



UDC 341

DOI: 10.31548/law/4.2023.79

Legal regulation of the protection of women from domestic violence in Western Europe

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Suggested Citation:

Yara, O., Golovko, L., Kapplová, O., Medvedska, V., & Funta, R. (2023). Legal regulation of the protection of women from domestic violence in Western Europe. *Law. Human. Environment*, 14(4), 79-91. doi: 10.31548/law/4.2023.79.



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Article's History:**Abstract**

Received: 02.08.2023

Revised: 10.10.2023

Accepted: 22.11.2023

The relevance of the stated issue is explained by the constant increase in the number of reports of domestic violence in the vast majority of European countries. The purpose of the study is to conduct a comparative analysis of the legal framework for protecting women from domestic violence in Western European countries using the examples of Italy, Germany, and France. General theoretical methods of research, namely abstract-logical, systemic-functional, analysis and synthesis, and the comparative method, were used in the paper. It was clarified that the criminalisation of domestic violence victims has become a gradual trend in Western European countries. Protective measures such as issuing protection orders, using Global Positioning System bracelets to track perpetrators, and increasing responsibility for committing domestic violence have been implemented. The necessity of criminalising the crime of stalking was justified in Ukraine. Western European countries actively combat domestic violence in general and towards women in particular. It is established that the feature of the German legal system is the presence of specialised police units whose activities are aimed at protecting victims of domestic violence. France focuses on developing state programmes aimed at protecting individuals who have experienced family violence. In all analysed countries, the legislation ensures the protection of domestic violence victims through the issuance of protective orders. The analysis of the legislation of Italy, Germany, and France disclosed features of legal regulation regarding the protection of women from domestic violence and identified advantages and disadvantages that may exist in this area. The results of the study can be used in the research field as a basis for further studies on the protection of women from domestic violence and in legislative activities, providing recommendations for changes to Ukrainian legislation

Keywords: women's rights protection; Istanbul Convention; protection order; court; applicant; court decision

Introduction

The relevance of analysing the legal regulation of women's protection from domestic violence in Western European countries is driven by the constant dynamics of social and cultural changes. The increasing awareness of gender inequality and family violence demands continuous analysis and adaptation of legislative mechanisms. The issue of domestic violence remains significant in many countries worldwide, including Ukraine. Therefore, researching the international experience in legal regulation to prevent and combat domestic violence, identifying positive practices

with public approval, is crucial. These countries include Italy, Germany, and France. Since Ukraine recently ratified the Istanbul Convention, it is essential to examine the experience of other countries in its implementation.

As statistics, particularly from the World Health Organization (WHO), show, predominantly women are victims of domestic violence (Violence against women, 2021). Protecting women's rights from domestic violence is a widely discussed issue in the 21st century, both at the international and national levels. The situation worsened

during the COVID-19 pandemic and its aftermath. WHO research revealed that one in three women worldwide experienced violence, and one in four women aged 15 to 24 became victims of partner violence. These figures were collected before the COVID-19 pandemic, which exacerbated the number of people experiencing various forms of violence, as indicated by T.O. Pertseva *et al.* (2021). UN (United Nations) Secretary-General A. Guterres, noting the “horrible global surge in violence,” called for a “ceasefire” in households (United Nations News, 2020). All this underscores that domestic violence against women is one of the most significant global issues, emphasising the need to examine ways to counter it, develop effective prevention strategies, and provide protection.

Many researchers have explored issues related to combating domestic violence, emphasising the importance of collaboration among stakeholders in preventing domestic violence. For example, O. Yara *et al.* (2021) and N. Yuzikova *et al.* (2021) focus on the necessity of collaboration between healthcare professionals and police officers in their study. They concluded that collaboration among professionals working in different fields (doctors, police officers, social workers) is crucial as it helps identify victims of domestic violence who may not be psychologically ready to officially report to law enforcement and immediately provide them assistance. In their study, V.L. Andreenkova *et al.* (2020) argue that collaboration among professionals working with domestic violence victims contributes to prevention and resistance to domestic violence. O.O. Uvarova and K.K. Daineko (2019), as well as T.V. Zhuravel *et al.* (2020), emphasise gender-based domestic violence, highlighting that women are the most frequent victims and require special protection through restraining orders.

