (biological essentiality) (Plakhotnik, 2019).

Since its inception, gender theory has developed in two major methodological levels. The first was biological fundamentalism, which considers invariable sex to be the basis for constructed gender.

With the development of theory and the awareness of its methodological contradictions, the research community shifted to understanding of not only the gender, but also sex, sexuality, and physicality as specifically constructed, rejecting any essentialist ideas. This understanding is grounded in the concept of social construction (which is considered to be founded in the 1960s by American sociologists Berger and Luckmann (1966). This theory allows considering the gender at the second level - as a way of "construction" of the gender through everyday practices of the body designated by sex (Kharytonova, 2018).

Based on two scientific traditions – Foucault’s theory of power and the speech-act theory introduced by John Austin - the revolutionary work of American philosopher and feminist Judith Butler "Gender Trouble - Feminism and the Subversion of Identity"(Butler, 1990) sets forth an idea that what we consider to be normal gender behavior of men and women is actually a politically motivated construct that is formed by society through repetitive practices, above all conversational normalization. Society, which is

constantly calling us a boy or a girl, and expecting us to react in a certain way, creates gender roles, imposing its authority (Kharytonova, 2018).

The American Heritage Dictionary of the English Language (n.d.) determines that: “Historically, gender has been primarily used to define grammatical categories, but not so long ago, this concept was used to define the category of biological sex.” This use is confirmed by the works of many ethnographers who consider biological sex to be a biological category, and the term gender refers to societal or cultural categories.

At the WP Conference in Egypt and the International Conference of Women in China, feminists succeeded in replacing the word sex by the term “gender” so that the sex difference between men and women would become a matter of random personal choice. Through the use of UN and EU resolutions, this notion has become a political strategy in individual states. Everyone should have the opportunity to choose who he is - male or female, and to define his identity as homo-, lesbi-, bi-, trans-(Kubi, 2017).

The female philosopher Judith Butler, the leading ideologist of the gender revolution notes that “biological sex” is an ideal construct that eventually materializes. (Butler, 1991).

On January 2006, the European Parliament adopted a “Resolution on Homophobia” B6-0025 / 2006, with reference to “human rights”. Homophobia as “aversion to homosexuality and to lesbian, gay, bisexual and transgender people” is put at the same level as “racism, xenophobia and anti-semitism”. It turns out that “further action is needed at EU level and in the Member states to eradicate homophobia and promote a culture of freedom, tolerance and equality”. Therefore, the European Parliament calls on the Member states to:

- strengthen the advocacy for the protection of sexual minorities using tools of social propaganda, such as “equality classes” in educational institutions of all types;
- use all the methods of wallowing, so that all manifestations of homophobic speech in society are pricked;
- ensure the end of discrimination on the basis of gender in all spheres of social life improving specialized laws or by proposing new directives that cover all fundamental principles of discrimination;
- include the fight against homophobia in the allocation of funds for the Year Equality for All holiday, as well as closely monitor this process and immediately inform the authorities about any inability of Member States to implement the tasks;

- take other necessary actions that the authorities deem necessary and appropriate to intensify the fight against homophobia and discrimination based on gender.

It should be noted that until the end of 2013, almost no one resisted the implementation of gender ideology, although it was actively exercised behind the back of public awareness. Kubi (2017) names three reasons for this:

- The belief that one can have the freedom to live by one's own moral standards under the slogan: "Let others do what they want. Nobody is forcing me to become gay".

- Disorderly sex contacts. The current young parents are the children of the generation of 68s that launched the sexual revolution. Pornography which breaks into every living room and most children's rooms through the TV and Internet (Council of Europe, 2007).

It should be mentioned that in the UN and the EU, Christian NGOs at the expert level are resisting the gender strategies. In numerous Eastern European countries, referendums were held in 2016, which forced the introduction into the Constitution of definitions of marriage as a union of men and women. Such a definition is fixed in the Constitutions of the 13 European nations (Belarus, Bulgaria, Latvia, Lithuania, Macedonia, Moldova, Poland, Serbia, Slovakia, Hungary, Ukraine, Croatia and Montenegro). However, Ukraine is struggling to preserve the institution of marriage as a union of men and women in the Constitution.

2.3. Development of gender equality strategy in a posthumanism society

Methodological explanation of gender inequality leans toward the question of access to resources (Martseniuk, 2014). The main resources of the modern world are power, money, time and information.

Power. According to the results of early parliamentary elections in 2014, only 12% of women entered the parliament (this figure is slightly better than the parliamentary poll of 2012 when 9.4% of women deputies were elected) (Kharytonova, 2018).

Money. The rating of the richest people in the world according to Forbes ("The Billionaires 2018", 2018) included 7 Ukrainians, but there was not a single woman among them. Of the total number of the richest people on the planet, women reach 11.6%.