In the study by Yu. Slukhaenko (2020), the criminological characteristics of domestic violence were investigated. The author argues that creating a criminological profile of the perpetrator allows for preventing future incidents of domestic violence. N.O. Lishchuk (2020) and O.V. Lomakina (2020) examined the issue of women’s protection from domestic violence through the norms of criminal law. The criminalisation of domestic violence proved to be an effective means of combating it. I.A. Horbach-Kudrya (2021) and O.S. Dmytrashchuk (2021) concluded on the necessity of taking preventive measures against individuals who committed domestic violence and conducting preventive work with them. K.V. Dovgun (2021) proposed an original classification of entities implementing measures to counter and prevent domestic violence, categorising them into subjects of general competence, subjects of special competence, and subjects of optional competence. A.Ya. Shynkarchuk (2021) justified the need for legislative provisions allowing the implementation of restrictive measures of a criminal-law nature concerning minors who commit criminal offences. N.O. Lishchuk (2020) defines violent acts against women as intentional socially unlawful actions causing moral, psychological, physical, or material harm to the victim, motivated by the victim’s social-role status. T.R. Humennikova and A.S. Metil (2018) and D.I. Yaitska (2018) identified family violence as actions or inactions in the form of economic, psychological, physical, or sexual violence occurring within a family. E.A. Polyanska (2020) supports strengthening criminal liability for committing domestic violence, a stance that is fully endorsed. A.I. Berendeeva and V.Yu. Tomina (2022) advocate directing individuals who have committed violence against their partners to undergo a programme for offenders.

The study employed general scientific and special-scientific methods of cognition, including dialectical, for identifying legislative features in France, Germany, and Italy regarding combating domestic violence; systemic-functional, for revealing protective mechanisms for women against domestic violence in these countries; abstract-logical. Analysis and synthesis methods were used to identify legislative trends in these countries, and the comparative method was applied to compare legislation in the three countries. The dialectical method was used to investigate social relations in the protection of domestic violence victims in Italy, Germany, and France, revealing patterns in their development. The formal-logical analysis method critically examined the Criminal Code of Italy, several laws in Germany and France, allowing for the identification of peculiarities in national legislation. The formal-juridical method analysed the effectiveness and consistency of regulations in Italy, Germany, and France concerning the protection of domestic violence victims.

The purpose of the study is to identify the features of legal regulation for preventing and combating domestic violence against women in Western European countries, using the examples of Italy, Germany, and France, and to formulate proposals for amending Ukraine's legislation.

Experience of Italy in protecting women from domestic violence

One of the countries that has achieved considerable success in combating domestic violence is Italy. In this country, in 2019, new legislation aimed at combating domestic violence, the so-called "codice rosso" ("red code"), was developed and adopted. The "Red Code" increased the penalties for crimes related to domestic violence and violence against women, specifically for committing sexual violence and stalking. The code also

established new types of crimes related to violence against women, criminalising forced marriages, acid attacks, non-compliance with eviction orders, and the dissemination of photos or videos with sexual content with the intent to harm a former partner after the end of the relationship. Committing such crimes in Italy is punishable by imprisonment for a term of 1 to 6 years and a fine ranging from 5,000 to 15,000 euros. If the committed crime belongs to the above-mentioned crimes and is perpetrated by a current or former partner using social media, these circumstances aggravate the responsibility (Cordero: Italy passes new domestic violence law, 2019). In Ukraine, the perpetrator of domestic violence is punished with community service for a period of 150 to 240 hours, or arrest for up to six months, or restriction of liberty for up to five years, or imprisonment for up to two years (Article 126-1) (Criminal Code of Ukraine (2001, April)). Compared to the types of punishment in Italy, the types of punishment in Ukraine are less severe, so it is necessary to bring them in line with European standards.

It is worth considering the criminalisation of stalking as a useful and worthy experience to emulate. The crime of stalking in the Criminal Code of Italy is defined as the repeated making of threats or stalking with the intent to cause fear or concern for the safety of the targeted person or the safety of a person with whom he/she is in close relationship (Criminal Code of Italy (1978, May)). The Criminal Code of Italy imposes criminal liability for stalking in the form of imprisonment for a period of 5 to 7.5 years. Stalking has also been criminalised in Germany. The criminalisation of victims of domestic violence becomes a trend in Western European countries. This experience is advisable to adopt in Ukraine.

Italian practice regarding the duties of the judicial police in cases of domestic violence reflects

the state's serious attention to this issue and its efforts to ensure a prompt and effective response to such situations. This obligation arises even if domestic violence is committed verbally. In this case, the person who has experienced domestic violence is guaranteed the right to be heard by a magistrate within three days from the moment the crime is reported (Violence against women, code red is law..., 2019). These measures aim to improve access to justice and ensure safety for those who become victims of domestic violence. This approach underscores the importance of taking prompt action and effective coordination to counteract the crime.

In December 2021, the Council of Ministers of Italy approved a package of measures that enhance the protection of women and increase the penalties for men who commit domestic violence. The most considerable changes introduced by this package of measures include immediate arrest for threats of committing domestic violence, committing the crime of stalking; the use of electronic bracelets by men who behave violently or threaten women. In the case of forgery of the device by the offender, imprisonment is applied as a sanction. Moreover, the package of measures approved by the Council of Ministers of Italy increased the punishment for beating, inflicting bodily harm, breaking into the place of residence of the injured person, threats, and causing damage. In addition, the approved package of measures provides immediate financial assistance to women who have experienced domestic violence, even during the investigation phase (Italy unveils new bill to combat violence against women, 2021). It would be advisable for Ukraine to also increase the penalties for individuals who commit domestic violence, serving as an additional incentive to reduce the number of violent crimes. This opinion is supported by researchers

in the field of combating domestic violence, such as O.L. Bernal (2019).

An interesting experience in Italy is the establishment of the Commission for the Investigation of Femicide and any form of gender-based violence. This Commission investigates the phenomenon of violence against women in Italy and monitors the implementation of the Istanbul Convention (Council of Europe Convention "On Preventing and Combating Violence..." (2011, May)). The experience of monitoring the implementation of the Istanbul Convention is valuable and contributes to better implementing the convention, making this experience worth emulating.

Experience of Germany in protecting women from domestic violence

In Germany, several national laws on domestic violence and violence against women have been enacted. Among the most important of these are the Act "On Civil Law Protection Against Acts of Violence and Stalking" (2001, December); the Draft Law "On the Establishment and Operation..." (2011, September); the Law Amending the Criminal Code to improve protection of sexual self-determination (2016, November); the Act to Improve the Fight Against Human Trafficking (2016, October); and the Law to Improve Protection Against Stalking (2017, March).

Firstly, in this way, Ukraine would follow European standards, as demonstrated by the examples of Italy and Germany. Secondly, this is required by the Istanbul Convention. According to it, all countries that have ratified it must criminalise stalking, as well as sexual violence, including rape, psychological violence, which is also a form of domestic violence, physical violence, forced marriage, female genital mutilation, coercion to abortion, and the commission of forced sterilisation. Some of these criminal offences are

already recognised as crimes in Ukraine, such as sexual violence (Article 153 of the Criminal Code of Ukraine), illegal abortion or sterilisation (Article 134 of the Criminal Code of Ukraine), coercion to marriage (Article 151² of the Criminal Code of Ukraine), psychological and physical violence constitute the objective side of the crime under Article 126¹ of the Criminal Code of Ukraine on “Domestic Violence,” and mutilation of sexual organs constitutes the objective side of the crime under Article 121 of the Criminal Code of Ukraine on “Intentional Grievous Bodily Harm.” In addition to that, the Criminal Code of Ukraine needs to establish criminal liability for stalking, which should be understood as intentional systematic unlawful actions causing or likely to cause the person reasonable fear for their life or health, or the life or health of family members, close relatives, or significantly deteriorating the quality of their life, punishable by imprisonment for a term of two to three years.

The German Criminal Code includes coercion as a type of domestic violence, i.e., actions of a person who unlawfully, by using force or threat, causes major harm, forces another person to act, agree to act, or refrain from certain actions; and stalking, i.e., actions of a person towards another person that significantly restrict their way of life and manifest in seeking physical proximity to another person, attempting to establish contact with another person through electronic communication means, or using third parties; the unlawful use of another person’s personal data with the intent to order goods or services for that person or induce third parties to contact that person; threats to another person, one of their relatives, or someone close to them to harm life, physical integrity, health, or freedom, or to perform other similar actions. The formulation of the criminal offence of stalking used in German legislation can be utilised by the Ukrainian legislator when

criminalising stalking and making corresponding amendments to the existing legislation in Ukraine.