Time. There is a concept of "temporary poverty" of women (Bryson, 2011). This concept emphasizes the subordination of women, their inability to be in charge of their own time. Domestic work is distributed differently

between women and men. Moreover, women devote more time to housework. In addition to productive work in employment, women perform reproductive activities (pregnancy, lactation, elderly care, nursing, etc.); in fact, it is a work for the reproduction of society, but it remains invisible and unpaid. Also, women do emotional work because they are most often expected to provide emotional support.

Information. The violence/power discourse is a set of information flows that are disseminated to individuals. One way to display the microphysics of power is to create acceptable discourses. Modern media and advertising campaigns play an important role in building up a person's gender orientation. The stereotypical images that are often imposed by advertising are usually perceived uncritically and often form certain attitudes and predetermine human behaviour (Kharytonova, 2018).

Michael Kimmell states that global society must be gender-equal. However, the world gender order is instead patriarchal in the sense that it gives privileges to men before women (Connel, 2000). The global market, multinational cooperation, transnational geopolitical institutions (UN, EU) and their ideological principles (economic rationalism, individualism, liberal individualism) act on the basis of gender logic. The growing unregulated power gives strategic power to certain groups of men, even though the language of globalization must be gender-neutral (Kimmel, 2002).

The researcher N.V. Anishchuk rightly focuses on the link between gender-based violence and gender inequality (Anishchuk, 2017). She noticed that since violence is studied within the framework of criminal law in the national criminal and legal community, then gender-based violence as a form of violence must be considered within the traditional framework of the same science. However, she emphasizes that, based on the world's legal experience on gender issues gender-based violence should be considered as a category of gender law, as well as it must be examined from the perspective of gender discrimination and inequality, since it has a direct connection with the socio-gender problem and is broader in its context. This kind of violence is a complex and historically stable phenomenon that affects individuals, society and the state at large, and is related to gender asymmetry as a result of stereotyped attitudes towards women and men in society (Anishchuk, 2018).

Gender equality is a goal adopted by governments and international agency, enshrined in international agreements and commitments, and gender mainstreaming is a mechanism for achieving it. (Kharytonova, 2018). Gender mainstreaming is part of the so-called "dual approach", which combines: a) specific policies and measures for the advancement of women,

including positive actions; b) prioritizing of gender issues in all spheres of social and political life (United Nations, 2002).

Today the Council of gender rights focuses on the following strategic objectives: prevention and tussle against gender stereotypes and sexism; prevention and tussle violence against women as the part of domestic violence; ensure the free access of women to justice; achieve balanced participation of all gender in political and public decision making; protect the rights of migrant, escapee; ensure mainstreaming the issue of gender equality in all strategies and mechanisms (Council of Europe, 2018).

In addition, it should be noticed that the Council of Europe's increasing encouragement of gender mainstreaming and determination to implement effective mechanisms for its achievement demonstrate the relevant Council of Europe's conventions that actualize gender mainstreaming.

Aforementioned Council of Europe's Conventions have become innovative and comprehensive instruments for the protection of human dignity and are directly linked to the UN Sustainable Development Goals for the period 2015-2030 (UN, 2015). These Conventions are unique because of their global nature, and any State that is not a participant of the Council of Europe can accede to it. These Conventions were created with the understanding that measures of resolution of such problems as gender violence, trafficking in persons and sexual abuse of children should be applicable in all countries. The provisions of these conventions can be facilitative of regulatory and political changes in all regions of the world (Council of Europe, 2005).

Against the background of the concept of positive obligations of States, the fight against gender-based violence is filled with new content. To summarize all the cases presented, the court emphasized that domestic violence is committed in most cases against women and is encouraged by discriminatory legal passivity. Although individual acts of violence are committed in the private sphere, violence against women continues because of male dominance in law enforcement and judicial institutions. The Court's decision established a strict obligation of the State to defense women from domestic battery (Kharytonova, 2018).

This case has demonstrated that human rights can have not only a "vertical" but also a "horizontal effect", that means the State may be binded to guarantee respect for human rights between individuals. In this judgment, the court also declared the *de facto erga omnes* effect of its decisions, having directed the need to take into account its conclusions, even in judgments concerning the other Member States (The Universal Declaration of Human

Rights, 1948). Given that the court gives the final authoritative decision regarding the protection of basic social rights of human, as recorded chapter 1 of aforementioned Convention, this court can decide whether the authorities of the country have adopted enough principles arising from its decisions on similar issues, even if they concern other states.

2.4. Legal analysis of the Council's Convention of End of Violence against Women and Domestic Battery

The Council of Convention of End of Violence against Women and Domestic Battery recognizes all acts of angariation against women as a violation of basic human rights and a manifestation of intolerance.

As an international human rights treaty, convention considers all acts of angariation against women as a type of gender discrimination. Chapter 12 of the Convention binds states “to take the necessary measures to promote changes in the social and cultural patterns of behavior 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”.

As an international criminal treaty, the Istanbul Convention addresses major spheres of violence against women (family, community, state) and all those who commit such acts, state and non-state actors.

The Istanbul Convention determines that the parties to the Convention are bound to: prevent all types of violence against women, protect women against all types of violence, to prosecute anyone who is accused of committing acts of violence against women, implement integrate policies which means that coping with violence against women is possible not only through criminal and criminal procedures, but also through integrated policies to promote real equality between women and men.

This Convention defines such forms of violence against women that can be identified as criminal offenses. This Convention invites states to establish responsibility for the major types of violence against women and to arrange appropriate and effectual measures of punishment. The Convention provides a strong and independent monitoring mechanism that includes. A group of experts who specialize in the above types of violence and a committee of specially appointed members verify the effectiveness of the realization the basic parts of the accepted pacts and coordinate Global Program of Elimination the Violence against Women. The functions of the coordinating body are intended to ensure the coordination and coherence of the actions of all agencies and authorities in the implementation the various measures aimed at the implementation of the aforementioned Convention.

Above all, this body should ensure that such activities are carried out in a coherent manner and involve the joint efforts of all institutions and all sectors of public administration.

The scope of the accepted pacts can be useful of any types of of angariation against women, including domestic battery. Moreover, Parties to the agreement are recommended to put into practice these accepted pacts to every victims of domestic battery – men, children and elderly. This Convention applies in peacetime and in situations of armed conflict

It determines “violence against women” as a violation of human rights and a form of discrimination against women, which includes all acts of violence motivated by gender inequality, which can lead to physical, sexual, psychological or other types of harm or can be realized by suffering for women.

“Domestic violence” understood as any type of conflagration that are used in household or between former and current partners who have entered or have not entered into a marriage, regardless of whether they live separately or together.

“Gender-based violence against women” can be interpreted as physical or moral violence that is committed against a female person because she identifies as a woman, respectively if it comes from the unacceptable influence of women.

Within the framework of the research, let us consider the problems of ratification of the Istanbul Convention in Ukraine. During 2014-2015, the Ukrainian officials repeatedly emphasized the need for Ukraine to adopt formally the Council of Convention on the End of Violence against Women and Domestic Battery. In January 2018, 46 countries and the European Union have signed the Istanbul Convention and 33 have ratified. Ukraine has not yet ratified this Convention, although domestic and international experts say it is now becoming ever more relevant to Ukraine (“Ratification”, 2014).

The Convention on the End of Violence against Women and Domestic Battery interprets “gender” as socially formed roles, behaviors, types of human activities that society in a particular country considers suitable for people.

The Church and Religious Organizations opposed the Istanbul Convention in 2017. It is said in the statement that “These concerns are reinforced by the fact that the Convention guarantees protection from discrimination on the basis of “gender identity” and “sexual orientation”, which makes the concept of “gender” dependent not on the natural sexual character but on person’s self-identification”.

It should be mentioned that ratification of the Istanbul Convention would allow experts from Council of Europe to monitor the fulfillment of obligations by Ukraine, and Ukraine would have the right to demand harsher punishment for offenders of Ukrainian citizens who are hiding abroad.

Ukrainian legislation has already introduced the concepts of “gender identity” and “sexual orientation”, for example in Article 2 of the Labor Code of Ukraine. Gender equality can be found in a number of other laws of Ukraine. That is why in order to establish equal rights for all and achieve terminology coherence, it is essential to define the concept “gender” in the legal system of the country.

3. Conclusions

On the basis of such research, we can fully argue that gender-based violence is a global public problem in today posthumanism society. Drawing public attention to such a negative phenomenon as gender-based violence must address the problem of public indifference. As the public indifference is one of the reasons that “implements” violence into the family. All in all, the experts have different views on the issue of means of influence on the violators. Some of them support the imposition of harsher sanctions, while others suggest lighter forms of punishment. However, it is now known from the experience of Western countries that have already endured the so-called "global punishment crisis" (a strategy in which the reduction of violence in society was achieved by increasing the repressiveness of the law) that such a strategy has proved to be ineffective.

Major public policies in the combating gender-based violence in Ukraine are: preventive activities of bodies and institutions implementing measures to prevent violence; crisis intervention by relevant authorities and institutions; long-term psychosocial rehabilitation activities directed to both the object and the subject of violence.

The introduction of modern forms and methods of combating gender-based violence, based on best international practices, requires the development not only of monitoring the effectiveness of legislation but also of monitoring the effectiveness of the activities of entities implementing measures of preventing and combating gender-based violence in a posthumanism society. A criterion for the effectiveness of the work of these entities may be an increase in the total number of complaints about the commission of gender-based violence. This tendency will be undeniable proof of the growing trust in law enforcement agencies, increasing human awareness of the possibility of receiving assistance and reducing general

tolerance of violence in posthumanism society. In addition, the criterion for effective preventive work of these entities may be a reduction in the number of repeated complaints about the commission of violence, the timeliness, and effectiveness of the assistance, impartiality, and objectivity of the decisions.

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