If a woman becomes a victim of domestic violence, she should file a complaint with the police. After the police arrive at the scene, the victim of domestic violence must disclose everything that happened, show any physical injuries inflicted by the perpetrator. The police are obliged to draw up a protocol describing the events, documenting statements provided by both parties, and specifying the nature of the injuries suffered by the person. Each party is entitled to receive a copy of the protocol. The police may order the offender to leave the shared residence, take away their keys, and prohibit them from entering the shared residence. Such prohibition can be issued for a duration of up to 14 days. In addition, police officers may prohibit the person who committed violence from contacting the victim, approaching them and their children, approaching their workplace, daycare/school, etc. During this specified period, the victim of domestic violence must seek medical attention to document physical injuries and file a complaint with the nearest court specialising in family dispute resolution. Police officers also have the right to temporarily detain the person who committed domestic violence in custody if there is no other way to ensure the safety of the victim.

Within the framework of the criminal police in Germany, departments of specialists in domestic violence cases have been established. They handle domestic violence cases and ensure the protection of individuals who have experienced violence. Ukraine should learn from this experience. Cases of domestic violence should be handled by experts specialised in the field, as indicated in the work of N.V. Lesko (2019). A key aspect of such an approach is to ensure not only the conduct of investigations but also the guarantee of protection for individuals who have become

victims of domestic violence. Department experts can collaborate with other services, such as social services, medical institutions, and non-governmental organisations.

Experience of France in protecting women from domestic violence

Substantial opposition to domestic violence is also observed in France. Proof of this is the adoption of a number of regulations. One of the most noteworthy in this area is the French Law on the Protection of Non-National Victims of Violence (Law No. 2016-274... (2016, March)). This law establishes the principle of automatic extension of the residence permit in France obtained through marriage to a French citizen in case the couple, which does not have French citizenship, becomes a victim of domestic violence. Also notable is the Law on Measures Against Domestic Violence (“Grenelle Law”) (Law No. 2020-936... (2020, July)), adopted on December 28, 2019. This law consolidates the rules for the use of electronic bracelets. The use of an electronic bracelet allows real-time notification if the person who committed domestic violence approaches the victim. The Grenelle Law establishes a deadline of six days from the date of the court hearing appointment to the issuance of a court order for civil protection, prohibits family mediation in cases of divorce or exercising parental responsibilities in cases of possible domestic violence; the use of electronic bracelets by men who behave violently or threaten women, with imprisonment for offenders who tamper with the device, is also provided for in the legislation of Italy (Italy unveils new bill..., 2021). Their use can be considered a European trend worth emulating. In addition to the mentioned laws, it is also necessary to highlight the Law on Domestic Violence (2015, December). This law empowers a doctor or any other medical professional to break patient confidentiality if they

believe that domestic violence directly threatens the life of the victim. With the enactment of this law, the punishment for harassment by a partner was also increased to a term of up to ten years of imprisonment and a fine of 150,000 euros if the harassment induced the victim of domestic violence to commit or attempt suicide. An increase in the punishment for committing domestic violence is also observed in Italy (Codered: Italy passes new domestic violence law, 2019). However, the highest punishment is established in France.

In France, there are no specialised courts exclusively handling cases related to domestic violence. Criminal courts have jurisdiction over criminal offences related to domestic violence, and matters concerning protective orders are addressed by family civil courts. Women who have become victims of domestic violence have the opportunity to use both civil and criminal legal means of protection. To obtain civil protection, a person who has experienced domestic violence can file a petition for a protective order with a family court judge for immediate protection of their life and health. The court order for civil protection for the person affected by domestic violence is issued for a period not exceeding six months from the date of notifying the offender of the decision, and the duration of this order can be extended. The prosecutor has the right to provide a victim of domestic violence with a remote protection device that allows them to report to law enforcement authorities the danger of violence, for example, when the offender approaches the victim of domestic violence or their residence. With the victim’s consent, who has experienced domestic violence, this device allows them to determine their geographic location when the notification is triggered. The experience of reporting domestic violence that has developed in France is worth emulating in Ukraine.

In France, police officers closely collaborate with the hotline, and this cooperation is well-established. This enables police officers to quickly respond to incidents of domestic violence. Police officers are authorised to issue eviction orders for the person who committed domestic violence from the residence shared with the victim of domestic violence. The court may decide to use GPS (Global Positioning System) bracelets on the offender, which allows the police to receive a signal when the offender approaches the victim of domestic violence, enabling them to respond promptly to such notifications, as indicated by O.V. Lomakina (2020). The decision to use a GPS bracelet can be made by either the criminal proceedings or a family court judge resolving family disputes. The use of electronic GPS bracelets, providing the police with tracking capabilities and immediate response to the approach of the person who committed domestic violence to the victim, is an excellent experience worth adopting.

Conclusions

The study showed that Ukraine should borrow the experience of Italy, Germany, and France in criminalising the prosecution of perpetrators of domestic violence. Through the analysis of the legislation in these Western European countries, the conclusion has been drawn that persecution is considered a crime. An original definition of persecution has been formulated, proposed for incorporation into Ukrainian legislation. Persecution, in the development of Ukrainian legislation, should be recognised as a deliberate and systematic conduct of threatening behaviour towards another person, causing them to fear for their safety, punishable by imprisonment for a term of three to five years.

An analysis of the legal regulation of the protection of women from domestic violence in

Italy, Germany, and France has been conducted, highlighting the features of legal protection for victims of domestic violence in these countries. Proposed amendments to Ukrainian legislation have been identified. The analysis of the legal regulation of the protection of women from domestic violence in Italy, Germany, and France indicates that substantial steps have been taken in all three countries to improve legislation in the fight against this disgraceful phenomenon. Positive steps include recognising domestic violence as a criminal offence and applying restrictive measures to individuals who have committed domestic violence. The experience of Italy and Germany in criminalising the persecution of perpetrators of domestic violence is valuable and worth adopting in Ukraine. This experience should also be borrowed by Ukraine. A particular feature of Germany's legal system is the presence of specialised police units focused on protecting victims of domestic violence. France's distinctive feature is the development of state programs aimed at protecting individuals who have experienced family violence. In all countries analysed (Italy, Germany, France), the protection of victims of domestic violence is ensured by issuing protective orders.

The scientific originality lies in the proposal that the most acceptable form of ensuring the safety of victims of domestic violence, which could be introduced into Ukrainian legislation and the practical activities of the courts, is conducting judicial proceedings in cases related to domestic violence via video conferencing while adhering to clearly established procedures. The person who committed domestic violence must be present in court, and the person who has become the victim of domestic violence must participate in the proceedings either from the court premises or outside the court premises in an online mode, for example, using the Easycon service. This procedure

will enhance the protection of victims of domestic violence and is worth applying both in Ukraine and in other Western European countries, including Italy, Germany, and France.

The practical value of the results obtained is that they can be used in the research field as a basis for further investigation of the protection of women from domestic violence. The issue of preventing domestic violence deserves further

exploration. The relevant area of research may be the legal regulation of the prevention of domestic violence.

Acknowledgements

None.

Conflict of Interest

None.

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Правове регулювання захисту жінок від домашнього насильства в країнах Західної Європи

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Анотація

Актуальність теми дослідження пояснюється постійним зростанням кількості повідомлень про насильство в сім'ї в переважній більшості європейських країн. Мета статті – провести порівняльне дослідження правового забезпечення захисту жінок від домашнього насильства в країнах Західної Європи на прикладі Італії, Німеччини та Франції. У роботі використано загальнотеоретичні методи наукових досліджень, а саме: абстрактно-логічний, системно-функціональний, аналізу і синтезу, порівняльний метод. З'ясовано, що криміналізація жертв домашнього насильства стала поступовою тенденцією в країнах західної Європи. Як і видача охоронних приписів, використання Global Positioning System-браслетів, за допомогою яких

поліція має змогу відстежувати кривдника, а також збільшення відповідальності за вчинення домашнього насильства. Обґрунтовано необхідність криміналізації злочину переслідування і в Україні. Країни західної Європи здійснюють активну боротьбу з насильством у сім'ї загалом і щодо жінок зокрема. Установлено, що особливість правової системи Німеччини – це наявність спеціалізованих підрозділів поліції, діяльність яких спрямована на захист жертв домашнього насильства. Особливість Франції – розроблення державних програм, спрямованих на захист осіб, що зазнали насильства в сім'ї. В усіх країнах, законодавство яких аналізувалося, захист жертв домашнього насильства здійснюється шляхом видачі охоронних приписів. При аналізі законодавства Італії, Німеччини та Франції виявлені особливості правового регулювання захисту жінок від домашнього насильства та встановлено переваги та недоліки, які можуть існувати в цій сфері. Результати проведеного дослідження можуть бути використані в науково-дослідній сфері, як основу для наступних наукових досліджень з проблематики захисту жінок від домашнього насильства, та правотворчій діяльності, оскільки надані рекомендації для змін до законодавства України

Ключові слова: захист прав жінок; Стамбульська конвенція; обмежувальний припис; суд; заявник; судове рішення
